



EMPLOYMENT TRIBUNALS

Claimant: Mrs Denise Clare Shipstone

Respondent: Leicestershire County Council

FINAL HEARING

Heard at: Leicester **On:** 23-25 & (deliberations) 26 January 2017

Before: Employment Judge Camp (sitting alone)

Appearances

For the claimant: Mr Jonathan Davies, counsel

For the respondent: Mr Jonathan Gidney, counsel

RESERVED JUDGMENT

The claimant was not dismissed and her complaint of unfair dismissal therefore fails.

REASONS

Introduction

1. The claimant, Mrs Denise Shipstone, was employed in education by the respondent Council from August 1982 until her resignation on 7 March 2016. Her resignation came after a decision, following a disciplinary process and many months of suspension, to impose a final written warning on her. Mrs Shipstone was told about that decision on 24 February 2016 and it was confirmed by letter on 29 February 2016. She went through ACAS early conciliation from 31 March to 15 May 2016 and presented her claim form on 9 June 2016. Her only tribunal complaint is one of constructive unfair dismissal under sections 95, 98 and 111 of the Employment Rights Act 1996 ("ERA").
2. It should be emphasised from the outset that Mrs Shipstone's honesty and the quality of her day-to-day work is unquestioned. I unhesitatingly accept that she did nothing morally blameworthy, nor anything that caused actual damage to the Council or any of its schools. One very unfortunate feature of the background to this case is that Leicestershire seems largely to have lost the benefit of Mrs Shipstone's considerable knowledge and skills. She alleges – and I know of no reason to doubt this – that she has been the victim of the 'rumour mill' and that her reputation has been seriously tarnished, to an extent



out of all proportion to any misconduct she was guilty of. What the Council did, and how it went about doing it, may well have contributed significantly to this.

3. In her witness statement, Mrs Shipstone suggests that part of her motivation for bringing her claim is a desire to 'clear her name'. That is an entirely understandable motivation. However, regrettably from her point of view, an employment tribunal trying a constructive unfair dismissal case is not in the business of exoneration, whether of claimant or of respondent. It is no part of my decision that Mrs Shipstone was not treated badly in various respects, nor that the Council's conduct was unimpeachable; but all I am concerned with is whether, in technical legal terms, she was constructively dismissed. In deciding whether she was, I am not applying some vague abstract concept of fairness and justice, but the law as enacted by Parliament and interpreted by appellate courts and tribunals.

Law & issues

4. The main issue I have dealt with is: at any relevant time, did the Council, objectively speaking, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and Mrs Shipstone, or otherwise fundamentally breach her contract of employment? Because my answer to that question is 'no', it is unnecessary for me to consider the other issues raised by the parties and I have not done so.
5. The only other issues – subsidiary ones – I have considered in dealing with the main issue are:
 - 5.1 if there was at any time a fundamental breach of Mrs Shipstone's contract of employment, did she affirm it before resigning?
 - 5.2 did she resign in response to whatever breach of contract she is relying on – or, to put it another way, was it a more than minimal part of her reasons for resigning?
6. The relevant law appears substantially in the issues as outlined above. Dismissal includes an employee terminating, "*the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct*": ERA section 95(1)(c). What this means was definitively decided by the Court of Appeal in Western Excavations v Sharp [1977] EWCA Civ 165, in the well-known passage beginning, "*If the employer is guilty of conduct which is a significant breach...*" and ending, "*He will be regarded as having elected to affirm the contract.*"
7. Mrs Shipstone relies principally, as the "*significant* [a.k.a. fundamental or repudiatory] *breach*", on a breach of the so-called 'trust and confidence term', that is to say: she alleges that the Council, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between employer and employee. Any breach of that term is repudiatory. This serves to highlight that it is a high-threshold test: "*destroy or seriously damage*" is the wording used. It



is not enough, for example, that, without more, the employer acted unreasonably or unfairly.

8. To further emphasise how grave things must be for there to be a breach of the trust and confidence term, or some other fundamental breach of the contract of employment, I note that a fundamental breach is one going to the root of the contract; one that, adopting the wording used in some of the cases, 'evinces an intention¹ not to be bound' by the contract.
9. As was explained by Lord Steyn in Malik & Mahmud v BCCI [1997] ICR 606 at 624, although it is possible for the trust and confidence term to be breached by conduct the employee is unaware of, such conduct cannot be the basis of a constructive dismissal claim. This is because the employee must resign in response to the breach in order to have been constructively dismissed.
10. This is – to an extent – a 'last straw' case. An essential ingredient of the final act or last straw in a constructive dismissal claim of this kind is that it is an act in a series the cumulative effect of which is to amount to the breach of the trust and confidence term. The final act need not necessarily be blameworthy or unreasonable, but it has to contribute something to the breach, even if relatively insignificant. See Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493.
11. In relation to affirmation, (which is referred to at the end of the above-mentioned passage from Western Excavations), I note paragraphs 11 to 15 and 21 to 29 of the decision of the EAT in Cockram v Air Products Plc [2014] IRLR 672.
12. Affirmation is not straightforward in a case like this one where there is alleged to be a course of conduct that amounts to a breach of the trust and confidence term. Respondents often argue that events at the beginning of such an alleged course of conduct are irrelevant because (it is said) if there was a breach at that point, the contract has been affirmed. Any such argument is misconceived. Affirmation of a particular breach of the trust and confidence term does not make things that happened pre-affirmation irrelevant to assessing whether there is a new breach after affirmation. It is necessary to look at everything that happened, including things that happened pre-affirmation, in deciding whether there has been a breach at the point of resignation. Affirmation only 'works' as a defence in these cases if the contract is affirmed between the event constituting the last straw and resignation.
13. Normally, there is nothing more that needs to be stated about the law relating to the trust and confidence term. During the course of claimant's counsel's closing submissions, however, it came to light that there may be a dispute about the law that applies, or at least about how it is properly to be applied. This is a convenient point to discuss that dispute.

¹ This is a reference to what the employer's intentions appear, objectively, to be from its behaviour. Neither the employee's nor the employer's actual, subjective feelings and intentions are relevant to the issue of whether there has been a breach of the trust and confidence term.



14. Everyone agrees that the question for me is (as above): whether, looking at matters objectively, the Council, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence. It is also agreed, in accordance with Buckland v Bournemouth University [2010] IRLR 445, that “*the occurrence of a fundamental breach of a contract of employment on the employer’s part*” is “*to be gauged by a conventional contract test*” and not “*by a ‘range of reasonable responses’ test*”², i.e. the tribunal must make its own, objective assessment of the respondent’s conduct, and decide whether or not it was without reasonable and proper cause and calculated or likely to destroy or seriously to damage the relationship of trust and confidence. It should not merely ask itself whether the employer acted within the ‘range’ or ‘band’ of reasonable responses.
15. The two matters most heavily relied on by the claimant in support of her allegation that she was constructively dismissed are her suspension³ and the imposition of the final written warning. These are said to be the main ingredients of the [alleged] breach of the trust and the confidence term.
16. The dispute about the law that has arisen concerns claimant’s counsel’s argument to the effect that: in relation to the suspension and/or the final written warning, if the tribunal decides the respondent acted unreasonably, there will necessarily have been a breach of the trust and confidence term. That argument is based on the following propositions:
 - 16.1 suspension – or at least suspension without prior investigation and/or in breach of proper procedures – and the imposition of a final written warning will always or almost always be likely to cause serious damage to the relationship of trust and confidence;
 - 16.2 the only live question in the present case is therefore whether there was reasonable and proper cause for suspension and the imposition of a final written warning;
 - 16.3 assessing whether there was reasonable and proper cause involves the tribunal making its own assessment of the reasonableness of the employer’s actions.
17. It also seems to be being suggested that if the tribunal, standing in the Council’s shoes, would have acted differently, i.e. would not have suspended and/or would not have imposed a final written warning, then there was not reasonable and proper cause for what it did and the claimant should win even if the Council acted within the band of reasonable responses.

