

States of Guernsey



THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

APPLICANT: Mr Jason Garnham
Represented by: Advocate Amy Richardson

RESPONDENT: St John Ambulance & Rescue Service
Represented by: Advocate Jessica Roland

Tribunal Members: Mrs Paula Brierley (Chairman)
Mr Peter Woodward
Mr Andrew Vernon

Hearing date(s): Thursday 10 and Friday 11 March 2016

Decision of the Tribunal

The Applicant claimed that he had been constructively unfairly dismissed due to a repudiatory breach of the implied terms of trust and confidence between himself and the Respondent as a result of the Respondent's actions.

Having considered all the evidence presented, whether recorded in this judgment or not and the representations of both parties and having due regard to all the circumstances, the Tribunal unanimously finds that, under Section 5 (2)(c) of the provisions of the Employment Protection (Guernsey) Law, 1998, (as amended), the Applicant was not unfairly constructively dismissed from his employment. The Tribunal therefore makes no award.

Mrs Paula Brierley
Signature of the Chairman

22 April 2016
Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

The Legislation referred to in this document is as follows:

The Employment Protection (Guernsey) Law, 1998, as amended ('the Law')

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, Mr Jason Garnham, claimed that he had been constructively unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, (as amended). He felt there had been a repudiatory breach of the implied term of trust and confidence between himself and the Respondent as a result of the Respondent's alleged ineffective and inadequate training and guidance on policies and procedures and the Respondent's actions which had been partisan to a particular party, following an incident on 9 July 2014 ('the incident'). The Applicant also claimed that actions taken by the Respondent during the Applicant's sick leave had caused him further upset. The Applicant claimed that due to these actions he had no choice but to resign.
- 1.2 The Applicant was represented by Advocate Amy Richardson of Haskins Legal.
- 1.3 The Applicant gave witness testimony under Oath.
- 1.4 The Applicant did not call any witnesses.
- 1.5 The Respondent, St John Ambulance & Rescue Service, was represented by Advocate Jessica Roland of Mourant Ozannes.
- 1.6 The Respondent denied that its actions had left the Applicant no choice but to resign, rather that he had resigned from his employment in order to avoid having to progress with an internal disciplinary process that had been reasonably and lawfully initiated after a full internal and Police supported investigation into the death of a member of the public on 9 July 2014.
- 1.7 The Respondent called the following witnesses who gave witness testimony under Oath:

Mr Jonathan Beausire, Chief Officer of the Respondent.
Mr Ian Morellec, Temporary Assistant Chief Officer of the Respondent.
Mrs Wendy McHugh, External Human Resources Consultant to the Respondent.
- 1.8 The Tribunal notes that Mr Carl Charlesworth, Acting Senior Officer, and Investigating Officer for the incident was unavailable to the Tribunal as he was out of the Island for medical reasons.
- 1.9 Mrs Veronica Crocker, who was an Ambulance Controller at the time of the incident, attended the Tribunal hearing to give evidence under Oath at the request of the Tribunal.
- 1.10 A joint bundle of documents was submitted by both parties in addition to the following initial documentation:

- original ET1 Application Form (received on 1 April 2015) submitted by the Applicant;
- supplemental ET1 (received on 7 December 2015) from the Applicant's representative;
- original ET2 Employer's Response Form (received on 29 April 2015) from the Respondent's representative; and
- supplemental ET2 (dated 23 December 2015) from the Respondent's representative.

1.11 The Respondent also submitted, within document ER1, a written witness statement of Mr Dean De La Mare, Senior Officer of the Respondent and line manager of the Applicant. This statement was accompanied by a CD recording of a meeting on 4 November 2013. However during the hearing both parties confirmed that neither of them wished to call Mr De La Mare; nor have the Tribunal take note of the contents of the CD; consequently the Tribunal has disregarded this material.

2.0 The Law

2.1 According to the Employment Protection (Guernsey) Law, 1998 (as amended), section 5 (2)(c) *"an employee shall be treated as dismissed by his employer if, but only if – the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct."*

2.2 The complaint was an alleged (constructive) unfair dismissal, and the burden of proof lay with the Applicant. It is now firmly established in previous judgments given, under the Employment Protection (Guernsey) Law, 1998 (as amended), that in order for an employee to be able to establish Constructive Unfair Dismissal, four conditions must be met:

- (i) The employer must be in breach of a term of the contract of employment.
- (ii) The breach must be fundamental, amounting to a repudiatory breach of contract.
- (iii) The employee must have resigned in response to that breach.
- (iv) The employee must not have delayed too long in terminating the contract following the breach of contract, otherwise the breach can be found to have been waived and the contract affirmed.

3.0 Facts Found

3.1 The Respondent has been providing Guernsey's ambulance service since 1936 under a service level agreement with the States of Guernsey. The Service is overseen by the Health and Social Services Department of the States of Guernsey and is required to meet targets, both clinical and operational with key performance indicators. There is also a board consisting of non-executive directors.

3.2 The structure of the Respondent is hierarchical, with decision making being escalated as necessary. There are three levels of management: operational, tactical and strategic. The role of Station Officer (the role held by the Applicant) is at the operational level and carries out day to day management of the service.

