

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

**APPLICANT:** Mrs Diane Harding  
Represented by : Mrs Harding represented herself

**RESPONDENT:** States of Guernsey acting by and through the Health and Social Services Department  
Represented by: Ms Emily Bamber, Employment Lawyer, Law Officers of the Crown

**Witnesses:** **Called by the Respondent:**  
Mrs Valerie Cameron (Director of Environmental Health and Pollution Regulation)  
Mr Tony Rowe (Retired Deputy Chief Environmental Health Officer and Applicant's former line manager)  
Mr Tobin Cook (Deputy Chief Environmental Health Officer)  
Ms Ruth Briggs (Trainee Environmental Health Officer)  
Mr Simon Welch (Waste Regulation Officer)  
Ms Susan Marshall (Former temporary PA to Mrs Cameron in Applicant's absence)  
Ms Elaine Burgess (Head of Infection Prevention, HSSD)  
Ms Colette Hornsby (Occupational Health Manager)  
Ms Julia le Tissier (Senior Human Resources Manager, HSSD)  
Mr Tony Jeffreys (By Witness Statement) (Senior Manager Estates, HSSD)

**Decision of the Tribunal Hearing held on 5, 6 and 7 November 2013**

Tribunal Members: Mr Peter Woodward (Chairman)  
Mrs Tina Le Poidevin  
Mr Roger Brookfield

**DECISION**

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 found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not constructively unfairly dismissed.

Mr Peter Woodward  
.....  
Signature of the Chairman

13 December 2013  
.....  
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 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 Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.**

**Extended Reasons**

**1.0 Introduction**

1.1 The Applicant, Mrs Diane Harding represented herself.

1.2 The Respondent was represented Ms Emily Bamber, Employment Lawyer, Law Officers of the Crown.

The Respondent called the following witnesses:

- Mrs Valerie Cameron (Director of Environmental Health and Pollution Regulation)
- Mr Tony Rowe (retired Deputy Chief Environmental Health Officer and Applicant's former line manager)
- Mr Tobin Cook (Deputy Chief Environmental Officer)
- Ms Ruth Briggs (Trainee Environmental Health Officer)
- Mr Simon Welch (Waste Regulation Officer)
- Ms Susan Marshall (former temporary PA to Mrs Cameron in Applicant's absence)
- Ms Elaine Burgess (Head of Infection Prevention, HSSD)
- Ms Colette Hornsby (Occupational Health Manager)
- Ms Julia le Tissier (Senior Human Resources Manager, HSSD)
- Mr Tony Jeffreys (by witness statement) (Senior Manager Estates, HSSD)

1.3 At the outset of the hearing it was confirmed that:

- The agreed Effective Date of Termination (EDT) was 14 March 2013.
- The Applicant's gross earnings were £15,451.02 for the six months prior to the EDT.

1.4 The complaint was an alleged constructive unfair dismissal. 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. that breach must be fundamental, amounting to a repudiatory breach of contract;
- iii. the employee must resign in response to that breach;
- iv. the employee must not delay 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.

1.5 The Respondent, in its ET2, submitted that the Applicant had resigned and was not constructively dismissed.

1.6 Bundles of evidence were submitted by both parties; ER1 to ER3 and EE1 to EE3 respectively.

## **2.0 Facts Found**

2.1 The Respondent is the Health and Social Services Department of the States of Guernsey. The Applicant was originally employed in 2007 as a Typist Receptionist and was then re-graded in or around September 2010 as a Personal Assistant. She was line managed by the Director of Health and Environmental Health and Pollution Regulation (DEHPR) Mrs Valerie Cameron, and her deputy Mr Cook.

2.2 On Saturday 19 June 2010 a mains water pipe connection to a water cooler in the office ruptured and as a consequence sections of the office and the reception area were flooded. The water supply to the cooler was cut off that day and remedial work was put in hand on Monday 21 June 2010. Initially the affected carpet tiles were vacuumed and dehumidified however it became evident that this would not be sufficient and on 5 July 2010 work began on removing these to allow the floor to dry out.

2.3 The great majority of the affected tiles were removed but some were left down to act as stepping stones and some carpet tile adhesive still remained on the concrete floor. There were delays in locating replacement carpet tiles which would match the existing tiles and remedial work was not carried out until the week of 18 October 2010. The new carpet tiles were laid with latex free adhesive.

2.4 On 21 June 2010 the Applicant attended work as normal, alongside her colleagues. During the course of this day the Applicant felt unwell and reported her concerns; her symptoms were reported on the Health and Safety incident log by Mr Rowe.

2.5 The Applicant worked at the Princess Elizabeth Hospital (PEH) from the 22 June 2010 onwards but was still visiting the OEHPR office to pick up mail. On 24 June 2010 she was again unwell and needed to go home. Both the Applicant and the Respondent agreed that it seemed to be an allergy attack but they disagree as to the probable cause of the allergic reaction. It was confirmed by both parties that prior to 21 June 2010 the Applicant had suffered no such allergic reaction to the office environment.

2.6 On 28 June 2010 Mrs Cameron referred the Applicant to the Occupational Health Department. (ER1 Tab 4 Page 35 refers). This document states that the Applicant had suffered an asthma attack following the flooding incident at the office.

2.7 The Applicant returned to work on 29 June 2010 and for a short period of time continued with a work routine which had her temporarily working out of an office in the PEH.

2.8 Following the Incident report of 21 June 2010 a Risk Assessment was conducted by a Mr Webb Health and Safety Manager of HSSD on 5 July 2010. The report referred to increased dust and high humidity currently being present in the affected area and

recommended that in the interim, whilst rectification work was being carried out, that the Applicant should be relocated to an unaffected work area in the OEHPR.

- 2.9 The Applicant was then assigned to an interview room in the OEHPR which had not been affected by the flooding.
- 2.10 On or about 6 July 2010 all employees at the OEHPR attended a DVD briefing which offered advice as to the actions they should take if the Applicant suffered a recurrence of an allergic attack; this being a further precautionary step recommended by Mr Webb.
- 2.11 On 31 August 2010 Mrs Cameron gave her formal support that the Applicant's job role should undergo an evaluation in accordance with the Hay job evaluation protocol, with this being supported by Wilma Edwards, the HSSD Director of Human Resources. The Applicant's role was upgraded and this was formally communicated to her on 9 June 2011; with a backdate to September 2010. (ER1 Tab Page 41 refers).
- 2.12 In November 2010 the Applicant returned to her normal office space and, although from time to time the Applicant reported continuing allergic symptoms to her line managers, she did not take any formal sick leave during the period July 2010 until June 2012.
- 2.13 In January 2012 allergy tests were undertaken by the Applicant's GP and these indicated a higher level of "IgE" (general allergy) but a negative latex allergy test. Following these tests the GP referred the Applicant to Dr Anees a specialist respiratory physician. (ER1 Tab 11 Page 277 refers).
- 2.14 On 22 March 2012 Mr Cook, the Deputy Chief Environmental Health Officer, undertook air quality readings at the OEHPR office. Readings were taken approximately every hour using an "Aerocet 531 Particulate Monitor" and a "Graywolf TG-501 Toxic Gas Probe". The readings were recorded in tabular form and compared with air quality standards set down by the UK Environmental Health Department. (ER1 Tab 10 Pages 223 and 225 refer).
- 2.15 The Applicant met with Dr Anees on 26 March 2012 (ER1 Tab 4 Pages 47 to 49 refer); the Tribunal notes that in this letter the Doctor states that the Applicant was "adamant" she was allergic to something in her workplace. Following this consultation the Applicant self-referred herself on 30 March 2012 to the Occupational Health Department. (ER1 Tab 11 Page 281 refers). In this document the Applicant stated she had been advised by Dr Anees that she was suffering from "Sick Building Syndrome".
- 2.16 Late in March 2012 the Applicant approached her Line Manager Mrs Cameron; the Applicant informed her that following a further risk assessment of the workplace by Mr Webb he had recommended the purchase of an air filtration unit.
- 2.17 On 23 April 2012 the Applicant attended an appointment with Dr Le Noury from the Occupational Health Department.
- 2.18 On 26 April 2012 a meeting took place with Mrs Cameron, Mr Webb, Mr Phillip Goodchild; a Health and Safety Officer, and Diane Harding. The purpose of this

meeting was to consider all possible triggers for the employee's adverse reaction. During this meeting it became evident that Mrs Cameron and the Applicant were in significant disagreement as to the probable cause of her reported symptoms. Mrs Cameron thought it was an asthmatic condition whereas the Applicant insisted it was due to an allergic reaction. Both Mrs Cameron and the Applicant are agreed that the Applicant left the meeting abruptly in a significant state of agitation.

