



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4114987/2019**

5

**Held via Cloud Video Platform (CVP) on 21, 22, 23 and 24 September 2019**

**Employment Judge S Cowen**

10

**Mrs M Erlank**

**Claimant**

**Argyll & Bute Council**

**Respondent**

15

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

1 The Claimant's claim for unfairly dismissal is upheld.

2 The Respondent shall pay the Claimant £2673.51.

20

### **REASONS**

#### **Introduction**

1. The Claimant brought a claim of unfair dismissal under s.98(4) Employment Rights Act 1996.

25

2. The matter was set down for a four day hearing by CVP. The parties provided a list of issues, agreed facts, witness statements and a bundle. The Respondent also provided a written skeleton argument.

3. The Tribunal heard oral evidence from the Claimant and from Alison Hunter, Local Area Manager and Brian Reid, Locality Manager on behalf of the Respondent.

30

#### **The facts**

4. The following facts were found based on the documentary and oral evidence.
5. The Claimant was employed by the Respondent as a social worker from 15 February 2005 to 20 September 2019.
6. The Claimant worked successfully for the Respondent in both the Children and Families Team and then the Adult Community team. She took a period of maternity leave in 2009/10 and returned to a part time post in the Mental Health Team in March 2010.
7. In August 2013 Julie Cameron became the Claimant's Team Leader in the Mental Health Team.
8. The Claimant was signed off work as sick with stress at work from 24 September 2014. She was seen by Occupational Health who wrote a report. She subsequently returned to work on 28 November 2014. From March 2015, by agreement, the Claimant worked set hours for 17.5 hours per week.
9. The Claimant had further time off work due to stress at work from 18 May 2017. She discussed her concerns with Linda Skrastin, Local Area Manager; that she was being bullied by Ms Cameron and felt unsupported by her. The option of mediation was discussed but Ms Cameron was unwilling to engage.
10. The Claimant returned to work after a holiday on 10 July 2017 and attended a return to work interview on 27 July with Ms Cameron. This did not go well and resulted in the Claimant making a formal complaint to Ms Skrastin about her treatment by Ms Cameron. The Claimant was advised to submit a grievance. She did so by way of her first grievance on 31 July 2017. Ms Cameron raised a counter-grievance in response.
11. Whilst the counter-grievance was upheld on 7 September 2017, no outcome to the Claimant's grievance was provided at that time.
12. The Claimant raised a second grievance with regard to the delay in deciding the first grievance on 5 October 2017. Jayne Lawrence- Winch was appointed to investigate this grievance and partially upheld this grievance on 31 October 2017.

13. The outcome of the first grievance led to an appeal by the Claimant which was partially upheld and recommended that Ms Skrastin should meet with the Claimant to consider a move to another team and Ms Skrastin was to ensure that appropriate supervisory and line management arrangements were in place for the Claimant.
14. The outcome of that meeting was that the Claimant was told that it was not possible for her to move to another team as there were no part time vacancies available in those teams which the Claimant was willing to consider.
15. In January 2018 Ms Skrastin referred the Claimant to Occupational Health ('OH'). She was then allowed to move temporarily to the Adult Care (Operations) Team and took some time off whilst that move was organised. She commenced working in the Adult Services Team in February 2018. During the period she was in the temporary post, no substantive steps towards resolution between the Claimant and Ms Cameron were taken by Ms Skrastin.
16. The Claimant continued to work there until her appeal was considered in April 2018 – it was not upheld. It was during this process that the Claimant became aware that Ms Cameron had written a letter dated 4 July 2017 which alleged that the Claimant was incompetent and that she (Ms Cameron) considered that the suggestion of mediation undermined her position as a manager. After the dismissal of the appeal, consideration was given as to how and when the Claimant would return to her original post. Ms Skrastin outlined to the Claimant that her options were to return to work with Ms Cameron in her original post, or to be seconded to the Children and Families Team. The opportunity to undergo a facilitated discussion with Ms Cameron was also offered. By this point, the Claimant declined the facilitated discussion, sighting a breakdown in trust with Ms Cameron as a result of the letter and resolving not to work with her again. She also rejected the secondment to the Children and Families Team having had a stressful experience there in the past. An OH report on 31 May 2018 said that she was fit to return, but that if the issues were unresolved, the symptoms of stress and anxiety would return.

