

Ken, I took some time to put my thoughts down in black and white so it's easier for us to get up to speed when we meet next....

I shall be available to meet with you Tuesday p.m. / Wednesday a.m / p.m. or Friday.

- I'm aware that arbitration is still an option, although the tone of the response is so absolute and pugilistic.
- I've drafted a response to the Counter-claim
- I have explained the position on intellectual property to the accrediting organisation, who stated they disapproved of "plagiarism". This is a separate issue to me, but could be tacked on as part of a counter-counter-claim (?)
- I enclose a letter to the funders at the time requesting a report which was never made available to me.
- I'm ready to request statements from several witnesses if need be.
- Do we need a list of documents / evidence we are requesting?

General impression

The Response does not answer the Claim. Still prosecuting on issues rather than answering the procedural faults established in the Claim.

The penultimate point (20) seems to show disregard and disdain for the Law. Counter-claim bogus / illegitimate (books returned / 'breach of contract'?)

Textual analysis

Remedial factual errors (2)

Disputatious and argumentative (3)

Dramatic / operatic vocabulary (8/10/12)

Document was submitted to the Tribunal Service by FAX at 5.21 p.m. on the 21st February, the last day possible before a default judgement would have been automatically issued.

PSYCHOLOGY

I was informed in January that AB was bullish and believed the case would be covered by the organisation's 'legal insurance'. I don't imagine that this could mean financial indemnity against a legal problem if culpability is established.

Given that the response was only just returned within the statutory month, I believe that the following scenario has occurred:~

AB initially sought free legal advice and / or applied for support under legal cover, which would be judged by a panel who decide whether to take on a case, based on the chances of success.

I believe that either or both of these sources would have made their judgements based on DPP Employment Law since October 2004, and advised their client that the dismissal was automatically unfair due to not following the legally prescribed procedure.

AB was aware of the change in this law and even circulated a memo explaining it.

I believe that AB is driven by the need to save face amongst her colleagues and trustees to such an extent that she is prepared to reject independent legal advice and has chosen to defend the case herself, using the legal status of a chronie or sap to legitimise her story and preserve her position for a little longer.

This seems obvious because the Grounds for Resistance are just an even more emphatic restatement of the existing allegations. There seems to be no awareness or attempt to defend the Claim of automatically unfair dismissal based on failure to follow the proper process. Instead the Resistance concentrates on blackening my character to an even greater degree, introducing fresh allegations as well as hyperbolising existing ones.

I see no evidence of an independent (or competent) legal mind contributing to this defence and would suggest that retrenchment would indicate that essentially nothing has changed in the mind of the Respondent.

I believe, judging from her previous pattern of nepotism, that AB has resorted to requesting a favour from a friend or acquaintance in the legal profession, in which AB was formerly employed, and is simply using his name, status and legal practice as a front to legitimise her own work. I think I recall mention of this individual in relation to Unstone Grange.

If this is the case, I am not at all intimidated by this recourse to status, although I do think that intimidation is the intended effect. What is the weight of the word Barrister in an Employment Tribunal? I don't understand the 'non-practising' proviso?

Could we view all this as empty posturing and positioning?

Thoughts about the response (“Grounds for Resistance”)

1. I was a core part of the organisation for 10 years.

I believe the disparity between the figures for employees is because the Respondent is aware that their employment practices have been illegal and exploitative over the course of many years. (Claimants paying over their housing benefit and earning cash in hand from the Trust, thus putting their claims at risk)

The lettings business alone has a turnover of more than £50,000 a year
The Organic project has received public funding of more than £120,000 over the last 4 years.

2. Volunteer Co-ordinator (Organic Horticulture) from April 2001

Organic Tutor from Jan 2004 - No contract of Employment

(one-line statement of appointment dated.. April 2004)

3. ‘6 hours’ refers to the actual hours required to deliver the courses, Specifically, 3 hours preparation time + 3 hours delivery in class per week. 140 hours per year was a notional allocation, invented nearly a year before the courses even began.

4. My record was clean up until 11th May 2004. Any issues had been resolved by a formal process of mediation involving the Trustees in December 2003. This episode was a diversion tactic on the part of manager and co-worker to distract attention from several safety-critical concerns I had about my co-worker, which I had raised (and documented), but which were never addressed due to this diversionary tactic.

The manager seems to have held onto this impression despite evidence to the contrary. If she really believed I was still a “bully” then she is demonstrating her own negligence in leaving me in charge of volunteers, learners and clients for a further 12 months!

