

## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>Appointments and Disciplinary Committee</b>	
<b>DATE OF DECISION</b>	<b>29 January 2024</b>	
<b>REPORT TITLE:</b>	<b>Outcome of the Hazel Simmonds Employment Tribunal Case</b>	
<b>CORPORATE DIRECTOR / DIRECTOR &amp; LEAD OFFICERS :</b>	<b>Dean Shoesmith, Chief People Officer</b> <a href="mailto:dean.shoesmith@croydon.gov.uk">dean.shoesmith@croydon.gov.uk</a>	
<b>LEAD MEMBER:</b>	<b>Mayor Jason Perry</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>  <i>(* See guidance)</i>	<b>No</b>	
<b>WARDS AFFECTED:</b>	<b>All</b>	

### 1 SUMMARY OF REPORT

- 1.1 This report formally notifies the Committee of the outcome of the Hazel Simmonds employment tribunal (ET) case which concluded on 22 December 2023.
- 1.2 In summary, the ET dismissed all the claims as they were not well founded.

### 2 RECOMMENDATIONS

- 2.1 For the reasons set out in the report, the Committee is recommended to note the outcome of the Hazel Simmonds employment tribunal case.

### 3 BACKGROUND AND DETAILS

#### Generally

- 3.1 The general background to Ms Simmonds' case is the historical, widespread and high-profile corporate failure of the Council which the Committee is familiar with.
- 3.2 On 19 November 2020, at an Extraordinary Council meeting, the Council formally received a Report in the Public Interest ('RIPI 1') issued by the Council's external auditor, Grant Thornton, on 23 October 2020. RIPI 1 detailed significant issues relating

to the Council's financial position, its financial governance and its overall effectiveness as an organisation.

- 3.3 The Council accepted the findings of RIPI 1 in full and agreed a comprehensive action plan to address the 20 recommendations made by Grant Thornton.
- 3.4 Following receipt of RIPI 1 on 23 October 2020, the (then interim) Chief Executive, had commissioned the LGA to undertake an independent investigation of senior management actions in regard to the findings of RIPI 1 to assess what, if any, formal action was required to be taken under any relevant process. The commissioning of the report was noted in the recommendations at the Extraordinary Full Council meeting on 19 November 2020 in these terms:

“Note that the LGA has been commissioned to support the Council in undertaking an independent initial investigation of senior management actions in regard to the findings of the Report in the Public Interest to assess what, if any, formal action is required to be taken under any relevant process;”
- 3.5 The terms of reference of the independent investigation sought two important outcomes: “The first will be to form the understanding of how and why the council has arrived in this situation, and the second is to demonstrate the seriousness of the Council's intent to establish a new organisational culture that has learning and accountability at its heart”.
- 3.6 The terms of reference also made clear that, if relevant, other formal proceedings would be commenced to deal with any matters identified in the report.
- 3.7 Richard Penn, a senior LGA Associate and former local authority chief executive, and national expert on senior management performance and disciplinary process issues in local authorities, was appointed to undertake the investigation.
- 3.8 Running in parallel, in response to RIPI 1, there followed several further reviews and reports that commented on and made recommendations relating to the Council's financial position, governance and effectiveness. Those reports include the Strategic Review of Companies and Other investment arrangements (25 November 2020) and the Non-Statutory Rapid Review of the Council undertaken by the MHCLG (1 February 2021). Both reports identified significant issues relating to the Council's financial position and governance and are published.
- 3.9 On 26 January 2022 a second RIPI ('RIPI 2') was issued by Grant Thornton into the refurbishment of Fairfield Halls.
- 3.10 As well as reviews and reports commissioned by the Council, other published reports include the report of the House of Commons Housing, Communities and Local Government Committee on Local authority financial sustainability and the section 114 regime. Although this inquiry was not into the situation at Croydon itself, what happened at Croydon is explored as a case study.
- 3.11 Also, by way of background, to date the Council has issued three s114 notices on 11 November 2020, 2 December 2020 and 22 November 2022.