² Buckland, per Sedley LJ at paragraph 18(a).

³ As is explained later in these Reasons, Mrs Shipstone relied on a number of things to do with the suspension and not simply on the decision to suspend; but in this part of the Reasons, I am concerned only with the act of suspending her.



18. I do not accept claimant's counsel's argument – not, at least, as a whole.
- 18.1 Suspension – not even suspension without prior investigation and/or in breach of contractual procedures – and the imposition of a final written warning will not always be likely to cause serious damage to the relationship of trust and confidence.
- 18.2 In relation to suspension, the claimant relies on Gogay v Hertfordshire County Council [2000] EWCA Civ 228. In that case, the claimant was suspended ostensibly on the basis that a child had made an accusation of sexual abuse against her. That was not an accurate description of what had happened. Further, there was no warning or prior investigation. The Court of Appeal (Hale LJ, as she then was) stated, at paragraph 55: *“The conduct in this case was not only to suspend ... the claimant, but to do so by means of a letter which stated that ‘the issue to be investigated is an allegation of sexual abuse made by a young person in our care.’ Sexual abuse is a very serious matter, doing untold damage to those who suffer it. To be accused of it is also a serious matter. To be told by one’s employer that one has been so accused is clearly calculated seriously to damage the relationship between employer and employee.”* This part of Gogay is simply a decision on a particular, extreme set of facts. It is not, in my view, authority for any legal principle of general application relating to suspension and the trust and confidence term; or, if it is, it is a principle confined to cases where suspension follows an allegation of sexual abuse.
- 18.3 Similarly, it can't be right that as a matter of law imposing a final written warning on an employee will always or even usually be likely to cause serious damage to the relationship of trust and confidence. It may well be that in practice it often will cause such damage; but that doesn't alter the legal position. Whether something is likely to damage the relationship of trust and confidence is a question of fact; and it is not difficult to think of at least one entirely plausible scenario where a reasonable employee's trust and confidence in their employer would be significantly boosted by being given a final written warning: where they had done something that most employers would sack them for.
- 18.4 In making an objective assessment of the respondent Council's conduct and of whether it breached the trust and confidence term, what I am looking at is how that conduct would be viewed by a hypothetical reasonable employee in Mrs Shipstone's position. The hypothetical reasonable employee in her position has some rare and almost inhuman qualities, in particular the ability to be objective about themselves and their situation. The trust and confidence in the respondent of such an employee would in many, and perhaps most, cases not be seriously damaged by objectively reasonable disciplinary (or other) action; nor even, quite possibly, by conduct that is reasonable in the narrow sense that it is within the band of reasonable responses. Buckland does not negate or even affect this. What it does is to serve as a reminder that an employer's behaviour that falls within the band of reasonable responses can breach the trust and confidence term.



- 18.5 In Buckland itself, the Court of Appeal recognised⁴ that, “*reasonableness is one of the tools in the employment tribunal’s factual analysis kit for deciding whether there has been a fundamental breach. There are likely to be cases in which it is useful.*”⁵
- 18.6 In other words: the determinative test is whether there was conduct without reasonable and proper cause that was calculated or likely to destroy or seriously to damage the relationship of trust and confidence; it is not the question ‘did the employer act within the band of reasonable responses?’ and the tribunal does not need to pose that question; but there is nothing wrong with posing it as part of one’s inquiry into whether the employer’s conduct satisfied that test.
- 18.7 In their decision in Buckland, the Court of Appeal did not discuss the ‘without reasonable and proper cause’ part of the test for whether there has been a breach of the trust and confidence term. Presumably, it was not raised in argument before the Court. In the circumstances, I don’t think Buckland necessarily makes the band of reasonable responses test irrelevant to the assessment of whether there was reasonable and proper cause for the employer’s actions in a constructive dismissal case.
- 18.8 I don’t think ‘without reasonable and proper cause’ necessarily always means exactly the same as ‘unreasonably’; but if there is a distinction in meaning, I don’t think it has a practical effect in the present case.
- 18.9 In any given employment situation, for example in a disciplinary process, there may well be reasonable and proper cause for the employer to behave in a number of different ways. I reject any suggestion that there can be only one course of action for which there is reasonable and proper cause. By rejecting that suggestion, I am not importing the band of reasonable responses test into the law of contract; I am simply recognising that in most situations there is a range of objectively reasonable behaviour.
- 18.10 In particular, I reject any suggestion to the effect that if the tribunal, stepping into the respondent’s shoes, would have acted differently from the respondent, e.g. would not have suspended or would have imposed a lesser sanction than a final written warning, the respondent must have acted without reasonable and proper cause. It is open to a tribunal to decide that although an employer’s decision is not the one it would have made, or even that the employer’s decision seems to the tribunal to be rather harsh, there was nevertheless reasonable and proper cause for it.
- 18.11 Finally, on this point, I note that if claimant’s counsel were right, any employee who suffered loss and/or damage as a result of unreasonably being suspended or of having an unreasonable disciplinary sanction imposed on them would be entitled either to remain in employment and sue their employer in the County or High Court for breach of contract or (assuming they had at least 2 years’ continuous service) to resign and

⁴ It was said to be “*arguable*”.

⁵ *Per* Sedley LJ at paragraph 28.



claim constructive unfair dismissal. This would be a surprising state of affairs and is not, I think, the state of affairs that pertains.

19. In practice, conduct of the employer that is within the band of reasonable responses is unlikely to breach the trust and confidence term, because: it is likely to be objectively reasonable and therefore to be considered as such by the hypothetical reasonable employee in the claimant's position; there is likely to be reasonable and proper cause for it.
20. In the above circumstances, it is appropriate to give at least some consideration to the reasonableness of the Council's actions, including to whether they were within the band of reasonable responses; and accordingly I shall from time to time in these Reasons discuss whether the Council acted reasonably / within the band or otherwise; and I shall do so notwithstanding the fact that (as I am well aware) the answer to the question 'did the respondent behave reasonably and/or within the band of reasonable responses?' is not determinative.

Factual background

21. The essential relevant facts are not substantially in dispute. To the extent they are in dispute, my findings of fact are set out below. Also incorporated into my decision, as part of my findings, is an amended version of the Council's chronology of events, contained in an annex to this Reserved Judgment and Reasons. All or almost all of that document is agreed and/or uncontroversial.
22. Mrs Shipstone is a well-known figure in the Leicestershire educational establishment. She has been a Headteacher and/or a Primary advisor to schools in the county for a total of 34 years. In September 2013, after a continuous spell of 10 years or so as a Headteacher, she got a job as Service Manager for Primary Education within the Council. That was itself a senior role. In August 2014, she was seconded to the post of Head of Strategy – Education Quality, and thereby promoted for the duration of the secondment. Her line manager was Gillian [Gill] Weston, Assistant Director, Children and Families Services and Gill Weston's line manager was Lesley Hagger, Director, Children and Family Services.
23. Around August 2014, Mrs Shipstone, who is a widow, began dating a man called David Herd, who is now her partner. Mr Herd provided services to the Council as an Education Quality Adviser ("EQA") and Mrs Shipstone was involved in the commissioning of those services, in that, for example, she signed the extension of his contract with the Council, albeit the decisions that were taken in relation to him were made by Gill Weston. As Mrs Shipstone herself recognised at the time, her relationship with Mr Herd gave rise to a potential conflict of interest.
24. Under the Council's Code of Conduct – both that which applied in 2014 and a new, somewhat 'beefed-up' Code that applied from January 2015 (and that Mrs Shipstone, along with all other staff, was told about and with which she was obliged to make herself familiar) – it was incumbent on Mrs Shipstone to register the potential conflict of interest in writing to her line manager. Mrs



Shipstone did not register the potential conflict of interest in writing with anyone until July 2015. She did, though, in early September 2014, tell Gill Weston about the relationship and offered to complete any forms that Gill Weston wanted her to complete so as to register it.

