



a subsequent letter dated 21 December 2000, dates back to 31 August 2000. Mr Redshaw claims that as a result of the unjustifiable action by the Council, he has suffered a monetary loss of \$98,938 plus associated unpaid superannuation contributions. He seeks an order for payment (and interest) accordingly.

[2] However, in my earlier determination I found that:

... it is more probable than not that Mr Redshaw would have been quite aware of how he was personally affected by the 2007 changes to the Council's remuneration policy and that his salary arrangements were no longer according to the year 2000 agreement. Given the obvious evidence and the time that has since elapsed, it can be reasonably implied that he had accepted that the 2007 remuneration changes applied to him, particularly the continual decrease in his place on the pay scale relative to the 100% base salary mark.<sup>2</sup>

[3] In summary, the effect of this finding is that, despite the *Amended Statement of Problem* received by the Authority on 15<sup>th</sup> October 2009, (following the receipt by the parties of *Determination 346/09*) whereby Mr Redshaw continues to present a personal grievance claim of unjustified disadvantage, the Authority will not be giving further consideration to this claim, quite simply because it has been determined that Mr Redshaw is time barred pursuant to s.114(1) of the Act. It follows that there will be no consideration given to the claim of breach of contract and the associated monies claimed, for the period from September 2007 to date as I found that it could be reasonably implied that Mr Redshaw accepted that the 2007 remuneration changes applied to him.

[4] It was acknowledged by Mr Redshaw at the investigation meeting on 22<sup>nd</sup> October 2009 that his contractual claims do not apply to the 2003/2004 remuneration period. Therefore, notwithstanding Mr Redshaw's continuing claim to the contrary, as he does not accept the findings of the Authority in the earlier determination,<sup>3</sup> the substantive remaining claim to be determined is that; for the remuneration periods<sup>4</sup> 2004/2005, 2005/2006 and 2006/2007, the Council breached its contractual obligations to Mr Redshaw with the effect that he was underpaid by the following amounts:

<b>2004/2005</b>	\$10,384	<b>2005/2006</b>	\$10,732	<b>2006/2007</b>	\$6,147
------------------	----------	------------------	----------	------------------	---------

<sup>2</sup> The factual findings set out in *Determination AA 346/09* need to be taken into account along with this determination, as given the overall background there will be some common content both in findings and the evidence presented.

<sup>3</sup> A challenge has been lodged with the Employment Court (*ARC 86/09*)

<sup>4</sup> Salary increases were effective from 1<sup>st</sup> September each year.

The above sums include the deficit in the base salary that Mr Redshaw says he incurred. Also, as the Council's contributions to his superannuation are calculated as 10% of the base salary and his annual bonuses are a discretionary percentage of the base salary, Mr Redshaw says there are consequent underpayments in these two components of his remuneration, due to the base salary being at a lesser rate than, as Mr Redshaw argues, should have applied.

[5] In addition to the monetary claims, Mr Redshaw says that the breach of his employment contract on the part of the Council also constituted a breach of good faith and he asks the Authority to award penalties for both.

[6] The Council denies that it has breached Mr Redshaw's terms and conditions of employment or that it has breached its duty of good faith.

[7] In addition to the evidence of Mr Redshaw, the Authority received evidence for the Council from Mr John Woods, General Manager, Organisation Performance. Prior to being appointed to this position, Mr Woods was the Group Manager, Human Resources. The parties have provided a number of relevant documents along with written submissions. All of the available evidence has been closely considered, albeit it is not all specifically identified or referred to in this determination.

## **Background**

[8] Mr Redshaw commenced his employment with the Council on 4<sup>th</sup> July 1994 in the role of Area Accountant. He subsequently was appointed to the position of Manager Business Improvement in 1996. This role was disestablished in 1999 and Mr Redshaw was subsequently appointed to the role of Business Analyst. There was some degree of conflict between the parties that, in due course, was resolved by this appointment. As the Business Analyst position attracted a lower salary than Mr Redshaw was currently being paid, it was agreed that his existing salary would be preserved. Therefore, rather than being paid at the Hay system mid-point, or 100% mark for the role of Business Analyst, Mr Redshaw was placed at 128%.