- 3.12 It is possible to set the case in an even broader context by referencing cabinet and full council reports (especially on budgetary and financial strategy matters) and the MHCLG submission requests for a capitalisation direction as well as other such documents. The facts and circumstances that these sources of information speak to are now well-established and have been much discussed.

### **More Specifically**

- 3.13 On receipt of Mr Penn's investigation report (the Penn report), the Council initially suspended a number of the executive leadership team. Two members of that team then resigned, followed by a further resignation after ill health absence. Following due process, the Council commenced disciplinary proceedings against the two remaining members of the executive leadership team referred to in the Penn report. With one exception, all these officers resigned between February 2021 and July 2021.
- 3.14 Ms Simmonds, former Executive Director of Localities and Resident Pathways, resigned on 6 September 2022 claiming constructive unfair dismissal. At that stage, Ms Simmonds had already commenced two ET claims. Ms Simmonds resigned soon after she was advised that the Committee had received an independent disciplinary investigation report upholding six allegations of gross misconduct and recommending that she be dismissed.

### **The claims**

- 3.15 The first claim was brought by Ms Simmonds on 6 September 2021 against the Council and the Chief Executive. In this claim, she alleged she was directly discriminated against on the grounds of race and sex, had been humiliated, treated in a degrading manner, harassed and victimised.
- 3.16 The second claim was a contractual claim alleging unlawful deductions of pay when Ms Simmonds was both suspended and on sick leave. On 22 May 2022, an ET judge upheld the second claim. The agreed shortfall in net pay in the sum of £14,527 was paid to Ms Simmonds shortly after.
- 3.17 Having acknowledged that "[t]here are policy arguments that could be made either way", ultimately, the Judge decided that Ms Simmonds was entitled to full pay (i.e. pay without any deductions) when she was both suspended and on sick leave because the JNC Handbook for Chief Officers on suspension pay trumps contractual provisions on sick pay.
- 3.18 Following the Judgment, the Council advised the LGA of the outcome of the second claim, raised concerns about outdated wording of the JNC Chief Officer Handbook; the inconsistencies when compared with the Acas code of practice on disciplinary and grievance procedures, the JNC Chief Executive Conditions and the NJC 'Green Book' (which applies to officers below chief officer level) and the wider implications for the local government sector.
- 3.19 The LGA have acted upon these concerns and on 22 August 2023 issued a letter to all local authority Chief Executives to alert them to the risks, advising of the action

required and undertaking to explore options for amending the JNC Chief Officer Handbook, which currently provides for suspension from duty to be on full pay.

3.20 The third claim related to Ms Simmonds' resignation on 6 September 2022 and her subsequent claim for wrongful and constructive unfair dismissal.

3.21 Ms Simmonds claimed compensation of over £1.1m as well as reduced pension losses for her first and third claims.

### **The outcome of the first and third claims**

3.22 In short, following a three-week trial, the ET dismissed Ms Simmonds' first and third claims as they were not well founded.

3.23 In relation to the discrimination claims:

- every single race and sex allegation was dismissed, with the ET finding they could see "no evidence that a male or white comparator would have been treated differently to [Ms Simmonds]";
- every single harassment allegation was dismissed, with the ET finding they could see "absolutely no connection with [Ms Simmonds'] race or sex" and due to the absence of the requisite purpose; and
- every single victimisation allegation was dismissed, with the ET finding they "could not see any connection with [Ms Simmonds'] race or sex".

3.24 In relation to constructive unfair dismissal and wrongful dismissal, these claims were dismissed too.

### **The costs**

3.25 In defending Ms Simmonds' first and third claims, the Council had to deal with a substantial number of very serious allegations over many years relating to the broad subject matters of RIPI 1 and RIPI 2. These issues included widespread and high-profile corporate failure and financial mismanagement, the implications of which were, at the time, unprecedented.

3.26 The allegations also related to grievances, senior management re-structure, suspension, investigations and sickness absence management. The issues were wide ranging; factual, contractual, legal, procedural and substantive in nature; complex and highly contentious.