- 2.19 On 27 April 2012 Mrs Cameron received a letter from Dr Le Noury. In this letter Dr Le Noury stated that the Applicant suffered from complex medical symptoms and suggested that a temporary redeployment would assist to establish "whether the symptoms can resolve in another work place". In this letter Dr Le Noury stated that it would also allow time to review other assessments of the Applicant's usual workplace. (ER1 Tab 4 Pages 69 to 71 refer).
- 2.20 On 30 April 2012 the Applicant was temporarily redeployed to the PEH working for Dr Stephen Bridgman, Director of Public Health. During this temporary assignment the Applicant was line managed by Linda Osborne at the PEH.
- 2.21 On 14 May 2012 Dr Le Noury wrote to Mrs Cameron confirming that she had been in discussion with Collette Hornsby Occupational Health Manager for the States of Guernsey relating to the Applicant's state of health. Dr Le Noury stated that she was waiting for further information regarding the Applicant's medical condition. In the letter it was also confirmed that there would be a referral to Dr Cook, a visiting consultant in Occupational Medicine.
- 2.22 On 24 May 2012 Julia Le Tissier, a Senior Human Resources Manager of the Health and Social Services Department, having been in contact with Colette Hornsby, wrote to the Applicant agreeing that her period of redeployment would be extended pending a visit by Dr Cook on 25 June 2012. (ER1 Tab 4 Page 81 refers).
- 2.23 On 25 June 2012 the Applicant met with Dr Cook and he requested further information from her GP. Given this request a further extension of the Applicant's temporary redeployment was approved until 31 July 2012. (ER1 Tab 4 Page 83 refers).
- 2.24 On 3 July 2012 Occupational Health sent a letter of referral to an independent counsellor. Ms Hornsby confirmed that she would fund up to five counselling sessions for the Applicant.
- 2.25 On 26 July 2012 Dr Cook wrote to Mrs Cameron, copying in the Applicant and Julia Le Tissier. He stated that he had reviewed inputs from Dr Anees and the Applicant's GP and noted that during her temporary redeployment she had only taken one day's sick leave. He also noted that the Applicant had a long term history of asthma which was well controlled by medication. The Applicant had told him she was worried about returning to the OEHPR and suffering a "further reaction". Dr Cook concluded in his letter that the Applicant was fit to work. In his letter he stated: - *"I advised Diane today that I have no specific evidence to say that Diane is unfit to work in her previous work environment. However in view of her stated concerns regarding returning to that role / environment I advised her I would support a permanent move from that role to the current role / environment or any other suited role if that is possible for management"*.

- 2.26 The Applicant met with Mrs Cameron and Ms Le Tissier on 30 July 2012 and on 2 August 2012 a letter was sent to the Applicant which stated that as Dr Cook had concluded there was no medical reason for her redeployment to continue she would be required to return to her normal workplace. It was noted that there were still some tasks to be completed at the Princess Elizabeth Hospital (PEH) and as a consequence the date for her recommencement of work at the OEHPR would be 3 September 2012. (Tab 4 ER1 Page 91 refers).
- 2.27 On 16 August 2012 the Applicant emailed Occupational Health to request an appointment with Dr Cook to discuss her return to the OEHPR. On the same day she consulted her GP who referred her to a Dr Standring for allergy testing.
- 2.28 On 3 September 2012 the Applicant returned to work at the OEHPR. At approximately 10.05 AM the Applicant suffered an alleged collapse. She was attended to initially by Mr Cook and then by Mrs Cameron and Ms Elaine Burgess Head of Infection Prevention at the HSSD. An ambulance was called and the Applicant was attended to by paramedics; at Mrs Cameron's insistence the Applicant was taken to A&E and was seen by a Dr Gee. The Applicant was subsequently released from A&E later that day and was signed off work until 10 September 2012; the medical certificate gave as the reason "allergic reaction". It was confirmed by both parties that the Ambulance and A&E fees were paid by the States of Guernsey. Mr Cook completed an "Incident Report". (ER1 Tab 4 Page 93 refers).
- 2.29 On 10 September 2012 the Applicant met with Mrs Cameron and Ms Le Tissier and was accompanied by a Mr Martin MacIntyre, a union representative. During this meeting the Applicant was told that there was no possibility of a permanent relocation away from the OEHPR. In addition the Applicant was also informed that a formal "Capability Procedure" would be initiated on the basis of an apparent unjustified refusal to return to her post. A letter from Ms Le Tissier on 11 September confirms these decisions (ER1 Tab 4 Page 101 refers). In this letter Ms Le Tissier stated that as part of the "Capability Procedure" the Applicant would be required to attend a further appointment with the Occupational Health Department. The purpose of seeking this further medical advice was to provide the employer with what it described as a "full clear picture of the nature and extent of any medical condition which might be affecting the Applicant". Ms Le Tissier informed the Applicant that the Environmental Health Department also wished to have advice as to whether there were any relevant psychological factors that should be taken into account. (ER1 Tab 4 pages 103 to 105 refer).
- 2.30 The Applicant provided a further medical certificate covering the period 10 September to 19 September 2012.
- 2.31 On 15 September the Applicant submitted a formal letter of grievance; whilst this document was titled as a grievance against Mrs Cameron it contained allegations as to allegedly unfair behaviour by other members of staff. (ER1 Tab 4 Pages 107 to 137 refer).
- 2.32 On 17 September 2012 the Applicant wrote to Ms Le Tissier; in this correspondence she stated that there were errors and omissions in the Occupational Health referral form submitted by Ms Le Tissier. The Applicant also informed Ms Le Tissier that she

had not refused to return to the OEHPR on a permanent basis but rather sought a delay until further allergy tests could be conducted. (ER1 Tab 4 Page 141 refers).

- 2.33 On 23 September 2012 the Applicant wrote to Ms Le Tissier thanking her for confirming a review / follow-up with Dr Cook. In this letter the Applicant stated that Dr Gee had stated her collapse was due to an allergic reaction and she felt unable to countersign the referral document that had been submitted by Ms Le Tissier. (ER1 Tab 4 Pages 145 to 147 refer).
- 2.34 On 25 September Dr Cook sent a letter to Mrs Cameron, copying the Applicant and Ms Le Tissier. In this letter Dr Cook referred to her collapse as a “presumed allergic reaction” and stated that in his opinion it was not clear why the Applicant had become unwell. He wrote that he would wish to see the Applicant again once the results of the allergy tests were available. (ER1 Tab 4 Pages 149 to 151 refer). On the same day the Applicant attended the Medical Specialist Group for allergy tests.
- 2.35 On 28 September 2012 the Applicant attended a consultation with a Dr Standring. This information had been communicated to Dr Cook and he decided that he wished to review the outcome of this consultation and any related tests. Dr Cook had forgotten to ask the Applicant for a consent form during their consultation and Ms Hornsby wrote on his behalf on 1 October 2012. (ER1 Tab 11 page 340G refers).
- 2.36 On 1 October 2012 a telephone discussion took place between Ms Le Tissier and the Applicant. Ms Le Tissier summarised the employer’s position in a letter. She stated that as part of the “Capability Procedure” HSSD required the Applicant to attend a further appointment with the “Occupational Health Department. The letter stated *“The purpose of seeking further medical advice is to provide a full, clear picture of the nature and extent of any medical condition which may be affecting you; the likely duration of any condition, and the effect it and any associated treatment may have upon your ability to perform your role. In the absence of any medical condition affecting your ability to return to your post at Environmental Health the Department considers it necessary to take advice upon whether there are any relevant psychological factors that should be taken into account”*. Ms Le Tissier also related in the letter that the Applicant had advised her she had been diagnosed with an allergy to latex and shellfish. (ER1 Tab 4 Pages 153 to 155 refer).
- 2.37 On 2 October 2012 Ms Le Tissier sent another letter to the Applicant seeking clarification as to her grievance of 15 September 2012. In particular she asked for a full list of the staff the Applicant considered had contravened States policy in respect of her; she requested examples of their behaviour. Ms le Tissier also advised the Applicant that a confidential counselling service was available to her if she required such assistance. (ER1 Tab 4 Pages 157 to 159 refer).
- 2.38 The Applicant responded to this letter on 7 October 2012 and informed Ms Le Tissier that she had contacted her Union to decide whether she wished to advance her complaint under the Established Staff Directive or under the Dignity at Work Policy. (ER1 Tab page 167 refers).
- 2.39 On the same day the Applicant submitted a medical certificate to Tobin Cook for the period 2 October 2012 to 14 October 2012. In this letter the Applicant claimed that

Ms Le Tissier had stated a preference that she should not return to work until the results of Dr Standring's tests were known. (ER1 Tab page 169 refers).

- 2.40 On 9 October 2012 the Applicant wrote to Ms Le Tissier stating that her husband's and her own right to residence in Guernsey had been approved for a further two years. In this letter the Applicant reiterated that whilst she was prepared to be referred to the Occupational Health Department, she would not sign the form and give her consent without it being amended; she suggested that they meet together with her union representative and agree a wording acceptable to both parties. (ER1 Tab 4 page 171 refers).
- 2.41 On 12 October 2012 Ms Le Tissier wrote again to the Applicant denying that she had requested the Applicant not to return to the office until the results of Dr Standring's tests were known. Ms Le Tissier wrote *"The Health and Social Services Department had made every effort to ensure that you engaged with the Occupational Health Department regarding your allergy to shellfish and latex. These are the two allergies you disclosed to me during our telephone call on Tuesday 2 October 2012 which you said was the result of testing at the MSG. In order to confirm these results the Occupational Health Department requested that you return the Permission Form which would give them access to your GP and the formal results of the allergy testing. I note to date they have not received this form and have been unable to confirm any results"*. (ER1 Tab 4 page 173 refers).
- 2.42 A medical certificate was submitted by the Applicant on 13 October 2012, issued by her GP, signing her off for a further period ending 5 November 2012. In an accompanying letter the Applicant stated she was still awaiting Dr Standring's report on the tests which had been undertaken; in addition she informed Ms Le Tissier that she was undertaking further tests, at her own cost, with the Oxford Private Dermatology Churchill Hospital. The Applicant quoted Dr Cook's letter of 25 September 2012 in which he stated *"I anticipate that Diane will be signed off in the short term pending these results"*. (ER1 Tab 4 page 175 refers).
- 2.43 On 16 October Ms Hornsby sent a letter to the Applicant requesting the return of the consent form sent to her on 1 October 2012. Ms Hornsby informed the Applicant that whilst she was aware that she was undergoing further tests in Oxford that the only information being sought were the results of her appointment with Dr Standring; these results having been requested by Dr Cook. (ER1 Tab 4 Page 177 refers).
- 2.44 On 23 November 2012 the Applicant was signed off work by her GP for a three month period ending 22 February 2013. The medical certificate stated that the Applicant was incapable of work due to ongoing investigations into allergic reaction. (ER 1 Tab 7 page 195 refers).
- 2.45 On 5 December 2012 Ms Hornsby wrote to Mrs Cameron advising her that she was unable to advise any further with the Applicant's case as she had not received the consent form which would permit the Occupational Health Department to write to the Guernsey Allergy Specialist Dr Standring. Ms Hornsby stated that despite numerous letters and telephone calls the Applicant had still not returned the form. It was noted that the Applicant had sent in a report from a private consultant from the



UK, but this had been unsolicited and would not cover the information that the Occupational Health Department required. (ER1 Tab 4 Page 179 refers).