[9] It is commonly accepted that the employment terms and conditions pertaining to Mr Redshaw's new position were then set out in two documents; a contract of

employment dated 31<sup>st</sup> August 2000, and a letter dated 21<sup>st</sup> December 2000 confirming the appointment of Mr Redshaw to the position of Business Analyst, effective from 15 January 2001. The letter also provides that:

*The terms and conditions of your employment will remain the same as per your contract dated 31 August 2000, with the following clarification. Each year you and your manager will agree on objectives, which are realistic and achievable. Provided these are met, then your current percentage on the salary scale will be retained. Unless there is a performance issue the market related movement of salaries will be applied to your salary. You will continue to be eligible for a performance bonus.*

[10] The letter continues:

*Details of your current salary package is [sic] set out below:*

<i>Base salary</i>	<i>\$83,701</i>
<i>Percentage of salary scale</i>	<i>128%</i>
<i>Superannuation</i>	<i>\$8,370</i>
<i>Vehicle compensation allowance</i>	<i>\$16,479 (effective 1 May 2001)</i>

[11] It is the argument of Mr Redshaw that the provisions of the employment contract dated 31<sup>st</sup> August 2000 and the letter dated December 2000, continue to this day, particularly the provision regarding the percentage of the salary scale being at 128%. Mr Redshaw says that these two documents form the only employment agreement he has ever had with the Council, apart from an amendment or variation dated 13<sup>th</sup> June 2007, pertaining to the inclusion of the telephone allowance into his base salary.

### **The employment contract dated 31 August 2000**

[12] The contract was signed by Mr Redshaw on 9<sup>th</sup> September 2000. The applicable salary and benefits for Mr Redshaw are provided at *Appendix 2* of the contract; effective from 15<sup>th</sup> August 2000; being:

- a. *Total base salary \$79,785 [This had increased to \$83,701 by 21 December 2000.]*
- b. *A performance related annual sum payment of between 0% and 15% of the base annual salary may be paid at the discretion of your manager for exceeding performance requirements.*
- c. *A superannuation allowance of 10% of base salary .....*
- d. *Telephone rental refund of \$484.68 per annum (\$40.39 per month). This will be adjusted in line with market rentals.*

[13] Also referred to in the contract, and relevant to the respective positions of the parties, is clause 5, *Human Resources Policy Manual*:

*This contract should be read in conjunction with the organisation's Human Resources Policy Manual, as amended by the employer from time to time.*

[14] The *Remuneration and Leave* provisions of the February 2001 *Human Resources Policy Manual* have been produced to the Authority. It appears to be commonly accepted that these provisions would have been the same in 2000 when Mr Redshaw's contract came into existence. At clause 3.12 of this document, several remuneration "principles" are set out. One of these is:

*That all remuneration is set not only in terms of the relevant employment agreement, but also considers internal relativities and the current market range for each occupational grouping.*

Then, at clause 6:

*All salaries and wages shall be reviewed annually, taking into account recognised market salary surveys. Before any salary/wages are reviewed, a performance appraisal must have taken place.*

And, at clause 9:

*A new employment agreement signed by the Group Manager is required:*

- (a) .....
- (b) *when the employee's terms and conditions (other than pay scale) change.*

[15] During 2003 the Council implemented an organisation wide change to salary structures and salary bands. The effect of this upon Mr Redshaw was that he no longer maintained the salary margin that had been agreed to in December 2000.

[16] Albeit, effective from 1<sup>st</sup> September each year, Mr Redshaw received performance based salary increases, he says that from September 2004, he has not received the salary increases that he is entitled to, based on his year 2000 employment contract. Mr Redshaw says that the reason for this is that in 2003, when the Council implemented an organisation wide new remuneration system, it altered his pay scale; the effect being that the percentage on the Hay scale was reduced below the 128% that had been agreed to in December 2000.