- 3.3 The Applicant commenced employment with the St John Ambulance & Rescue Service on 4 June 1996. He became a paramedic in 2003 and, following three applications for promotion, became a manager on 1 October 2012.
- 3.4 At the time of the incident on 9 July 2014, the Applicant held the position of Station Officer. At that time there were four Station Officers and two Acting Station Officers providing continuing 24 hour cover 365 days a year.
- 3.5 The Applicant reported to a Senior Officer (Mr Dean De La Mare).
- 3.6 The Applicant took part in the delivery of the 'ambulance control assistant induction course' and was responsible for the delivery of training to four new ambulance control assistant recruits in November 2011, on emergency calls and incidents. The training provided by the Applicant included (a) emergency call taking (introduction to categories, call taking procedures and practise simulated calls); (b) non-emergency call taking; (c) radio communication; and (d) visits to other emergency services, emergency calls, categorisation, location and dispatch. (EE1, pages 195 – 198 refer).
- 3.7 In addition to being a Station Officer, the Applicant had responsibility for the inshore rescue boats.
- 3.8 The Applicant undertook a number of training and development experiences (as reflected in his personnel file). The list below was put forward by the Respondent and was not disputed. This training took place both before and after his promotion to Station Officer (October 2012). The training was both technical and managerial (for existing and aspirational levels) delivered in formal and/or experiential formats. The list consisted of:
- 17/18 January 2011 – ambulance refresher training;
 - February 2011 – Station Officer shadowing training (ad hoc basis) commencing February 2011;
 - 18 May 2011 – Paramedic refresher training;
 - 7 August 2011 – shadowing and 'acting up' to Station Officer to get on the job training and guidance;
 - 15/16 November 2011 – Operational Bronze Command course (an essential course for all Station Officers providing training on the command and coordination of emergency response);
 - 10 December 2011 – Police Firearms training exercise;
 - 5 September 2012 – familiarisation of kit with Guernsey Fire & Rescue Service;
 - 18 December 2012 – Multi Agency Bronze Command training;
 - 9 September 2013 – disciplinary training with the Learning Company (specifically designed around the Service's disciplinary policy and procedures and its capability procedures);
 - 15/16 January 2013 – Tactical Silver Command training (focused on the level above the Applicant but offered to him as aspirational training);
 - 10/11 May 2013 – Advanced Life Support training;
 - 4 April 2014; 13/16 May 2014 – half day delegation workshops with the Learning Company; and
 - 9 June 2014 – Capacity and Consent training.

3.9 By way of the nature of their duties and prior experience, Station Officers were the most experienced control operators who, in the absence of the Control Room Manager, supervised the staff and functions of the ambulance control room. The ambulance control room received over 4000 emergency calls a year and therefore, due to the volume and variety of calls, Station Officers were very experienced in this particular function.

The incident and investigation

- 3.10 There had been an incident on the evening of 9 July 2014 when an emergency 999 call had been put through to the control room. The Ambulance Control Assistant (Mrs Veronica Crocker) had taken the call. The caller gave their location and then the call was 'dropped'.
- 3.11 The Applicant had not been present in the control room at the time of the call coming in, but had entered the room afterwards.
- 3.12 No response was made to the call.
- 3.13 The following morning another call from the same location was received. A response was made and the body of a man was found.
- 3.14 It was not until a call from the Police at 5.11 pm on 21 July 2014 that a potential connection between the 999 emergency calls on 9 and 10 July 2014 was identified. The Police had been alerted to the emergency call on 9 July by the deceased's family.
- 3.15 Duty Officer John Le Page, who had taken the call from the Police on the evening of 21 July 2014, had undertaken some preliminary investigation and ascertained that the 999 call of 9 July 2014 had been taken by Duty Controller, Veronica Crocker and that the Applicant was the Duty Officer at the time of the call.
- 3.16 Mr Le Page had contacted Mrs Crocker on the evening of 21 July 2014, following the call from the Police, to find out some details of the call. Mr Le Page wrote a report to Mr Beausire recording his actions and findings following the call from the Police. (EE1, page 274 refers).
- 3.17 On 22 July 2014, the call the previous evening from the Police was brought to Mr Beausire's attention. Mr Beausire made the decision to initiate an internal investigation to ascertain: (a) the circumstances surrounding the 999 call; (b) whether there was the need to initiate any internal disciplinary procedures; and (c) what organisational learning could be identified.
- 3.18 Mr Beausire appointed Mr Ian Morellec (temporary Assistant Chief Officer covering a maternity leave) to oversee the investigation. Mr Morellec had held the position of Deputy Chief of Police, therefore, had a great deal of relevant experience in carrying out investigations.
- 3.19 Mr Beausire appointed Mr Charlesworth as the Service's Investigating Officer because he had been the Senior Duty Officer on the night of the incident; this role is a level above Station Officer.

- 3.20 At no time either at Mr Charlesworth's appointment as Investigating Officer, nor during the investigation, did the Applicant make known any personal issues between himself and Mr Charlesworth.
- 3.21 At the same time Her Majesty's Procurer had directed the Police to undertake a non-criminal investigation into the circumstances surrounding the incident.
- 3.22 The Respondent's investigation into the incident was run in conjunction with the Police investigation.
- 3.23 As a first stage of the investigation, on 22 July 2014, duty reports were obtained from Mrs Crocker, the Applicant and Mr John Le Noury.
- 3.24 The Applicant's duty report (EE1, Page 279 refers) and Mrs Crocker's report conflicted.
- 3.25 Mr Le Noury's report conflicted with the Applicant's (EE1, Page 282 refers).
- 3.26 The investigation confirmed that, after the 999 call of 9 July 2014 had been received, the Applicant had stayed and manned the control room whilst allowing Mrs Crocker to meet with Mr Charlesworth (on an unrelated matter). This fact conflicted with what the Applicant had stated in his duty report.
- 3.27 Section 7.1.2 of the Disciplinary Policy and Procedure notes "The purpose of investigation will be to: determine the circumstances under which the alleged event occurred; decide if disciplinary action is warranted."
- 3.28 Mr Morellec wrote, separately, to both Mrs Crocker and the Applicant, on 24 July 2014, to let them know that they would be interviewed by Mr Charlesworth. In his letter Mr Morellec also explained that they must not discuss any matter relating to the investigation with any other witnesses and should also refrain from discussing details of the investigation with other colleagues, unless in relation to seeking guidance or advice in connection with the process from a union representative.
- 3.29 The Applicant reported sick for duty the following day then went on annual leave, up to and including the 13 August 2014.
- 3.30 Joint Police and Respondent investigation meetings took place with those involved. Mrs Crocker's meeting took place on 1 August 2014, Mr Le Noury's on 12 August and the Applicant's on 26 August.
- 3.31 The investigation was concluded in September 2014 with a report being submitted to Mr Morellec which he read on or around 9 September 2014. (EE1, page 445 refers).
- 3.32 There was a meeting held on 22 September 2014 between Mr Morellec and the Applicant. During the meeting Mr Morellec gave the Applicant a letter informing him that the investigation had been completed and he would be required to attend a hearing under the disciplinary process. The hearing was due to take place four weeks from the date of the letter, to be chaired by Mr Andrew Walford (Assistant Chief Officer).