17. The Claimant was told that as her secondment to the Adult Care Team came to an end, she was required to return to her substantive post under the management of Ms Cameron. It was at this point on 4 June 2018, that the Claimant was once again signed off work as sick. She did not return to work.
- 5 18. Thereafter, in June 2018 the Claimant was invited to an Attendance Review Meeting, but the letter was returned undelivered. The Respondent did not call the Claimant to confirm her address or to enquire of her welfare. The Claimant was then written to and offered a) mediation and a return to her substantive post, b) transfer to the Children and Families Team or c) a social worker post  
10 in Helensburgh, but this would require a successful competitive interview process (i.e the Claimant would not be guaranteed the post).
19. In response to this, the Claimant made a third grievance and requested a different manager deal with her absence management. Ms McLoone was appointed to deal with the absence management and held a meeting with the  
15 Claimant and her TU representative on 7 August 2018. The Claimant said she did not want to attend mediation with Ms Cameron due to the history of attempting to do so and the subsequent passage of time. She asked for another line manager to be appointed so she could resume her role, or an alternative post within Adult Care. She also requested that her sick pay be  
20 maintained due to the delay implemented by the Respondent. The Claimant was once again referred to the vacancies which existed but with no indication of whether she would be required to enter into competition for these positions or transferred.
20. A further Attendance Review meeting was held on 14 September 2018 at  
25 which the Claimant maintained her position. She was told that it would not be possible to appoint a different line manager. The Claimant indicated she could not enter into mediation with Ms Cameron as it was too far down the line and the damage was irreparable and she was aware that Ms Cameron's stated view was that she (the Claimant) was incompetent. Ms McLoone also set out  
30 that Ms Skrastin denied that delays and failures to meet were due to reluctance on the part of Ms Cameron.

21. The outcome of this meeting was also delayed, by which time, on 9 October 2018, the Claimant had seen OH once again who suggested medical redeployment. On the same day the Chief executive decided not to extend the Claimant's sick pay, partly on the basis that Ms Cameron's grievance about the Claimant had been upheld. Ms Laird drafted the final letter which was sent to the Claimant which did not include this reasoning. The letter referred to "other options are available to you to allow you to return to work", although these were not specified.
22. A third Attendance Review meeting took place on 25 October 2018. The Claimant said she had been unable to find a vacancy on the Respondent's website for the social worker vacancy which had been mentioned. The Claimant indicated she didn't mind working in the same Adult Services Team as Ms Cameron as long as she did not have line management responsibilities for her. The Claimant was told for the first time that Ms Cameron was not willing to participate in a facilitated discussion with her.
23. As part of this meeting the Claimant was offered the opportunity to join the medical redeployment list. The Claimant left, part way through the meeting but was represented by her TU representative.
24. On 23 November 2018 the Claimant was informed that there was no requirement for additional cover for any posts at that time. The Claimant was told that if she could not return to her substantive post then she should continue on sick leave and a case review meeting would be held. By the end of 2018 the Respondent's view was clearly that there was no point in trying to engage further with the Claimant as her position would not alter.
25. On 4 January 2019, the Claimant's representative told the Respondent that the Claimant did not wish to be medically redeployed, as she was not unwell. She did indicate an interest in another temporary post, but it had already been filled. She also outlined that this was the Claimant's third long term sick absence due to stress under Ms Cameron's management. She also noted that another Social Worker had complained about bullying by Ms Cameron.

The Respondent was concerned about this, as an internal email from Mr Littlejohn referred to “nip this one quickly”.

26. In late January 2019 there was consideration of whether the Claimant would be entitled to apply for a vacant post within the terms of medical redeployment. By the time the Respondent reached any consensus, the post had been filled and so was not available to the Claimant in any event.
27. On 4 February 2019 the Claimant’s third grievance appeal was not upheld. The outcome suggested another ‘cover’ position the Claimant could take, mediation with Ms Cameron, or the Claimant to apply for other jobs. Shortly after this the Claimant was informed that before she could return to any job, she would have to have a supported discussion with Ms Cameron.
28. The Claimant was told at a meeting on 19 February 2019 that the Respondent had identified Mr Gibson to facilitate the meeting with Ms Cameron and that a temporary post for three weeks could be offered, on the understanding that the Claimant would return to her substantive post thereafter. The Claimant declined this offer and requested that it be a mediation as she had requested in her appeal. She also indicated she could return to work but wished to be managed by others.
29. At this time Ms Cameron indicated that she would not continue to work with the Claimant in any post, unless their issues were resolved. This was a change in her position, as previously she had indicated that she was not willing to enter into mediation with the Claimant. This led to a change in the Respondent’s position. It had been that a return to the substantive position required a meeting between the Claimant and Ms Cameron. At this point, the requirement was widened to undertaking mediation before any return to work by the Claimant.
30. On 27 March 2019 Ms Skrastin emailed the Claimant’s TU representative and told her that if the facilitated discussion did not work, then the Claimant would have to consider her options for continued employment. To the Claimant this appeared to be an ultimatum.