[17] The evidence of Mr Redshaw is that until the Chief Executive Officer of the Council announced to all staff in February 2009, that there would be no budget for salary increases in the 2009/2010 financial year, he had not given any thought to why he had not received the salary increases that he believes he is entitled to. After

reviewing his year 2000 employment conditions, Mr Redshaw concluded that errors had been made by the Council in respect of his salary payments since September 2004. Mr Redshaw says that the effect is that there has been a continual decrease in his place on the pay scale relative to the 100% base salary mark with his current base salary being at 108% of the pay scale when it should be 128%. Mr Redshaw wrote to Mr Woods on 25<sup>th</sup> March 2009, setting out his concerns and calculations as to what he believed he was entitled to.

[18] Mr Woods responded on 1<sup>st</sup> May 2009. He pointed out to Mr Redshaw that there had been two changes to the Council's remuneration policy; in 2003 and 2007 respectively, which Mr Redshaw had been consulted about; these were applicable to him and he had accepted them, hence his year 2000 salary arrangements had been superseded by the new policies. In my earlier determination (AA 436/09) and as referred to above, I have determined that the change in the Council's remuneration policy which took place in 2007 applied to Mr Redshaw, that he was fully aware of it and by implication, he accepted it. Therefore, it is the change to the remuneration policy that occurred in 2003, and its application to Mr Redman, that falls to be examined further.

### **The change to the Council's remuneration policy – 2003**

[19] The Council has provided evidence of a change in its remuneration policy; introduced in 2003. Mr Redshaw acknowledges that he was aware of the change in policy but he does not accept that it applied to him. He says that his employment contract was never altered. There is evidence that tends to support Mr Redshaw's position. If one takes the letters dated 30<sup>th</sup> August 2002, 29<sup>th</sup> August 2003, 27<sup>th</sup> August 2004 and 1 September 2005, the words used which advised Mr Redshaw of a salary increase, refer to a "*performance based increase*" each year. While the Council submits that one of the outcomes of the 2003 change was that salary increases were to be performance related rather than market adjustments, and that Mr Redshaw was aware of and affected by this, this is not reflected in any change in the terminology used to specifically notify Mr Redshaw of his respective annual increases from 2002 to 2005 (there is no written evidence of what happened in 2006).<sup>5</sup> That is, there is no

---

<sup>5</sup> It is agreed that Mr Redman did receive an increase in his salary but a written record has not been produced.

difference in the terminology used prior to 2003, when the remuneration policy changed, to that used after the change. Mr Redshaw's position appears to be further supported in a letter to him from the Council dated 21<sup>st</sup> January 2005, confirming his placement in the position of Business Analyst in the Group Management Team, and that:

*All other terms and conditions as per your employment agreement will remain unchanged.*

There is no evidence of any notification of a change to Mr Redshaw's remuneration arrangements and Mr Redshaw says that he was never made aware that 128% of the grade no longer applied.

[20] The evidence of Mr White is that the letter to Mr Redshaw dated 21<sup>st</sup> December 2000 does not guarantee that Mr Redshaw's salary would remain at the 128% level indefinitely, regardless of the circumstances. Mr White says that the 128% point would remain for Mr Redshaw, provided he "*meets performance standards*" and as long as the remuneration system that existed at the time, remained. Mr Redshaw clearly more than met the performance standards, as evidenced by the bonuses he received, but the Council's remuneration system changed in 2003. But, unlike the 2007 changes, which I have in found (AA 436/09) were very clearly and specifically notified to Mr Redshaw<sup>6</sup>, it is arguable if he was notified of the financial effect of the 2003 changes.

[21] The further evidence of Mr White is that in the light of the information that was provided to all Council employees in 2003, he does not believe that Mr Redshaw could have been in any doubt about the fact that the new remuneration policy would apply to him, that the new broad-bands would have application, and that it was not expected (except in rare cases) that staff would be paid over 120% of the mid-point for their salary band. Mr White says that enquiries of managers and human resource staff involved at the time, have not revealed any evidence of Mr Redshaw raising any objections to the changes.

