



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant **Respondent**
Mr A Mitchell AND South Western Ambulance Service NHS Foundation Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin **ON** 26, 27, 28, 29 and 30 June 2017

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person
For the Respondent: Mr N Caiden of Counsel

JUDGMENT

The judgment of the tribunal is that the claimant's unfair dismissal claim is dismissed.

REASONS

1. In this case the claimant Mr Alan Mitchell claims that he has been unfairly dismissed. The respondent contends that the reason for the dismissal was gross misconduct, and that the dismissal was fair.
2. I have heard from the claimant. I was also asked to consider a statement from Mr Chris Nelson on behalf of the claimant, but I can only attach limited weight to this because he was not here to be questioned on this evidence. I have heard from Mr Russell Cooke, Mr Paul Cleeland-Smith and Mrs Emma Wood on behalf of the respondent. I also accepted a statement from Mr Christopher Mann on behalf of the respondent which the claimant did not seek to challenge.
3. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The respondent is the South Western Ambulance Service NHS Foundation Trust. The respondent delivers emergency and urgent care and non-urgent patient transport services across Cornwall and the Isles of Scilly, Devon, Dorset, Somerset,

Gloucestershire, Wiltshire, Bristol, Bath, North and North East Somerset, and South Gloucestershire. The claimant was employed by the respondent from 3 December 2001. He was dismissed by reason of gross misconduct with effect from 4 May 2016. At the time of his dismissal he was a Paramedic based at the Falmouth Ambulance Station in Cornwall.

5. In April 2006 the claimant was issued with a written statement of the terms and conditions of his employment. Clause 1.3 provided: "The Trust expects all employees, whatever their job or status, to support and enhance patient care and overall service quality, and to act in a manner to justify public confidence. All employees are required to display integrity, objectivity and honesty whilst undertaking work on behalf of the Trust."
6. In addition the claimant was subject to the provisions of a number of detailed written policies and procedures. The first of these which is relevant is the respondent's Conflict of Interest Policy. Clause 1 set out its Purpose. It provides: "1.1 The sensitive and personal nature of Trust services creates a variety of circumstances in which the occurrence of a conflict of interest could have an adverse affect upon the organisation, its staff, its volunteers and its patience ... 1.3 The policy is intended to raise awareness amongst all staff on how to identify true or potential conflicts of interest and how to manage those to ensure that they continue to act in the best interests of the organisation, patients and colleagues at all times." Clause 2 sets out the Principles which include: "2.1 All staff, volunteers and patients have the right to protection from taking any action, or being affected by any action by another which may be classed as a conflict of interest ... 2.2 The professional relationships between a member of staff and a patient ... 2.3 are vital to the effective treatment of the patient ... 2.4 Staff and volunteers are therefore advised not to enter into a personal relationship with a patient for whom they are required to provide treatment ... 2.10 Employees should be aware that, even where they cannot explicitly identify a conflict of interest specific to their circumstances within this policy, they may still find themselves in breach of it if they do not consider declaration of that conflict in accordance with the guidance within this document ... 4.2 A conflict of interest refers to a situation or circumstances where a staff or volunteer member's personal relationships, assets or interests place him or her in a real, apparent or potential conflict of interest with the duties and responsibilities of his or her role, or in situations which could affect his or her judgment to the detriment of the Trust, a patient, a volunteer or a colleague ... 4.3 A personal relationship is one which overlaps a professional one and will include a family/close personal relationship ... 5.10 All employees, at all levels of the organisation, have a personal responsibility to read and comply with the requirements of this policy, alongside the Trust Code of Conduct as set out in the contractual terms of their employment ... 5.10.4 Employees should also be aware that breach of the requirements of this policy ... could result in disciplinary or capability action Taken by the Trust."
7. There is also a Code of Conduct for Trust Staff. The purpose of this Code of Conduct is explained to be the setting and maintenance of "the highest standards of conduct and integrity". Its provisions include: "1.6 Failure to meet the standards and requirements of this Code may result in disciplinary action against an employee for breach of the employment contract ... 1.8 Employees with a professional registration have an obligation to ensure they maintain the requirements of that registration and remain compliant with any relevant codes of conduct for that registration ... 3.1 Employees should observe the following principles ... be honest and act with integrity, ensuring that their conduct at work and in their personal life reflects in a positive way upon the organisation and that their actions do not have an adverse impact upon the reputation of the Trust ... Use the resources available to them in an effective, efficient and timely manner having proper regard to the best interests of the public and patients."
8. The respondent also has a detailed written Disciplinary Policy. The versions which applied during the relevant times for the purposes of this case were the December 2014 and July 2015 editions. They were identical save that in July 2015 an appendix was added on the use of social media. That amendment is not relevant for the purposes of this case. Clause 2 sets out a number of examples of serious misconduct, which includes