5. “autumn ‘03” is pretty vague, but was definitely more than six months before “oral warning 11/5/04, and so should have been discounted according to Law Centre guidelines shown to disciplinary panel.

Meeting was actually held on on 2nd October 2003 at 6 pm and was called by me to plan how to deliver the new project (offering accredited courses from the start of 2004) and the transition period from Jan to March, when we would have two funders. I did want some reassurance that the Trust would make sure that basic systems and procedures would be adequate to administer these courses, in addition to still running our volunteering commitments.

I knew we were discussing the future of the project, under new funders, so I was shocked when I was then given a warning and threat of being sacked from my current job at that time.

The Trust did formally agree as a body to a Project Review, which was promised for April 2004, when the local LSC became sole funder.

I did not walk out of the meeting. That sounds like a resignation.

If I had refused to work for my line-manager, then why wasn't I dismissed there and then? I was talking about how the project would be run delivering educational outputs during the next year and under different funding arrangements. I should not have been sanctioned in one job for talking about what might happen in another, future post.

I have already submitted documented evidence of this exchange to you, showing that despite the warning being very strong and being delivered with excessive force (witnessed if necessary), the manager did not even bother to turn up to the first of a series of stipulated one-to-one meetings less than a week later! (AB letter of apology to RC 14/10/04)

6. My 'previous record' was completely clean at this point. Please provide evidence that a complaint was made.

7. To my knowledge, the Unstone Grange Trust Limited, did not uphold this warning. A 'disciplinary committee', made up of 3 Trustees, made a decision which had not been discussed or ratified by a full meeting of the Trust, the Respondent, at the time of my suspension.

8. I did not 'petition' anybody in any form. I did not ask anybody to sign anything.

I did make a small transcript extract from the disciplinary hearing available for others' information. They could draw their own conclusions about what was going on.

I did claim complete innocence of the allegations in the oral warning, but the phrase 'complaints of victimisation' is the Respondent's phrase. To me it feels like I had accepted victimisation from management as part of the job, ever since I was physically abused by the manager in front of witnesses 4 years ago at the very start of the project and that at this point I had decided I would not be her "victim" any longer. This issue formed the substance of the exchange with the manager requested before the disciplinary process was allowed to proceed (as evidenced in the exchange of letters June 04).

I just wanted to reassure those I worked with that I was innocent and had not done anything wrong, for the benefit of our working relationships.

I did have a problem with manipulation of the process I was being subjected to, but I did not feel I was the victim of any particular individual at that time. I expected the process would be allowed to run its due

course and only wanted those responsible to be able to make an informed decision.

9. This is pure fantasy, not only is it not witnessed or evidenced but these 'numerous complaints in front of volunteers and learners' just never happened.

'Intolerable' was my response to the manager's request for a meeting but refusal to tell me what it was about. I projected my voice because she just walked away when I was trying to talk to her, and I wanted her to hear my comment on her refusal to communicate.

I do not remember tearing anything up. I thought this bit was withdrawn from the revised 8 allegations.

10. I did not 'bully and harangue' people into 'acquiescing' that I was being 'victimised'. I can evidence the exact opposite. What was I 'requesting support' for?

The Respondent witnessed nothing directly and have no evidence for their interpretation. This is based on paranoia, not fact.

11. I accepted but was not told what / why / where / when

12. Told to stop doing something I was not doing.

"Bullying" is a serious allegation which was not mentioned at the time nor in the 8 allegations used as grounds for dismissal.

I did not mention 'human rights'.

What is 'reasonable' about asking me to "stop talking about what is happening for you, Richard"?

Tape recording confirms the above.

13. The course would not have been 'as usual', due to the absence of the tutor. I formed my decision in communication with all the students, and with their collusion and support.

14. The letter explained why I had been suspended and that the Respondent believed this also constituted grounds for dismissal.

I experienced 'requesting' as coercion, that I should either attend or be sacked.

15. This meeting was not a formal "disciplinary hearing" as is claimed.

There were not 3 impartial representatives present. Again, my 'agree'ment to an assessment was an ultimatum. I'd have been sacked if I refused. I had no idea why this was insisted upon, or what would actually be assessed.

"Short notice" involved me waiting 8 weeks, being informed of cancellation a week before the planned appointment, then waiting another 4 weeks expecting a re-appointment until the 8th December when I discovered that I had already been dismissed instead.

16. It was actually only the "intention to dismiss" in that letter. I knew they still needed to hold a formal disciplinary hearing at this point and was worried that I had in fact not yet been sacked and that they might hold back from actual sacking until they had gone through all the steps required in law.

