



THE EMPLOYMENT TRIBUNALS

Claimant: Mrs M Stannard
Respondent: Yell Sales Limited
Heard at: Bury St Edmunds
On: 18 September 2017
Before: Employment Judge M Warren (sitting alone)

Representation

Claimant: In Person
Respondent: Mr Charles, Counsel

RESERVED JUDGMENT

The Claimant's claim that she was unfairly dismissed fails and is dismissed.

REASONS

Background

1. By a Claim Form dated 22 May 2017, Mrs Stannard brings a claim of unfair dismissal arising out of the termination of her employment as an Account Manager on 1 March 2017, when she was dismissed after some 22 years' service.

Evidence

2. I had before me a witness statement from Mrs Stannard and for the Respondent, witness statements from the Dismissing Officer, Mr Thompson and from the Appeal Officer, Mr Caldwell. I heard from each of those witnesses.

3. I also had before me a properly paginated and indexed bundle of documents, running to page number 287.
4. During an adjournment, I read the witness statements and either read or looked at, in my discretion, the documents referred to. I explained that I had not read all of the bundle, nor all of the documents referred to and that if there were important passages in the documents the parties must make sure they take me to them during the evidence.
5. I finished hearing closing submissions at 4:05 and therefore retired to give a Reserved Judgment. I indicated that I expected to have time on 19 September to deliberate and reach my conclusions, (alas that was not so) and on the morning of 19 September at 09:19, I received an email from Mr Charles, making submissions on what he thought may have been a misunderstanding arising out of questions I had asked of Mrs Stannard relating to page 54 of the bundle and whether or not she had historically met targets. I did not have time to consider the email in detail, but directed that an email should be sent to Mrs Stannard to explain that if she wished to comment, she should do so by email within the next 24 hours. I have not been provided with any response from Mrs Stannard, but as it happens, on reading Mr Charles' email in detail, I am able to confirm that there was no misunderstanding so far as I am concerned.

The Issues

6. At the outset, I clarified with the parties what the issues in the case were.
7. The Respondent says that it dismissed Mrs Stannard for her poor performance, for the potentially fair reason of, "capability". Mrs Stannard does not accept that was the reason for dismissal, she says that the real reason was that the Respondent anticipated that further down the line, it would need to reduce its head count and she was dismissed in anticipation of that.
8. Mrs Stannard says that her dismissal was procedurally unfair because the Respondent used the same Appeal Officer to hear her appeals against her first and her final written warnings.
9. Mrs Stannard says that she was treated inconsistently with the way that other employees were treated, namely Tracey Claridge, Annette Rix, Sharon Horton, Patricia Ransome and Mario Garcia. I did not permit her to rely on that ground as this was not something that she had complained about in her ET1, (nor indeed does she argue this or present any evidence on the point in her witness statement) and it is not a matter the Respondent had come here prepared to deal with.
10. Finally, Mrs Stannard says that the targets set for her, against which her performance was measured, were unfair given the territory which had been allocated to her.

The Law

11. The right not to be unfairly dismissed is contained in Section 94 of the Employment Rights Act 1996, (ERA).
12. Section 98(1) and (2) of the ERA set out five potentially fair reasons for dismissal, which include the capability or qualifications of the employee for performing work of the kind which she was employed to do.
13. If the employer is able to show the reason for dismissal was one of the potentially fair reasons set out in Section 98(1) and (2), the Tribunal must then go on to apply the test of fairness set out at Section 98(4) which reads as follows:

“Where the employer has fulfilled the requirements of subsection (1), 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.”*
14. In applying the test of fairness set out in s98(4), the tribunal must not substitute its decision as to what was the right course to adopt and in considering the reasonableness of the employer’s conduct, there will usually be a band of reasonable responses the reasonable employer could adopt and it is to that, one should have regard; a decision inside that band is fair, a decision outside that band is unfair, (Iceland Frozen Foods Limited v Jones [1983] IRLR 439).
15. The basic tenets for a fair dismissal based upon an employee’s lack of ability are that there has to be a genuine belief in the individual’s lack of ability based upon reasonable grounds, (Taylor v Alidair Ltd 1978 IRLR 82 CA) and the employee must have been given fair warning and an opportunity to improve, (Polkey v A E Dayton Services Ltd 1987 IRLR 503 HL).
16. Section 207(2) of the Trade Union & Labour Relations Act 1992 provides that any Code of Practice produced by ACAS under that Act which appears to an Employment Tribunal to be relevant shall be admissible in evidence and shall be taken into account.
17. One such code of practice is the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2009) the introduction to which makes clear that the procedures and principles therein may equally be taken to apply to situations of poor performance as well as misconduct. I have had regard to the provisions of this code in deciding the outcome of this case.

Facts

18. Mrs Stannard's employment with the Respondent commenced on 31 October 1994. She was employed as an Account Manager, covering the areas of Norwich and Colchester.
19. Mrs Stannard had two periods of maternity leave, returning from the second period in October 2000 and after that, she worked three days a week.
20. Mrs Stannard was managed by Mr Sean Thompson, (Sales Manager for East Anglia) from circa 2013. Mr Thompson was managed by Mr Caldwell, (Regional Manager for the Eastern and Home Counties).
21. The Respondent has a capability management policy, which starts at page 200. I was not taken to it.
22. Targets are set centrally every quarter by a central planning team, taking into account the environment of the individual concerned such as for example, whether the territory is rural or a city. The Accounts Manager's targets are reviewed on a weekly, bi-weekly and monthly basis.
23. The nature of the business sought by an Account Manager broadly falls into two categories; the first is known as renewals, which refers to existing customers who must be cultivated so as to procure repeat business and hopefully upsold to, so that they spend more. The second category is prospecting, which entails securing new business from new customers. In the past, the focus of targets had been on renewals. As of April 2015, the focus of the territory division became to ensure that Accounts Managers would spend 60% of their time on renewals and the remainder of their time prospecting.
24. The Respondent has a specialist team in Belfast, whose role it is to research and analyse prospects, contact them and make appointments for the Accounts Manager to attend. The Belfast team relies on information supplied to them by the Account Managers, so that the local Account Manager is expected to forward to Belfast information on possible prospects, (the example given to me was by sending them local newsletters, fliers or information on-line) and Belfast then do research and set up the contact. If an Account Manager provides no such information, that is recorded as a "NDF", (No Data Found) on the Respondent's systems. The purpose of the Belfast team is to assist Account Managers with the more difficult task of prospecting.
25. In the year April 2014 to March 2015, Mrs Stannard hit her sales target achieving 107.2% of target in Quarter 1, she missed her target in Quarter 2 by achieving 73.5%, she missed her target in Quarter 3 by achieving 92.1% and in Quarter 4, she exceeded her target by achieving 102.2% of target. Over the year, she achieved 98.1%, (see page 54).
26. In the year April 2015 to March 2016, she missed her targets in Quarters 1, 2 and 3. She exceeded her target in Quarter 4 and received a prize called a Silver Award, (see page 257).