- 3.33 The letter of 22 September 2014, given the stressful situation, also drew the Applicant's attention to the employee counselling service.
- 3.34 At the end of the meeting on 22 September 2014, the Applicant informed Mr Morellec that he would be going to see his doctor. Later that afternoon, the Applicant reported sick for duty.
- 3.35 As a result of the Applicant being certified unfit for work, it was decided to delay the disciplinary hearing until the Applicant was fit to return to work.
- 3.36 In his witness statement the Applicant described the incident of 9 July, as "the incident that led to my resignation".

Process and Procedures

- 3.37 At the time of the incident the operational protocol for the control room, (that is before the emergency services moved to a joint control room in October 2014), delegated oversight of the control room to Station Officers when the Station Manager was not on duty, with the Ambulance Control Operators taking the 999 calls.
- 3.38 On receipt of a 999 call an 'Emergency Call Taking Form' was required to be followed and completed to ascertain the level of response to the information being provided by the caller. If there was not sufficient information the call would be prioritised in a higher category and an emergency response made.
- 3.39 Control Operators were responsible for both the call taking and dispatching of resources. In the event of insufficient information the call could be referred to a supervisor (either the Control Manager or Duty Officer/Station Officer) for a dispatch decision. A dispatch decision could be an emergency ambulance, a Paramedic, an ambulance car or referral to another agency such as Police or Primary Care.
- 3.40 There were a range of policies, procedures and guidelines to assist staff in performing their duties. With regard to the control room, to ensure that all control room staff were equipped to deal with emergency calls, there was an 'Ambulance Control – Guidelines and Procedures for Control Operators' document. (EE1, pages 144 to 184 refer).
- 3.41 There was no specific procedure at the time of the incident for dealing with dropped 999 calls.
- 3.42 The investigation report noted that both the Applicant and Mrs Crocker were correct in saying that there had not been any procedures for dealing with an aborted call. It was also noted that a procedure was being compiled. The investigation report went on further to note that the event in question "did not go astray due to a lack of procedure. It was common sense that this aborted call needed to urgently be followed up, & the reason that it wasn't was due to poor management of the situation & incorrect decision making."

Job Description

3.43 The Applicant had been provided with a job description for the role of Station Officer twice. The first dated February 2012 and an updated version which was sent to him, and others, on 27 November 2013. The covering email sending out the updated version (EE1, page 83 refers) noted that the job description “has been updated with the correct terminology”.

Communications between Applicant and Respondent during sick leave

3.44 At the point of the Applicant being signed off work by his doctor on 22 September 2014, Mrs Wendy McHugh, the Respondent’s external HR adviser, was appointed as the welfare officer to stay in contact with the Applicant to ensure his wellbeing.

3.45 Initially, the Applicant was signed off for a period of one month. The Respondent then received further medical certificates certifying the Applicant unfit for work until 22 January 2014.

3.46 Mrs McHugh made her first of two welfare calls to the Applicant on 26 September 2014. At the beginning of this call she checked that the Applicant was comfortable speaking with her and he confirmed he was. Mrs McHugh file noted the conversation. The file note was undisputed. (EE1, page 238 refers).

3.47 As outlined in the file note, during the call Mrs McHugh asked the Applicant if he felt that he needed counselling, to which he said he was liaising with his doctor. The Applicant told Mrs McHugh that he was “in no fit mind to have anything to do with the Station”. However, he also said that he was not afraid or running away from anything, he just needed to have time to deal with the situation. He understood that he needed to put his “case forward”. He said he needed to be in the right frame of mind to deal with the matter. He also told Mrs McHugh that he would be “fighting this”. As noted in the file note, the Applicant agreed to Mrs McHugh calling him at the end of the following week.

3.48 Mrs McHugh called the Applicant again on 8 October 2014 (after unsuccessfully being able to get hold of him on 3 October 2014). Mrs McHugh file noted the call. The file note was undisputed. (EE1, page 241 refers). During this call the Applicant confirmed that he was happy for Mrs McHugh to call him at the end of the following week.

3.49 Shortly before Mrs McHugh was due to make her next welfare call to the Applicant on 23 October 2014, she received an email from Mr Dean De La Mare, letting her know that the Applicant’s partner had called and advised that the Applicant had been signed off for a further two months and he did not want to take calls directly from the Respondent. (EE1, page 244 refers).

3.50 The Applicant’s partner had requested that contact be directed either through her by telephone or by text message to the Applicant so that he could respond in his own time if he chose.

3.51 Mrs McHugh complied with this request.

- 3.52 In early November 2014, Mrs McHugh sent the Applicant two text messages on separate days asking the Applicant if he was happy that she maintain welfare contact.
- 3.53 The Applicant did not respond to either text message.
- 3.54 Mrs McHugh sent the Applicant a letter dated 25 November 2014. At that time the Applicant had been off work for over two months, Mrs McHugh had only had contact with the Applicant twice during that period and no medical certificates had been submitted, which was in breach of the Applicant's obligations under the sickness absence policy. The Applicant was on full pay during this time.
- 3.55 The Applicant responded by letter dated 8 December 2014 to Mrs McHugh's letter of 25 November 2014.
- 3.56 The Applicant stated in his 8 December letter that he had been informed by a number of his colleagues that Mr Charlesworth had been trying to 'catch him out' by visiting boat yards where he (the Applicant) conducted his boat cleaning business.
- 3.57 The Applicant did not produce any further detail or evidence to substantiate the allegations of Mr Charlesworth trying to 'catch him out'.
- 3.58 Both Mr Beasure and Mr Morellec denied any knowledge of Mr Charlesworth conducting any monitoring as alleged by the Applicant.
- 3.59 Following receipt of the Applicant's letter of 8 December 2014, Mrs McHugh did not make any further attempts at contacting him.
- 3.60 The Applicant telephoned the Respondent on 30 December 2014 to let it know that he had been signed off for a further period until 22 January 2015.
- 3.61 Three medical certificates were provided in respect of the Applicant's absence.
- 3.62 Once a date for the Applicant's return to work had been received Mr Walford wrote to the Applicant setting a date for the disciplinary hearing.
- 3.63 Mr Beasure was made aware, in early January 2015, that a date of 9 February 2015 had been set for the disciplinary hearing.
- 3.64 Mrs Alison Marquis, Assistant Chief Officer, had returned from maternity leave in November 2014, therefore, Mr Beasure took the decision to have Mrs Marquis appointed as Chair for the disciplinary hearing.
- 3.65 On or around 15 January 2015, Mr Beasure was contacted by text by the Applicant's partner asking if he would meet with both her and the Applicant, to which he agreed.
- 3.66 Mr Beasure met with the Applicant and his partner. Mrs Wendy McHugh also attended the meeting, at Mr Beasure's request. The meeting took place at Mrs McHugh's offices on 19 January 2015.