25. Unfortunately, it seems Gill Weston was just as ignorant as Mrs Shipstone was as to the procedure to be followed. Either of them could have found out what the proper procedure was by reading the Council's published policies. Gill Weston told Mrs Shipstone something to the effect that she [Mrs Shipstone] had done all she needed to do and that she [Gill Weston] would take whatever further steps were necessary. When, in January 2015, the new Code came in, Mrs Shipstone did nothing to ensure that she complied with it. This was because she, innocently but wrongly, assumed the appropriate steps had been taken by Gill Weston in September 2014.
26. From September 2014 onwards, Mrs Shipstone was heavily involved in setting up what was intended to become a new framework for procuring the provision of a range of education-related professional support services to Leicestershire schools (the "Framework"). She was part of a team which included an external purchasing agent called Eastern Shires Purchasing Organisation ("ESPO"). The services provided by EQAs such as Mr Herd were to be included within the Framework. Mrs Shipstone agreed with Gill Weston various working practices with a view to preventing any actual conflict of interest arising in relation to the Framework because of Mrs Shipstone's relationship with Mr Herd. It evidently did not occur to either of them to question whether that relationship made it inappropriate for Mrs Shipstone to be involved in the Framework at all.
27. When involved with the Framework, Mrs Shipstone was not reluctantly following her line manager's orders to deal with the Framework despite her own misgivings. I mention this because her case has at times been put on the basis that she had no choice but to deal with it because Gill Weston had asked her to. That would be a valid submission if and only if Mrs Shipstone had raised concerns and had them overridden by Gill Weston. This did not happen; the two of them had no such discussion. Although Gill Weston's failings provide Mrs Shipstone with significant mitigation, they don't take away her own responsibility, as a senior employee, to do her reasonable best to ensure she did not find herself in an inappropriate position.
28. At various times in early 2015, Mrs Shipstone was having IT problems and wanted to send electronic documents from the Council's computer systems to her home so that she could work on them. There were only two ways she could do this: emailing them to her personal email address, which would have been in breach of the Council's Information Security and Acceptable Use Policy; emailing them to Mr Herd's personal email address, which was an address routinely used by him to communicate with and receive messages from the Council in relation to his work for them. Mrs Shipstone chose the latter course. She was not sending them to Mr Herd and there is no evidence he ever read them. She was just using his email inbox. Amongst other things she sent in this way was, on 16 January 2015, as an email attachment, an internal report or paper presented to the Children & Family Services



Departmental Management Team concerning the Framework and EQAs. It would not in practice have been of use to Mr Herd, but it was an internal and confidential document that he would have had no business seeing.

29. The first step in the process for those, such as Mr Herd, who wanted to be on the Framework was to express an interest by requesting documentary information about it from ESPO. The Council was keen to ensure that as many people and organisations as possible expressed an interest and ESPO had a list of those that had done so. There was some kind of administrative and/or IT problem which meant that some of those who had expressed an interest were not put on the list. On 22 January 2015, Mrs Shipstone: forwarded the list to Mr Herd by email, telling him he was not on it; emailed Lisa Tutt of ESPO to tell her that Mr Herd and another interested party – Gill Weston’s husband – was not on the list.
30. Mr Herd made his tender submission in relation to the Framework around 25 February 2015. In it, he fully and properly declared his relationship with Mrs Shipstone. His application to be on the approved list of providers was considered by colleagues of Mrs Shipstone. She had no involvement. She did, however, consider other applicants’ applications and earlier, had drawn up part of the Framework specification.
31. On 1 July 2015, a ‘whistleblower’ raised concerns and made allegations about conflicts of interest and potential financial impropriety relating to Mrs Shipstone being in a relationship with Mr Herd and Gill Weston being married to her husband. Although the whistleblower was mistaken about a number of things, and although it turned out there was no actual financial impropriety⁶, the concerns were serious and substantial and had some basis in fact.
32. The whistleblower’s concerns were considered by the Council’s senior management. Ultimately, it was referred to the Director of Finance, Chris Tambini, and the Council’s then Monitoring Officer, Andrew James. After a discussion also involving the then Assistant Director – Corporate Services & Transformation, Gordon McFarlane, Mr Tambini and Mr James decided that it should be investigated by the then Head of Internal Audit Services, Neil Jones, and that Mrs Shipstone should be suspended.
33. Prior to suspension, the matter was not investigated to any extent beyond reading the whistleblower’s concerns. In particular, the concerns were not put to Mrs Shipstone for her comments first.
34. The claimant was actually suspended by Mr McFarlane, at a short meeting on 14 July 2015. He appears to have been involved simply because he was a senior manager who was available at the time, because it would not have been appropriate for Gill Weston or Lesley Hagger to suspend (the first also being

⁶ I am only referring to Mrs Shipstone’s situation unless it is expressly stated otherwise. I don’t know what happened in relation to Gill Weston beyond the fact that the concerns against her were investigated alongside those against Mrs Shipstone, that she was suspended too, and that at some stage she left the Council’s employment.



suspended and the second being a potential witness), and because he had an HR background.

35. The only explanation that was provided in the letter confirming suspension, dated 14 July 2015, was that Mrs Shipstone was being suspended, *“following serious concerns regarding your conduct”*. The concerns were identified as, *“you did not appropriately declare and register an interest which has the potential to put you under suspicion of improper behaviour”, “that there existed a potential conflict of interest which you did not properly resolve”, and, “that you have acted or made decisions in situations where there was potential to be influenced by personal interest and financial gain”*.
36. Counsel for Mrs Shipstone seemed to be suggesting that the remit of Mr Jones’s investigation should have been strictly confined to looking into the matters set out in the suspension letter. There is no good reason why this should be so. Mr Jones was not given a written remit, but he correctly understood he was to look into the whistleblower’s concerns and that is what he did. The purpose of the suspension letter, which Mr Jones had no hand in, was merely to outline, in broad terms, for Mrs Shipstone’s benefit, the main allegations she faced and it did so. Its purpose was not to tell Mrs Shipstone precisely what matters were being investigated. If the investigations bore fruit, she would be told in detail the disciplinary allegations she was facing. That was an entirely conventional and reasonable approach for the Council to take.
37. A second illegitimate criticism is levelled at Mr Jones in relation to the scope of his investigations. This is the suggestion that he should not have considered anything other than the specific concerns raised by the whistleblower. In particular, he is criticised for looking into the emails referred to in paragraphs 28 and 29 above, once he happened upon them in or around late August 2015. Having discovered something potentially untoward, Mr Jones would have been in dereliction of duty had he ignored it. If what he had discovered had nothing at all to do with what he was already investigating, it might have been appropriate temporarily to put it to one side, to be examined later and/or by someone else. However, what I shall call the ‘emails issue’ was very much part and parcel of the things Mr Jones was already looking into. It would almost have been unreasonable for him not to have investigated it.
38. Returning to the decision to suspend Mrs Shipstone and the suspension letter, it is noted that the letter did not accuse her of actually acting or making decisions influenced by personal interest and financial gain. At the time, and throughout the course of the disciplinary process and of the tribunal proceedings, she has sought to suggest that the only potentially serious allegations being made against her were those of actual financial impropriety; and that once it was realised (which, it is said, was or should have been by the end of July 2015 at the latest) that those allegations were false and that she had made an oral declaration to Gill Weston about her relationship with Mr Herd in September 2014, the matter should have been treated as no more than a minor misdemeanour – a training issue relating to how properly to register relationships and conflicts of interest. Paragraph 33 of her witness statement



contains an example of the kind of thing I am referring to. I am afraid that that suggestion is misplaced and at best naïve.