31. The appeal of the grievance was decided in a letter dated 18 April 2019, which partially upheld the Claimant's grievance, indicating that there should be a facilitated discussion/mediation between the Claimant and Ms Cameron and also Ms Skrastin. Also that a comprehensive support package should be put in place.
32. It later came to light (in November 2019) that Ms Cameron had agreed to neither mediation nor facilitated discussion in February 2018 and therefore the temporary secondment to facilitate such a process was never going to succeed.
33. A case review meeting was held on 3 May 2019 with Ms Hunter at which Ms Skrastin acknowledged that Ms Cameron had not been willing to enter into mediation previously and that no attempts to settle difficulties between them had been undertaken whilst the Claimant was in a temporary post. The Claimant suggested that if she now entered into facilitated discussion with Ms Cameron she should be placed on the medical redeployment list without time limit. Ms Hunter indicated that consideration had to be given to future roles for the Claimant. She outlined that it was not appropriate for the Claimant to cover for Ms Wicks' role as she was needed in her own team. Ms Hunter also indicated that a plan was required for a facilitated discussion which would occur over a four week period and be conducted by an external facilitator. At that point the parties agreed that the process could occur over a period, partly at least due to the Claimant's contention that she could not endure meetings of more than approximately 2 hours. At this point both sides were focused on moving forward with the relationship between the Claimant and Ms Cameron.
34. The review also highlighted a possible temporary vacancy in the Emergency Standby team. The Claimant made enquiries about this post, as directed, but was told that no selection process was yet in place.
35. On 7 May 2019, Paul Beal sent his first proposal for the facilitated discussion process. It outlined that the process would require 5 days of work. The Respondent then requested alternative quotes to compare cost as Paul Beal's quote was considered 'quite steep'. One of those quotes was from ACAS, who

quoted for a one day mediation. This was used to bring down the cost from Mr Beal, although it was not the same service which was being offered.

36. An amended proposal from Mr Beal reduced the work to 3 days and took out some of the administrative costs. This was accepted by the Respondent, but this change in plan was not communicated to the Claimant by the Respondent.
37. The Respondent's letter of outcome of the meeting on 3 May was sent on 13 May 2019, but did not refer to this change of the nature of the facilitated discussion. It stated that due to Ms Cameron's wide ranging duties, this resolution would have to be commenced before the Claimant could return to any work. An indication once again that Ms Cameron would have to line manage the Claimant and that she could not return to work without engaging in this process.
38. An email from Ms Skrastin on 13 May 2019 acknowledged the Claimant's agreement to undertake the facilitated discussion, denied the Claimant any pay and said that the Claimant had declined the same offer in February 2019. This was incorrect as the terms of the offer were not the same in February.
39. On 17 May 2019 the Claimant was informed by Ms Laird that the facilitated discussion process would now proceed, once again it did not indicate that the Respondent had asked the provider to cut down the number of sessions, or to reduce the overall cost, leading to a cut in the number of sessions offered. On 23 May, the Claimant raised a question about the number of sessions being proposed. Once again, Ms Laird's answer failed to inform the Claimant of the change of proposal for the process.
40. When the Claimant received notice from Paul Beal on 27 May as to the proposed process of the facilitated discussion, she wrote to Ms Laird to express her concern. This was responded to the same day by Ms Laird who indicated that Ms Hunter's view was not binding and that if further work was required then Mr Beal could indicate that to Ms Laird. The Claimant had been offered a process, which was not the one which she was then asked to carry out. She felt forced into this alternative process. The Claimant's further email



on 29 May made clear to Ms Laird that the suggestion of a meeting from 10am to 4pm ignored the emotional impact on the Claimant. She requested that the meeting with Mr Beal be in person and not by Skype.

- 5 41. Ms Laird acknowledged internally (but not to the Claimant) that she had not commissioned the process which had been discussed with the Claimant and so requested that the initial conversation with Mr Beal should be carried out face to face. This compromise was agreed by the budget holder for the Respondent.
- 10 42. Ms Laird's emails to Ms Skastin and Mr Littlejohn on 30 and 31 May, indicate that she did not believe that the Claimant's questioning of the process or her views are valid, whilst asking them to handle the situation directly with the Claimant. Ms Laird also emailed Mr Beal on 31 May indicating that the reason for the delay in commencing the work was due to the Claimant's issues with the process.
- 15 43. Mr Beal carried out face to face interviews with the Claimant and Ms Cameron on 14 June 2019. The Claimant recorded her meeting with Mr Beal, but failed to tell him this. On 17 June 2019 the Claimant had a telephone meeting with Mr Beal and emailed him later the same day. This outlined that the Claimant was willing to participate in mediation (rather than facilitated discussion) and that she understood that Mr Beal was going to speak to Ms Cameron to attempt to agree the same. She also outlined the timetable they had discussed with an individual meeting with each person and then a joint meeting the following day. The Claimant indicated that she would not be able to cope with a long meeting and therefore 3 or 4 such meetings would be preferable. She had previously discussed returning to work after the second such meeting. Mr Beal's reply indicated that he could not agree to the proposal, but would make a proposal to the Respondent with regard to next steps.
- 20 25 30 44. Mr Beal's proposal was sent to Ms Laird on 18 June. It outlined a further two days of work. He indicated that it would be preferable to do this work before the Claimant's holiday and said the dates had been agreed in principle with