27. In 2016, the Respondent introduced a new approach to allocating territories to its Account Managers. Instead of covering one area during a period of six months and a second area during the second six months of the year, Account Managers were allocated a single territory to cover throughout the year. The Respondent also revised the territories to reduce the number of accounts part-time Account Managers were allocated. They tended to have a similar number of renewals to full time Account Managers, which meant that they were advantaged by being able to concentrate on renewals and could concern themselves less with converting prospects in order to meet targets.
28. On 1 April 2016, Mrs Stannard became responsible for a new territory; her existing territory had been split between herself and Ms Tracy Claridge. The makeup and allocation of territories is determined centrally by a specialist department, who aim to take into account the nature of the area so as to ensure equality of opportunity amongst its Account Managers, so that a territory in a rural area will be larger geographically than a city territory, which in turn would be larger than a metropolitan territory. In the case of Mrs Stannard's new area, it was also designed to take into account that she worked part time, 3 days a week. She had been consulted about the boundaries of her new territory.
29. On 13 June of 2016, in a meeting with Mr Thompson, Mrs Stannard submitted a forecast for Quarter 1 of 2016, which was to close at the end of that month, indicating that she was likely to be £10,000 behind, or at 93% of, target. Mr Thompson wrote then to her on 14 June 2016. He reiterated that 100% of target was a minimum expectation. He pointed out that she had missed target in Quarters 1, 2 and 3 of 2015/2016. He explained that he was implementing an improvement plan, which was to run for 3 months from 13 June to 13 September, (overlapping the end of Quarter 1 and ending a couple of weeks before the end of Quarter 2). He set objectives to achieve before the end of Quarter 1 on 29 June and explained that he would set further objectives for 1 July to 13 September, once Quarter 2's targets were known. He explained that failure to achieve the objectives may lead to disciplinary action. He said that he was committed to supporting her and that he was open to any and all suggestions she may have that may help her.
30. Mrs Stannard responded to say that she was taken aback. She said that if her performance had been unsatisfactory 9 months ago, it should have been dealt with then. She wrote that she considered it unacceptable to bring into account in assessing her performance, her figures for the Quarters 1, 2 and 3 of the previous year. She also wrote:

"I understand it is my responsibility to hit my Q1 target and I know you will support me should I need it, and I am sure you know I will be doing my best to achieve it..."

I appreciate the support you have offered in working with me Sean and will strive to achieve Q1."

Mr Stannard replied:

"I am sure you would agree that in the past 12 months your performance has not met the required on target requirement. The fact that I have allowed this time to give you opportunity to turn this around I do not deem unreasonable....I am introducing these informal objectives now in order to really focus on what needs to be achieved to get back on track as soon as possible and avoid a scenario I am sure we would both rather avoid"

31. At the end of Quarter 1 2016, (30 June 2016) Mrs Stannard had missed her target for that Quarter by £20,000.
32. On 4 July 2016, Mr Thompson set as Mrs Stannard's objective, to achieve 100% of her Quarter 2, (1 July to 30 September) target. In doing so, he was giving her 3 months to improve, as compared to usual practice in the Respondent's performance management, which was to allow 30 working days, prorated for part-time employees. She achieved 83%, missing by £14,000.
33. Mr Thompson spent 24 August with Mrs Stannard, accompanying her in the field and providing her with coaching. He provided feedback in an email dated 24 August, (page 69).
34. By letter dated 7 October 2016, Mrs Stannard was invited by Mr Thompson to attend a disciplinary hearing on 18 October, in order to review the fact that she had missed her Quarter 2 target. This letter warns that disciplinary penalty may ensue, she was informed of her right to be accompanied and her figures in respect of target and achievement were clearly set out.
35. The disciplinary hearing took place on 18 October 2016. It was recorded. The transcript is in the bundle. Although I was referred to this document, I was not taken to any particular passage in it. Mrs Stannard is concerned that some comments, in which Mr Thompson had been rude, have been omitted from the transcript. However, those omitted comments, as she describes them, appear to have no bearing on the issues before me. At the end of the meeting, Mr Thompson informed Mrs Stannard that she was to be given a First Written Warning.
36. The written warning is dated 18 October 2016, (page 83). Mrs Stannard was set a target of achieving revenue of £65,070 by 7 December 2016. She was told that she would receive appointing sessions support on 19 October and 121 coaching on a date to be advised. She was told to speak to Mr Thompson if she felt that she needed any other specific training and development. Mr Thomson pointed out that she had supplied very little to Belfast but had received 11 appointments, none of which she had converted to a sale.
37. On 19 October 2016, there was a half day group training session run by Mr Thompson, attended by Mrs Stannard.