39. It is not difficult to empathise and sympathise with Mrs Shipstone. She had over 30 years of dedicated public service to education in Leicestershire. She knows she is not dishonest and corrupt. The local educational establishment and the Council must (from her point of view) have known this too. She had never been suspected of any serious impropriety before.⁷ She had done everything her line manager had required of her. How could anyone possibly think she was anything other than “*a professional person who would not intend to do anything that was inappropriate*”⁸? To suggest that she would ever “*act in an inappropriate way*” would, to her, be “*absurd and deplorable*”⁹.
40. What is missing from that kind of analysis is an appreciation that in the kind of senior role Mrs Shipstone held, and particularly (but not only) when she became involved in the administration of a public procurement process, form and appearances really did matter. Although Mr Herd (and through him, she herself) had not actually benefitted:
- 40.1 she sent to Mr Herd’s email address – and thus on the face of it to him – documents that might be of assistance to someone applying to be on the Framework;
- 40.2 she did things in her professional capacity that were potentially to the advantage of Mr Herd’s business – and thus, indirectly, potentially to her own financial advantage – that were not also done for everyone else applying to be on the Framework, such as sending the emails referred to in paragraph 29 above;
- 40.3 she allowed herself to be in a position where her decisions could help or hinder Mr Herd’s business. For example, if she rejected another EQA’s application to be on the Framework, this would potentially mean less competition for Mr Herd once the Framework was up and running;
- 40.4 she had done all this without ensuring that her relationship with Mr Herd and the potential conflict of interest it gave rise to were properly registered, in accordance with the Council’s written policies and procedures;
- 40.5 by these actions, she made the Framework and the tendering process potentially vulnerable to challenge by any disgruntled failed applicant, in particular by anyone whose application Mrs Shipstone had rejected;
- 40.6 at no stage did she accept that she had done anything significantly wrong.
41. These were serious matters. And there were other allegations that, although they were ultimately not made out, could not simply be dismissed without

⁷ No one suggested in evidence that she had and I assume I would have been informed of any relevant suspicions that existed.

⁸ Claimant’s witness statement, paragraph 39.

⁹ Claimant’s witness statement, paragraph 19.



proper investigation and without serious consideration being given to them. Without hesitation, I reject the submission that “*there were only ever grounds for believing [she] had committed very minor offences*”¹⁰.

42. The gravity of the charges Mrs Shipstone faced does not, though, justify suspension in and of itself. Counsel tell me on behalf of both parties that it is agreed that “*Version: 2015-4R*” of a document called “*Disciplinary Guidance*” (“*Guidance*”) was part of Mrs Shipstone’s contract of employment. I have my doubts as to whether this is correct. I don’t know the basis upon which the *Guidance* is said to have become contractually incorporated; the actual *Disciplinary Policy and Procedure* that is mentioned in the first sentence of the *Guidance* (and with which, apparently, the *Guidance* should be “*used in conjunction*”) is not part of the evidence before me. Nevertheless, I am bound to accept this agreement and I proceed accordingly. In doing so, I take into account the fact that a 43-page document that calls itself ‘*guidance*’ will almost certainly contain many things inapt for incorporation into a contract of employment and that it should not, in any event, be read and construed as if it were a lawyer-drafted commercial contract.
43. The part of the *Guidance* relating to suspension has some rather unusual features, particularly given that it is to be read as containing terms of employees’ contracts of employment.
- 43.1 Suspension can be considered whatever type of disciplinary allegation the employee is facing; he or she doesn’t have to be accused of a ‘gross misconduct offence’.
- 43.2 In other ways, as explained immediately below, the *Guidance* is rather – one might say unnecessarily – inflexible and overly prescriptive.
- 43.3 There is nothing in the relevant parts of the *Guidance* to the effect that it is merely guidance and that managers can use their common sense and exercise a discretion, where appropriate, not to follow it to the letter.
- 43.4 Suspension may only be considered in three situations, only one of which is relevant in the present case. This is: “*there is reasonable belief that the employee may seek to influence witnesses or the conduct of the investigation*”. “*seek to*” suggests deliberate intent.¹¹ Accordingly, the person or people deciding to suspend must genuinely believe, on reasonable grounds, that the particular individual being suspended may consciously try to influence witnesses or the investigation. That there is, without more, a risk of witnesses or the investigation being influenced by that individual’s presence in the workplace is not enough to trigger the right to consider suspension.
- 43.5 Before suspending, an “*appropriate manager*” must “*make initial enquiries about the incident/concern. This will normally involve a discussion between the manager and the employee concerned to ascertain the employee’s version of events and to establish if there is an*

¹⁰ Claimant’s counsel’s Opening Note, paragraph 3.

¹¹ It may well be that this is not what was meant by whoever drafted the *Guidance*, but I have to interpret it objectively, and also apply the *contra proferentem* rule.



acceptable explanation.” In the present case, simply reading the whistleblower’s concerns did not, in my view, amount to making suitable “*initial enquiries*” in accordance with this part of the Guidance, so there was a breach of the Guidance, and therefore of Mrs Shipstone’s contract of employment, here.

- 43.6 The Guidance imposes no express general obligation on the Council to keep any suspension under review. It requires lifting the suspension to be considered only: after the initial interviews with both the employee and witnesses have been concluded, where it is “*necessary for the employee to ... have their suspension lifted*” [emphasis added]; after the formal investigatory meeting with the employee, when “*consideration should be given as to whether [the suspension] can be lifted*”. The only other situation described in the Guidance in which a suspension should be lifted is where it becomes “*apparent that it is no longer necessary for the employee to be suspended from work*”. In the present case, the relevant interviews and meeting concluded in late July / early August 2015.
44. There is no evidence before me directly from Mr Tambini or Mr James about their reasons for suspending Mrs Shipstone. However, I accept Mr McFarlane’s evidence to the effect that they likely had in mind, “*the nature of the allegations and the potential risk of influencing witnesses or [the] conduct [of the] investigation*”¹². Even accepting this, though, I am not satisfied, in the absence of evidence from either of them, that Mr Tambini or Mr James believed Mrs Shipstone might “*seek to*” influence witnesses or the conduct of the investigation, let alone that any such belief was reasonable. I think no one at the Council understood the contractual test that had to be satisfied, hence the repeated emphasis on the seriousness of the allegations being made – which was not, under the Guidance, really relevant to whether or not Mrs Shipstone should be suspended – and the failure fully to address that test, even in Mr McFarlane’s no-doubt-carefully-prepared witness statement. The initial suspension was therefore a breach of Mrs Shipstone’s contract of employment.
45. As to whether there was a further breach of contract when the suspension was not lifted:
- 45.1 dealing first with the situation after the “*initial interviews*”, it is difficult to envisage circumstances in which it would be necessary (as opposed to, for example, desirable or reasonable) to lift a suspension, and there was no failure to comply with this part of the Guidance;
- 45.2 equally, I don’t think it ever became “*apparent*” that suspension was no longer necessary;
- 45.3 the Council is, however, in difficulties in relation to the position after the formal investigatory interview with Mrs Shipstone on 27 July 2015. First, I am not satisfied that Mr McFarlane, or anyone else at the Council, even thought about the suspension in late July / early August 2015. I accept there was a discussion about it between Mr McFarlane and Mr Jones around 26 August 2015. This is supported by the contents of an email Mr

¹² Mr McFarlane’s witness statement, paragraph 6.



McFarlane sent Mrs Shipstone on 27 August 2015. I don't however, accept that any real thought was given to whether or not the suspension should be lifted before then. Secondly, particularly given that the initial suspension was in breach of contract, the suspension clearly 'could' have been lifted and therefore it was a breach of contract for it not to have been.