3.27 The number and nature of the allegations and issues accounted for a particularly difficult and demanding disclosure process extending to thousands of pages. This was compounded by the fact that as Ms Simmonds was acting as a litigant in person during the latter stages of the ET proceedings, the Council had to assume obligations relating to disclosure and trial bundle preparation which a claimant ordinarily would.

3.28 The number and nature of the allegations and issues also accounted for the reliance on a large number of witnesses to give evidence by way of witness statements initially and then at the trial and a listing of 3 weeks. This resulted in the Council incurring substantial legal costs.

- 3.29 As with almost all litigation, it is the preparation for a trial and the trial itself which accounts for a substantial amount of the cost of the entire litigation. Which is why on multiple occasions Ms Simmonds was invited to withdraw her claims and the Council set out why her claims were weak and that the Council had received legal advice that there were strong prospects for defending the claims. However, Ms Simmonds refused to withdraw her claims without a substantial financial payment.
- 3.30 Making a substantial financial payment to Ms Simmonds to avoid the necessary and substantial costs in defending her claims was not in the public interest and was not compliant with the statutory guidance on special severance payments and the principles of accountability in local government which the Committee endorsed on 23 March 2023.
- 3.31 As there was no justification for a financial payment, the Council had no choice but to continue to defend the claims and prepare for and proceed to trial.
- 3.32 The cost of the internal disciplinary process and defending all three claims brought by Ms Simmonds will be set out in a supplementary Appendix to this report and published ahead of the Committee's meeting.

## **4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 This report formally notifies the Committee of the outcome of an ET case and is for noting only.

## **5 CONSULTATION**

- 5.1 None.

## **7. IMPLICATIONS**

### **7.1 FINANCIAL IMPLICATIONS**

- 7.1.1 The internal disciplinary process and ET litigation costs will be set out in a supplementary Appendix to this report and published ahead of the Committee's meeting.

### **7.2 LEGAL IMPLICATIONS**

- 7.2.1 The report refers to the statutory guidance on special severance (SSPs) which forms part of the best value regime for local authorities in England. It expresses the government's view that SSPs do not usually provide good value for money or offer fairness to the taxpayers who fund them and so, should only be considered in exceptional circumstances. It states that employers have a responsibility to ensure that

SSPs are only made when there is a clear, evidenced justification for doing so and, among other things, proportionate and provide value for money for the taxpayer.

**7.2.2** One of the examples given of the exceptional circumstances in which a SSP may be considered is: "... in order to settle disputes, where it can be properly demonstrated that other routes have been thoroughly explored and excluded. After receiving appropriate professional advice, it may then possibly be concluded that a special severance payment is the most suitable option and prudent use of public money" (para. 4.3).

**7.2.3** The following is also pertinent on the facts of the case in hand:

"4.4. Those approving a Special Severance Payment related to a settlement agreement should be provided with appropriate evidence that attempts were made to resolve disputes before they escalated to a legal claim. They should also bear in mind that even if the cost of defeating an apparently frivolous or vexatious claims will exceed the likely cost of that settlement to the employer, it may still be desirable to take the case to formal proceedings. This is because successfully defending such cases will discourage future frivolous or vexatious claims and demonstrate that the local authority does not reward such claims."

**7.2.4** Comments approved by Looqman Desai, Deputy Monitoring Officer, on behalf of the Director of Legal Services and Monitoring Officer.

### **7.3 EQUALITIES IMPLICATIONS**

**7.3.1** Under section 149 of the Equality Act 2010, the Council has a duty when exercising its functions to have "due regard" to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

**7.3.2** "Due regard" is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the council is properly aware of the effects and has taken them into account, the duty is discharged.

**7.3.3** There are no immediate equalities implications arising from this report however, as the main body of the report outlines, it is in the Council's interests and in the public interest to ensure that those responsible for the Council's financial situation and governance failures are fairly and properly held to account so that public trust and confidence can be restored. In holding those people to account the Council should ensure there is no bias, unequal or less favourable treatment on the grounds of one or more protected characteristics.

**7.3.4** *Comments approved by Dean Shoesmith, Chief People Officer.*

## **8. APPENDICES**

The internal disciplinary process and ET litigation costs (to follow).