- at 2(c) "Actions which have the potential to harm patients and compromise the professionalism of the Trust or bring the Trust into disrepute". Clause 3 sets out a non-exhaustive list of examples of gross misconduct which are considered to be so serious as to justify summary dismissal. This list includes 3.1(c): "Dishonesty, eg theft or fraud including falsification of timesheets, qualifications, expense claims"; and 3.1(k) "Acts of misconduct as set out below where the act or omission, or the impact of it, is sufficiently serious to constitute a breach of contract". The appeal procedure provides the right of appeal against any disciplinary decision. It suggests that any appeal should normally be on one or more of the following grounds: "investigation and substantiation of issues (adequacy and sufficiency); procedural (regularity and fairness); action (unreasonable)".
9. As a registered paramedic the claimant was also subject to the professional regulation of the Health & Care Professions Council ("HCPC"). He was bound by their rules of conduct which are set out in a document entitled Standards of Conduct, Performance and Ethics. The 2012 edition included the following duties: "You must act in the best interests of service users ... you must keep high standards of personal conduct ... you must act within the limits of your knowledge skills and experience, and if necessary, refer the matter to another practitioner ... you must get informed consent to provide care or services (so far as possible) ... you must behave with honesty and integrity and make sure that your behaviour does not damage the public's confidence in you or your profession." The 2016 edition states: "1.1 You must treat service users and carers as individuals, respecting their privacy and dignity ... 1.4 You must make sure that you have consent from service users or other appropriate authority before you provide care, treatment or other services ... 1.7 You must keep your relationships with service users and carers professional ... 9.1 You must make sure that your conduct justifies the public's trust and confidence in you and your profession."
 10. The claimant has never disputed that these policies and procedures applied to him. However, he has repeatedly alleged since his dismissal that he had insufficient time to study and understand them, and/or that no guidance or support was given with regard to establishing professional boundaries, and/or that the policies were unclear as to the extent of personal and professional relationships and that this was a grey area, and/or other public bodies such as NHS trusts and education authorities provide more detailed guidance and explanation as to the extent of professional boundaries (and by inference therefore the respondent's policies were defective or unclear). I do not accept these contentions. In the first place the claimant has never denied that he was aware of the relevant policies and had seen and read them. In my judgment their provisions and requirements are clear and straightforward. In addition, the claimant was a qualified and experienced registered paramedic who was always subject to the professional regulation of the HCPC. The HCPC Standards of Conduct, Performance and Ethics provide guidance and support and also set out the conduct and standards expected of a registered paramedic. The fact that other public employers may have prepared different policies does not absolve the claimant from complying with the clear policies that have been implemented by his own employer and his own professional body. As an experienced and registered paramedic the claimant must have known that it is a fundamental principle that paramedics must not confuse the boundaries between professional assistance and personal relationships.
 11. The claimant had previously faced disciplinary proceedings for misconduct. On 24 May 2012 Mr Paul Cleeland-Smith (who gave evidence to this tribunal) had issued a four month written warning following a finding that the claimant had delayed mobilisation to a 999 call. The claimant appealed against that finding, but his appeal was rejected. The appeal officer determined that Mr Cleeland-Smith was correct in his decision, had taken into account mitigating factors, and had issued an appropriate penalty. The claimant therefore had first hand experience of disciplinary proceedings for misconduct, and the respondent's appeal procedure.
 12. The claimant's dismissal resulted from circumstances arising from his personal relationship with a woman patient, referred to as KB. The claimant attended her in a professional capacity, and has never denied that they subsequently had a personal

- relationship. There has never been any suggestion that the relationship was in any way amorous or sexual. However, KB was a vulnerable patient with mental health issues, which included post traumatic stress disorder and suicidal ideation.
13. On 15 July 2015 the respondent received a safeguarding referral from the relevant local authority department. KB had complained about the claimant's conduct to her Community Psychiatric Nurse. The matter was referred to the local authority and to the Police, and subsequently to the respondent. The referral stated: "What are we worried about? Alan Mitchell works as a paramedic in the Truro area. He met KB when he attended her address on two occasions in a professional capacity. KB has reported that he has pressurised to meeting up with him which she did on Friday 8th May. He tried to persuade her to allow him to come back to her but she resisted. Also was asking for relationship advice from her. He's a professional and appears to have crossed professional boundaries. Appears to be a risk to KB and potential other adults at risk ... What are they worried about? KB is concerned about further contact and that he makes her feel uncomfortable."
 14. The respondent decided to suspend the claimant pending an investigation. When the claimant returned from annual leave on 3 August 2015 he attended a suspension meeting with Mr Small, an Operations Manager, and Mr Mann who was asked to attend to provide support for the claimant. He was told that he was suspended on full pay pending an investigation into an allegation that he had behaved inappropriately towards a patient who was a vulnerable adult, and that suspension was not a punitive measure. The suspension and reasons were confirmed in writing. The claimant had since asserted that his suspension "was staged for maximum intimidation and afforded Geoff Griffin an opportunity for revenge which he took". Mr Griffin was another Operations Manager. I accept Mr Mann's unchallenged evidence to the effect that "There was nothing in this meeting that could in any way be described as having been humiliating or intimidating and, as I said earlier, Geoff was not present, and far as I am aware had no involvement in Alan's suspension", and I so find.
 15. The respondent then commenced an investigation. Mr Russell Cooke, who gave evidence to this tribunal, agreed to undertake the investigation. Because of his imminent departure on leave, a colleague Mr Taylor commenced preliminary investigations and obtained evidence of an exchange of text messages between KB and the claimant. On his return Mr Cooke discussed the matter with Mr Taylor. It seemed from the exchange of text messages that the claimant had attended KB in his capacity as a paramedic on 14 April 2015. They had exchanged telephone numbers and there were subsequently more than 300 text messages between them. There was also a concern about how the claimant had attended on KB in an ambulance, which concerns a procedure known as "Running Red". This involves circumstances in which an ambulance crew comes across a situation which requires assistance, (for example if they are flagged down in the street by a member of the public, or happen across a road accident). The ambulance crew are required to telephone the Clinical Hub, which is the telephone control centre which allocates ambulances to specific jobs, to confirm their instructions. The Clinical Hub will consider the circumstances and triage the job. They will either confirm that the crew should attend at that job (and will record them as a Running Red and being present so as not to be deployed elsewhere), or if other emergency calls have a higher priority then the crew will be required to attend the other incident (and therefore leaving the first incident in the queue to be serviced by a subsequent ambulance as soon as it is available). One key aspect is that it is up to the Clinical Hub to assess the circumstances and to deploy ambulance resources appropriately.
 16. Mr Cooke was later assisted by Mrs Healey and they continued with their preliminary investigation. They met with KB on 19 August 2015 and again on 26 August 2015. Mr Cooke also interviewed Mr Adams and Mr George, who were the colleagues who had attended KB with the claimant in the ambulance on 14 April 2015 and 17 April 2015. Mr Cooke also interviewed the claimant on 15 September 2015 in the presence of both his Welfare Officer, and Mr Hornsby his chosen trade union representative. This meeting was reconvened on 17 September 2015.