46. I do, however, note that were it not for the express terms of the Guidance, I would probably have decided there was reasonable and proper cause both for suspending Mrs Shipstone and (subject to my observations, below, about the longevity of the investigatory process) for keeping her suspended. The allegations against Mrs Shipstone were reasonably viewed as serious and substantial. If she remained in work at in her existing job, she would, every day, come into contact with individuals who would be witnesses either for her or against her at a future disciplinary. There is no evidence that there was any alternative job she could temporarily step into in which she would be able to avoid dealing with potential witnesses. However professional she tried to be, her presence would unavoidably have created a risk of witnesses being influenced and of tensions arising, potentially leading to workplace dysfunction. Suspension would have been a reasonable response to those risks, but for the fact that it was a breach of Mrs Shiptone's contract of employment.
47. A further legitimate criticism of the Council relating to the suspension is about its length. This resulted directly from how long it took to get from the start of investigations, in mid July 2015, to specific disciplinary charges being levied and her being invited to a disciplinary hearing, on 18 December 2015. (The delay from 18 December 2015 to the disciplinary hearing taking place around 2 months later is not anyone's fault). I make no personal criticism of Mr Jones in relation to this. It is unfortunate Mrs Shipstone was informed by Mr McFarlane, in his email of 27 August 2015, that Mr Jones was "*very close to the point where he will conclude his investigation and finalise the investigation report*" and that the report was not then finished until 9 October 2015, some 6 weeks or so later. However, I accept he did his investigating and prepared his report – a thorough and substantial piece of work – as quickly as he reasonably could, given his other commitments. I also accept that there are reasonable explanations for at least some of the delays that might otherwise seem excessive. For example, it was necessary to redact Mr Jones's report, which was a report both on Mrs Shipstone and on Gill Weston, before it could be disclosed to Mrs Shipstone, for data protection reasons. This was not a straightforward task, and contributed to the delay between 9 October and 18 December 2015. What I do not accept, though, is that it was not reasonably practicable for the Council as an institution to ensure that matters happened a lot faster than they did.
48. I get the distinct impression in this case (which unfortunately is far from unusual in this respect so far as concerns what happens within large bureaucratic organisations, particularly in the public sector) that, institutionally, the Council's attitude to Mrs Shipstone was that she had no cause for complaint, and that it did not have to proceed with any great urgency, because suspension is not a disciplinary sanction and she was suspended on full pay. What that ignores is



– and this is true even though it is now a cliché in its own right, ranking alongside the cliché that suspension is a neutral act – that suspension, particularly if it is prolonged, almost always feels to the affected employee like a punishment. It is also often taken by other staff, and by customers / clients or equivalents, as being a disciplinary sanction, again particularly where it is prolonged. While on suspension, Mrs Shipstone did not have access to her work emails and was not allowed to contact other members of staff, many of whom were friends as well as colleagues. She was isolated from the workplace and what was going on within the Council. She was not doing any work and so was becoming progressively more de-skilled. These are all normal features of a suspension; but some of what the Council did or failed to do made matters significantly worse than they needed to be.

49. Between 14 July 2015 and 19 October 2015, the only substantial communications with Mrs Shipstone about the suspension and the progress of the investigatory and disciplinary process – not including letters and emails about notes of meetings and the like, or about the grievances she raised – was the email of 27 August 2015.
50. The Council's policies and procedures required a senior manager, designated the Decision Maker, to decide whether, in light of Mr Jones's report, the matter should proceed to a disciplinary. The Decision Maker in this case was Mike Sandys, Director of Public Health. On 19 October 2015, he wrote to Mrs Shipstone to tell her that, "*Having now given the matter considerable thought and in weighing up all of the issues contained within the investigation report, my decision is that this matter needs to proceed to a formal disciplinary hearing. ... the issues contained within this investigation, jointly or separately, may amount to gross misconduct which could result in your summary dismissal*". That was the first Mrs Shipstone knew Mr Jones had completed his report; and it was not until 18 December 2015 that she was actually sent the (by now redacted) report, together with the invitation to the disciplinary hearing, and told what "*the issues contained within this investigation*" were.
51. The only relevant communication from the Council between 19 October and 18 December 2015 was in direct response to a letter of complaint from Mrs Shipstone to the Council's Chief Executive of 10 December 2015, which I shall return to shortly.
52. It wasn't only in relation to the process that there was a woeful lack of communication with Mrs Shipstone from the Council. No one thought to tell her what was happening at work, whether in relation to her job, her department, or the Council as a whole. Mrs Shipstone learned about internal changes within the Council second or third hand. At least partly as a result of this, she thought that her role had, or would, become redundant following a restructure within her team. She was, I find, wrong about this and was given written assurances by the Council that she was wrong about this, but misunderstandings were almost bound to occur when, seemingly, no one at the Council was even attempting to keep her up to date with developments. There were also no welfare communications at all, so far as I can tell.



53. While she was suspended, Mrs Shipstone raised a number of grievances. One that was upheld – in November 2015 – was about the paucity of communication between the Council and her. Another that was upheld was about Lesley Hagger, on 23 September 2015, telling the representatives of Leicestershire headteachers about Mrs Shipstone’s suspension. I am not satisfied that there was, as she alleges, a firm agreement reached that anyone asking where she was would be told she was absent for “*personal reasons*” (I think she is mistaken about this) and I accept she had no right to specify how queries about her during her suspension should be dealt with. However, on 1 September 2015, the Council, through Mr McFarlane, had agreed that a specific form of words would be used in dealing with queries, and she anyway had a right to her suspension being kept confidential.
54. I have no doubt that Lesley Hagger was well intentioned. It was probably impossible to prevent the fact of Mrs Shipstone’s suspension from slipping out sooner or later, and even if it didn’t, it really was impossible to prevent idle speculation, some of it perhaps more damaging than the truth, as to the reasons for her absence from work. With hindsight, though, it would have been much better had the Council adopted from the outset and consistently used “*personal reasons*”, or something like that, as the explanation. In any event, if there was a proposal to breach confidentiality, Mrs Shipstone should have been consulted first. Apart from anything else, she might well have said she preferred people to speculate than to be told what was really going on. I also note that the perceived need to inform Heads once the new school year had got well underway, in late September 2015, to stop speculation and rumour, only arose because of the length of time the process was taking.
55. Mrs Shipstone’s other grievances were, in my judgement, either about objectively quite minor matters or were misplaced. For example, on 21 August 2015, she complained by email about aspects of Mr Jones’s investigation. Putting to one side the issues already mentioned about how long it took and lack of communication, the only one of the criticisms she has made of Mr Jones and his investigation I accept (and it is one that Mr Jones himself accepted at the time) is about one poorly worded question that was accusatory when it should not have been.
56. I think the grievances were to a significant extent born of frustration – the result of the Council’s delays and poor communication with Mrs Shipstone. I certainly don’t suggest it was wrong of her to raise any of them. But that does not make them significant in relation to my objective assessment of whether, when she resigned in March 2016, there was a breach of the trust and confidence term. This is particularly so given that the things she was complaining about in her grievances had mostly happened 6 months or so earlier, between July and September 2015.
57. Finally in relation to the grievances, I note that:
- 57.1 none of them were about the decision to suspend in the first place, nor about the failure to lift the suspension following the investigatory meeting. In fact, the claimant did not complain about these matters prior to her



resignation, nor in the resignation letter itself; and I don't believe they were in her thoughts at any relevant stage;

57.2 from her oral evidence, it is clear to me that Mrs Shipstone was content with the way in which the grievances had been dealt with by the Council. Discontentment about this was not, in my view, a factor in her resignation.

58. Returning to a chronological narrative of events, Mrs Shipstone's letter of complaint to the Council's Chief Executive, John Sinnott, of 10 December 2015 was principally about the lack of communication after Mr Sandys's letter of 19 October 2015. The most relevant parts of the former letter are as follows:

I have been suspended now for five months with no real end in sight I received an email on 19th October 2015 to tell me that it is proceeding to a disciplinary hearing ... whilst I understand that there may be processes you need to follow before advising me of the date for the disciplinary hearing ... I cannot fathom why you would not contact me throughout this time or why this process would need to take more than eight weeks...

... I feel that you have made it impossible for me to return to my role which I have recently learnt has now been made redundant. Based upon this and the silence from you, I can only be led to believe that I have been dismissed from my employment.

I have already provided you with my statements against the absurd allegations showing that they do not stand up to scrutiny. ... I cannot see what more information you would require from me to be able to bring matters to a conclusion. Therefore, unless I hear from you within 7 days setting out the contrary, I will consider that I have been dismissed from my role.