both parties. Agreement was reached on 19 June for the work to proceed as per this proposal.

45. Mr Beal sent the proposal to the Claimant on 20 June and spoke to her the same day. The Claimant was upset that the proposal did not reflect their previous discussion and anxious at the prospect of a day of mediation with Ms Cameron. Mr Beal indicated to the Claimant that this was his proposed process as Ms Cameron would not agree to more than one day. The email said that it was 'agreed with the client' because it had been approved by the Respondent. The Claimant was not Mr Beal's client.
46. On 23 June the Claimant emailed Mr Beal saying that she would not agree to carrying out the whole meeting with Ms Cameron in one day and said that she would prefer to return to a case review discussion. Mr Beal replied to say that he would pass this on to Ms Laird.
47. A letter was sent by Ms Hunter on 4 July 2019 stating that as the Claimant had withdrawn from the facilitated discussion process and had not returned to work, a case review meeting would be reconvened on 29 July. This would continue the discussion on how the Claimant could return to work given that her medical reports said she was fit to do so. The letter outlined that a possible outcome would be that her employment would be terminated.
48. The Claimant indicated via her representative that she disputed the idea that she had withdrawn from the process. The meeting had to be rearranged due to the unavailability of her representative. A further letter dated 18 July was sent which withdrew the accusation that the Claimant had withdrawn from the process and replaced it with the neutral wording that the 'facilitated discussion process has not progressed'.
49. The Claimant subsequently made complaints to Insightful Exchange (Mr Beal's employer) and to the Civil Mediation Council, about Mr Beal. Mr Beal responded to the Claimant's complaints outlining that he had not promised or committed to anything with the Claimant, but had negotiated with the Claimant taking into account the points the Claimant had indicated.

50. A further case review meeting was held on 30 August 2019. The Claimant was represented by Ms Kinnell. The hearing was conducted by Ms Hunter; Ms Skrastin and Ms Laird attended on behalf of management. Ms Skrastin gave evidence of how she had set up the facilitated discussion process. She stated that it had been the view of Mr Beal that short meetings were impractical and therefore she had convened a case review meeting instead. The Claimant presented her case and outlined what she had and had not agreed with Mr Beal. She indicated that she felt that both Ms Hunter and HR had sided with Ms Cameron by supporting the discussion to occur on just one day.
51. A detailed discussion of Mr Beal's professional standing and credentials was undertaken. As was a discussion of why the Claimant had not attempted to follow the proposed plan. The Claimant outlined that she did not want to be seen to be walking out of the meeting, but felt that she might have to do so if it became too much for her. She therefore did not want to agree to go to such a meeting. Both parties were given the opportunity to sum up and Ms Hunter then indicated that she was adjourning the hearing in order to speak to Mr Beal and to consider her decision.
52. By letter dated 20 September 2019, the Claimant was informed that the outcome of the case review meeting was that her employment would be terminated immediately for 'some other substantial reason; a breakdown in working relationships'. The letter outlined that Occupational Health had indicated at the meeting on 3 May 2019 that the absence was stress related due to the breakdown in the relationship with her manager. It then outlined that the Claimant had refused to consider redeployment to the Children and Families Team and no other suitable posts were available. The letter stated that Ms Hunter was satisfied that the facilitated meeting process which was proposed could have worked and therefore the Claimant's position that she would not continue with it meant that the matter was returned to case review. The letter indicated that the Claimant would be paid 12 weeks pay in lieu of notice and any untaken holiday. It indicated her right to appeal.

53. The Claimant did appeal her dismissal by letter on 1 October 2019 and filled in the Respondent's form on 4 October 2019. The appeal was heard on 15 November 2019 by Mr Reid. Ms Kinnell represented the Claimant and Ms Hunter presented the case for management with Ms Skrastin and Ms Laird present. The Claimant was informed that no new material would be considered. The Claimant questioned the independence of Mr Reid, but the hearing went ahead. The Claimant was given the opportunity to say what she wanted. The issues she raised in her appeal letter were addressed.
54. Mr Reid wrote to the Claimant on 22 November 2019 to indicate that the appeal was dismissed and the dismissal therefore upheld.