- 2.46 On 25 February 2013 the Applicant's period of sick leave expired and she then took a period of holiday leave until 14 March 2013.
- 2.47 On 14 March 2013 Mrs Harding wrote to Mr Langlois, Head of Human Resources, tendering her resignation. She informed him that as Ms Le Tissier had made it quite clear that she would not support her relocation from her current position that she had no option but to resign from her post. She stated that she had expressed her concerns to Dr Cook regarding "*possible further allergic reactions to as yet not fully identified allergens within the office*". She informed Mr Langlois that she had been advised by her doctor not to return to the OEHPR due to the severity of her last collapse and felt it would be unwise not to follow her advice. She stated that she was not prepared to further jeopardise her health by returning to the OEHPR.

### **3.0 Mrs Diane Harding (the Applicant)**

- 3.1 The Applicant read from a witness statement. (ER1 Tab 5 refers).
- 3.2 The Applicant informed the Tribunal that on Monday 21 June 2010 she seemed to experience a physical reaction to the flooded office. She felt giddy and was given permission to work at the PEH. This arrangement was to continue for several days with the Applicant visiting the OEHPR every day to pick up mail. On 24 June 2010 she found the atmosphere in the OEHPR to be damp, humid and oppressive; she started to feel ill and her lips and tongue started to swell. She felt unwell and was near collapse and needed the assistance of a Mr Wiltshire to take her to the foyer where for a period of time she was unable to sit upright. Mrs Cameron arrived and told her line manager Tobin Cook that the Applicant was having an asthma attack. The Applicant took an antihistamine and then used her asthma inhaler, although she told the Tribunal this was only at the insistence of Mrs Cameron.
- 3.3 The Applicant was taken home by her husband and consulted her GP on 25 June 2010 who informed her it was a possible allergic reaction but could not make a definitive diagnosis as he had not been present at the time of her collapse.
- 3.4 The Applicant returned to work on 29 June 2010 and continued to work out of the PEH. She then attended a meeting with the Occupational Health Department on 1 July 2010. The Applicant told the Tribunal that she did not agree with the stated reason for the referral, i.e. an asthma attack. In her opinion she had suffered an oedema from an allergic reaction.
- 3.5 On 6 July 2010 the Applicant confirmed she was relocated in the OEHPR interview room and told the Tribunal this was not satisfactory as it isolated her from the rest of her work team.
- 3.6 The Applicant informed the Tribunal that she continued to experience itching, her lips would often swell, her tongue would be enlarged and she would often go home at the end of the working day with very unpleasant symptoms that she believed were caused by an ongoing allergic reaction. Despite these symptoms Mrs Cameron

advised the Applicant that she should consult a respiratory consultant and that asthma was the cause of her current difficulties.

- 3.7 The Applicant had been informed that her job was to be formally re-evaluated but was concerned that this was being undertaken whilst she was still in her temporary office location as she believed the evaluation might be based on her temporarily reduced role. During a period of hiring freezes and possible redundancy she found this to be stressful and she feared for her job security.
- 3.8 Back in her normal office in November 2010 the Applicant continued to take antihistamines until Christmas 2010. On her return to work in early 2011 she again experienced a significant allergic reaction; she had been moving a number of suspension files from wooden cabinets which had been in Reception at the time of the flood. Her lips became swollen and her face became puffy.
- 3.9 The Applicant then consulted with Mr Rowe, the then current Deputy Chief Environmental Officer. He advised her to contact Mr Webb the Health and Safety Manager for HSSD.
- 3.10 In the summer of 2011 the Applicant went on a cycling holiday in Germany and on her return was so concerned at her exhausted state that she self-referred to the Guernsey Chest and Heart Clinic; the outcome was positive, the Clinic informed her she had the general fitness level of a person 15 years younger than herself but had slightly elevated blood pressure.
- 3.11 In January 2012 the Applicant consulted her GP who, given her symptoms, could not decide whether to refer her to a respiratory consultant or allergic specialist. It was decided to conduct blood tests to discover if there were grounds for an allergic reaction. The tests were conducted by Dr Standring at the MSG and based on an "unexpected negative to latex" the Applicant was referred to a Dr Anees for further investigations.
- 3.12 Following her consultation with Dr Anees he wrote to her GP on 26 March 2012, copying the Occupational Health Department; (ER1 Tab 4 Pages 47 to 49 refer). He did not find any features in his discussion with the Applicant which would suggest asthma activity; she denied any breathlessness or wheezing. He noted that the Applicant was adamant that she was allergic to something in her work-place; it was her belief that she was allergic to latex even though her latex test was negative. He wondered whether she might be suffering from "sick building syndrome" but also stated that he was not in a position to say whether there was a genuine reaction occurring in the workplace. He recommended she should be evaluated by an Occupational Physician who would be in a position to authorise a formal evaluation of the work-place environment if they felt it necessary.
- 3.13 The Applicant claimed that the water cooler had sprung a number of leaks after June 2010 and this caused the carpet to be damp and this released unpleasant odours which in turn made her feel unwell.
- 3.14 The Applicant believed she was placed under further strain by some of Mrs Cameron's actions. For example Mrs Cameron was in the habit of dictating memorandums etc. for the Applicant to transcribe; the quality of the tapes was so

poor she found this task almost impossible. Also she was not granted “delegated access” to Mrs Cameron’s diary and this complicated her role unnecessarily.

- 3.15 Following the Applicant’s referral to Dr Anees she claimed the atmosphere in the office became very unpleasant. Mrs Cameron reacted badly to the referral and used a sharp tone of voice in her dealings with the Applicant. She told the Applicant the problem must be related to mould in her rented accommodation and said she should not cycle into work as the traffic fumes might be exacerbating her condition.
- 3.16 The Applicant attended a meeting on 26 April 2012 with Mr Webb and Mrs Cameron and Mrs Cameron said they were going to help her cope with personal issues in her life so that she could continue to work in the office. This upset the Applicant as Mrs Cameron seemed to be disregarding the referral from Dr Anees; she was so distressed she ran out of the meeting.
- 3.17 Mrs Cameron persuaded Mrs Harding to rejoin the meeting and asked what the matter was. The Applicant told her she was frightened to enter the general office area until the carpet was re-laid; her symptoms had then reduced but not gone away. Mr Webb advised her to go straight to her GP and ask for stronger antihistamines and Mrs Cameron thought she should agree to personal counselling.
- 3.18 A one month temporary redeployment at the PEH was agreed for the Applicant, commencing 30 April 2012. This period of redeployment was then extended as a result of various medical consultations already detailed in section 2 of this judgment.
- 3.19 At the end of July 2012 the Applicant met with Ms Le Tissier and Mrs Cameron and was told that due to the lack of evidence that the OEHPR was unsafe she was to return to that office in September 2012 and resume her normal duties. The Applicant asserted this meeting was a form of harassment.
- 3.20 On 3 September 2012 the Applicant returned to the OEHPR and began to feel unwell. She felt cold and started to shake; her lips began to tingle and she felt giddy. She slumped on her desk and at this point Mr Cook and Ms Marshall came to her assistance and put her in the recovery position. Mrs Cameron and Ms Burgess then assisted and an ambulance was called. The ambulance arrived and, as the Applicant put in her witness statement, the attending paramedics thought she had had a panic attack.
- 3.21 On arrival at A&E the Applicant was seen by Dr Gee who examined her and asked a number of questions; on the basis of her responses he signed a medical certificate noting an allergic reaction and discharged her. It seemed to the Applicant that her collapse was due to the OEHPR environment and there could no longer be any doubt.
- 3.22 When the Applicant met with Mrs Cameron and Ms Le Tissier on 10 September 2012 she believed that the meeting was to discuss her wish to take annual leave until the allergy testing which was due on 25 September 2012. To her surprise her union representative was present and to her greater surprise the meeting was being held to commence a capability procedure. She was told that this procedure was instigated on the basis of her “unreasonable refusal” to return to the OEHPR building. Ms Tissier said she would be referring the Applicant to the Occupational

Health Department for a psychological assessment. Mrs Cameron seemed to be convinced that Dr Gee had made an incorrect diagnosis. The Applicant thought that Mrs Cameron was placing her own medical judgments above those of qualified doctors.