[22] The evidence from Mr Redshaw, in regard to his knowledge of the 2003 remuneration system changes, is relatively sparse. Mr Redshaw acknowledges that the

---

<sup>6</sup> By a letter dated 3<sup>rd</sup> September 2007 with attached pay review summary - and a further pay review summary in 2008.

Council “*consulted generically*” but there were no “*one-to-one negotiations*” about moving onto the new salary bandings. Mr Redshaw also says that there was no discussion with him about varying the employment agreement the parties entered into in 2000. He says that the lack of any such discussion reinforced his belief that he remained on 128% of the salary scale.

### **Analysis and Conclusions**

[23] The main issue to be determined is: Was Mr Redshaw fully aware of the effect of the 2003 remuneration changes and if so, can it be implied that he accepted them?

[24] It is arguable as to how aware Mr Redshaw was of the overall effect of the Council’s changes to the remuneration system in 2003. However, on the evidence presented, I cannot help but conclude that unless Mr Redshaw made a concerted effort to seek out information specific to how his remuneration was going to be affected, it would have been quite difficult to arrive at any conclusions as to whether he would maintain his salary at the previously agreed percentage, or otherwise. It may well be that for most Council employees, if their salary at the time fitted neatly within the salary bands, the effect was clear. However, in the case of Mr Redshaw, because of the history relating to his placement on the salary scale, I accept the submission that the Council had an obligation to deal with him on an individual basis, rather than as part of the collective approach that appears to have been adopted. Furthermore, the *Human Resources Policy Manual* at the time, provides (at clause 9) that:

*A new employment agreement signed by the Group Manager is required:*

- (a) .....
- (b) *when the employee’s terms and conditions (other than pay scale) change.*

Given that the introduction of the 2003 remuneration policy, and its effect on Mr Redshaw’s salary level, was considerably more than a simple change of pay scale for him, and if his salary level was reduced, as Mr Redshaw claims: “*a new employment agreement, signed by the Group Manager,*” was required. Given that a new employment agreement never eventuated, this gives some credence to Mr Redshaw’s argument that the original (2000) contract conditions remained intact and that he never accepted the 2003 changes expressly or by implication.

**Determination**

[25] While both parties to this matter have competently advanced their opposing and difficult arguments, I find on the balance of probabilities, that the overall evidence leans more towards Mr Redshaw's position. That is, that until the 2007 remuneration changes were introduced, and as I have previously found, were accepted by him, the employment conditions agreed to by the parties in 2000 remained intact. This included the percentage of the relevant salary scale remaining at 128%. Therefore, I find that for the remuneration years: 2004/2005, 2005/2006 and 2006/2007, Mr Redshaw was entitled to salary increases based on 128% of the applicable pay scale being the base salary. It also follows that his bonuses and superannuation payments would also be derived from that base salary.

[26] Unfortunately, I find that the evidence presented is not conclusive enough for me to make an order that Mr Redshaw should be paid the sums that he has claimed. Rather, the parties are ordered to attempt to reach a resolution as to the monies that Mr Redshaw is entitled to, calculated on a base salary that recognises the 128% entitlement. The right is reserved, if required, to return to the Authority for an order based on the presentation of more comprehensive evidence as to Mr Redshaw's entitlements.

[27] While I have found in Mr Redshaw's favour in that the Council failed to pay Mr Redshaw in regard to his contractual monetary entitlements under the terms of his 2000 employment agreement, given the arguable circumstances overall, I do not find that a breach of contract warranting the award of a penalty exists. Nor do I find that there has been a breach of s.4 of the Act.

**Costs**

[28] Costs are reserved. The parties are invited to resolve the matter of costs if they can along with the monetary amounts owed to Mr Redshaw. However, the right is reserved for the parties to make submissions on costs in due course.

**K J Anderson**  
**Member of the Employment Relations Authority**