- 3.67 The meeting was file noted by Mrs McHugh. The file note was undisputed. (EE1, pages 212 & 213 refer).
- 3.68 During the meeting the Applicant handed Mr Beausire a resignation letter. (EE1 page 141 refers).
- 3.69 The Applicant's resignation letter said that it was with "a very heavy heart I find myself tendering my resignation with immediate effect. Over the last 6 months I have had my professional position brought into question." The Applicant ended the letter with "I owe it to my Partner and Daughters to find a new direction in my life". The Applicant also noted the support "not only as a Chief but also a colleague and friend" which Mr Beausire had given him. (EE1, page 141 refers).
- 3.70 During the resignation meeting the Applicant's partner explained that the Applicant had applied for and been offered, a new position with another company and needed a reference, she asked on the Applicant's behalf, if the reference could depict the Applicant's performance prior to the incident of 9 July 2014.
- 3.71 During this meeting the Applicant said that he would still like to be involved with the inshore rescue boats in the future.
- 3.72 During the resignation meeting the Applicant said that a disciplinary hearing would break him.
- 3.73 Neither in the resignation letter, nor during the meeting of 19 January 2015, did the Applicant make any reference to lack of training or concerns with the handling of the investigation. Nor did the Applicant express a belief that the Service had failed him, or make any other complaints against the Respondent.

4.0 Additional Facts Found

- 4.1 Since the mid 1980's operational staff have been trained by the NHS and hold relevant NHS qualifications.
- 4.2 There had been some temporary problems with the location mapping system 'freezing' in July 2014 which was reported to the third party provider for resolution.
- 4.3 When writing to Mr Beausire on 13 September 2012, the Applicant expressed "I believe I have demonstrated my middle management skills in decision-making and openness to challenge change over the recent years".
- 4.4 There was a meeting held on 4 November 2013 conducted under the 'Capability Procedures – Informal Procedure'. The meeting was officially recorded by a file note signed by both the Applicant and his line manager, Senior Officer Dean De La Mare (page 203 of the joint bundle refers). This meeting pointed to areas of 'unsatisfactory performance' of the Applicant. These were mainly around administration, including completion of order forms for items ordered or work authorised for the inshore rescue boats for which the Applicant had responsibility. The file note also evidenced discussion around the agreed way forward over a six week period to bring the Applicant up to a satisfactory standard. Solutions included (1) mentoring; training with mentor on administrative areas, specifically sickness,

TOIL, overtime graph, shift swaps, duty boards and key performance indicators, (2) regular meetings with his line manager during the 6 week period to discuss areas of concern, (3) the Applicant's attendance at a management training course (it was noted that this would be when a course was available).

- 4.5 Two further formal capability meetings (under the informal process) are evidenced as taking place on 13 and 18 November 2013 (EE1, page 202 refers). A letter was sent from Mr De La Mare to the Applicant, dated 23 December 2013 (EE1, page 200 refers), acknowledging that the agreed solution steps had taken place and further acknowledging that the Applicant "has maintained a good standard" over the time scale.
- 4.6 On 29 October 2014 Mr Morellec received a letter from the Applicant's union representative, Mr Bob Lanning (Regional Officer of Unite). The letter noted receipt of the DVDs of the investigatory meetings with Mrs Crocker and Mr Le Noury and requested the DVD of the investigatory meeting with the Applicant (which was subsequently provided). The letter also questioned the Respondent's decision to initiate formal proceedings. (EE1, page 522 refers).
- 4.7 The Applicant had received various awards and recognition for good performance for emergency call responses.
- 4.8 Despite the Applicant stating in his ET1 that until the incident, he was "never subjected to any disciplinary procedures", the Respondent produced evidence to show that he had been the subject of three separate disciplinary procedures: 26 February 2004 (issued with a formal oral warning), 25 November 2007 (issued with a formal oral warning) and 10 January 2014 (issued with a first written warning).

5.0 The Applicant

Allegation of defective and out of date equipment provided by the Respondent

- 5.1 The Applicant made allegations in connection with equipment which was "not fit for purpose". Although he gave a couple of general examples these were not substantiated with evidence.

Alleged issues with managerial role and lack of training and support

- 5.2 The Applicant stated that, in his opinion, there had been 'strange relationships' between management and staff and alleged that there had been a general atmosphere of animosity and distrust. However, this had not put him off seeking a managerial role within the service, because he felt he could rise above this and would seek to rectify this "fractured relationship".
- 5.3 The Applicant stated that when he approached managers with various ideas and proposals he felt that he was simply ignored. However, there was no evidence offered up to substantiate this statement.
- 5.4 The Applicant stated that it took him three applications in order for him to successfully secure a managerial role. He said that, during each application, he had been discouraged by managers.