- 3.23 The Applicant received the draft referral on 11 September 2012 and on inspecting it she thought were significant errors. It strengthened her suspicion that the referral was malicious and had been instigated to prevent management dealing with the Health & Safety issue evidenced by her collapse the previous week.
- 3.24 The Applicant met Dr Standring on 25 September 2012 and initially the doctor seemed dismissive of her claim to an allergic reaction, however she produced Dr Gee's certificate. Dr Standring responded by arranging further medical tests. Following the results of these tests the Applicant was then referred by her GP to a Dr Eren in the UK for further testing; in addition the Applicant self-referred herself to a Dr Cooper in Oxford.
- 3.25 The Applicant lost confidence in Dr Standring after a conversation with his PA; she mentioned to the Applicant that they frequently spoke to Occupational Health. The Applicant concluded from this that someone had primed him to reject the possibility of her allergy being caused by the building. The Applicant also concluded that as Dr Standring normally only treated allergies in children he was not sufficiently competent to give advice on her condition.
- 3.26 In addition the fact that Ms Le Tissier had not informed the Policy Council HR Unit of the commencement of the capability procedure was further confirmation of her suspicions that this procedure was being undertaken with malicious intent. In her opinion Ms Le Tissier seemed to be able to dictate to Ms Hornsby as to how the Occupational Health Department should deal with her.
- 3.27 Despite a further meeting with Ms Le Tissier and a senior union representative the Applicant and her employer remained deadlocked on the issue of a psychological assessment. The Applicant held the view that unless the wording of the referral could be amended she would not sign it.
- 3.28 The grievance complaint did not progress; Mr McAlonan, a union representative, had spoken with the Applicant on 27 November 2012 and informed her he would be her representative. He requested that she have no further contact with her employer without first discussing the details with him. The Applicant assumed that since the Occupational Health Department was part of HSSD that this also precluded contact with that department as well.
- 3.29 The Applicant submitted Dr Cooper's report to Occupational Health on 4 December 2012. It was persuasive that there were allergens present in the OEHPR; but this was not accepted by that Department. Instead, since she would still not give permission for Occupational Health to write to Dr Standring, they had decided to discharge her.
- 3.30 Shortly before 14 March 2013 the union representative communicated to the Applicant that he could go no further with her case.

- 3.31 Given the withdrawal of union support the Applicant believed she had no choice but to resign on the grounds of:
- 1) The severity of her reaction on 3 September 2012.
  - 2) The complete absence of any evidence that the OEHPR had been made safe for her.
  - 3) Her firm conviction that her health would suffer if she returned to her original workplace.

#### **4.0 Mrs Cameron**

- 4.1 The witness read from a witness statement. (ER1 Tab 6 refers).
- 4.2 Mrs Cameron has worked for the Respondent as the Director of Environmental Health and Pollution Regulation since 1 October 2009. Mrs Cameron is a Fellow of the Faculty of Public Health, College of Physicians, and a Chartered Fellow of the Chartered Institute of Environmental Health. In the past six years Mrs Cameron has been researching the effects of indoor workplace environments on asthma towards a PHD.
- 4.3 The witness denied that she had ever bullied or harassed the Applicant; it was her belief that over the years they had worked well together. She observed that the Applicant was a very sensitive person who could be quite fragile and was occasionally very moody. On one occasion, at a conference being held in Guernsey, Mrs Cameron had occasion to query the whereabouts of the conference registration documents and the Applicant reacted very emotionally. The Applicant was found crying in the toilets and complained that she had been told off in front of people. In the opinion of Mrs Cameron this was a very significant over-reaction and illustrated how straightforward conversations could be perceived over-sensitively. Despite these concerns Mrs Cameron believed that the Applicant's role was under-graded and backed the evaluation job process which resulted in the Applicant's promotion in 2011, backdated to 2010.
- 4.4 After the flooding incident in June 2010 Mrs Cameron found the Applicant in some state of distress, she was wheezing and asked Mrs Cameron to get her asthma inhaler from her bag. Mrs Cameron thought it best she go home for the rest of the day.
- 4.5 As the Applicant had considered she had a latex allergy it was decided that a non-latex, water based, adhesive should be used when laying the replacement carpet tiles.
- 4.6 Mrs Cameron denied that either she or any other member of staff had suffered any significant ill health issues arising from the flooding; this is in direct contradiction to assertions made by the Applicant during her consultation with Dr Standing. All the witness could recall was a headache on the day the carpet tiles were removed, for which she took paracetamol.
- 4.7 Following the flood the Applicant was temporarily relocated to Corporate Headquarters (the PEH) until arrangements could be made to provide a work station for the Applicant in the interview room at the OEHPR. The room had not been affected by the flood and was on the other side of the building from the main

offices. This room was checked by a nurse from the Occupational Health Department. The Applicant found this temporary arrangement somewhat isolating and attempts were made by Mrs Cameron and others to visit her in this office on a regular basis.

- 4.8 The office was refurbished and had dried out by November 2010 after an extensive “wet clean”, also the damaged areas had been re-carpeted and new furnishings installed. In addition, prior to the Applicant moving back to the main reception area, a deep clean was conducted in the light of the Applicant’s reported symptoms and allergy concerns. Following these actions the Applicant took only two day’s sick leave in the period November 2010 to March 2012.
- 4.9 In March 2012 the Applicant became upset about the procurement of an air filtration unit. The Applicant was seeking to purchase this unit without the permission of her line management. Mrs Cameron enquired into this matter and was told by the Applicant this was a recommended purchase after Mr Webb, Health and Safety Manager, had conducted a second risk assessment. This turned out to be untrue, Mr Webb had not carried out such an assessment nor had he recommended the purchase of an air filtration unit.
- 4.10 In the light of this finding Mrs Cameron held a meeting with Mr Webb and the Applicant. The Applicant then asserted that Mr Rowe had authorised the purchase of an air filtration unit. Mr Rowe was asked in the Applicant’s presence if this was so, and he, Mr Rowe, denied this. The Applicant then became very agitated and stated she was confused.
- 4.11 In light of this issue Mrs Cameron spoke to Ms Hornsby at the Occupational Health Department who subsequently suggested that, following the Applicant’s consultation with Dr Anees, she should be referred to Ms Hornsby’s department for evaluation.
- 4.12 In April 2012 Mrs Cameron consulted with a member of the HR team, she had not observed any of the Applicant’s alleged symptoms and, from overheard conversation, had formed the belief that the Applicant might be seeking to make a compensation claim.
- 4.13 The Applicant often discussed her allergies with Mrs Cameron and described how her tongue and lips would swell. This concerned Mrs Cameron as she had not observed these symptoms; when challenged the Applicant stated that other team members had observed them, but none of the team ever mentioned observing these symptoms.
- 4.14 The witness requested that Mr Cook undertake air quality testing (ER1 Tab 10 Pages 223 to 225 refer). Given the professional qualifications and training undertaken by the witness and Mr Cook they could conclude with some certainty that neither irritant gases, which trigger asthma, nor particles like pollen and dust were found in sufficient quantities to trigger an allergic reaction.
- 4.15 In addition to the air quality testing Mrs Cameron instituted a regime of twice weekly “wet cleaning” with particular attention to the reception area where the Applicant worked. Given all these precautions Mrs Cameron informed the Applicant

that she did not accept that the office was exacerbating her allergies. She explained that there could be multiple reasons for the reported symptoms including traffic pollutants when the Applicant cycled to work, or her own home environment or that of friends she visited and many other possible causes such as gas cookers / appliances.

- 4.16 In addition to these possible causes the witness stated that she had rented the same property as the Applicant who had lived at that address in the period August 2011 to October 2012. Mrs Cameron took up her tenancy in February 2013 and by June 2013 had developed a sore throat and eye irritation which despite medication could not be resolved. After extensive discussions with her GP the witness has come to the conclusion that given the very large number of soft furnishings in the property which would exacerbate a dust mite allergy this was the probable cause. These same furnishings had been in place during the Applicant's tenancy. It caused her to reflect that the Applicant might have suffered a similar reaction whilst renting this property.
- 4.17 At the meeting held with the Applicant on 26 April 2012 every attempt was made by Mrs Cameron and her colleagues to consider what might be causing the Applicant's reported symptoms. In the opinion of the witness there were no obvious latex triggers but she wanted to consider all possible potential triggers that might be imagined; she told the Tribunal she was motivated to take all reasonable steps to protect the Applicant's health. The Applicant became agitated as it was explained to her that this was an attempt to try and help her control her asthma; the Applicant insisted it was not asthma but allergies which were causing her problem. Mrs Cameron disputed this; neither she nor her colleagues had observed any of the alleged symptoms. When challenged, the demeanour of the Applicant changed, she became aggressive and jabbed her finger toward Mrs Cameron; she accused her of being a "bad manager". Then the Applicant jumped up, and said she would not be "attacked by two senior officers"; she ran into the general office and was found there screaming and crying with the whole office staff stunned by her behaviour.
- 4.18 Following this incident Mrs Cameron spoke with Ms Le Tissier and Ms Hornsby and it was decided that Mrs Harding be temporarily redeployed to work with a member of Dr Bridgman's team whilst medical tests were carried out. This temporary role had a lighter workload and the Applicant lived close enough to walk to work during this period.
- 4.19 On 3 September 2010 the Applicant was required to return to her normal duties at the OEHPR, in the opinion of the witness there was no specific or scientific basis for her continued redeployment and she decided she should return to her contractual role. Mrs Cameron had arranged for a temporary PA, Mrs Marshall, to remain for a short period time to assist the Applicant in settling back into her job.
- 4.20 When the Applicant collapsed on 23 September 2012 the witness attended her, assisted by Ms Burgess. She did not observe any swelling, respiratory difficulty or drowsiness; however the witness did note that the Applicant's pupils were dilated and she wondered if any kind of medication had been taken by the Applicant that morning. She did notice that the ends of the Applicant's fingers were turning blue and considering that to be a circulatory issue suggested her position be moved prior to the Ambulance arriving.