17. The claimant has criticised the respondent, and in particular Mr Cooke, and alleged that he deliberately sought to distort the investigation to the claimant's detriment. In particular the claimant alleges that KB was entirely happy with their relationship, and only complained that she felt pressurised after the event as a result of aggressive leading questions from Mr Cooke and others which had led her to that conclusion. I have no hesitation in rejecting that serious allegation as being unfounded. Mr Cooke gave evidence to this tribunal in a composed and credible manner, and this serious allegation was not even put to him by the claimant. Indeed, it can be seen from the original safeguarding report that KB had already complained about being pressurised by the claimant before either Mr Cooke or any other managers of the respondent were even aware of the complaint. In addition, the content of the text message exchanges between the claimant and KB speak for themselves.
18. There were approximately 300 text messages between the claimant and KB between 14 April 2015 and 22 June 2015. They follow the events when the claimant called upon KB whilst working in one of the respondent's ambulances on both 14 and 17 April 2015. KB was a vulnerable adult patient with mental health issues including PTSD and suicidal ideation. The text messages are too numerous to set out in this judgment, but examples include the following (and the numbering reflects the numbers of the texts in the agreed bundle).
19. [The first meeting] (14 April 2015) (1) Hi [KB] this is Alan Mitchell paramedic SWAST hoping to get a friend to talk to you if that's okay buddy (2) Hi [KB] it's Al, paramedic from last night. Just wanted to check in with you and find out how you're doing today if that's okay? Did you get much sleep in the end last night? (15 April 2015) (5) [from KB] that's so kind, thank you (6) No problem [KB]. Want to help where I can. Also I've spoken with my friend I mentioned last night who feels in an impossible position in her marriage. She is very keen to talk to you if that's okay? (16 April 2015) (16) I spoke with D [the claimant's friend] today. She's still keen to talk with you ... I hope she will get to meet you next week if that's okay (22) I really don't mind KB. I'm so grateful for the advice you provided for me. You seem to know exactly what's been happening to her. It was spooky. Spooky for her to. I also want to try and help you if I can and if that's alright with you ... I'd like to eventually introduce you into sailing. It's how I met D where she had negotiated a little freedom to try it ... (24) I want to help you partly as a return favour for the help you're offering to D and me ... please try not to feel panicked or anxious about this idea ... the last thing I want is to add to any issues you have.
20. [Second Meeting/Running Red Incident] (17 April 2015) (33) [from KB] walked out to Malpas today. I think I have too many obstacles, I have nothing. Allright to chat as wondering whether it's worth ringing the out of hours. I think I might end up overdosing tonight (34) Do you feel you need an ambulance crew? (35 and 36) [both from KB] I haven't taken anything yet I'm just exhausted with the effort required not to. I told [CPN] that I was suicidal today. The only support is to call the Samaritans. That's what I was told to do (37) I'm on a Falmouth ambulance tonight [KB]. Just picked up a young lad with a suspected broken ankle. We are gonna be taking him to Truro. My crewmate is with him. As we roll away from the hospital we could meet to you as something called a running job. As if we've been flagged down on the road. A normal procedure. We could come round and just spend some time and try and get you past this. Or you could have the knowledge as a back up if you need it (38) Is it a bit suspicious? Flagged down by me? Would it come up on their system as they know I don't go out (39) No no. The flagging down just an example. It is used when we become aware we are needed at a location so we self activate. If we're some distance away we report to dispatch and they sent the closest crew. For continuity from yesterday it might be helpful if it's me rather than a strange crew have to start afresh with your history (40) OK. Do I need to call them? I am actually getting strong urges to strangle myself (41) I'll text you from Trelliske [Truro hospital] after we drop this guy. If it gets really bad just call 999 for an ambulance otherwise I'll text you in about three quarters of an hour and will call around if you wish (47) OK if you're sure. You'll have to tell me how to explain how you knew I was

- struggling (48) Don't worry about that. I'll text you then we'll just appear. I will arrange all about the call. Don't need to ring anyone unless it's desperate and you can't wait"
21. Against this background the claimant then arranged to call on KB in the ambulance in the early hours of 17 April 2015. The transcript of the telephone call from the claimant to the respondent's Clinical Hub control centre headed "Notification of Running Red" reads as follows: "AM: we are moseying our way through town looking for some food ... we've picked up a running red for a person in an address in [XX] could you wait for details over? Control: Yes, pass the address, over - AM: ... I'm pretty sure I've been to this address two days ago actually, might be coincidence but bit of continuity there hopefully, 45-year-old female, query sort of desperate suicidal thoughts is the presenting complaint over - Control: so, sorry, how did you come across this, over? AM: ... came out of the property down onto the main street and we were passing and we've been flagged, over - Control: OK I don't have a ?? AM: Yes Yes over - Control: okay I don't have a ?? on the system but I'll put it in like this and send it through - AM: Lovely many thanks".
 22. Having created this Running Red, the claimant then attended KB with his colleague in the ambulance for a period over two hours during the early morning of 17 April 2015. During that time four other ambulances had to be allocated to deal with emergencies or other duties in West Cornwall.
 23. Following these investigations Mr Cooke prepared a Management Statement of Case ("MSOC"). His preliminary view was that the claimant had committed misconduct and he recommended that disciplinary proceedings should be commenced. The MSOC listed eight specific allegations as follows:
 24. Allegation 1: Alan has pressurised and attempted to manipulate a vulnerable mental health patient (KB). After meeting her as a patient Alan has had extensive communications with KB, outside of his professional duties including text messages, a lengthy telephone call and personal meetings. These communications were part of an attempt to make KB influence another female's behaviour for Alan's benefit." Allegation 2: During communications Alan has been dishonest with KB. Alan has deliberately misled KB regarding the care of her son when he became critically ill, and with regards to putting markers on KB's house stating she would benefit from attendance by paramedics. This dishonesty was to gain PB's confidence and friendship. Allegation 3: At times, during the period of communication, Alan has neglected KB's welfare through failing to provide appropriate care, support or referral when she has been in mental health crisis and self harming. Allegation 4: Alan has been dishonest to the Trust's Clinical Hub and falsely constructed a running red call enabling him to attend KB on 17 April 2015. This had affected the use of ambulance resources and potentially endangered patients. Allegation 5: Alan has been text messaging KB when on an emergency incident instead of attending a patient or when he is driving. Allegation 6: Alan has been dishonest during interviews and throughout the course of this investigation in attempts to present a different picture of events. Examples of this include: false representation of a friendship with another female (i.e. DR), failing to disclose he was trying to use KB to influence another person, denial of telephoning KB late at night, denial of entering her home on 8 May and the promise of helping KB but "backing off" as soon as she became ill. Allegation 7: Alan has been acting outside of his professional scope of practice; inappropriately attempting to form a mental health self help group. Alan has attempted to use vulnerable adults experiencing personal crisis to help others. There is no evidence he has any training or skills in this field to organise such self help groups. These actions have put patients and others at risk. Allegation 8: Alan has criticised the Trust and belittled other health services attempting to help KB. This has been to gain KB's confidence, friendship, reliance and obligation.
 25. By letter dated 2 December 2015 the claimant was then called to a disciplinary hearing. The same eight allegations were set out in detail and in each case it was made clear which Policy or procedure was said to have been breached, and whether this amounted to misconduct, serious misconduct, or gross misconduct. The claimant was informed that if any gross misconduct was proven then it might well result in his summary dismissal. The claimant was informed of his right to be accompanied by his chosen trade union