### The Law

55. In order to be a potentially fair reason for dismissal under s. 98(1)(b) Employment Rights Act 1996, the reason amounting to 'Some other Substantial Reason' must be both the substantial reason for the dismissal and be a genuinely held reason by the employer.
56. The Tribunal must consider what was in the mind of the person controlling the dismissal at the time. It is possible that an irretrievable breakdown in the relationship between the Claimant and her manager can be a potentially fair reason *Ezsias v North Glamorgan NHS Trust* 2011 WL 806781.
57. If the reason falls within this criteria, then the Tribunal must consider whether the employer acted fairly in treating it as such under s.98(4) as reasonable in all the circumstances including the size and administrative resources of the employer's undertaking. The Tribunal will consider the actions of the employer on the basis of a band of reasonable responses. It is not for the Tribunal to substitute its own view for that of the employer.
58. There is no burden of proof at this stage *Boys and Girls Welfare Society v McDonald* (1996) ICR 693.
59. Before dismissing for reason of relationship breakdown is it reasonable to expect an employer to investigate whether there could be improvement in the relationship; *Turner v Vestric Ltd* [1980] ICR 528.

60. Phoenix House Ltd v Stockman 2017 ICR 84, EAT, the EAT held that the Code does not apply to SOSR dismissals based on a breakdown in the working relationship.

61. Contributory action by the Claimant can be taken into account where there is an unfair dismissal.

62. A claim for unlawful deduction of wages under s. 13 ERA indicates that the Claimant must prove that she was entitled to the payment as a result of her employment.

### Decision

63. The Tribunal considers that this matter has a long and complex history which has been set out in some detail above, although this does not reflect all the actions taken by both sides. The initial dispute between the Claimant and Ms Cameron was not managed with any vigour and was allowed to fester into something much more fundamental between the Claimant and her employer. Initially the Claimant was willing to engage in attempts to reconcile and rebuild the relationship with Ms Cameron, but that was not reciprocated by the manager who indicated that she did not respect the Claimant's skills, nor did she want to engage in reconciliation. Sadly at this point in 2017, more senior management did not take control of the situation. Ms Cameron's grievance against the Claimant was upheld, the outcome of which gave strength to the view that it was the Claimant who was unreasonable in suggesting she was being bullied.

64. Instead over a two year period the Respondent allowed the Claimant and Ms Cameron to retreat from each other and take up positions which became entrenched. The Respondent asserts that the Claimant withdrew from attempts to mediate and/or a facilitated discussion. This change in the Claimant's position occurred in April 2018 when she was shown a letter from Ms Cameron dated 4 July 2017 indicating Ms Cameron's view that the Claimant was incompetent and indicating that she did not want to engage in mediation. It was understandable why the Claimant lost faith in the idea that

she could continue to work with Ms Cameron at this point. It is also clear that these events had an increasing toll on the Claimant's mental health.

5 65. During the period of time when the Claimant was temporarily transferred from Ms Cameron's team in early 2018 attempts were supposed to be made to resolve the Claimant's grievance appeal and the relationship difficulties between them. There is no evidence that any such steps were taken to mediate between the Claimant and Ms Cameron. This was a significant opportunity which was lost. The Respondent failed to appreciate this, or to acknowledge that they had in any way failed to support the Claimant at that point.

10 66. Whilst the Claimant continued to suggest ways in which she could continue to work in the Adult Community team, none of these were acceptable to the Respondent. Unfortunately, they did not actively seek to find a solution for the Claimant. The Claimant requested that she be referred to Occupational Health which occurred in January 2018. The report indicated that the managerial relationship had broken down to the point that the Claimant and Ms Cameron could not continue to work together without it having an adverse affect on the Claimant's mental health. The OH report also outlined that the Claimant had no other underlying mental health condition. A further report in May 2018 also highlighted that she could not return to her substantive post without the issues being resolved. Ms Skrastin failed to act in response to these reports, but instead chose to insist that the Claimant should return to her own post. It was not surprising therefore that the Claimant was signed off sick from 4 June 2018.

25 67. The Attendance Management process was taken over by Ms McLoone around July 2018. This was an opportunity for a neutral manager to take hold of the situation and find compromise between the Claimant and Ms Cameron. Instead, she focused on why steps had not been taken to resolve matters earlier, attributing blame, rather than focusing on attempting to resolve the impasse between them. The only alternative post discussed was one in Children and Families and the Claimant had outlined that she did not wish to move to that team. No other transfers were offered by the Respondent,

30

although a vacancy was highlighted to the Claimant, which she chose not to apply for. Other than that, the Respondent had nothing more to offer the Claimant in order to facilitate her return to work. The Respondent also referred to the fact that nothing could be done unless there was a change in the Claimant's health. A further indication that the Respondent did not take the Occupational Health reports into account.