- 4.21 When the ambulance arrived the paramedics carried out various checks and in light of these did not want to take the Applicant to Hospital; however Mrs Cameron insisted this should be done. Mrs Cameron told the Tribunal she was concerned the collapse was not genuine and she wished a medical practitioner to see her.
- 4.22 Mrs Cameron thought the collapse might have been a panic attack as the Applicant had mentioned to her some stressful issues in her private life which might have affected her state of mind.
- 4.23 On 10 September 2012 Mrs Cameron met with the Applicant and by then had concluded that the Applicant was willfully and deliberately refusing to return to her contractual duties. During the meeting, which was attended by Martin Macintyre the Applicant's union representative it was explained to the Applicant that, given the lack of medical evidence in support of any further extension of the temporary redeployment, the Capability Procedure was being invoked.
- 4.24 As part of this procedure the Applicant was told she was being referred to the Occupational Health Department to establish if there was any psychological or mental health issue which ought to be taken into account by her employer. Mrs Cameron recalled that on the day of the relocation of the Applicant to the interview room, she had run out of the office into the car park and was observed waving her arms and screaming. In the event the Applicant would not sign the referral document, this stymied all attempts to explore this area of concern.
- 4.25 Mrs Cameron told the Tribunal that the States of Guernsey did not consider itself under a duty to redeploy the Applicant, although she was free to apply for any role with her Employer; the record demonstrates the Applicant did apply for two roles; that of Librarian and also that of the Chief Officer position in the Education Department.

## **5.0 Witness Statement Mr Tony Rowe**

- 5.1 The witness read from a witness statement. (ER1 Tab 6 refers).
- 5.2 Mr Rowe was employed by the States of Guernsey for almost 33 years within the OEHPR and its predecessors. He retired from his role as Deputy Chief Environmental Health Officer in May 2012. In the course of the Applicant's employment at the OEHPR he line managed her on a day to day basis.
- 5.3 He did not carry out any appraisals with the Applicant. He understood the Applicant would not engage in appraisals.
- 5.4 In June 2010 there was a water cooler leak at the OEHPR; a pipe serving the water cooler had broken. The estates team started to mop up on the same day as the flood; they opened all the windows in the affected rooms and had used industrial vacuum cleaners to reduce the amount of water in the carpets. They installed some industrial dehumidifiers in a further attempt to dry out the building. It was obvious that some of the furniture, notably the filing cabinets, was damaged at the bottom where it had been affected by the water but the desks and chairs less so as they sat on small feet or castors.



- 5.5 The insurance loss adjuster attended on the Monday and advised that all of the affected floor tiles should be removed to assist the drying out of the fabric of the building. This was done by contractors later in the week. Floor tiles in the reception office, Mrs Cameron's, his office and the corridor were removed. The carpet tiles were glued down and their removal left glue on the floor. This was removed as far as was practical by the contractors but there was a small residue left over. Some carpet tiles were retained as "stepping stones" to avoid stepping on the bare floor surface.
- 5.6 It was sometime after the carpet tiles were removed that he recalled Mr Webb, Health and Safety Manager, visited the OEHPR and stated that the Applicant had reported to him that she had some sort of health issue which she attributed to the water leak and/or removal of the carpet tiles. Mr Webb appeared to suggest that he thought that the exposure of the glue may be having some effect.
- 5.7 The witness later became aware that the Applicant considered she had an allergy problem. The Applicant appeared to him to attribute her reported allergy to the OEHPR. As a result of the disruption to the reception office, and following the Health and Safety Manager's recommendation, he and Mrs Cameron agreed to move the Applicant's work station to the interview room at OEHPR, which had not been affected by the water leak. This was not ideal given that the Applicant worked as a Receptionist and ought to have been at the front of the building to greet people attending the OEHPR.
- 5.8 During the period of refurbishment both he and Mrs Cameron continued to work in their own offices as normal, even though they were also without any floor covering.
- 5.9 The Applicant did not mention to him that she considered she suffered allergies, and she did not tell him at any time, as her line manager, that she had been medically advised that the office environment presented any form of risk to her or that she should not return to the OEHPR.
- 5.10 The witness stated that the Applicant's sickness history was generally good, and recalled that she had a couple of days off following the water cooler incident in June 2010 but after this she had an almost faultless attendance record until his retirement in May 2012.
- 5.11 The witness had seen a copy of the Applicant's letter to Dr Standring dated 26 September 2012. This letter stated that he suffered medical complaints following the 2010 flood. This was not the case, neither did he remember complaining to the Applicant nor any other person about a "persistent cough" as the Applicant had referred to in her letter to Dr Standring.
- 5.12 He believed the Applicant became disenchanted with certain aspects of her role at the OEHPR. She had previously had responsibility to requisition budgetary expenditure up to £1,000, but procedural changes in procurement caused a reduction in her authority to make such purchases and the Applicant, and all other staff, were required to make requests through central procurement, rather than directly to source.
- 5.13 The witness told the Tribunal that the Applicant approached Mrs Cameron as to the purchase of an air filter, which she stated was necessary because of her health. The

Applicant had not approached him directly about the air filter or asked that he approve expenditure on that particular item.

- 5.14 He understood that the Applicant lodged a grievance towards the end of her employment. The Applicant did not inform him any time prior to lodging the grievance of any concerns that she may have had, that she was being bullied or harassed by any member of staff.
- 5.15 He perceived during the Applicant's employment at the OEHPR that she could be quite sensitive in that she could become offended by colleagues relatively easily and he recalled an incident during which he had to go out to the car park to speak with the Applicant who had become upset. She was refusing to re-enter the building and was crying. The Applicant told him that she did not think that anybody took her seriously. After a while the Applicant calmed down, and she was persuaded to go back to her office.
- 5.16 The Applicant had been engaged in her role under the previous Director of Environmental Health and Pollution Regulation, Mr J Cook and the witness perceived that the Applicant did not react particularly well to a change of approach in the management of the office. When Mrs Cameron took over the Director's role it was clear that she wished things to be done a particular way and it appeared to the witness that the Applicant often didn't want to do tasks that Mrs Cameron set for her, or did not want to carry them out in the way required. His overall impression of the Applicant was that she was generally quite frail.

## **6.0 Witness statement Mr Tobin Cook**

- 6.1 The witness read from a witness statement. (ER1 Tab 6 refers).
- 6.2 The Applicant did not appear to him to have particularly close relationships with other staff at the OEHPR but neither did he observe her to be in conflict with any staff or marginalised in any way.
- 6.3 He found the Applicant to be particularly sensitive and told the Tribunal she could take offence or become upset very easily, when other members of staff would not have done. By way of example, he recalled an incident following a period of leave taken by the Applicant. Whilst she was away, he had sorted through some Environmental Health files that were on the Applicant's filing or storage desk, so that they were easier for the Environmental Health Officers to find and so that a desk that was visible to public visiting the office was more presentable. When the Applicant returned from leave she noticed that some of the papers and files had been moved and she became upset and starting crying.
- 6.4 Mr Cook considered that the expectations of the Applicant by Mrs Cameron and the Environmental Health Officers were at a lower level than they may otherwise have been in respect of other staff carrying out that role. He considered that the Applicant was given considerable leeway in the performance of her duties given her particularly sensitive nature.
- 6.5 The witness confirmed that on 22 March 2012 he carried out air quality monitoring due to concerns that the Applicant had raised regarding the quality of the air within

the room in which she worked. He was aware that the Applicant attributed an alleged allergic reaction to the office environment within which she was expected to work. He took approximately hourly readings throughout a normal working day, inside the administrative office where the Applicant usually worked; he also left Petri dishes containing agar within the room for a three day period to collect any larger, visible dust and particles. He interpreted the findings as not to give any cause for concern about the quality of the air within the building. He told the Tribunal the building within which the OEHPR is situated is a relatively new building and is well ventilated. There is no visible mould, condensation or other structural indicators of poor air quality. He was never asked to check the humidity of the building and did not consider that there were any visible indications that such testing may be necessary.

- 6.6 Whilst consulting with the Applicant Mr Cook never observed any physical symptoms of reaction on the Applicant such as swollen lips, or reddening of her skin. He provided verbal feedback to Mrs Cameron and the Applicant and sent a report of the findings to Ms Hornsby at the Occupational Health Department on 1 June 2012.
- 6.7 On 26 April 2012 he noticed the Applicant entering the room. She initially stood in the centre of the room, in front of his desk and she appeared to be crying. She then moved and stood adjacent to the fire exit, with her back to his desk. The Applicant appeared to be sobbing and the witness asked if she was alright and whether she needed to sit down. Shortly after this, Mrs Cameron came into the room and asked if the Applicant was okay and invited her back to the meeting in Mrs Cameron's office. As the Applicant appeared to be upset, Mr Goodchild offered to accompany her back to the meeting and to sit in with her. Throughout this brief event, the Applicant did not converse with Mr Cook or communicate what the problem was.
- 6.8 Mr Cook told the Tribunal that he took steps to ensure the Applicant did not take work from the OEHPR to her temporary redeployment with Linda Osborne and thus avoided an adverse workload for the Applicant.
- 6.9 On 3 September 2012 the Applicant returned to the OEHPR. The Applicant did not report any illness or symptoms to him that morning or before she apparently became unwell. At approximately 10.05 am Ms Marshall opened the door to the administrative office and came partially down the hallway. She told the Mr Cook that the Applicant had collapsed in the administrative office. He immediately went to the room and found the Applicant slumped at her desk. He could hear the Applicant breathing and she was making moaning noises. He asked the Applicant if she was okay but she did not reply. He alerted Mrs Cameron and Mrs Burgess and they quickly went to the room with him, Mrs Burgess placed the Applicant in the recovery position and checked her vital signs. Mrs Burgess spoke to the Applicant throughout this process, explaining what she was doing. He remembered that the Applicant's breathing was strained and she was clammy but she appeared to retain consciousness and, when on the floor, she replied to questions that were asked of her.
- 6.10 The ambulance arrived at approx. 10.25 am and two paramedics went upstairs where they checked the Applicant. She was taken out of the building in a wheelchair. Mr Cook completed a "Safeguard" report; the incident reporting and risk system report. The system is used to record any matters of potential or actual detriment to

staff and service users. It is a Health and Safety record. Once a particular entry has been made, the States of Guernsey Governance Team collate and review the entries and consider whether any action is necessary. The entries are input into the system by a manager and may be added to or commented upon by senior managers. A manager may close an entry, but ultimate responsibility for final closure of an entry rests with the Governance Team. The witness told the Tribunal that matters of Health and Safety are therefore dealt with corporately, across the whole of the States of Guernsey and not simply at department level. Following the incident of 3 September, the incident report records that there was no evidence to demonstrate any causal element triggering any reported reaction thus no further action was considered necessary.