- representative or companion. He was also informed that it was his responsibility to arrange representation, and the attendance of any witnesses whom he might wish to call. The claimant was also sent a copy of the MSOC and relevant supporting documents.
26. The disciplinary hearing was postponed from its prospective date of 15 December 2015 because the claimant went absent on sick leave. It was reconvened on 4 March and again on 14 March 2016 following his return to work. During that time the claimant's trade union representative had requested and been sent copies of other supporting documents. It is clear that the claimant and his trade union representative had had more than sufficient opportunity to consider the nature and details of the allegations which he had to face.
 27. The claimant was aggressive and confrontational during the disciplinary hearing. He accused Mr Cooke of a lack of impartiality and bad faith. The claimant complained that Mr Cooke had previously supported the claimant's manager Mr Griffin in his decision to give the claimant a low mark in an audit for his completion of a Patient Clinical Record (PCR). Mr Cooke was unaware that it was the claimant's PCR which he was marking, and the events had had no influence on Mr Cooke's preparation of the MSOC. The claimant's confrontational and aggressive approach to Mr Cooke, added to other professional and personal concerns, resulted in Mr Cooke's subsequent absence from work through stress.
 28. In any event the disciplinary hearing was chaired by Mr Paul Cleeland-Smith. He was a Staff Officer who had had no previous involvement in the investigation and MSOC. As noted above, he had issued the claimant with a written warning in 2012, which was upheld on appeal, and his unchallenged evidence was that this event played no part in his decision in these subsequent disciplinary proceedings.
 29. The disciplinary hearing had been rescheduled for 4 March 2016. The claimant's trade union representative was Mr Nelson, and he complained that the claimant had had insufficient time to prepare, his suspension had been too long, and he challenged the impartiality of Mr Cooke and Mr Cleeland-Smith. The claimant's conduct was unpleasant and aggressive. Mr Cleeland-Smith felt it necessary to remind the claimant to behave properly and suggested to Mr Nelson that he advised the claimant about his behaviour. The meeting was postponed to 14 March 2014 to enable the respondent to consider the matters which had been raised. Mr Cleeland-Smith decided that there was no valid reason why Mr Cooke should not continue to present the MSOC, and no reason why he personally should not remain as the chair of the disciplinary panel. In addition he felt that any delay had been caused partly by the claimant's illness, and partly the difficulty in obtaining an agreed date. In addition the claimant and his chosen union representative had had ample time to consider the MSOC. Indeed, the claimant and his representative had prepared and presented a document in defence of the claimant's actions entitled "Response to Management's Statement of Case" and which ran to 70 pages.
 30. Mr Cleeland-Smith describes that meeting as "hard going" and on occasions he found it difficult to follow the arguments of both Mr Cooke and the claimant in reply. Eventually they ran out of time with the result that the disciplinary hearing was postponed and rescheduled for two days on 14 and 15 April 2016. The MSOC and the allegations which the claimant had to face remained the same.
 31. At this reconvened disciplinary hearing it became clear that the claimant and his trade union representative wished to ask questions of certain witnesses, but had failed to arrange for them to attend as they had been notified they were required to do. Nonetheless Mr Cleeland-Smith agreed to make a note of the questions which they wished to put so that he could speak to the witnesses whom the claimant had indicated could help or support him. None of them did so, and none kept their appointments for meetings or telephone conferences and the claimant was unable to adduce any witness evidence in support of his position. The claimant has since criticised the respondent for failing to provide the appropriate witness evidence. I have no hesitation in rejecting that allegation because the claimant and/or his union representative knew that it was their responsibility to call any witnesses they wished, and they failed to do so. In any event it is