59. Based on her oral evidence, I don't think Mrs Shipstone really meant what she wrote in that letter. I think it was written largely in an entirely understandable attempt to get things moving. That attempt was successful. Mr Sinnott replied by letter on 15 December 2015, telling her that, "*An invitation to a disciplinary hearing, together with the relevant documentation, will be sent to you this week.*" As already mentioned, this duly happened, on 18 December 2015. He also attempted to reassure her about her job: "*There are no action plans in place in relation to the management structure within Children and Families Services. Your position has not been made redundant and you have not been dismissed. ... Please be assured that if your post were to fall within any restructure then you would be properly consulted.*" She did not reply to Mr Sinnott's letter. From this and from – amongst other things – the fact that she ultimately did not resign until March the following year and until after the disciplinary allegations against her had been heard and determined, I think she made a decision in December 2015 that, for better or for worse, she would stay with the Council and see the disciplinary process through to its conclusion. I am sure she still fully expected that conclusion to be the dismissal of all serious charges against her.

60. The letter of 18 December 2015 in which, amongst other things, Mrs Shipstone was invited to a disciplinary hearing referred to three broad allegations. These can be summarised as: failing properly to declare and register her relationship with Mr Herd; failing to ensure that a proper procurement process was followed,



in seven different ways – including allowing herself to be involved in the Framework; sending the emails referred to in paragraphs 28 and 29 above to Mr Herd and/or to his email address.

61. The disciplinary hearing ultimately took place on 22 February 2016. It lasted about 8 hours. I refer to the Council's notes of it, which are comprehensive and speak for themselves. It was dealt with by a panel chaired by the Council's Assistant Chief Executive, Tom Purnell. Both he and one of the panel members, Caroline Fairchild, Head of HR, gave evidence before me and they clearly considered the case and their decision very carefully. They upheld all of the broad allegations being made, although they dismissed as "*unfounded*" five out of the seven subsidiary allegations being made about not following a proper procurement process.
62. It took the panel very little time to come to the unanimous view that dismissal was not appropriate. So far as concerns why a final written warning was the right sanction, they were choosing between this and a first written warning – given that they were not going to dismiss and that the only other option was 'no further action necessary' – and felt that a first written warning was for relatively minor things like timekeeping. They were particularly impressed with evidence they heard from the Head of Procurement and Commissioning Support, Fiona Holbourn, about the potential seriousness of Mrs Shipstone being involved in the Framework, particularly when she hadn't followed proper procedures about declaring her relationship, and they were concerned about Mrs Shipstone's lack of contrition.
63. The panel accepted almost everything Mrs Shipstone told them about what had happened. By the time of the disciplinary hearing, there was in reality only one factual dispute of any potential significance. This was as to whether or not Mrs Shipstone had told Lisa Tutt of ESPO about her relationship with Mr Herd. The panel heard contradictory evidence about this from, on the one hand Lisa Tutt herself and, on the other, Mrs Shipstone and her witnesses. It seems to me the panel were entitled to reach the conclusion they did about this, which was that Lisa Tutt had not been told. Whether it was the conclusion I would have reached is impossible for me to say, but I do not agree that the conclusion went greatly against the weight of the evidence or anything of that kind.
64. In addition, I don't think whether Mrs Shipstone had told Lisa Tutt mattered a great deal to the panel's overall decision. The panel did not accept Mrs Shipstone's overarching case to the effect that she was wholly or largely blameless because others – such as Gill Weston – were to blame. The findings that were made against her were made on the basis that whatever the failings of others, Mrs Shipstone, as a senior manager, was responsible for her own conduct.
65. Part of Mrs Shipstone's case – albeit, I think, a small part – is that there were procedural defects in relation to the disciplinary hearing. For example, it has been suggested that it was wrong for Caroline Fairchild to be part of the panel because of alleged previous involvement in the grievance and disciplinary processes. In short, I don't think there is anything in the points Mrs Shipstone



makes in relation to this. For example, nothing Caroline Fairchild had previously done made her biased or otherwise disqualified her from being part of the disciplinary panel. She had certainly not, as is suggested in paragraph 82 of Mrs Shipstone's witness statement, helped prepare the 'prosecution's' case.

66. Mrs Shipstone knew what the case against her was well in advance of the disciplinary hearing; she was not prevented or inhibited from making any of the points she wanted to make or from calling any of the witnesses she wanted to call; she was able to prepare and did prepare a detailed defence to the allegations against her; anyway, as already explained, by the time of the disciplinary hearing, things had largely stopped being about what had happened and had become almost entirely about whether or not her conduct merited disciplinary action.
67. The panel's findings and the confirmation of the final written warning were set out in writing in a letter from Mr Purnell of 29 February 2016. Mrs Shipstone registered an appeal in a letter of 3 March 2016, but resigned four days later, on the 7th, also by letter. I refer to these three letters, which speak for themselves.
68. There was quite a lot of evidence about matters that I have not mentioned above. In reaching my decision, I have considered and taken into account all of the evidence, but have not resolved and do not purport to resolve every single factual dispute between the parties. Mrs Shipstone in particular may believe that some of the events I have not covered are central. My assessment is that the things I have not expressly dealt with are of little or no significance in relation to the issues I have to decide, and, in any event, are of much less significance than those I have expressly addressed.

Decision on the issues

69. In light of my above findings, unfortunately for Mrs Shipstone, my decision in the Council's favour has become quite straightforward.
70. The question for me is whether Mrs Shipstone's resignation was a response to an un-affirmed repudiatory breach of her contract of employment.
71. Mrs Shipstone relies as the 'last straw' on the imposition of the final written warning and there is no doubt in my mind that she resigned directly in response to it. Indeed, having considered the totality of the evidence, it was, I think, by far the most important factor in her decision to resign.
72. I have to confess that towards the start of trial, my feeling was that imposing a final written warning in the circumstances of this case was rather harsh, and possibly 'over the top'. However, that feeling faded during the course of the hearing and my firm view now, mainly because of the facts and matters referred to in paragraphs 40 and 62 above, is that:
 - 72.1 the Council had reasonable and proper cause for imposing it;



- 72.2 in so far as it matters, I, standing in the decision-makers' stead, would probably have done the same as them.
73. Accordingly, looking at the matter objectively, imposing a final written warning did not "*contribute something*"¹³ to any breach of the trust and confidence term and is not a final straw in accordance with Omilaju.
74. Again assessing matters objectively, and on the basis of my above findings, the only conduct of the Council potentially amounting to or contributing significantly to any fundamental breach of Mrs Shipstone's contract of employment (whether as a stand-alone breach or as part of a breach of the trust and confidence term) is:
- 74.1 suspending her in July 2015;
- 74.2 failing to lift the suspension around early August 2015;
- 74.3 informing headteachers' representatives of her suspension without prior warning or consultation in September 2015;
- 74.4 up to 18 December 2015, causing or permitting the suspension to continue for an excessive period, coupled with a lack of any or any adequate communication with Mrs Shipstone about the course of the investigatory and disciplinary process, about what was happening within the Council, and about her welfare.
75. Mrs Shipstone was not constructively dismissed as a result of these things. This is because even if they, or any of them, did amount to a fundamental breach of contract at some stage:
- 75.1 the breaches of contract relating to the initial suspension and the failure to lift it following the investigatory interview formed no part of her decision to resign;
- 75.2 in accordance with my findings in paragraph 59 above, she affirmed her contract of employment (if not before) when, in light of the Council's letters of 15 and 18 December 2015, she did not resign following her threat to do so in her letter of complaint of 10 December 2015, but instead elected to await the outcome of the disciplinary process, remaining in employment, on suspension, and continuing to receive her full salary, for more than two months further;
- 75.3 because of the affirmation, Mrs Shipstone would not have been constructively dismissed unless something happened after 18 December 2015 that, whether by itself or in combination with everything that had happened up to that date, amounted to a new fundamental breach. Based on my findings, no candidate presents itself; the Council did nothing 'wrong' after 18 December 2015; nothing happened after 18 December 2015 – the final written warning included – that contributed anything to any potential fundamental breach of contract.