5  
10  
15  
68. The decision in October 2018 by Mr Sneddon, the Chief Executive, not to extend his discretion to allow the Claimant to receive further sick pay, is another example of the Respondent not acknowledging that their handling of the situation had led to delays and that this was having a negative impact on the Claimant's mental health. However, the Claimant has failed to prove to the Tribunal that she was entitled to the payment. It is said to have been discretionary and Mr Sneddon applied his discretion. Whilst this may have been a further unfavourable turn for the Claimant, the burden is on her to prove that she was entitled to the payment and she has failed to do so and therefore the claim cannot succeed.

20  
69. At a final meeting with Ms McLoone in February 2019 the Claimant indicated that she would not be willing to undertake a facilitated discussion but that she would engage in mediation with an external mediator. This procedure was then recommended by the panel of elected members who partially upheld the Claimant's grievance appeal in April 2019.

25  
30  
70. The Respondent's reluctance to find a solution for the Claimant was also shown by Miss Hunter who undertook the review of the Claimant's absence and who refused the request to allow the Claimant to be placed on the medical redeployment register without time limit. The Claimant's suggestion that she be temporarily seconded to cover for a colleague who was on long term sick were rebuffed by Ms Skrastin on the grounds that the role had to be kept open for the absent employee and that Ms Skrastin had made alternative arrangements. This once again indicated her lack of interest in trying to assist the Claimant.

71. The Claimant felt that her attempts to reconcile and to find an alternative way forward were repeatedly rebuffed both by Ms Cameron and Ms Skrastin. The Claimant therefore became more resolute in the position that she also took. She engaged with the case review meetings, but with increased will to have matters resolved in the manner which suited her.
72. At a case review meeting with Ms Hunter on 3 May 2019 despite Ms Skrastin again insisting that the only possibility was for the Claimant to return to her substantive post, contrary to the advice of OH and the views of the elected members panel, Ms Hunter agreed that a facilitated discussion should take place over 4 weeks whilst the Claimant was in a temporary post. Steps were then taken to find an independent person to undertake this process. The Claimant was insistent that it be someone specialised in such disputes and who could take account of the Claimant's anxiety about such a process.
73. It was agreed that Paul Beal was such a qualified person. The Respondent gave him latitude to speak to the Claimant with regard to identifying the work which would be required. The Claimant relied upon their conversations and believed that Mr Beal was agreeing to arrange the meetings as she requested. Mr Beal clearly did not ensure that the Claimant understood that he would have to have authority from Ms Laird on behalf of the Respondent to carry out such work. Ms Laird took estimates from Mr Beal for a mediation process and from ACAS for a one day mediation.
74. This led to further misunderstanding and set back, when the Respondent did not agree to the cost of multiple days of meetings between the Claimant and Ms Cameron. Mr Beal therefore cut back his estimate and changed the process. None of this was relayed to the Claimant and therefore she became understandably anxious and wary of the process. She believed that Mr Beal was being controlled by the Respondent and was therefore not independent as had been suggested.
75. In a style which had become typical of the Respondent's attitude to the Claimant Ms Laird -in her emails of 30 and 31 May 2019- showed her impatience with the Claimant, over her questioning of the process. In fact it



was due to Ms Laird's lack of transparency with the Claimant in the commissioning process that the objections were raised. The Claimant was right to feel that she was being forced to participate in a process which was not the one which had been outlined to her. As Mr Beal had had no contact with the Claimant at this point, the only reason for his reassessment of the process was due to the information provided by Ms Laird, i.e. that the price was too high and needed to be more competitive. However, this was also incorrect, as Ms Laird was not comparing like with like when comparing pricing to the ACAS offer.

10 76. Not only did Ms Laird fail to inform the Claimant of the change to the proposal, she then blamed the Claimant for the delay and amendment caused by her own duplicity. This in turn led Mr Sneddon, the Respondent's budget holder, to refuse a request to extend discretionary payments to the Claimant as a result of the delay in the process.

15 77. The Tribunal does not consider that Mr Beal was underhand in his dealing with the Claimant. He was effectively trying to provide a process which would be acceptable to both the Claimant and Ms Cameron, as well as falling within the financial constraints placed on the contract by the Respondent. Mr Beal's discussions with the Claimant were informative to him, but not binding upon him. His email of 20 June makes it clear that he was trying to find a way forward and that he would try to make the process as easy for the Claimant as he could, whilst holding to the limited time schedule provided by the contract. The Tribunal does not consider that the complaints about Mr Beal to the Civil Mediation Council, or his membership thereof to be of relevance to the matters the tribunal has to decide. The Tribunal concludes that Mr Beal was honest in his dealings with the Claimant. The Claimant thought that her conversations with Mr Beal were an agreement on a way forward, when in fact he was merely taking information from her with a view to agreeing a way forward with the Respondent. Any misunderstanding of the status of their discussion was on the part of the Claimant and not due to any duplicity by Mr Beal.