- 6.11 Following that incident, the Applicant was signed off work for several months. During that time, the Applicant telephoned Mr Cook to report on her condition, from time to time. The Applicant telephoned him on 26 October 2012 and reported that she had been seen by a specialist, Dr Standring, who had reported her to be "highly sensitive" to various substances. He emailed Mrs Cameron and Ms Le Tissier after this discussion with the Applicant to update them.

## **7.0 Witness statement Ms Ruth Briggs**

- 7.1 The witness read from a witness statement. (Tab 6 refers).
- 7.2 The witness is a Trainee Environmental Health Officer at the OEHPR and recalled an incident on 26 April 2012. The Applicant entered the office and was clutching her chest with her hand. She appeared to be very upset and slightly panicked; she was taking deep breaths. She did not respond to any questions from the office staff.
- 7.3 Mrs Cameron then entered the office and asked for a volunteer to accompany the Applicant back to her office; Mr Goodchild volunteered to assist.

## **8.0 Witness statement Ms Susan Marshall**

- 8.1 The witness read from a witness statement. (Tab 6 refers).
- 8.2 The witness is currently Executive Assistant to the Chief Officer of the Public Services department; prior to this appointment she had worked as a temporary Personal Assistant to Mrs Cameron during the absence of the Applicant from her post from July 2012 to July 2013.
- 8.3 Ms Marshall qualified as an Enrolled Nurse in 1982 and underwent a refresher course in 2000. She has not worked actively as a nurse since 2004.
- 8.4 Prior to taking up her temporary role with Mrs Cameron she had had occasional conversations with the Applicant who told her she was very unhappy in her role as PA to Mrs Cameron. The Applicant led her to understand that she did not wish to work for the Environmental Health Officers and would have preferred to restrict her duties to working only for Mrs Cameron.

8.5 On 3 September 2012 the witness was present at the OEHPR and it was intended she remain in her temporary post for a further month to assist the Applicant in the re-integration of her role at the OEHPR.

8.6 When the Applicant collapsed the witness was present and as she and Mr Cook placed the Applicant in the recovery position the witness observed that the Applicant's pupils were dilated. It led the witness to think that the Applicant might have taken Valium, or a drug with similar properties, and remembered that she and the Applicant had talked about taking valium in a previous discussion.

**9.0 Witness statement Ms Elaine Burgess**

9.1 The witness read from a witness statement. (Tab 6 refers).

9.2 Ms Burgess is a Registered Nurse a qualified RCSN and holds further qualification including a MHSc, and an LLB. As part of her continuing professional development she had recently attended a resuscitation course prior to 3 September 2012.

9.3 Ms Burgess is the Head of Infection Prevention at the HSSD and was present in the OEHPR office on 3 September 2012, attending a meeting with Mrs Cameron.

9.4 The meeting was interrupted by Mr Cook who stated that the Applicant had collapsed. Ms Burgess attended the Applicant and found her lying on the floor but conscious. She applied a damp cloth to the Applicant's head and asked her a number of questions in an attempt to understand the cause of the collapse.

9.5 In her professional opinion, as an experienced and qualified nurse, the Applicant did not demonstrate the symptoms of anaphylactic shock; her face had not swelled and neither was her breathing laboured. The Applicant did not offer any explanation for the collapse.

**10.0 Witness statement Ms Julia Le Tissier**

10.1 The witness read from a witness statement. (ER1 Tab 6 refers).

10.2 The witness first became aware of the issues concerning the Applicant's employment at the OEHPR when she was contacted by the Director of Environmental Health and Pollution Regulation, Mrs Cameron in April 2012.

10.3 The Applicant was claiming to have a range of allergies that she considered prevented her from continuing to work at the OEHPR. The witness understood from her discussions with Mrs Cameron that she had referred the Applicant to Occupational Health as a result of the Applicant's concerns about her reported allergies.

10.4 The Occupational Health Service advised by letter of 27 April 2012 (ER1 Tab 4 Pages 69 to 71 refer) that the Applicant should be temporarily redeployed, given that the Applicant attributed her symptoms to the workplace, so that monitoring and review could take place. It was agreed this should happen as soon as possible and it was arranged for the Applicant to be relocated to Health and Social Services Corporate Headquarters to work with Dr Bridgeman's PA, Linda Osborne.

- 10.5 The Applicant states in her ET1 document that the temporary redeployment was intended to be for a period of six months; Ms Le Tissier stated that this was not the case, the redeployment was intended to cover such time as was necessary to carry out any appropriate tests at the office and on the Applicant and to carry out a review thereafter when the results were known. As a matter of good practice, the Department was keen to follow the Occupational Health recommendations.
- 10.6 Throughout the redeployment the Applicant was line managed by Linda Osborne as she carried out work rearranging electronic files for Dr Bridgman.
- 10.7 The Applicant was reviewed by Occupational Health in May 2012. The Occupational Health physician recommended that the Applicant be referred to Dr Donald Cook, Consultant in Occupational Medicine, and asked that until that review could be carried out the redeployment was extended until this consultation took place; this was agreed.
- 10.8 In June 2012 Ms Le Tissier made a referral to Occupational Health to offer the Applicant counseling support as her behaviour in the office at Corporate Headquarters had given her cause for concern. The Applicant had attended the Occupational Health Department, shouting, screaming and crying at the receptionist, Mrs Carrington, that she required an urgent meeting with Collette Hornsby, OH Manager. This distressing incident for the member of staff had come to her attention by way of a complaint from Mrs Hornsby about the Applicant's behaviour towards that member of staff. Mrs Duckworth, Employee Relations Manager, had intervened to calm the situation down and asked Mrs Harding to return to the Human Resources Department as Ms Le Tissier was on annual leave. Ms Le Tissier did not have any knowledge of the Applicant taking up the offer of counseling support.
- 10.9 The witness wrote further to the Applicant on 28 June 2012, once again extending her redeployment on the basis that Dr Cook needed time to obtain further medical data from the Applicant's GP.
- 10.10 On 26 July 2012 Dr Cook copied a letter to Ms Le Tissier in which he expressed an opinion that the Applicant was fit for work and that he had advised her that there was no specific scientific evidence to indicate that the Applicant was unfit to work in the OEHPR. On the basis of that report and having discussed the matter with Mrs Cameron it was decided that there was no need to continue the Applicant's temporary redeployment. The Applicant was the only member of support staff at the OEHPR in a permanent capacity, and whilst her role had been filled on a temporary basis whilst she was redeployed it was never envisaged that she should be permanently relocated.
- 10.11 Ms Le Tissier told the Tribunal that the Department considered the Applicant's continued refusal to return to the role as a willful refusal to accept a reasonable requirement that she return to her contractual position and that the matter would thereafter be dealt with under the capability process. The witness explained that the Department was concerned about the incident of 3 September 2012 because it appeared that the Applicant, if not exaggerating her symptoms, may well have

entirely fabricated the incident. The paramedics who attended the incident did not consider that there was any need to take the Applicant to hospital, and they were satisfied that the Applicant was fine, but Mrs Cameron had insisted the Applicant was to be examined by a medical practitioner, as she was becoming increasingly concerned that the Applicant appeared to be engineering a particular set of circumstances; for whatever reason.

- 10.12 The witness considered that she has a good professional relationship with the Applicant's union representative, Mr Martin MacIntyre, and she later discussed the case with him off the record. From this conversation Ms Le Tissier understood that Mr MacIntyre did not have any conviction in the Applicant's arguments against returning to her contractual role and did not think that he could therefore continue to help her. Mr Macintyre told her that he would be reassigning representation of the Applicant to the Prospect representative, Kevin McAlonan.
- 10.13 It seemed to Ms Le Tissier that the Applicant considered it was the responsibility of the States of Guernsey to find her alternative employment. The Applicant did not appear to grasp that the States of Guernsey had been prepared to support her in a temporary redeployment so that further investigation of her alleged condition and her working conditions could be carried out, and that the States of Guernsey did not consider that there was any on-going reason justifying a permanent redeployment. Ms Le Tissier also stated that with the introduction of new technology and a staff restructuring, members of staff affected by these changes were potentially at risk of redundancy and were given priority in terms of other jobs.
- 10.14 In terms of the Applicant's medical condition, the Department did not receive any information from the Applicant in support of the statements that she made about the nature and extent of the allergies she described. The decisions that the States of Guernsey therefore reached were based entirely upon the advice of the Occupational Health Service as there was no other evidence to support the Applicant's description of her state of health.
- 10.15 On 15 September 2012 the Applicant filed a grievance. The letter of grievance extended to approximately 30 pages and it was not readily clear to Ms Le Tissier upon reading it, who the grievance was about. The grievance also covered a long historical period spanning back several years. Following receipt of the grievance the witness wrote to the Applicant on 2 October 2012 acknowledging receipt of the grievance and seeking clarification of its scope, and against whom it was made. Mrs Le Tissier sent the Applicant copies of the Dignity at Work Policy and the Established Staff Grievance Directive and asked that the Applicant confirm under which Policy she wished to advance her complaint. In this letter Ms Le Tissier also asked that she be provided with all such evidence which the Applicant referred to in the body of her letter.
- 10.16 On 2 October 2012 Ms Le Tissier received a response stating that the Applicant had contacted her union for further advice and that she would revert to the witness to clarify which policy she wished to proceed under; no such clarification was received.
- 10.17 When the Applicant resigned by letter dated 14 March 2013, she did not make any reference to the grievance that she had lodged and at no other time did she contact

Ms Le Tissier to ask how the matter was being progressed or to indicate that she wished it to be.