- 5.5 The Applicant said that he had made it clear in his application form that, whilst he had a wealth of knowledge pertaining to him being a paramedic, he did not have the knowledge in relation to the managerial and administrative aspects of the role. He stated in evidence that he had not been offered:
- courses on management skills,
 - job shadowing, nor
 - a written job description.
- 5.6 The Applicant said that he fully accepted that he had previously “acted up” to a managerial level, but this had been on “a shift by shift basis”. He further stated that he had not been given “guidance or training in relation to various administrative roles (for example, the rota/on call system).”
- 5.7 The Applicant said that he had not been given formal training. He said that he had been given the opportunity to shadow a colleague but this only covered shifts and arranging duty boards. The Applicant summed up the shadowing as only covering menial tasks.
- 5.8 Under cross examination the Applicant said that he did have experience of dropped 999 calls. He said that he had not had formal training but he knew exactly what to do and this was because of his experience (he repeated this statement a number of times).
- 5.9 The Applicant said that he had been invited to a meeting to discuss feedback from a ‘360’ appraisal. The original meeting, with his line manager, was due to take place on 24 April 2013. However, the meeting was postponed until 4 November 2013. The Applicant was dismayed that the appraisal was “a critique as to my lack of skills as a manager”.
- 5.10 In giving evidence the Applicant said that he had only been given one hour of rota training and not provided with any further management training.
- 5.11 The Applicant said “I have been the victim of a systematic failure on behalf of the Respondent to provide me with adequate training or support”.
- 5.12 The Applicant said that he had not “been offered a written job description”.
- 5.13 The Applicant stated that part of his role related to the control room, this involved checking of calls, the review of phone logs and also providing some very general cover. He went on to say that it was not part of his role to provide full cover for the control room, as he had no real experience in this field. He said that he had made it clear that he had had no training and, whilst he accepted he had a degree of knowledge in a number of areas, he was concerned that he could not fulfil the role of a Controller. He said that his office was some distance away from the control room and that he was not expected to be physically present in the control room during the shift, as the control room was effectively supervised by a qualified and trained Controller who worked in conjunction with a Control Room Manager. He then went on to say that he only visited the control room in order to conduct welfare checks or indeed to attend any emergency situation. He summed up this

point by saying that it was not his function to be present in the control room at all material times.

- 5.14 The Applicant alleged that the Respondent provided very limited policy and procedure guides and that there were none available for some important emergency situations.
- 5.15 He said that he had notified the Respondent that certain procedures were out of date.
- 5.16 The Applicant alleged that there was no ongoing staff training provided in relation to policy and procedures in the control room.
- 5.17 The Applicant said that, at the time of the incident on 9 July 2014, he only entered into the control room because he had noticed on his radio that the lines were incredibly busy and the emergency line was being used to a high frequency.
- 5.18 On entering the control room, Mrs Crocker informed the Applicant that there had been a dropped 999 call.
- 5.19 The Applicant said that he had given Mrs Crocker instructions on how to proceed. He said that he was aware there was no crew available to attend. The Applicant said that he had asked Mrs Crocker to try to call the caller back; she said she had done this. He said that he had therefore asked Mrs Crocker to contact the Police to ask them to attend to identify if there was a patient to attend to. He said that he had then asked Mrs Crocker to complete the paperwork.
- 5.20 The Applicant said that Mrs Crocker had not carried out his instructions.
- 5.21 He said that he had not checked back with Mrs Crocker with regard to the status of the matter nor to find out if she had carried out his instructions.
- 5.22 In his witness statement, the Applicant said that being told he could not speak to his colleagues regarding details of the incident had made him feel “incredibly isolated” and “it was apparent that no employees felt able to provide me with any support”.
- 5.23 In giving evidence, the Applicant stated that he was surprised that it was only him who had been removed from a managerial role and “absolutely no action was taken against” Mrs Crocker. There was no evidence to suggest that he raised this at the time.
- 5.24 The Applicant felt that the investigation was weighted in Mrs Crocker’s favour, and that the outcome of the investigation was a “foregone conclusion, given that the interviews that were conducted in respect of myself were extremely accusatory.” The Applicant felt that this was in “direct contrast” to the interviews of Mrs Crocker and Mr Le Noury. He felt the tone of those two interviews was “wholly investigatory”.
- 5.25 The Applicant said in his witness statement that he had been informed, after the interview process by Mr Morellec, he was facing the prospect of gross misconduct.

He said: "Ian [Mr Morellec] went further to confirm to me that, regardless of the outcome, I would not be working for the Respondent ever again".

- 5.26 In giving evidence, when asked why he had not brought up any of his complaints, the Applicant said that he did not bring those issues up because he could not bring it up at such a difficult time when he was "finding it difficult to function".
- 5.27 In giving evidence, when asked why the Applicant did not use the Respondent's grievance procedure, he said that he did not think it would do any good.

Issues with Mr Charlesworth and the investigation

- 5.28 In his complaint the Applicant said that Mr Charlesworth's report was "heavily weighted" in Mrs Crocker's favour and had immediately come to the conclusion that the Applicant had been responsible.
- 5.29 The Applicant said that he felt that the interviews that had been conducted with him had been "extremely accusatory".
- 5.30 The Applicant said that he was surprised that it was only him who was removed from a managerial role and absolutely no action was taken against Mrs Crocker.
- 5.31 In his witness statement the Applicant stated "I was concerned that there was only myself and Veronica [Mrs Crocker] present in the room. I was aware that there had been previous incidents regarding Veronica and her fitness as a Controller. In previous investigations, I had been informed by other staff members that Veronica had been untruthful, but, despite this, her version of events had been upheld over theirs." The Applicant did not produce any evidence to substantiate these claims.
- 5.32 The Applicant said that he "recalled being concerned that Carl [Mr Charlesworth] was called upon to effectively conduct the inquiry". He felt that he should have been informed of the outcome of discussions in the meetings between Mr Charlesworth and Mrs Crocker and immediately felt at the commencement of the investigation there was "bias and that the investigation was not going to be fair".
- 5.33 The Applicant said that "there was history" between himself and Mr Charlesworth because Mr Charlesworth had taken the fact that the Applicant had been promoted ahead of him very personally. The Applicant further stated that there was a "one sided animosity" on the part of Mr Charlesworth towards the Applicant.
- 5.34 Under cross examination the Applicant said that the animosity had been resolved prior to the investigation.
- 5.35 Under cross examination the Applicant said that there was no evidence to back up his allegations that there was any animosity on the part of Mr Charlesworth against him (the Applicant).
- 5.36 Under cross examination the Applicant said, with reference to his allegations, that there were "a lot of items not substantiated with evidence".
- 5.37 Under cross examination the Applicant said, it was only after the interviews that he felt that the investigation was biased. This contradicted his witness statement which

stated at paragraph 47 that he “immediately felt at the commencement of the investigation there was bias and that the investigation was not going to be fair.”