20

25

30

78. The conclusion of this tangled process of arrangement was that the Claimant once again lost faith in the commitment of the Respondent to enter into the mediation process. She dug her heels in to insist that the process be carried out as she had requested; over a number of days. She believed Mr Beal to be duplicitous in his actions. She referred to the fact that meeting with Ms Cameron for more than two hours at a time was more than she could cope with on an emotional basis.
79. Neither the Respondent nor Mr Beal took this into account and the Respondent did not refer the Claimant to OH to obtain any detailed opinion from them. Nor did they request any update from the Claimant's GP.
80. As a result of the process for mediation not being agreed, the case returned to Ms Hunter for a further case review on 30 August 2019. The Claimant was not well enough to attend and was represented by her Trade Union representative. The fact that the Claimant was not able to attend did not spark any consideration by the Respondent to refer the Claimant to Occupational Health. They merely continued with the meeting, at which the position of the Respondent was presented by Ms Skrastin and Ms Laird.
81. On the basis of the information provided at the time, it was the genuinely held belief of Ms Hunter on behalf of the Respondent, that the Claimant did not want to engage in the process which they had set up to try to resolve the breakdown in relationship between her and Ms Cameron and that she could not therefore return to work in the team. Ms Hunter therefore had a genuine belief that there was a breakdown in the relationship between the Claimant and Ms Cameron. She believed that there was some other substantial reason for the dismissal. This was a potentially fair reason for dismissal.
82. In considering whether a fair procedure was applied, the Tribunal has taken into account the substantial background to the dismissal, including the efforts made by both sides to try to resolve the breakdown in the relationship. The Tribunal particularly takes into account that the Claimant knew from early in this process that her manager did not want to engage with her to resolve the issue and did not want to manage her. However, the Claimant continued for

almost 22 months to suggest ways in which she could continue her employment. In contrast the Respondent did little to try to find alternative working arrangements for the Claimant.

5 83. The Tribunal also considers that Mr Beal was not part of any manipulation of the process. The Claimant's view that he was manoeuvred by Ms Laird is due to her misunderstanding of the procurement process and not due to any manipulation of Mr Beal. Equally Ms Laird requested a reduced quote from Mr Beal on the basis that she did not want to pay for a protected process and the alternative quote she had obtained from ACAS was for 1 day of mediation.

10 Ms Laird was mistaken in her belief that this would be sufficient. The Tribunal does not believe that Ms Laird attempted to restrict the process in order to disadvantage or deny the Claimant the opportunity to resolve issues.

15 84. The Tribunal considers that the process broke down because the Claimant was not willing to engage with it unless it was carried out over a number of days. The Respondent was not willing to cover the cost of this and Mr Beal did not consider it necessary to conduct it in this way.

20 85. The Respondent failed to deal with the breakdown in the process in a reasonable manner. They failed to refer the Claimant to OH, or to obtain a report from her own GP as to whether the Claimant was capable of engaging in a mediation process for a whole day. Such a report would have helped the Respondent to know whether the Claimant's refusal to participate in the process was reasonable or not. By failing to investigate the Respondent relied on their entrenched subjective views of the Claimant's behaviour without any objective evidence.

25 86. The Respondent's failure to offer the Claimant a suitable alternative post was due to the entrenched views taken by Ms Skrastin and Ms Laird. They were supportive of Ms Cameron and therefore did not strive to find an alternative post for the Claimant. When the Claimant made suggestions of alternative jobs, they found reasons, some more plausible than others as to why the Claimant could not move jobs, but took no active steps to assist her to find

30 alternative work or to resolve the issues which prevented her return. These

issues were addressed in detail at the appeal, which showed that some alternative posts were not discussed with senior managers and others were given to agency staff before considering the Claimant.