- difficult to see how any such evidence could have been relevant in any way given the claimant's admissions (for which see further below).
32. During the course of the disciplinary proceedings the claimant accepted the following matters: (i) he had attended KB in his professional capacity as a paramedic on 14 April 2015; (ii) he had exchanged telephone numbers during the attendance on 14 April 2015; (iii) he had exchanged text messages with KB and met her in a personal capacity; (iv) he had passed a friend's telephone number to KB; (v) he had formed a friendship with KB; and (vi) he had attended KB in a professional capacity on 17 April 2015 following initiating a Running Red call.
 33. Mr Cleeland-Smith considered that this had put the claimant in fundamental breach of his professional standards. Paramedics are required not to have personal relationships with patients because this leads to professional boundaries becoming blurred. This in turn has the potential that patient care can be compromised, and potential to cause damage to the respondent's reputation and the public's confidence in the profession. Mr Cleeland-Smith considered this to be clear from the HCPC Standards of Conduct Performance and Ethics and the respondent's Conflict of Interest Policy and Code of Conduct.
 34. In addition, the claimant admitted that he had fabricated a false account with regard to the Running Red call. He admitted that he had given the Clinical Hub control centre a false story that he had seen somebody flagging down the ambulance from the side of the road, in order to generate the Running Red call.
 35. The claimant now attempts to suggest that he has never admitted that the Running Red call was in any way wrong or inappropriate, although he does still accept that the reason he gave to the Control Hub was "a deception". He tries now to draw a distinction between the respondent incorrectly assuming that he had admitted to a false Running Red call, and what he says is a genuine, reasonable and legitimate Running Red call, but with a minor deception with regard to the reason given.
 36. In any event Mr Cleeland-Smith concluded on the evidence before him that the claimant had falsely generated a Running Red call. He concluded that he had not given the full reason to the Clinical Hub because he knew that his actions were inappropriate. He had been dishonest with the Clinical Hub which had prevented them from assessing and then triaging the call. This would have affected the use of the respondent's resources thereby potentially endangering patients.
 37. Mr Cleeland-Smith genuinely believed that the claimant had committed gross misconduct in respect of these two core issues: first, having an inappropriate personal relationship with a vulnerable patient; and secondly, acting dishonestly in connection with the Running Red call. On the claimant's best case he had admitted the first, and partially at least admitted dishonesty in connection with the second. The respondent's belief that the claimant had committed gross misconduct was based on these grounds.
 38. Mr Cleeland-Smith considered that the MSOC had been unduly complicated because it had gone beyond these two core issues. The claimant had always stressed that he had had the best interests of KB at heart, and Mr Cleeland-Smith felt that too much emphasis has been put on the claimant's motivations by Mr Cooke's MSOC.
 39. The claimant continued to assert that insufficient guidance or support was given with regard to establishing professional boundaries, and/or that the policies were unclear as to the extent of personal and professional relationships and that this was a grey area. Mr Cleeland-Smith rejected this assertion, for the following reasons. The claimant was a qualified and experienced registered paramedic who was always subject to the professional regulation of the HCPC. The HCPC Standards of Conduct, Performance and Ethics provide guidance and support and also set out the conduct and standards expected of a registered paramedic. As an experienced and registered paramedic the claimant must have known that it is a fundamental principle that paramedics must not confuse the boundaries between professional assistance and personal relationships. Mr Cleeland-Smith concluded that it is a matter of common sense that commencing a personal relationship with a patient could create a conflict of interest, which could affect the care given, would not be in the best interests of the patient, and could be detrimental to the reputation of the respondent. He also concluded that it was incomprehensible that

- the claimant claimed to be unclear about the need to maintain professional boundaries with a patient, or that exchanging telephone numbers with her whilst on a professional call, and then commencing a personal relationship, would not confuse those boundaries. Mr Cleeland-Smith also concluded that the way in which the claimant had constructed the Running Red call clearly shows that he knew he would get into trouble if his friendship with KB was discovered, which is of course why he deceived the Clinical Hub.
40. For the record, Mr Cleeland-Smith's decision with regard to each of the allegations was as follows. Allegation 1 was partially upheld, but only to the extent that the claimant had pressurised KB to meet his friend and that he had extensive communications with her outside of his professional duties. This was held to have amounted to gross misconduct. Allegation 2 was rejected because there was insufficient evidence that the claimant's actions had been to gain KB's confidence and friendship. Allegation 3 was partially upheld to the extent that the claimant had not provided appropriate care to KB and had not safeguarded her. This had put KB at risk. However the claimant's actions had not been intentional or neglectful in this respect. Allegation 4 (manufacturing the Running Red call) was upheld as gross misconduct. Allegation 5 was not upheld because there was no evidence that the claimant was texting while providing care or driving. Allegation 6 was partially upheld but only to the extent that the claimant had provided a false statement regarding the Running Red call. To that extent it was a finding of gross misconduct, but was the same allegation as Allegation 4. Allegation 7 was not upheld for want of conclusive evidence. Allegation 8 was partially upheld to the extent that the claimant had criticised the respondent and other services inappropriately.
 41. Mr Cleeland-Smith concluded that the claimant's actions had the potential to harm patients and lead to inappropriate or substandard care; had the potential to bring the respondent into disrepute; breached the respondent's Code of Conduct Policy; were sufficiently serious to amount to a breach of contract; were contrary to the respondent's Conflict of Interest Policy; and amounted to serious breaches of contract and dishonesty, in breach of the Disciplinary Policy, and were gross misconduct pursuant to clauses 3.1(c) and 3.1 (k) in the list of definitions of gross misconduct. He considered that the claimant had fallen significantly below the expected standard and had acted in breach of his professional obligations. In addition, throughout the process the claimant failed to show any remorse for his actions, or to acknowledge any wrongdoing. Mr Cleeland-Smith felt that the continued employment of the claimant presented a risk to patients, staff, and the reputation of the respondent. He felt that he had no alternative other than to dismiss the claimant summarily for gross misconduct. Mr Cleeland-Smith's decision, and the reasons for it, were given in a detailed letter to the claimant dated 4 May 2016. He was also advised of his right to appeal.
 42. The claimant appealed by letter dated 4 May 2016. He appealed on the basis that there had been inadequate investigation and insufficient substantiation of the issues; procedural irregularities and unfairness; and unreasonable action. The claimant subsequently produced a written response to the disciplinary outcome to support his appeal, which was in excess of 200 pages.
 43. The appeal hearing was before a panel of two and was chaired by the respondent's HR Director Mrs Emma Wood, who gave evidence to this tribunal, and Mr Smart. The appeal hearing took place on 15 June 2016. The claimant was accompanied by his chosen trade union representative. The appeal was not a complete rehearing of the disciplinary hearing. The appeal hearing was a review of the decision to dismiss in the light of the points which he had raised.
 44. With regard to the investigation and substantiation of the issues, the appeal panel felt that MSOC had over complicated the core issues. It had not concentrated on the central elements of the claimant's conduct but had instead looked for the motivation for his relationship with the patient. Nonetheless the panel considered carefully and then rejected the claimant's assertions that the investigation was excessive; that it was unduly salacious; that it had been unfairly focused on the extent to which KB was vulnerable; or that KB had been unfairly coerced.