- 5.38 The Applicant could not evidence that he had raised any concerns about Mr Charlesworth conducting the investigation.
- 5.39 During cross examination there was much confusion on the part of the Applicant as to the various transcriptions of his investigatory interview. It transpired there were three sets of minutes of the interview; one set produced by the Respondent, one set produced by the Police and a third set which was a verbatim transcript which the Applicant’s partner had produced having listened to the recording of the interview.
- 5.40 The Applicant purported that there were “key points” missed from the transcript (there was confusion as to which transcript he meant, that is, either the Respondent’s or the Police’s) however, he was unable to say what they were. The Applicant continued to maintain that there were discrepancies but, even after being given time during an adjournment, he could not point any out.

Allegations of harassment and bombardment of communication whilst on sick leave

- 5.41 In his witness statement, the Applicant said that there had been correspondence received from the Human Resources Department which he found “distressing and intrusive”. He stated that his partner had contacted Mrs Wendy McHugh (outsourced HR provider) and requested that all communication be sent via Dean De La Mare as he (the Applicant) was “unable to process the same”.
- 5.42 The Applicant further stated, “However, despite there being various letters and telephone calls prior to my partner’s involvement, after her request, only one telephone call was made”.
- 5.43 The Applicant also said in his statement “Despite my partner confirming [to Mrs McHugh] that the letters were causing me undue distress, the Respondent still continued to send letters despite a direct request that they desist from doing so.”
- 5.44 The Applicant also stated in his letter that he was aware that, in his absence, he was being blamed for the withdrawal of two voluntary coxswains from the inshore rescue boat team.
- 5.45 The Applicant did not produce any evidence to back up this allegation and the Respondent denied that the Applicant was being blamed for the withdrawal of the two coxswains.
- 5.46 The Applicant also stated in his letter of 8 December 2014 that he had attended the funeral of a friend and colleague, he was asked to sit in the designated area for the Respondent and said that he had been “blatantly ignored”.

6.0 Mr Beausire

- 6.1 In giving evidence Mr Beausire explained that for someone selected for the role of Station Officer there was an induction programme and on-going training. There was a combination of formal and experiential training, that is, shadowing. An email dated 7 August 2011, included in the bundle, gave evidence of the Applicant and

other colleagues, being informed of their shadowing training which had been arranged for them (EE1, page 106 refers).

- 6.2 Mr Beausire also explained that training was given to members of the Service for their current roles as well as, where appropriate, aspirational training in preparation for the role at the next level.
- 6.3 Mr Beausire stated that the Applicant had been given the opportunity to 'act up' into the role of Station Officer in 2004 and was also provided with an intensive three day 'Sub Officer' (previous name for Station Officer) training course. He had not been successful in his application for that level at that time; however, he had been given ad hoc 'acting up' experience. It was also noted that the Applicant was a qualified (City & Guilds) adult trainer, a qualification he undertook during his employment with the Service. The Applicant had facilitated many ad-hoc and formal training sessions over the years.
- 6.4 It was acknowledged by Mr Beausire that the Applicant was a competent Paramedic and that it was the Applicant's desire to progress.
- 6.5 In giving evidence Mr Beausire said that, in addition to the general support of the Applicant's superior officers over the years, he (Mr Beausire) had personally encouraged and supported the Applicant on a number of occasions, initially when Mr Beausire was the Training Officer and then as Deputy Chief Officer and as Chief Officer. A number of emails were contained in EE1 showing Mr Beausire commending the Applicant on various actions.
- 6.6 Mr Beausire explained that the role of Station Officer is responsible for the day to day running of the Service which included the control room. This is covered in the last section of both versions of the job description.
- 6.7 Mr Beausire stated that requirement for all emergency calls to be recorded on an Emergency Call Taking Form and then on an Emergency Call Record was set out in the written procedures.
- 6.8 Mr Beausire stated that the policies were regularly reinforced by managers and guidance provided on an "as needed" basis. By way of example and evidence he explained that all control trained staff and managers were advised by email dated 29 January 2013 (EE1, page 189 refers) that any emergency call resulting in a non-response must be recorded on an Emergency Control Record.
- 6.9 Mr Beausire stated that the Service's policies and procedures are regularly reviewed and checked, by way of example and evidence he referred to an email, dated 2 June 2014, sent to control trained staff and managers (including the Applicant) informing them that ad hoc quality checks would be undertaken to monitor and confirm that control staff were following correct procedures. (EE1, page 192 refers).
- 6.10 Having appointed the individuals to oversee and carry out the Service's investigation into the incident, Mr Beausire said that he kept his distance and was only informed of progress of the investigation but not the findings.

- 6.11 Mr Beausire would normally have appointed Mrs Marquis as a disciplinary hearing manager. Mrs Marquis held the position of Assistant Chief Officer; however she was on maternity leave at that time. Mr Beausire said that Mrs Marquis had an HR background and considerable experience in disciplinary matters.
- 6.12 In the absence of Mrs Marquis, Mr Beausire appointed Mr Andrew Walford as chair of the disciplinary process. Mr Walford also held the position of Assistant Chief Officer.
- 6.13 Mr Beausire said that following the appointment of Mr Walford he did not have any further involvement in the disciplinary process, although he was aware that it had been put on hold whilst the Applicant was on sick leave.
- 6.14 In evidence Mr Beausire said that people did not know how to communicate with the Applicant as he had said that he didn't want contact with anyone at the Service.

7.0 Mrs Crocker

- 7.1 Mrs Crocker said, throughout the investigation and also when giving evidence to the Tribunal, that the Applicant had not asked her to contact the Police, nor had he asked her to complete the paperwork, that is, the Emergency Call Report Form. Mrs Crocker said that the Applicant had told her not to complete the form and only make an entry in the control log.