- 5 87. The appeal carried out by Mr Reid was not unfair due to the fact that fifteen days earlier Ms Cameron had started to work for a team for which Mr Reid had management responsibility. He did not directly line manage Ms Cameron. The matter was raised at the beginning of the meeting and the Claimant accepted that they could proceed.
- 10 88. Whilst there was clearly a significant breakdown in the relationship between the Claimant and Ms Cameron, that did not mean that it was impossible for the Claimant to return to a post. The Tribunal then considered how the Respondent had dealt with that situation;
- 15 89. A reasonable employer in such a situation would have taken steps at an early stage to ensure that the manager involved engaged in a process to recover the relationship. Alternatively, if the manager refused to do so, then a reasonable employer would have considered disciplinary action towards the manager. There was no evidence of any attempt by the Respondent to ensure that Ms Cameron did so, nor of the Respondent taking any steps with her failure to abide by a reasonable management order. The decision that the Claimant could not return to work without resolving the issues with Ms Cameron came from the Respondent. Initially it was said that the Claimant could not return to her own post without resolving the issues. Subsequently she was told she could not return to any post without having engaged in a facilitated discussion/mediation. In contrast the OH report did not say that the Claimant could not return to work without resolution, only that it would cause further illness. This was a condition which was therefore imposed by the Respondent.
- 20 25 30 90. The process to find and contract with Mr Beal was entirely professional and appropriate. The Tribunal does not accept the suggestion that Mr Beal was purposefully controlled by the Respondent in the way he proposed to carry out the discussion. However, the Respondent compared the offer by Mr Beal

to that of ACAS who were offering a different service (one day mediation). Mr Beal therefore came under pressure to reduce his proposed costs and did so, thereby reducing the number of meetings and the timetable. None of this took into account the Claimant's health and affect the whole situation and the meetings with Ms Cameron would have on her mental health. Ms Hunter acknowledged at the appeal that she had not considered this until it was raised by Mr Beal.

5

10

15

20

25

30

91. A reasonable employer would also have gained an up to date OH report to enquire whether it was reasonable of the Claimant to suggest that she could not manage more than a two hour meeting with Ms Cameron before dismissing.

92. The Tribunal therefore finds that the process applied by the Respondent was not fair and reasonable. The appeal considered the points which the Claimant raised, but failed to acknowledge that the Respondent had not encouraged resolution at an early stage, had not kept the Claimant informed of the reasons for the change in the proposed process and did not obtain OH advice. Therefore, it failed to rectify the problems with the process and reason for dismissal.

93. The Tribunal considers that the actions of the Respondent were what led to the dismissal. The matter could have been handled differently from the outset and the Respondent's acquiescence to Ms Cameron's position of not wishing to engage, meant no progress was made for almost 2 years. When resolution was attempted, the mental health of the Claimant was ignored and there was no will by the management involved to find ways to keep the Claimant in employment.

94. The dismissal was therefore unfair as it was not within a band of reasonable responses to dismiss to Claimant in the circumstances.

95. The Tribunal considers that the actions of the Claimant to request that if her needs could not be accommodated that the matter return to a case review was unfortunate. The Claimant had mostly indicated for over 2 years that she was willing to engage with the Respondent to resolve the issue so she could

return to work. A number of opportunities to do so were missed by the Respondent and the Claimant became increasingly despondent of support from her employer. However, her unwillingness to try to engage in the proposed process meant that the Respondent undertook a case review which led to her dismissal. The Claimant's role amounted to a 20% contribution to her dismissal.

5

10

96. Having considered whether the Claimant would have been dismissed in any event, even if an appropriate process had been followed, the Tribunal considers that it cannot be said that dismissal would have occurred. In so deciding the Tribunal has taken into account all the circumstances as well as the size and resources of the Respondent. No reduction to damages should be made for this reason.

97. The Tribunal makes the following award of losses:

15

98. The parties agreed the rate of earnings and periods of time. Hence the basic award of £6246.31 is reduced by 20% contribution to £4997.05. The compensatory award to the date of the hearing is £16,319.65 having deducted 20% for contributory action.

20

99. The Tribunal accepts that the Claimant has not applied for many jobs since her dismissal. The Tribunal takes into account the location of the Claimant, the mental health of the Claimant at the time of the dismissal and the Covid-19 pandemic and considers that it could not be expected that the Claimant would have found alternative work within the period up to the date of trial.

25

100. With regard to future losses, the Tribunal has been told that the Claimant set up business on 1 April 2020 buying and selling laptops, but has not yet received any income. The Tribunal considers that whilst it was resourceful of the Claimant to try to mitigate her loss in some way during the national Covid-19 lockdown, it must be considered that the Claimant could find alternative work to match her skills in social work within a period of 4 months from the date of the hearing, i.e. before 21 January 2021.

101. Future losses are calculated as 4 months of loss of earning, plus pension contribution, amounting to £5,256.81 (including a 20% deduction). A total award of £26,573.51

5 102. The Tribunal was not provided with any details of benefits to which the recoupment provisions apply and therefore cannot make any order for any such recovery.

10

**S Cowen  
Employment Judge**

**26 January 2021  
Date of Judgment**

15

**Date sent to parties**

**30 January 2021**

20

25