45. With regard to the alleged procedural irregularities, the panel considered the alleged delay and chronology of events. The investigation had taken four months, which it was accepted was lengthy, but given the sensitivity of the matter and the involvement of other agencies was not considered to be excessive or otherwise unreasonable. The subsequent delays had been at the claimant's request or because of his illness. There was nothing to suggest that they had had any impact on the outcome. The claimant complained that the witnesses whom he wished to question had not been present. However, it was clear from the relevant policy and the information given to the claimant that it was his responsibility to make these arrangements, which he had failed to do. Even when subsequently pursued these witnesses failed to attend to support the claimant. In any event the panel considered that they could not provide any further relevant information given the claimant's admissions. The claimant complained that he had not been provided with sufficient information or documents, and that there should be a new MSOC, with the new proceedings based on that new MSOC. Again the panel concluded that the claimant and his representative had been provided in good time with all relevant documents and policies, and given the agreed facts and admissions there was no need for a renewed process.
46. The panel also considered the extent to which the decision to dismiss had been an unreasonable action. It was clear to the panel that the claimant had accepted that he had had a personal relationship with a patient which was instigated during a visit to her in his professional capacity. The very fact that she was a patient meant that she was vulnerable, and there was added vulnerability because of her mental health issues. The claimant's conduct had resulted in KB raising concerns with another healthcare professional who was sufficiently concerned to raise a safeguarding referral. The panel concluded that none of this was in dispute and that it amounted to gross misconduct. Secondly the panel was satisfied that the claimant's actions had interfered with the care of KB and that he had acted outside the scope of his practice. This was also considered to be an act of gross misconduct. Thirdly, the claimant had admitted that he had initiated a Running Red call, and that he had deceived the Clinical Hub in relation to the reason. This was considered to be another act of gross misconduct. The panel concluded that the decision to dismiss the claimant summarily had been entirely reasonable because his actions had been wholly inappropriate, contrary to Trust policies and expectations, and his professional code, and were generally unacceptable. He had failed to acknowledge that he had done anything wrong, and had shown no remorse. They decided to reject the claimant's appeal. This decision and the reasons for it were set out in detail in a letter to the claimant dated 22 June 2016.
47. The claimant made a number of concessions and admissions during this hearing. He accepted that it was inappropriate in principle for a paramedic to have a personal relationship with a vulnerable patient without certain safeguards in place. He accepted that he did not discuss the matter with his managers or supervisors and did not seek to put any such safeguards in place. He accepted that his personal relationship with KB was inappropriate. However, he asserts that the conclusion that KB was in any way pressurised is wrong, because it clear from the text message exchange that she would not have continued with the relationship if she was not entirely happy, and no weight was given to this.
48. The claimant also made the following admissions under cross-examination: he first met KB on 14 April 2015 in his capacity as a paramedic; he exchanged telephone numbers with KB; she had a history of mental health issues including post traumatic stress disorder and suicidal ideation; she was vulnerable; more than 300 text messages were exchanged between them; there were two personal meetings between them; the second such meeting on 17 April 2015 was as a paramedic following the Running Red call; during discussions with the Clinical Hub he was dishonest in what he had said; that he stayed with KB for more than two hours on 17 April 2015; that he did not mention this personal relationship to any of his managers; that exchanging personal telephone numbers could affect the reputation of the respondent Trust; and that he crossed his professional boundaries.

49. In addition the claimant maintained his allegation of serious misconduct on the part of Mr Cooke. He alleges that KB was entirely happy with their relationship, and only complained that she felt pressurised after the event as a result of aggressive leading questions from Mr Cooke and/or others which led her to that conclusion. However it is clear from the original safeguarding report that KB had already complained about being pressurised by the claimant before either Mr Cooke or any other managers of the respondent were even aware of the complaint. In my judgment this is a serious and unfounded allegation.
50. Finally, during this hearing the claimant also conceded that he was happy for his conduct to be judged on the contents of two documents, namely his Response to the Management Statement of Case, which was presented before the disciplinary hearing, and which ran to 70 pages, and secondly the document which he presented to the appeal panel, in response to the decision to dismiss him, and which ran to over 200 pages. It is clear however that these documents were fully taken into account by the relevant decision makers both at the dismissal and appeal stages. Although the claimant now says he is content to be judged on these documents, that is in part at least effectively what happened, but he still disputes the outcome.
51. Having established the above facts, I now apply the law.
52. The reason for the dismissal was conduct which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 ("the Act").
53. I have considered section 98 (4) of the Act which provides "... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".
54. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").
55. I have considered the cases of Post Office v Foley, HSBC Bank Plc (formerly Midland Bank plc) v Madden [2000] IRLR 827 CA; British Home Stores Limited v Burchell [1980] ICR 303 EAT; Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT; Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR; Taylor v OCS Group Ltd [2006] ICR 1602 CA and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. The tribunal directs itself in the light of these cases as follows.
56. The starting point should always be the words of section 98(4) themselves. In applying the section the tribunal must consider the reasonableness of the employer's conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.
57. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. A helpful approach in most cases of conduct dismissal is to identify three elements (as to the first of which the burden is on the employer; as to the second and third, the burden is neutral): (i) that the employer did believe the employee to have been guilty of misconduct; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. The band of reasonable responses test applies as much to