¹³ Omilaju, per Dyson LJ at paragraph 19.



76. If something had happened between affirmation in late December 2015 / January 2016 and resignation that contributed something to a fundamental breach of the contract of employment, the fact that Mrs Shipstone affirmed the contract would not be fatal to her constructive unfair dismissal claim. But nothing did.
77. I am not sure whether Mrs Shipstone is pursuing any argument along these lines, but it could, I suppose, be argued that, in the same way that a suspension can be “*conduct extending over a period*”¹⁴ in a discrimination case, the suspension was a fundamental breach of contract that continued up to resignation, and therefore that there was no affirmation in relation to that breach. Such an argument ignores my findings.¹⁵
- 77.1 If there was a fundamental breach of contract in this case connected with suspension, it crystallised, at the latest, in December 2015, i.e. the Council was at fault in what it did up to then, but not in anything it did after then.
- 77.2 The only [potential] fundamental breach of contract that continued up to December 2015 related to the length of time it took to get from the start of investigations – around 14 July 2015 – to disciplinary charges being levied and a disciplinary hearing being convened, on 18 December 2015; coupled with inadequate communication with Mrs Shipstone during that period.
- 77.3 After 18 December 2015, there was no new breach. It was not, for example, a breach of contract to continue the suspension after that date.
- 77.4 By continuing in employment for a further 2 months and more after 18 December 2015, Mrs Shipstone effectively decided that she would not accept a fundamental breach of contract consisting of suspending her and, up to that date, continuing her suspension and providing her with inadequate information.

Conclusion

78. The Council may well have fundamentally breached Mrs Shipstone’s contract of employment on one or more occasions between July and December 2015, but she affirmed the contract before her resignation on 7 March 2016. This means she was not constructively dismissed and that her claim, which consists of a complaint of unfair dismissal only, fails.
79. My decision should not be taken as suggesting that Mrs Shipstone ‘should’ have resigned in December 2015; nor that it was unreasonable for her to have resigned when she did; nor that she did not genuinely feel, when she resigned, that she had lost all trust and confidence in the Council and could not continue to work for them. This is not about fairness or unfairness. It is no more and no less than a decision that there was no dismissal as a matter of law, i.e. that she

¹⁴ Equality Act 2010, section 123.

¹⁵ It also mixes up a statutory with a common law concept.



did not resign in response to an un-affirmed fundamental breach of her contract of employment.

2601408/2016

8 February 2017

Employment Judge Camp

SENT TO THE PARTIES ON
13 February 2017

.....
FOR THE TRIBUNAL OFFICE



ANNEX TO THE RESERVED JUDGMENT & REASONS OF JANUARY 2017

RESPONDENT'S CHRONOLOGY OF EVENTS INCORPORATING SOME AMENDMENTS FROM CLAIMANT'S COUNSEL & FROM THE TRIBUNAL

<u>Date</u>	<u>Event</u>
05.07.61	Claimant's date of birth. 54 years old at her EDT.
23.08.82	Claimant commenced employment for the Respondent, latterly in the role of Head of Strategy – Education Quality, earning £553.36 net per week.
19.07.12	Officer's Code of Conduct (pre December 2014 version).
<u>2013</u>	
10.09.13	Claimant's written statement of particulars (for the role of Service Manager).
19.09.13	Procurement fraud guidance.
18.03.13	Close Personal Relationship policy (pre December 2014 version).
<u>2014</u>	
05.06.14	Information Security & Acceptable Use Policy.
12.06.14	Employee code of conduct.
01.08.14	Claimant accepts secondment in the role of Head of Strategy – Education Quality (job shared with Christine Connearn).
29.08.14	Claimant's first social meeting with David Herd.
01.09.14	Respondent acknowledges David Herd's quotation to provide EQA services in the sum of £8,100.00 Purchase Order for David Herd's EQA services in the sum of £8,100.00. Grievance Policy. Manager's guide to grievance policy.
08.09.14	Claimant's second social meeting with David Herd.
09.09.14	Claimant meets with Gill Weston, her line manager, to orally declare her potential conflict of interest, as she may be called upon to make decisions on commissioning work for David Herd. [Note: Gill Weston was also 'Person A' (ie the other individual accused of failing to register and declare that her partner was also a bidder). Text from the Claimant to David Herd ' <i>I've told Gill about us</i> '.
15.12.14	David Herd (amongst others) invited to meet with the Claimant to discuss a new



	commissioning framework.
16.12.14	David Herd's EQA services contract extended to 31.03.15 (signed by Claimant).
12.14 / 1.15 [maybe earlier]	Gillian Weston makes a " <i>passing comment</i> " to Lesley Hagger that the Claimant was " <i>seeing</i> " David Herd.
<u>2015 Q1</u>	
.01.15	Manager's digest instructs managers to make themselves familiar with the 'Information Security & Acceptable Use' policy.
08.01.15	Officers' Code of Conduct (extract).
14.01.15	Respondent's updated Code of Conduct for Employees, reminding employees to register their personal, business, financial and other interests. Respondent's Registration of Personal Interests Policy.
16.01.15	Claimant sent 2 x work emails with attachments to David Herd's email address.
22.01.15	January edition of 'Staff Matters' detailing information security rules sent out. Claimant sends David Herd an email from Lisa Tutt of Eastern Shires Purchasing Organisation (ESPO) containing details of those that have expressed an interest – by requesting documents – in participating in the new framework. ESPO Consultation services document. Claimant alerts Lisa Tutt that she knows of two people who are registered but not on the list of parties seeking documents, David Herd and 1 other (personal relationship not mentioned).
23.02.15	Claimant sent work email with attachments to David Herd's email address.
02.03.15	David Herd's EQA tender submission.
13.03.15	ESPO evaluation of David Herd (approved).
<u>2015 Q2</u>	
16.04.15	Claimant signs extension of the contract of David Herd to 31.08.15.
19.04.15	Claimant sent work email with attachments to David Herd's email address.
20.04.15	Claimant indicates by email to bidders ahead of the closing date that their bids had been successful, forwarded to David Herd under the header 'FYI'.
25.04.15	Policy on the declaration of personal interests (latest version).
30.04.15	Purchase Order for David Herd's EQA services in the sum of £12,600.00
20.05.15	Claimant forwards email to David Herd, regarding new SEN work.
01.06.15	Claimant no longer job sharing with Christine Connearn, who took on a different



	Head of Strategy role.
03.06.15	Claimant's secondment extended until 31 st August 2016.
24.06.15	Disciplinary Guidance Policy.
	<u>2015 Q3</u>
01.07.15	Lisa Tutt discloses to whistleblower that David Herd had declared himself as the Claimant's partner. Whistleblower emails their concerns regarding the Claimant and David Herd.
02.07.15	Claimant's registration of a 'Close Personal Relationship' with David Herd.
07.07.15	Whistleblowing allegation made to Lesley Hagger (Head of Service) regarding conflicts of interest for commissioning EQA services, and the procurement exercise to establish the Framework, relating to the Claimant and another employee.
14.07.15	Claimant and another Senior Manager (Gill Weston, Person A) suspended, ostensibly because of allegations that she had (i) not properly declared an interest, (ii) a conflict of interest which was not properly resolved, and (iii) made decisions with the potential to be influenced by personal interest.
17.07.15	Claimant invited to a formal investigatory meeting to take place on 27.07.15.
26.07.15	Claimant's statement in response to her suspension.
27.07.15	Claimant attended an investigatory meeting conducted by Neil Jones.
28.07.15	Neil Jones interview with Gillian Weston. Neil Jones and Helen Moran interview with Neil Hanney.
29.07.15	Neil Jones and Helen Moran interview with Lesley Hagger.
30.07.15	Helen Moran interview with Nathan Odom. Helen Moran interview with Christine Connearn.
12.08.15	Claimant emails amended notes, answers to questions and a further statement to Neil Jones.
14.08.15	Incident in which the Claimant's friend, Shoba Parmer, on Advice & Information desk discovered that the Claimant was suspended.
15.08.15	Neil Jones sends Claimant v3 of her statement notes.
17.08.15	Telephone interview with Nathan Odom.
18.08.15	Claimant submits her 1st grievance regarding her suspension (namely the reason given for her absence, steps to ensure confidentiality and provision of suspension meeting minutes). Neil Jones and Helen Moran interview with Julie Drake.
19.08.15	Claimant's grievance acknowledged. Additional questions and answers from the Claimant, in the investigation, including