- 10.18 When Ms Le Tissier met with the Applicant on 10 September 2012, having relied upon the advice of Dr Cook in his letter of 26 July 2012, she informed the Applicant there was no basis for her not to return to her contractual role. Given her apparent reluctance to do so, Mrs Le Tissier considered it a matter of best practice to refer the Applicant to Occupational Health again, to evaluate whether or not any mental health factor or other non-physical factor might be causing her to refuse to return to her contractual position. The Applicant refused to sign the form on the basis that she said it was not correct, however the changes that she required to the form were so minor that the witness did not consider there to be any reason why the referral should be held up. The witness wrote to the Applicant asking that she sign the form so that the referral could be made and understood from Ms Hornsby that she too had contacted the Applicant asking for the forms to be completed, on several occasions.
- 10.19 Ms Le Tissier received a letter dated 5 December 2012, from Ms Hornsby stating that she could not provide any advice in relation to the Applicant because the consent form had never been returned to her by the Applicant for a release of the report of the Allergy Specialist, Dr Standring.
- 10.20 Ms Le Tissier understood that, in the course of her claim, the Applicant has disclosed her belief that her job was offered to another member of staff, Lynne Davis. The witness stated this was not accurate. The Applicant's job was not offered to anyone else until it was necessary to fill it, following her resignation.

**11.0 Witness statement Ms Colette Hornsby**

- 11.1 The witness read from a witness statement. (ER1 Tab 6 refers).
- 11.2 The witness has been Occupational Health Manager for the States of Guernsey since 4 July 2011. Prior to that date she had worked in the field of Occupational Health since 1991 and as a nurse since 1978.
- 11.3 Ms Hornsby explained that the action sheets between pages 291 and 321 of the bundle ER1 are a record intended for internal use within the Occupational Health Service. The action sheet is a means by which Occupational Health Staff record what has happened and what needs to happen in relation to the individual who is subject of a referral. The action sheet is more of an administrative record than it is a clinical record. Ms Hornsby understood that the Applicant had in her possession additional medical evidence in support of the conditions and the symptoms that she claimed to have; however such documentation has not been produced to Occupational Health.
- 11.4 Ms Hornsby made a disclaimer that insofar as any matters in this case relating to events occurring before she joined the Occupational Health Service with the States of Guernsey on 4 July 2011, she has no personal knowledge of such. The Manager and Occupational Health Advisor who worked within the service before her had both since left.



- 11.5 Ms Hornsby explained to the Tribunal that the purpose of the Occupational Health Service is to provide support for the States of Guernsey, managers of the organisations and the workforce. The Service evaluates the employee, in the context of their work, by reference to any particular health concerns that the employee has, or that their managers have about them, whether those emanate from work or outside of it. The role within which employees work is also evaluated and, as far as possible, the Occupational Health Service evaluates whether the two are compatible. Further, the Occupational Health Service recommends restrictions on an employee's duties and also what adjustments might be necessary to enable the employee to carry out all, or a reasonable part of their role. Generally, referrals are made to the Occupational Health Service by the line management of the employee, but employees can also refer themselves to Occupational Health for support and advice.
- 11.6 Ms Hornsby informed the Tribunal that the Applicant was referred to Occupational Health on two occasions by Mrs Cameron following the flood in June 2010, and then following receipt of Dr Anees' report in March 2012 and the Applicant also made at least one self-referral in March 2012. (ER1 Tab 4 pages 35 /47 / 51 & Tab 11 page 283 refer).
- 11.7 Ms Hornsby became involved with the Applicant's case directly, following a report prepared by Dr Anees. The Applicant's GP, Dr Hatton, had asked Dr Anees, of the Medical Specialist Group, to evaluate the Applicant in respect of ill health that the Applicant reported she had suffered since the flood in June 2010. Dr Anees recommended that the Applicant ought to be evaluated by the Occupational Health Service which could evaluate the workplace environment if it considered it necessary. Dr Anees copied his report to Occupational Health and Ms Hornsby advised that an OH referral was required and brought this to the attention of the Director of Environmental Health and Pollution Regulation, Mrs Cameron.
- 11.8 The following day Mrs Cameron submitted a formal referral of the Applicant to Occupational Health on the basis of Dr Anees' report. In April 2012, the Applicant met with the Occupational Health Physician, Dr Le Noury, who suggested temporary redeployment of the Applicant to establish whether the symptoms reported by the Applicant would abate in a different work situation. (ER1 Tab 4 page 69 refers).
- 11.9 Two days later, on 29 April 2012, Mrs Cameron confirmed to Ms Hornsby in an email that arrangements had been made for the Applicant to be temporarily relocated.
- 11.10 Ms Hornsby telephoned Mrs Cameron on 25 April following Dr Le Noury's meeting with the Applicant and asked for a copy of the risk assessment carried out by the Health and Safety Manager. On 3 May 2012, with consent, she wrote to the Applicant's GP to obtain a copy of her medical records for a ten year period. (ER1 Tab 4 page 77 refers).
- 11.11 Following a discussion with the witness, Dr Le Noury wrote to Mrs Cameron on 14 May 2012 recommending that the redeployment be extended pending a review of the Applicant by Dr Donald Cook, Consultant in Occupational Medicine. Ms Hornsby understood that the redeployment was extended following that recommendation.
- 11.12 On 26 July 2012 Dr Cook met with the Applicant. Following production of the risk

Assessment and considering the content of Mr Tobin Cook's letter to her of 15 June 2012 (ER1 tab 10 page 223 refers), the Occupational Health Service, including Dr Cook, concluded that it could not assist the Applicant any further and that it was not necessary to support her further redeployment.

- 11.13 Dr Cook wrote to Mrs Cameron later that day stating that the Applicant was, in his opinion, fit for work. Dr Cook also stated in his letter of 26 July 2012 that there was "no specific/scientific evidence to say that the Applicant was unfit to work in the previous work environment". (ER1 Tab 4 pages 87 to 89 refer). .
- 11.14 On the morning of 3 September 2012 Ms Hornsby was working at the PEH and she received a telephone call from Mrs Cameron explaining that the Applicant had returned to her contractual post that morning and shortly after arriving had slumped at her desk and had been taken to Accident & Emergency at Mrs Cameron's insistence.
- 11.15 Following this incident, the Applicant met Dr Cook on 25 September for a further review. Dr Cook's report of that date indicates that the Applicant told him that she was having allergy tests with Dr Standring who is an Immunologist on the Island. Dr Cook decided that he would like to take into account Dr Standring's conclusions in his review. Dr Cook had forgotten to obtain the necessary consent forms from the Applicant during his review meeting with her and asked Ms Hornsby to write to her to obtain them so he could obtain Dr Standring's report; this was done on 1 October 2012. Ms Hornsby did not receive a completed copy of that consent and wrote again to the Applicant on 16 October 2012 asking that the consent form be signed and returned. In this letter Ms Hornsby explained that she only required the results from the appointment with Dr Standring so that Dr Cook could carry out his review. The action sheet shows (28/11/2012) that the Applicant requested a further copy of the consent form which was provided by the part time admin officer Sonia Gaudion who posted another copy to the Applicant. The Applicant completed the consent form but filled in details for Dr Cooper rather than for Dr Standring. This was not the report that Dr Cook required to be able to conduct his review. Dr Cook was concerned to see the conclusions drawn by the Immunologist, Dr Standring. A copy of the consent form completed by the Applicant is included in the bundle at page 345.
- 11.16 Given that the Applicant did not provide Occupational Health with a copy of Dr Standring's report so that Dr Cook could carry out a further review of the Applicant, Ms Hornsby wrote to Mrs Cameron on 5 December 2012 stating that Occupational Health could do nothing more in respect of the referral given that Applicant had failed to submit Dr Standring's report. The witness told the Tribunal that the Occupational Health Service had never been able to make a direct request to Dr Standring's practice for his report.
- 11.17 Following the conclusion of Dr Cook that there was no specific or scientific basis for continuing the Applicant's redeployment and that she was fit for work, Ms Le Tissier referred the Applicant to Occupational Health for psychological evaluation. Ms Le Tissier wished to establish whether there was any psychological reason why the Applicant would not return to her contracted role. The referral never progressed,

given that the Applicant objected to the referral on the basis that she considered it to include "incorrect statements".

#### **12.0 Witness Statement Mr Simon Welch**

- 12.1 The witness read from a witness statement. (ER1 Tab 6 refers).
- 12.2 Mr Welch is a Waste Regulation Officer at the OEHPR and gave evidence that on 26 April 2012 he observed the Applicant in the general office area in a distressed state; she appeared to be crying. Mrs Cameron arrived, attempted to comfort the Applicant and requested that somebody from the office accompany the Applicant back to Mrs Cameron's office.