- the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.
58. Throughout these proceedings the claimant has raised a large number of procedural and substantive complaints about the respondent's conduct, process and decision making. He summarised his position in his closing submissions and distilled his complaints into the following seven general allegations of unfairness, and each one was supported by further allegations and complaints. I now deal with each of the claimant's seven key concerns in turn.
 59. (1) I believe my employer broke their obligations to my contract of employment. They did not follow a fair and unbiased procedure through their process. Their investigation was flawed and I was prevented from questioning witnesses.
 60. I find this allegation to be wholly unsupported and I reject it. The respondent was first alerted to the claimant's misconduct by independent third parties through a safeguarding referral. The respondent was required to investigate thoroughly, and was entitled contractually to suspend the claimant on full pay, which it did. The reasons for the suspension were explained in a reasonable and sensitive manner. There was then a full investigation during which all relevant personnel were interviewed, and which involved an investigation meeting with the claimant, a full disciplinary hearing, and an appeal hearing. The claimant was fully aware throughout this process of the allegations which he had to face, and the fact that they were of a serious nature and might result in his dismissal. He was accompanied by his chosen trade union representative throughout. On occasions the proceedings were postponed at his request. The claimant had been provided with all the relevant documents, policies and information. He was able to state his case fully in response to the allegations against him. His responses and his detailed documents in response to the allegations were considered in full. It is simply not true that the claimant was prevented from questioning witnesses. He was able to question the respondent's witnesses. He was aware of the requirement to make arrangements for his own witnesses, and failed to do so. The decision-makers at the disciplinary and appeal levels were unbiased and independent of the earlier investigation and decisions. Although there was a delay of four months during the investigation process, it was a sensitive matter involving other agencies and there was no delay which could have been said to have been unreasonable or unfair. The process adopted by the respondent was in accordance with its disciplinary and appeal policies. In my judgment the respondent has clearly done more than enough to satisfy the test that it had carried out as much investigation as was reasonable in the circumstances of this case.
 61. (2) I believe the actions of the investigators were inappropriate and resulted in corruption of the report and bullying of the patient and staff witnesses, particularly Steve Williams.
 62. In my judgment there is simply no evidence to suggest that the behaviour of the investigators was in any way corrupt or inappropriate, or that KB or any other witnesses were bullied into providing false evidence. It is clear that KB gave evidence of her own volition that she had felt uncomfortable and pressurised by the claimant to her own CPN which resulted in the safeguarding referral. This was in place long before the respondent's managers even knew of the claimant's conduct. In any event it misses the point that the MSOC was not the reason for the claimant's dismissal. Rather, the claimant admitted crossing professional boundaries and deceiving the Clinical Hub controller and the respondent concluded, on the claimant's own evidence, that this amounted to gross misconduct and was sufficient to dismiss him.
 63. (3) There was inadequate guidance and training provided with regard to professional boundaries. This is despite Mrs Wood admitting in cross-examination that there were previous cases of staff being disciplined and/or dismissed for professional boundary issues. This indicated that SWAST knew they had a problem in this area.
 64. In my judgment this is another example of the claimant's conduct throughout the investigation and these proceedings in which he fails to accept the consequences of his own misconduct, and seeks to explain it or justify it by spurious means. On the one hand this head of alleged unfairness claims that there was inadequate guidance and training provided with regards to professional boundaries. On the other hand the claimant

- admitted in these proceedings that it was inappropriate for a paramedic to have a personal relationship with a vulnerable patient without certain safeguards in place, and that he failed to discuss the matter with his managers, and did not try to put any such safeguards in place. I am in no doubt that the claimant was fully aware of the various policies and procedures which required him not to cross professional boundaries in the way in which he did. It is abundantly clear from the respondent's policies, as well as his own HCPC guidance and requirements. In addition, it is a reasonable conclusion to draw from his own admission of his deception of the Clinical Hub operator that he would be in trouble if the real reason for the manufactured Running Red call was made clear. It is also clear from Mrs Wood's evidence that the respondent does not have a consistent problem with the blurring of professional boundaries, that the policies are simple and clear, and that the respondent will take necessary action where appropriate.
65. (4) During the appeal I faced allegations which I believe I was never originally charged with that of simply defending the patient. I was never allowed to present any response to this, question witnesses or put forward mitigation for consideration.
 66. This assertion of unfairness is simply untrue. The claimant was always required to face the eight specific allegations in the MSOC. The fact that Mr Cleeland-Smith chose not to uphold all of these allegations, and rejected some of them, shows that he considered them individually and carefully, and was content to focus on the core issues. These were that the claimant had admitted to having an inappropriate personal relationship with a vulnerable patient; and had admitted deceiving the Clinical Hub operator. These in short were the reasons why the claimant was dismissed for gross misconduct. This was the decision which was reviewed on the appeal. The allegations which the claimant was required to face had not changed. It is plainly untrue that the claimant was not allowed to present a response, when he did so at great length to both the disciplinary and appeal panels. He was allowed to question witnesses in accordance with the relevant procedure, and failed to call any of his own. The respondent also considered such points in mitigation as were presented by the claimant, but equally were entitled to note his aggressive and truculent attitude during the various proceedings, his very worrying failure to accept that he had done anything wrong, and his complete lack of remorse.
 67. (5) To set the matter in context it is my belief that the MSOC exacerbated the circumstances of this case in order to exploit an opportunity to dismiss me from an organisation with which I have been at odds for some time.
 68. This assertion misses the point that the respondent's investigation and consequent MSOC were prompted by the safeguarding referral from independent third parties and that the respondent was required to investigate the circumstances. There is no evidence that the respondent "exploited this opportunity to dismiss" the claimant, and no evidence, for example, that it might not have taken the same action against other employees in the same circumstances. The respondent was entitled to conclude that the claimant had committed gross misconduct, and to apply what it considered to be the appropriate disciplinary sanction.
 69. (6) The respondent has never adequately explained their thinking behind the decisions that were taken. Whilst they dropped the allegation that I manipulated the patient for my own benefit I was never allowed to discuss what the motivation would otherwise be.
 70. This assertion is also untrue. The reasons for the decisions which the respondent took by way of dismissal and rejecting the appeal were explained in detail in the letters confirming each of those decisions. It is not true that the claimant was "never allowed to discuss what the motivation would otherwise be" because the claimant was always fully aware of the allegations against him, and had every opportunity to state his case in the presence of his chosen representative, and by way of his lengthy documents which were presented to both the disciplinary hearing and the appeal.
 71. (7) Dishonesty on my part is admitted only in connection with the reason given for how I became aware that a running red call was required. Considerable mitigation has been put forward for this. The information that I was asked about by the dispatcher is not required for a running red to be successfully initiated.