8.0 Mr Morellec

- 8.1 Mr Morellec noted that Mrs Crocker's duty report of 22 July (EE1, Page 277 refers) was consistent with the spontaneous verbal account she had given to Mr Le Page the night before, when he called her.
- 8.2 Mr Morellec said that Mr Charlesworth had brought the discrepancy in duty reports to his attention.
- 8.3 Given the seriousness of the situation Mr Morellec had decided that an investigation should be conducted in accordance with Section 7.1 'Investigation' of the Service's Disciplinary Policy and Procedure. (EE1 Page 290 refers).
- 8.4 Mr Morellec provided Mr Charlesworth with the Service's guidelines, for line managers conducting disciplinary investigations and carrying out policies and procedures.
- 8.5 Mr Morellec proposed that a joint investigation with the Police be undertaken (as it would be the same witnesses being interviewed). Mr Morellec agreed this with the Police and then sought (in writing) and obtained the consent to a joint investigation, from each of the witnesses.
- 8.6 Mr Morellec considered that the investigation needed to be progressed as a matter of priority, therefore, it was decided that the other two witnesses (that is, Mrs Crocker and Mr Le Noury) should be interviewed and evidence obtained. The Applicant would be interviewed as soon as practicable after his return to work from sickness and holiday in August.

- 8.7 Mr Morellec considered whether or not to suspend Mrs Crocker and/or the Applicant whilst the investigation was taking place. He had concluded that it was not necessary to suspend either; however, it was a point he would keep under review as the investigation proceeded.
- 8.8 On 1 August 2014 Mr Morellec met with Mr Charlesworth immediately following Mr Charlesworth's investigatory meeting with Mrs Crocker. Mr Morellec made written notes of his meeting with Mr Charlesworth (EE1, page 314 refers).
- 8.9 As a result of what he heard from Mr Charlesworth, Mr Morellec formed the view that regardless of "who actually said what to whom", it was apparent that, even on the Applicant's version of events (that is, that he had instructed Mrs Crocker to contact the police), as the Duty Officer in charge on 9 July 2014, the Applicant had failed to do anything further to ensure that his instructions had been carried out.
- 8.10 In Mr Morellec's opinion, the seriousness of a dropped 999 call warranted "active intrusive management" and, by the Applicant's own admission, he had undertaken no further action to satisfy himself as to the outcome of the task he allegedly delegated to Mrs Crocker.
- 8.11 Mr Morellec felt that, based on the information he had (even on the Applicant's account of events), the Applicant's actions had fallen below a standard expected of a Station Officer. This had raised issues of confidence and therefore, Mr Morellec felt that it would have been inappropriate, at that point, to allow the Applicant to continue in his supervisory role whilst the investigation was ongoing. This did not affect the Applicant's rank or pay.
- 8.12 Mr Morellec concluded that whilst it was unnecessary to suspend the Applicant, it was appropriate to temporarily remove the Applicant's role of Operational Team Supervisor while the investigation was ongoing. Mr Morellec wrote to the Applicant informing him of his decision on 8 August 2014 (EE1, page 316 refers).
- 8.13 Mr Morellec did not consider it necessary to suspend Mrs Crocker because he did not think that by allowing her to continue in her role until the investigation was completed, it placed either the Service or the investigation at risk.
- 8.14 Mr Morellec met with the Applicant on 9 September 2014 to let the Applicant know that there was media interest in the incident and it was about to become public knowledge.
- 8.15 In evidence Mr Morellec said that he did recall that, at the meeting of 9 September 2014, the Applicant questioned the appropriateness of Mr Charlesworth being the Investigating Officer on the basis that he had been the Senior Officer in charge on the evening of the incident. Mr Morellec did not consider this to be a conflict.
- 8.16 Upon concluding the investigation, Mr Morellec met with Mr Beausire and informed him that having reviewed all the evidence, he had formed the view that a disciplinary hearing should take place in respect of the Applicant's role in the incident. Mr Morellec also informed Mr Beausire that he had concluded that there was no case to answer by the Control Operator, Mrs Crocker.

- 8.17 Mr Morellec wrote to the Applicant on 22 September 2014 (EE1, page 464 refers), giving the Applicant four weeks' notice of a disciplinary hearing and setting out the reasons for the hearing, who the hearing manager would be and also disclosing the documentary evidence which would be referred to. The process was in line with the Respondent's disciplinary policy and procedure.
- 8.18 Mr Morellec called a meeting with the Applicant on 22 September 2014 in order to give him the letter.
- 8.19 During that meeting Mr Morellec informed the Applicant that he would continue on restricted duties until the conclusion of the disciplinary process.
- 8.20 Mr Morellec denied "without reservation" telling the Applicant that he (the Applicant) would not be working for the Respondent ever again. Mr Morellec also denies saying that in his eyes the Applicant was the only person at fault.

9.0 Conclusion

- 9.1 The Tribunal notes that, in his witness statement the Applicant states "the incident that led to my resignation occurred in and around 9 July 2014". It is also noted in the Applicant's resignation letter he gives the reason for resignation as "over the last 6 months I have had my professional position brought into question." Therefore, in reaching its decision the Tribunal centred its focus on the complaints brought by the Applicant which were connected with that incident.
- 9.2 The Applicant's allegations of "defective out of date equipment" provided by the Respondent were unsubstantiated with evidence other than that of the temporary freezing of the location system which apparently was resolved by IT experts. There were no alleged equipment deficiencies connected with the incident of 9 July 2014. The location of the caller making the 999 call was clearly understood. Therefore, this allegation was not considered to be relevant to the Applicant's complaint of constructive unfair dismissal.
- 9.3 Although consideration was given to the capability process which the Respondent had taken the Applicant through, very little weight was put on it by the Tribunal when reaching its decision.
- 9.4 The Tribunal was persuaded that there was adequate and effective training on policies and procedures and also took into consideration that the Applicant himself was a trainer and had indeed undergone a number of training courses and development exercises. It is noted that there was an admitted lack of formal procedure around dealing with an aborted call. It is also noted that the Applicant's version of events does not indicate that he did not know what to do because he said that he gave instructions. It is also noted that those alleged instructions were in line with what would have been expected. It is further noted that the Applicant said that it was down to his experience that he knew what to do and indeed had received formal recognition on previous occasions for his response actions. Therefore, the Tribunal is persuaded that basic managerial principles should have prevailed in that, if an instruction is given, especially in serious circumstances, follow up to ensure execution of that instruction should happen. Therefore, the Applicant cannot rely on the fact that there was a lack of formal procedure on the part of the Respondent

at that time, as a reason for causing the event which in his words led to his resignation.