17. We established that I had actually been sacked, then Christine and I explained some of an employer's basic legal obligations to me, such as issuing a P45. This meeting was not a 'disciplinary hearing'

18. I now think that I was deprived of my right of appeal, having already been dismissed when this was offered.

My response dated 13/12/04 was a thorough and detailed defence against their allegations. The Respondent had every chance to address this response as an appeal at our meeting on 16th Dec, but failed to do so.

I had nothing to add to my response. The Respondent even changed their allegations after receiving my response.

This decision was taken based on legal advice and the wording of it was agreed with my legal representative.

19. I think that "gross misconduct" would normally be interpreted as a single, defined action which is so heinous that the worker cannot be permitted to carry on for another minute, such as witnessed instances of violence or stealing.

20. This seems to state that the Respondent's resolve to dismiss me was such that they would have proceeded with it whether it was legal or not! Surely this declares an intention to disregard Employment Law.

21. I was not dismissed "summarily". I was suspended for 3 months during which time there was no attempt to communicate with me to discuss or try to resolve the problem.

Response to Counter-claim. I am not now and was not in possession of the books in question. To the best of my knowledge, the Respondent was actually in possession of the relevant items on 21st February 2005.

At a formal meeting on December 16th 2004, which was attended by independent witnesses and recorded by both parties, the Respondent was informed that I had already returned one box of about 25 books in November 2004 and I promised to return the remainder of those in my possession, which I was able to on the 16th February 2005, (prompted by the threat of legal action in the Small Claims Court on the 18th, if I failed to return the books by then).

At that same meeting, I explained to the Respondent that many of the books were on loan to students and that I could not be held responsible for all of the books referred to. I am unaware whether the Respondent has checked with their students about their books, but I know that many were borrowed by students on the Practical Organic Cultivation course which ran from April through September 2004 and that several were borrowed on 7th and 14th September during the first two weeks of the Organic Culture course, both of which were utterly disrupted by my suspension. I could never be held accountable for all these books.

I do not understand why this is described as a 'breach of contract'. This issue was never explained as such when I was actually under contract.

Under a long-standing, formal, reciprocal arrangement, the Organic Gardening project at Unstone Grange had benefited from the use of about 300 books, magazines and periodicals belonging to Sheffield Organic Food Initiative, which were available at Unstone and had been bought, collected and donated over the previous decade (S.O.F.I. Charity No.1076110 promoting the benefits of Organics, Biodynamics & Permaculture for Health, Education & Relief of Poverty). This arrangement was formalised as a combined lending library on the course I delivered January – April 2004, as evidenced by the mixture of titles on the lists attached.

While suspended, I still expected to return to work again as course tutor at any time, as I explained in writing to the management and trustees. I thought I should return the books at the end of my employment, but was very confused about when that actually happened, since I was informed that this was an "intention" on 30th November 2004, which was confirmed at a meeting on 16th December 2004, after which my P45 was issued, but then I was offered the chance to appeal on 9th January 2005. I still thought there might be a chance of going back to work right up to this latter date, I have since returned the balance of the books. If any more of the respondent's books should come into my possession in the future, I will make every effort to return those also.

I am sorry that I forgot to return the camera cable, which I have now done.

Request for documentation and evidence

Unstone Grange Trust

- April 2001 – present day inclusive – minutes of monthly Trustees meetings (especially 10/4/04 to 13/9/04)
- Report to and record of proceedings at the Annual General Meeting held at Unstone on 8th August 2004, including project report and UG financial statement.

Unstone Grange 'Gardening for Health' project

(also referred to as the 'Organic Gardening Training for Health' project

- Minutes of Team meetings '01-'04 inclusive (especially 4-7/04)
- Confirmation of RC's reappointment as Volunteer co-ordinator under new funding regime (Jan '04)
- RC Employment records showing attendance record and any instances of illness / sickness
- Employer's Appraisal records
- RC's Disciplinary Record
- Co-worker (AT) attendance record showing 7 weeks absence July and August 2004
- Series of six "warnings" against RC 2002-2004 and evidence that none was ever upheld following discussion and clarification
- Project report by Opportunities for Volunteering (=Volunteering England)
- Memos from manager explaining changes to employment law (from 1/10/04) and arrangements for Holiday / Sickness entitlement (August 2004)
- Copy of letter from Chair of Trust to students forbidding them to have contact with RC
- Copy of Contract with Learning and Skills Council (funder from Jan (April) 2004)

Letters from Jon North to RC

- Request to talk to manager instead of proceeding with Appeal (May 04)
- Decision of Appeal Committee, including reassurance that there was never any problem with RC's work before or after 4/5/04.