	the question ' <i>did you notify anyone (or seek further approval) that you were putting work DH's way?</i>
20.08.15	Neil Jones sends Claimant v5 of Notes of Meeting.
21.08.15	Claimant adds to her 2 nd grievance, complaining that the investigation is contrary to the disciplinary guidelines with some questions being accusatory or emotive, communications coming outside office hours, and the suspension (at six weeks) taking too long.
24.08.15	Claimant informed that Holly Field has been appointed to determine her grievances.
26.08.15	Neil Jones and Helen Moran interview with Martin Satchwell.
.08.15	Helen Moran interview with Penny Sutton.
27.08.15	Gordon McFarlane updates the Claimant on her suspension, the investigation and the next stage. Gill Weston provides answers to further questions from Neil Jones.
01.09.15	Gordon McFarlane proposes a form of words to be used for covering the Claimant's suspension.
03.09.15	Grievance meeting with Holly Field adjourned as Claimant did not want an HR notetaker when the grievance was against Gordon McFarlane (from HR).
23.09.15	Lesley Hagger told the 3 Head Teacher reps of schools of the Claimant's suspension (to explain her continued absence) in breach of confidence. Behaviour in the Workplace Policy.
28.09.15	Neil Jones sends out the final version (v7) of the Claimant's notes of interview and statement. Neil Jones informs the Claimant that his investigation report is finalised.
29.09.15	Heather Pick appointed to determine the Claimant's grievances in place of Holly Fields.
<u>2015 Q4</u>	
05.10.15	Heather Pick meets with the Claimant to investigate her 1 st grievance.
07.10.15	Gordon McFarlane, Jo Brown and Neil Jones provided with details of the grievance against them. Grievance investigation meeting with Gordon McFarlane.
08.10.15	Grievance investigation meeting with Lesley Hagger. Grievance investigation meeting with Jo Brown.
09.10.15	Neil Jones completes an Investigation Report.
12.10.15	Grievance investigation meeting with Helen Moran.



	Grievance investigation meeting with Neil Jones.
19.10.15	Mike Sandys informs the Claimant that after considering the Investigation Report of Neil Jones, he has decided that the Claimant's case should proceed to a disciplinary hearing. Claimant commences a period of annual leave (until 23.10.15).
28.10.15	Claimant submits her 3 rd grievance (against Mike Sandys) and her 4 th grievance (against Lesley Hagger).
Undated	Ffiona Baker appointed to investigate the Claimant's 3 rd and 4 th grievances, but the Claimant declines to meet with her, stating she <i>'is not in a position to take this forward'</i> inviting Ms Baker to go ahead with the investigation.
19.10.15	Claimant informed in a letter, sent by email only, that the investigation had concluded and that she would face a disciplinary process regarding the allegations.
17.11.15	Heather Pick provides a written grievance decision upholding some (but not all) of the Claimant's grievances and recommends greater clarity in the disciplinary process.
18.11.15	Notes made for use at grievance meeting between the Claimant and Roderick O'Conner to investigate her 3 rd and 4 th grievances.
19.11.15	Claimant, whilst expressing disappointment at the result, informs Heather Pick that she shall not formally appeal the findings of the first grievance.
25.11.15	Claimant informs Ffiona Baker that she is not in a position to meet to discuss grievances 3 and 4, and that Ffiona has the Claimant's evidence on those points.
07.12.15	Ffiona Baker confirms she will make a decision on the information available and without having a meeting with the Claimant, in accordance with the Claimant's wishes.
10.12.15	Claimant wrote to John Sinnott (the Respondent's Chief Executive) to complain about the delay and state that the process was causing her to lose trust and confidence in the Respondent. Grievance investigation meeting with Mike Sandys.
15.12.15	Respondent writes to the Claimant to confirm that she had not been made redundant.
18.12.15	Claimant sent a disciplinary invite letter and evidence pack.
21.12.15	Ffiona Baker informs the Claimant that investigations have been completed with Mike Sandys and Lesley Hagger and that Roderick O'Conner will be in touch shortly with the outcome.
23.12.15	Amended disciplinary invite letter with new date for hearing. Investigation report into the Claimant's grievances against Mike Sandys (unsent



	pending meeting Claimant and Roderick O'Conner).
29.12.15	Investigation report into the Claimant's grievances against Lesley Hagger (unsent pending meeting Claimant and Roderick O'Conner). Ffyon Baker forwards her grievance reports regarding Mike Sandys and Lesley Hagger to Roderick O'Conner.
<u>2016</u>	
06.01.16	Roderick O'Conner writes to the Claimant to express his condolences following the passing of the Claimant's mother and to arrange a meeting to discuss the outcome of her 3 rd and 4 th grievances when the Claimant was ready (no reply).
20.01.16	Disciplinary hearing (postponed due to the Claimant's mother passing). New invite letter sent out arranging disciplinary for 22.02.16
08.02.16	Roderick O'Conner writes to the Claimant again to arrange a meeting to discuss the outcome of her 3 rd and 4 th grievances (no reply).
22.02.16	Disciplinary hearing notes (with Claimant's annotations), attended by the Claimant, Tom Purnell (Chair), Ann Carruthers and Caroline Fairchild. Disciplinary Pack (with management case). Claimant's Defence to Allegations document. Claimant's documents for use at the disciplinary hearing. David Herd's explanation letter.
29.02.16	Disciplinary outcome letter. Claimant notified that she had been issued with a final written warning.
03.03.16	Claimant submits an appeal against her final written warning.
04.03.16	Claimant's appeal against her final written warning is acknowledged by the Respondent.
07.03.16	Claimant's resignation letter. Claimant's effective date of termination upon her resignation with immediate effect, after 33 years' service.
08.03.16	Roderick O'Conner writes to the Claimant to tell her that unless she makes contact regarding her grievances within 5 days, he will assume no further action is required and that the matter will be closed.
16.03.16	Lesley Hagger asks the Claimant (i) whether her resignation is on notice, (ii) whether she still wishes to proceed with her appeal against her final warning, (iii) confirms that the Claimant's seconded and substantive roles " <i>remain within the current department's structure</i> ".
18.03.16	Claimant confirms that her resignation is without notice and will be with immediate



	effect. She confirms that she will send a separate letter regarding her appeal against her final written warning in due course (but does not do so).
23.03.16	Roderick O'Conner writes to the Claimant again to arrange a meeting to discuss the outcome of her 3 rd and 4 th grievances (no reply). In the absence of a response Mr O'Conner indicates that it will be assumed that the Claimant no longer wished to continue with her 3 rd and 4 th grievances.
29.03.16	[According to ET3] Email to staff informing them that the Claimant had resigned and that her post would not be part of any new structure.
31.03.16	Claimant notifies ACAS of a dispute.
15.05.16	ACAS Early Conciliation certificate.
09.06.16	Claimant's Claim Form.
14.07.16	Respondent's Response Form.
16.08.16	Case Management Order (EJ Swann). Agreed List of Issues.
31.08.16	Claimant's secondment to the role of Head of Strategy – Education Quality would have expired (but for her prior resignation) with the Claimant reverting to Service Manager role.
<u>2017</u>	
23.01.17	Hearing of the Claimant's claim of constructive dismissal (liability only).