- 9.5 The Tribunal is not persuaded that there was a partisan approach to the investigation into the incident of 9 July 2014, but is persuaded that the interviews conducted and correspondence sent to the witnesses were consistent and appropriate. Each of the witnesses was given the same opportunity to put their side forward and have the support of a colleague and/or union representative. Weight is also put on the fact that the Respondent's investigation was carried out in conjunction with the Police investigation.
- 9.6 The Tribunal also took into account that at no time did the Applicant raise with the Respondent any concerns of perceived unfairness on the part of Mr Charlesworth.
- 9.7 The Tribunal took into account that the Applicant clearly stated to Mrs McHugh (as per her file note of the call on 26 September 2014) that he needed to put his "case forward" and that he would be "fighting this". (The wording of the file note was not contested by the Applicant). Therefore, the Tribunal concluded that the Applicant, at that time, felt that he had the opportunity to put his case forward at the disciplinary hearing.
- 9.8 The Tribunal noted that the wording and tone of the letters, dated 22 September 2014 and 23 January 2015, sent by Respondent to the Applicant, was poor. However, the Tribunal is persuaded that the wording is explaining the outcome of the investigation stage and moving into the disciplinary hearing stage of the process. It is noted by the Tribunal that no issue with regard to the wording of those letters was brought up by the Applicant and, as noted in 9.6 above, nor did he indicate at the time, or at any time up to and including his resignation, that he felt he would not get the opportunity of a fair disciplinary hearing.
- 9.9 The Applicant alleged that he was not supported by the Respondent. However, it is noted that the Respondent appointed a welfare officer to maintain contact with the Applicant as soon as he went on sick leave. It is also noted that in correspondence from Mr Morellec and during phone calls with Mrs McHugh, the Applicant is reminded and encouraged to use the counselling service. In line with the Respondent's procedures, the Applicant was also allowed to be accompanied by a colleague and/or a union representative at formal meetings. Indeed he took up the opportunity of being so accompanied. In his resignation letter, the Applicant himself refers to the support which Mr Beausire had "always" given him. Therefore, the Tribunal concluded that under the circumstances the Respondent took reasonable steps to support the Applicant.
- 9.10 It was agreed by both parties that the date of resignation and immediate termination of employment (at the request of the Applicant) was 19 January 2015. Therefore, any alleged conduct following this date was not considered by the Tribunal because that conduct could not have led to the Applicant's conclusion that he had no alternative but to resign, because he had already resigned.
- 9.11 It is noted that the investigation was carried out in line with the Respondent's procedures. The Tribunal concluded that the decisions made and the actions taken by the Respondent, in temporarily suspending the Applicant from his managerial

duties, were in line with the written investigatory and disciplinary procedures and they were not disproportionate in relation to the seriousness of the incident and the facts established at that time, and therefore were reasonable.

- 9.12 With regard to the Applicant's allegations that he was harassed and bombarded with communication whilst on sick leave it is noted that, during an approximate four month period of sick leave, Mrs McHugh contacted the Applicant twice by phone (each time seeking and receiving confirmation that it was acceptable to the Applicant). Further, in compliance with the request of the Applicant (received via his partner which was relayed to Mrs McHugh by email of 23 October 2014 from Mr De La Mare), she changed contact method to text message and sent two text messages and one letter on behalf of the Respondent. The Tribunal concluded that this, under the circumstances, did not amount to harassment or bombardment.
- 9.13 In determining its decision the Tribunal took into account that a contract of employment may only terminate without notice if the other party has committed a fundamental breach of contract and that any breach (or breaches) must go to the heart of the contract. Importantly, the Applicant must resign in response to the breach and must not have delayed too long in terminating the contract, otherwise it can be found that the breach was waived and the contract affirmed. It was noted by the Tribunal that the wording of the two letters, (22 September 2014 and 13 January 2015) setting the date of the disciplinary hearing, are not dissimilar and that during a conversation with Mrs McHugh on 26 September 2014, (after the Applicant had received the first letter and then subsequently gone on sick leave), the Applicant said that he needed "time to deal with the situation", he needed "to be in the right frame of mind" and he needed to put his "case forward". This does not intimate that he felt that the disciplinary process had, up to that point, been conducted in such a way that he was not going to be able to put his case forward. Nothing had changed in terms of the process between the first letter and the second, informing the Applicant of a date for the disciplinary hearing.
- 9.14 The Tribunal took into account that the Applicant expressed that he felt he would not get a fair appeal hearing from Mr Beausire but at no time did he express any feelings about the disciplinary hearing.
- 9.15 It was noted by the Tribunal that during the resignation meeting of 19 January 2015 the Applicant expressed his desire to be involved with the inshore rescue boats in the future. Therefore, contemplating an ongoing or future employment/voluntary employment relationship with the Respondent which contradicts the assertion that there had been a repudiatory breach going to the heart of the contract.
- 9.16 It should also be noted that that the Applicant resigned prior to any disciplinary proceedings taking place.

10.0 Decision

- 10.1 In reaching its decision it must be stressed that the remit of the Tribunal was not to rehear the investigation into the incident which took place on 9 July 2014, but to consider the actions of the Respondent, which were brought before the Tribunal by the Applicant, as reasons why he was entitled to consider that there had been a fundamental breach of the implied term of trust and confidence of the employment

contract, thus leaving him no alternative but to resign. As set out in this decision, the Respondent's approach to the investigation was amongst other items put forward as the Applicant's reasons for his resignation.

- 10.2 Having considered all the evidence presented, whether recorded in this judgment or not and the representations of both parties and having due regard to all the circumstances, the Tribunal unanimously finds that, under Section 5 (2)(c) of the provisions of the Employment Protection (Guernsey) Law, 1998, (as amended), the Applicant was not unfairly constructively dismissed from his employment. The Tribunal therefore makes no award.

Mrs Paula Brierley

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Signature of the Chairman

22 April 2016

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Date