Disciplinary process

- Minutes or record of Disciplinary Hearing 14/8/04
- Copies of minutes / records/ notes from meetings 7th / 21st September and 16th December 2004

- Letter from Trustee Nigel Wallis reassuring RC that warning will be fully considered by Trustees (3/9/04)
- Copy of letter prepared for 7/8/04 meeting
- Copies of correspondence with National Health Service Occupational Health Department
- Evidence of further attempts to obtain an Occupational Health Assessment from another source.

Evidence

- Witness Statement supposedly from DK signed by him on or about 25th August.
- DK 'wish to withdraw complaint' (1/9/04)
- Confirmation that no appointment was made following attempts to recruit replacement for RC (Jan 04)
- Detailed explanation of current course delivery including description of content.

To: Noelle Gilbert
Volunteering England

From: Richard Clare
41 b Burns Road
Sheffield S6 3GL

I am writing as per your instructions on the phone on 20th February 2005, to put a formal request in writing, under the Freedom of Information Act (if need be). I believe that as an employee at the time, I have a right to request this information.

Please could you provide for me the project report which Lynn Gillette compiled after her visit in April 2004. Namely for the Organic Gardening for Health Project which was funded by Opportunities for Volunteering from April 2001 to March 2004.

I was shocked when you told me you thought that I had not worked on the project, since I was actually instrumental in developing the gardens for six years before the funded project began and was the mainstay of actual provision and the delivery of the project throughout the 3 years of Opp.s for Vol.s funding. It was me who took all the lovely pictures and kept the diary which provided you with sufficient evidence of activity that you did not need to check up on us for the 3 funded years.

I was and still am proud of my contribution and would very much like evidence of this achievement for my Curriculum Vitae. I recall that I was told that this project was judged to be in the top 5 % of national O 4 V – funded projects. I would like to be able to show potential future employers evidence that we did so well in the first 2 years that we secured a third year's funding.

You explained that your expectation of good practice was that everyone involved in the project and the assessment visit should be shown the report. I can confirm that this was not the case. I repeatedly requested sight of the document from management who did not comply. To my knowledge participating volunteers, co-workers and the charity's trustees were not shown this information either.

I was very pleased and re-assured by how thorough Lynn's exploration of the project was and by the fact that she was prepared to criticise and make recommendations for the management of the project. To me this could explain why the report was not made available.

This enquiry is motivated by my need for evidence of my work experience and achievements for the benefit of my current and future career. I am currently studying for a PGCE and successfully delivering Organics courses on a freelance basis.

I do not wish to make a retrospective complaint to you about the quality of management on this project, but I am willing to provide further information and hard evidence if you were interested as an organisation in reviewing and improving your monitoring processes to guarantee better practices in future.

21st February 2005

41 b Burns Road S6 3GL

Copies to:- LDC, Tricia Foster / Course tutor, Andrew Thornton

TO: Project Manager, Angela Barney

It has come to my attention that you have proceeded to deliver a course.

I am writing to clarify the position as regards **intellectual property** . We established a mutual understanding which both parties accepted at our last meeting in December 2004, which I believe we both have taped records of and which was witnessed by independent parties.

Specifically:

1. I acknowledged that as the registered learning centre, Unstone Grange has the right to use the outline **structure** of the 'Organic Culture and Cultivation' learning programme as written by me and registered with North-East Midlands Open College Network for the start of delivery in January 2004.

2. I was reassured that you understood and accepted my request that you would not use anything that was my personal and private property. You have now complied with my request to return a digital copy of all the information you deemed to be my property and presumably deleted this data from your computer system as agreed. These copies now constitute evidence of what you consider to be my intellectual property.

This letter is a formal request for reassurance that you have abided by our agreement and are not using any of my intellectual property in the current course delivery. By which I mean the information handouts and leaflets which formed the majority of the **content** of the Theory of Organic Cultivation course. This information was authored by myself over a period of more than 15 years, from 1988 to 2003, when I was not employed by your organisation as a tutor.

I wish to make it clear that, as the author of this material, I refuse permission for any of my intellectual property to be used in any of your activities.

Neither myself nor Sheffield Organic Food Initiative (a registered charity and nominal copyright holder of some of the relevant information) have received any request to use, license or otherwise copy and distribute any of this material.

I have taken the liberty of contacting Tricia Foster so the NEMOCN and the Consortium are aware of this situation and requested their policy on protecting intellectual property.

I hope you can put my mind at rest, by replying with your confirmation that my intellectual property is not being used against my will.