#### **13.0 Witness Statement Mr Tony Jeffreys**

- 13.1 The witness read from a witness statement. (ER1 Tab 6 refers)
- 13.2 In this witness statement Mr Jeffreys, Senior Manager Estates HSSD, confirmed that his department carried out the necessary works to make good the damaged /flooded areas. His evidence corroborates the testimony given orally and in writing by other witnesses appearing for the Respondent.

#### **14.0 Conclusions**

- 14.1 The Tribunal had to consider whether there were grounds that justified the Applicant's resignation. In order to succeed, the Applicant had to demonstrate that, on the balance of probabilities, a fundamental breach of either an express or implied term of her employment contract had occurred, and this breach could be found to be unfair. In this case the Applicant alleges that her employer did not observe the duty of care in relation to her personal health and that she was bullied and harassed by her employer. The Tribunal noted the definition of "bullying" in the Oxford English Dictionary as "overbearing insolence; personal intimidations; petty tyranny".
- 14.2 It is the duty of an employer to treat everyone with dignity and respect at work; thus the working relationship should be free of bullying or harassment. It is also the Respondent's duty to take all reasonable steps to ensure that their employees are working in a safe environment.
- 14.3 It was the Applicant's contention that at no point had her employer done anything to reassure her that whatever had caused her collapse was not related to her workplace. The Respondent strongly contested this and evidence was heard as to the steps taken by the employer once the Applicant had reported her concerns in June 2010. Amongst these actions were the following:-
- 1) The Respondent was given alternative office accommodation in the OEHPR and was not required to return to her normal work station until November 2010 when all rectification work had been completed.
  - 2) Her colleagues were given a briefing on allergic reactions shortly after the flood, specifically focused on how they might assist the Applicant if she suffered any further reaction.

- 3) New floor tiles were laid using a water based adhesive.
  - 4) Mrs Cameron had the Applicant's office "deep cleaned" and instituted an on-going "wet clean" on a regular basis.
  - 5) The air quality of the room was tested by Mr Cook, as detailed in his witness statement, which also included the use of petri dishes to check for contaminants which might lead to allergic responses.
- 14.4 Despite these precautions the Applicant alleged that her symptoms of swelling lips, exhaustion etc. continued throughout 2011 and into 2012. The Applicant alleged that other employees suffered similar symptoms during this period, however there is no proof of this and witnesses such as Mr Rowe and Mrs Cameron have specifically denied this. The Tribunal prefers their evidence to that of the Applicant. The Tribunal notes that the employee was fit enough to continue her duties from November 2010 without any significant period of certified sickness and took a cycling holiday in Germany at the age of 60 in 2011.
- 14.5 The Applicant was also referred to the Occupational Health Department on four occasions.
- 1) The first referral was following the flood in June 2012.
  - 2) The second referral occurred in March 2012 on the recommendation of Dr Anees.
  - 3) The Applicant self-referred in April 2012.
  - 4) The Applicant was referred again by the Respondent to establish if there might be a psychological reason for her unwillingness to return to the OEHPR however she was not prepared to accede to this referral.
- 14.6 The events from March 2012 are particularly significant. Firstly there is the consultation with Dr Anees of the Medical Specialist Group. His letter (ER1 Tab 4 pages 47 to 49 refer) conveys puzzlement; he records the fact that the Applicant is adamant that she is allergic to something in her workplace. The consultant notes that her latex allergy test was negative but the Applicant states that her skin develops a rash and blistering after contact. He states there is no way of knowing the nature of her reaction to the event in June 2010 and her continuing problems; he ponders whether she is suffering from "sick building syndrome" but then states that he is not in position to say whether there is a genuine reaction occurring in the workplace. The results of Mr Cook's environmental testing in March 2012 are persuasive that no such "sick building syndrome" existed.
- 14.7 In April 2012 the Applicant undertook a consultation with Dr Le Noury of the Occupational Health Department. Dr Le Noury recommended a temporary redeployment to another site whilst further investigation took place; this is agreed by the Respondent.

- 14.8 The initial redeployment was extended on 24 May 2012 (ER1 Tab 4 page 81 refers) to allow a consultation with the visiting OH specialist, Dr Cook, on 25 June 2012. Following this appointment a further extension occurred to allow time for Dr Cook to liaise with the Applicant's GP. The Tribunal considers that this was an example of the Respondent exercising a duty of care toward the Applicant.
- 14.9 On 26 July Dr Cook concluded there was no specific / scientific evidence to say that the Applicant should not return to the OEHP. He did however note her strong desire to be permanently relocated and supported such a transfer if her management had deemed it necessary.
- 14.10 By this point in time it is evident that the Applicant had decided that there could be no other reason for her varied symptoms other than a reaction to the environment at the OEHP. The Applicant seemed unable to comprehend that whilst this might be the cause, that factors in her domestic environment or personal stress, rather than the work environment, might explain her symptoms.
- 14.11 The Tribunal heard significant evidence, neither challenged nor denied, of loss of personal control by the Applicant. For example Mrs Cameron observed that on the day of her relocation to the interview room the Applicant had run out of the office and was seen waving her arms and screaming in the nearby car park. On another occasion the Applicant had attended the Occupational Health Department, shouting, screaming and crying at the receptionist that she required an urgent meeting with Collette Hornsby, OH Manager. Such behaviour is arguably very troubling and a reasonable employer, exercising a duty of care, might very justifiably refer an employee for counseling or a psychological assessment.
- 14.12 The events of 3 September 2012 are much disputed by the parties; was the Applicant's collapse genuine, and even if genuine, was it due to an allergic reaction to the work environment? When the apparent collapse occurred the Applicant was attended by a number of colleagues including Mrs Cameron and Ms Burgess. The Tribunal is persuaded that both of these individuals have the professional expertise, qualifications and experience to make at least a superficial assessment of the presenting symptoms. Neither witness observed any symptoms that were consistent with an anaphylactic attack. The attending paramedics were of the opinion that they did not need to take the Applicant to the A&E department at the PEH. However at the insistence of Mrs Cameron they do so. Whatever her motivation for this insistence it clearly can be seen as a further example of the employer exercising a duty of care.
- 14.13 At the PEH the Applicant is attended by Dr Gee; The Tribunal has concluded that his assessment that it was an allergic reaction could have been heavily predicated on information provided by the Applicant.
- 14.14 From September 2012 onwards the Applicant was medically certificated and there was no return to her workplace.
- 14.15 Mrs Cameron and Ms Le Tissier had come to the conclusion that, given the assessment of Dr Cook, and their own observations, the Applicant was willfully refusing to attend her workplace. They decided the issue was one of capability and thought her behaviour might be based on psychological rather than physical factors.

The Tribunal considers that given the history of events leading up to 3 September 2013 that a reasonable employer might conclude this was a possibility.

- 14.16 The Applicant asserted that at no point had her employer done anything to reassure her that whatever had caused her collapse was not related to her workplace. The Tribunal has concluded that this is an unreasonable test. It would seem from the Respondent's evidence that this was a modern office meeting the required environmental standards; in addition no other OEHPR employee presented the same or similar allergic reactions during the period June 2010 to September 2012. It is therefore a reasonable presumption that the OEHPR environment would not present a health hazard to the vast majority of the working population. If the Applicant had a rare condition which did react to the OEHPR environment then the Tribunal believes it is reasonable for the Employer to require the Applicant, assisted by the Occupational Health Department, to prove this within a reasonable time scale. The Tribunal is of the opinion that most reasonable employers would consider the six month period of medically certificated leave between September 2012 and February 2013 was, as such, a reasonable time.
- 14.17 The Tribunal notes that the OH department continued, with the knowledge of Human Resources and the Applicant's line management, to pursue the search for further information on potential allergic reactions; in particular the assessment by Dr Standring. The Applicant refused to consent to this information being made available to Dr Cook. The Tribunal is of the firm opinion that this lack of transparency led to the reasonable conclusion that the Applicant might be holding back evidence which did not support her own assessment of her condition. The Tribunal finds it very difficult to believe that Dr Standring might change his opinion in relation to her allergic reaction in collusion with the OH Department as asserted by the Applicant. Such assertions significantly reduce the credibility of the Applicant's evidence.
- 14.18 The Applicant would not accept a referral for psychological assessment and despite repeated attempts by the OH department to secure her agreement this route was stymied.
- 14.19 The Tribunal has concluded that the employer had acted fully and reasonably in attempting to discharge their duty of care in relation to her reported medical issues.
- 14.20 Turning to the allegation of bullying / harassment the Applicant did not provide the Tribunal with any specific examples or persuasive evidence that this had occurred. On the contrary the evidence from the Respondent's witnesses described a frail and difficult individual who need to be handled with caution lest she burst into tears. Mr Cook told the Tribunal that, given these behaviours, it had become necessary to accept a reduced level of performance from the Applicant. Furthermore the Applicant refused to participate in the appraisal process, which arguably reduced the opportunity for effective two way communication between employer and employee. As a rider the Tribunal is surprised that the States of Guernsey would allow their employees in this department the discretion to determine whether they were subject to a periodic performance appraisal.
- 14.21 The Applicant clearly wished to be redeployed but given the Respondent's evidence this was not part of any contractual agreement with her employer; furthermore

given the staff restructuring being undertaken, with other employees at risk of redundancy, it would seem reasonable that the employer could not accede to this.

- 14.22 In summary the Applicant failed to persuade the Tribunal that there had been a breach of any implicit or explicit term of her contract of employment.

## **15.0 Decision**

- 15.1 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 found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, that the Applicant was not constructively unfairly dismissed.

Mr Peter Woodward

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Signature of the Chairman

13 December 2013

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Date