72. This final point follows the assertion made by the claimant during this hearing to the effect that the respondent has misunderstood or exaggerated his admission of dishonesty concerning the Running Red call. He claims that the Running Red call was entirely genuine and justifiable, and arranged in accordance with normal accepted procedures, and that the only dishonesty to which he admits is "a deception" in his call to the Clinical Hub as to the circumstances in which it had arisen. In all other respects he asserts that the call was appropriate and justifiable, and in accordance with the respondent's accepted procedures. In the first place this misses the obvious point that even the deception to which the claimant admits is an act of dishonesty, and is therefore an act described as gross misconduct such as to justify summary dismissal in the relevant disciplinary procedure. In any event the respondent's conclusion went beyond this. The requirement to report a Running Red to the Clinical Hub is effectively a requirement to seek confirmation of instructions. The Clinical Hub will need to triage the job, and to assign ambulance resources depending upon an overall picture of the relevant circumstances in the region. Any deception in this process can obviously affect the appropriate deployment of the respondent's emergency services. Given the context of the text messages (during which the claimant had suggested to KB that his ambulance might call on her), and the claimant's clear deception as to the circumstances in which the Running Red had arisen, the respondent was plainly entitled to conclude that the claimant had deliberately manufactured a false Running Red call (in order to call on KB), and had lied to the Clinical Hub about its circumstances. He then spent more than two hours with KB during which time four other ambulances had to be dispatched in the area. The respondent was entitled to conclude that the claimant's deliberate deception could well have had an impact on the effective deployment of its emergency services. It is clear that the respondent genuinely believed that this was an act of gross misconduct, and in my judgment that belief was based on reasonable grounds.
73. In conclusion, this is an extraordinary case in which the claimant has effectively admitted gross misconduct but nonetheless gone to considerable lengths to challenge his dismissal which was the the unsurprising and natural consequence of his actions. The very length of this judgment shows the complexity of the matters raised, and the repeated allegations by the claimant that various others were to blame throughout the process in an attempt to assert that he was unfairly treated. As it happens, the law is straightforward, and so is the evidence against the claimant upon which the respondent's decision was based.
74. In the first place, for the reasons set out above, there was a full and fair disciplinary process. This was prompted by a safeguarding referral by independent third parties. The claimant was aware throughout the process of the allegations which he had to face, he was aware that they might result in his dismissal, and he was entitled to state his case in detail against those allegations in the presence of his chosen trade union representative. There was suspension on full pay; a detailed investigation; a full disciplinary process; and a further review on appeal. At each stage the managers involved were independent of the previous stages. The claimant had been entitled to question the respondent's witnesses, and failed to rely on any of his own. The procedures were in accordance with the respondent's own policies and procedures, in accordance with the ACAS Code, and in accordance with the normally accepted concepts of reasonable industrial relations. The overall investigation was full, fair and reasonable, and it is clear that the respondent carried out as much investigation as was reasonable in the circumstances of the case.
75. Secondly, it is clear that the respondent genuinely believed that the claimant had committed gross misconduct. The evidence of Mr Cleeland-Smith and Mrs Wood to this effect was not challenged.
76. Thirdly, it is clear that the respondent's genuine belief in the claimant's gross misconduct was based on reasonable grounds, and at a time when it had carried out as much investigation as was reasonable. There were two clear examples of gross misconduct, explained in detail above. In short they were as follows. First the claimant had formed a personal relationship with a patient who was vulnerable with mental health issues. The claimant admitted that he had done so. It was in clear breach of various policies and the

- claimant's own professional guidelines, and potentially compromised the health and well-being of the patient, and risked reputational damage to the respondent. Secondly the claimant had acted dishonestly in arranging the Running Red call. The claimant admitted to "a deception". It was dishonesty and an act of gross misconduct. In addition the respondent was also entitled reasonably to conclude on the evidence before it that the Running Red call had been deliberately arranged by the claimant and based on a deception which had potentially affected the appropriate allocation of emergency resources. That too was an act of gross misconduct.
77. In conclusion, this case is no more complicated than this: the respondent genuinely believed that the claimant had committed gross misconduct; that belief was based on reasonable grounds; and that belief was held at a time when the respondent had carried out such investigation as was reasonable in all the circumstances of the case.
 78. Bearing in mind the claimant's aggressive attitude, his failure to accept that he had done anything wrong, and his failure to show any remorse, the respondent was not confident that the claimant would conduct himself appropriately in the future, and it decided that summary dismissal was the appropriate sanction.
 79. There is a band of reasonable responses to conduct of this nature within which one employer might take one view, and another might reasonably take another. It is not for the tribunal to substitute its view for that of the respondent. The function of the tribunal is to determine in the particular circumstances whether the decision to dismiss the claimant fell within the band of reasonable responses which a reasonable employer might have adopted. I find that dismissal was within the band of reasonable responses open to a reasonable employer when faced with these facts.
 80. Accordingly I find that even bearing in mind the size and administrative resources of this employer the claimant's dismissal was fair and reasonable in all the circumstances of the case, and I therefore dismiss the claimant's unfair dismissal case.
 81. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 50; a concise identification of the relevant law is at paragraphs 52 to 57; and how that law has been applied to those findings in order to decide the issues is at paragraphs 58 to 80.

Employment Judge N J Roper

Dated:- 30 June 2017

Judgment sent to Parties on

29th July 2017

For the Tribunal office