

Report of	Meeting	Date
Chief Executive (Introduced by Leader of the Council and Cabinet Member (Strategy and Reform))	Council	Wednesday, 23 February 2022

Employment Matter - Decision

Is this report confidential?	No
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Is this decision key?	Not Applicable
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Purpose of the Report

- To inform Council of the outcome of the claim brought by Heather McManus against South Ribble BC, Cllr Paul Foster and Cllr Michael Titherington

Recommendations to Council

- That Council note the decision.

Reasons for recommendations

- The employment claim related to the decision of the Council in July 2020 to terminate the former Chief Executive's employment without notice. It is appropriate to report the outcome of this case to the Council.

Other options considered and rejected

- Not to inform council was considered but rejected as it was felt this would not be transparent given the role full council had in the decision-making process.

Corporate priorities

- The report relates to the following corporate priorities:

An exemplary council	Thriving communities
A fair local economy that works for everyone	Good homes, green spaces, healthy places

Background to the report

6. Over the course of 5 days in October, the Employment Tribunal heard a claim brought by Heather McManus, the former Chief Executive of South Ribble Council, against the Council, Cllr Paul Foster and Cllr Michael Titherington.
7. The claim had been amended since issue but the tribunal heard 3 heads of claim
 - a. Detriments that arose as a direct result of making a protected disclosure (the whistleblowing claim); and
 - b. Unfair dismissal; and
 - c. Wrongful dismissal.
8. The total value of the claimant's claim was £4,942,596.95.
9. The whistleblowing claim is a particular category of claim which carries no financial cap, and enables individuals who are alleged to have influenced the decision making to be named as defendants in their own right. In order to prove this element of the claim the Claimant has to show that they have made a protected disclosure **and** they experienced detriments as a direct result of that protected disclosure.
10. The unfair dismissal claim is subject to a financial limitation (the cap) and needs to show that the decision to terminate the employment was unfair.
11. The wrongful dismissal claim relates either failing to follow appropriate processes and/or contractual obligations and is generally limited to the period of contractual notice.
12. On 15th July 2020, Council voted to terminate the employment of Heather McManus as Chief Executive without notice.

Findings of the Tribunal

13. The Tribunal set out a detailed analysis of the evidence heard and made a number of findings. The key ones are addressed below.

The Whistleblowing Claim

14. The Tribunal had at an earlier hearing found that the claimant had made a protected disclosure.
15. The Tribunal made the following findings:-
 - a. There was no direct evidence that the detriments alleged arose as a result of the protected disclosure;
 - b. The Tribunal could not infer that the detriments arose as a result of the protected disclosure; but even if it could be inferred the issues addressed in the protected disclosure predated the protected disclosure and the acts of the council related to those earlier issues not the protected disclosure.
16. It was found that the protected disclosure was not the principal reason for the dismissal and/ or the alleged detriments. As a result, this head of claim, and the claims against Cllr Foster and Cllr Titherington failed.

The Unfair Dismissal Claim

17. As the claim under the protected disclosure failed the claim that the dismissal was automatically unfair also failed.
18. The Tribunal went on to consider whether the dismissal was unfair. They were very clear that they were considering here the "dismissal" and not whether the dismissal was with or without notice. In other words, were the Council entitled to terminate the employment contract at all?
19. The Tribunal made the following findings:-
 - a. There was no criticism of the decision to suspend the claimant;
 - b. The Council applied the procedure within the JNC Model Conditions fairly;

- c. There was a lengthy and comprehensive investigation undertaken by an independent investigator;
 - d. There were no flaws in the investigation process;
 - e. The fact that the Independent Investigator did not find all the allegations of misconduct proven did not undermine the seriousness of the findings of misconduct identified.
 - f. The Council were entitled to treat the findings of the Independent Investigator as findings of misconduct;
 - g. The Independent Investigator envisaged dismissal as a potential outcome; and
 - h. The procedure followed by the Council leading to a decision to dismiss was fair and lawful.
20. The Tribunal found that the decision to dismiss was fair and lawful and the claim for unfair dismissal was dismissed.

The Wrongful Dismissal Claim

21. The Tribunal considered the summary dismissal and whether contractual notice should have been provided following dismissal. They found that the evidence provided did not support departing from the recommendation of the Independent Investigator to provide contractual notice.
22. The tribunal upheld this element of the claim. However, the period to be used was limited to the balance of notice remaining following the claimant's resignation, a period of 41 days.

Compensatory Award

23. The parties are to agree the value of the compensatory award which will be calculated by reference to the claimant's salary for that period and pension contribution. The salary will be payable net.

Climate change and air quality

24. This report does not impact the climate change and sustainability targets of the Councils Green Agenda and all environmental considerations are in place.

Equality and diversity

25. Not applicable to this matter.

Risk

26. Not applicable to this matter.

Comments of the Statutory Finance Officer

27. An allowance has been made in the council's budget for this claim.

Comments of the Monitoring Officer

28. No comments as this report is for information and reports the outcome of an employment tribunal and does not seek to provide further advice.

There are no background papers to this report

There are no Appendices

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