38. Mrs Stannard appealed against her First Written Warning by letter dated 22 October 2016. Her grounds of appeal were that there had been insufficient analysis of information at the hearing, relating to the division of her area between herself and her part-time colleague, Tracy Claridge. She also complained that there had been a failure to follow procedure relating to confidentiality and data protection, which are not matters raised before me. Her argument with regard to her territory was that there were greater opportunities for new business, (prospects) in the area of another part time worker, than there were in her area and that of Ms Claridge. She provided statistical evidence to support her contention. Further, she pointed out that before the territory had been divided, when it was hers alone, her previous Quarter 1 revenue target had been £158,181 whereas the combined revenue target of Mrs Stannard and Ms Claridge for the same area in the same quarter, had become £242,984.
39. On 8 November 2016, Mr Thompson spent a morning with Mrs Stannard, coaching her on sales technique. She wrote to thank him, saying that it was, "much appreciated".
40. The appeal against the First Written Warning was heard by Sales Manager Mr Brodie, on 7 November 2016. There was no transcript or formal minute of this meeting, but Mr Brodie confirmed what had been discussed and what his proposed actions were in an email dated 7 November 2016, (page 108) to which I was referred, but I was not taken to any particular passage therein. Mr Brodie had in 2011, supported Mrs Stannard in a promotion application and is likely therefore, to have approached the appeal regarding her in a favourable light. The outcome of the appeal was confirmed by letter dated 14 November 2016, (page 115). The appeal was unsuccessful. Mr Brodie said that in Mrs Stannard's previous territory, (prior to its split) she had been overallocated compared to others, given that she only worked 3 days a week. He explained to her that she should receive 30 bits of data each month from Belfast just as everyone else should and so she had an equal opportunity to exploit prospects as did someone in a different type of territory. He noted that she had received six leads from Belfast and closed none of them whereas his expectation would be a closure rate of 33%. He made observations about the lack of data being provided to Belfast and that of 90 bits of data that had been sent to her, she seemed only to have called 20.
41. Mrs Stannard missed the target set for her in her First Written Warning by £9,418. By letter dated 9 December 2016, she was therefore invited to a further disciplinary hearing on 12 December 2016. The invite informed her that she had the right to be accompanied, set out the relevant performance figures and warned her that the outcome may be disciplinary action including dismissal.
42. A transcript of the recording of the disciplinary hearing on 12 December 2016 is at page 120. Whilst I was referred to the document, I was not referred to anything particular therein. The outcome was a Final Written Warning.
43. The Final Written Warning is dated 12 December 2016 and a copy is at page 129. A new objective was set for Mrs Stannard to be achieved during the

period 13 December 2016 to 14 February 2017, a period of 18 days, in which she was to achieve a total revenue of £73,634. She was told to speak to Mr Thompson if she felt she needed any further specific training or development.

44. Mrs Stannard appealed against the Final Written Warning by letter dated 16 December 2016, (page 134). Her grounds of appeal were that there was inconsistency in the disciplinary approach being taken between team members and that she was required to work more than three days a week in order to achieve her target. She argued that there were others not achieving their targets who were not being subjected to the same disciplinary process and it was not possible to achieve the targets being set for her, without working more than three days a week.
45. Mr Brodie was again appointed to hear the appeal, which took place on 4 January 2017. Mrs Stannard did not object to Mr Brodie hearing the appeal at the time, although she does now. A transcript of the appeal hearing is at page 136. Once again, I was referred to the document but not taken to anything in particular therein. Confusingly, there is a further document in the bundle at page 151, which appears to be minutes of the appeal hearing, no one has explained to me why this is, but I assume it must be a separate set of minutes prepared by Mrs Stannard, to which she alludes at paragraph 39 of her witness statement. I was taken to a passage at page 152 where Mrs Stannard is recorded as agreeing that the business had changed and that previously 90% of her work had been renewal and that since this had changed, her targets had increased to an unachievable level.
46. The outcome of the appeal is that it was not successful, confirmed in a letter dated 13 January 2017, (page 159). Mr Brodie explained that he had investigated the allegation concerning inconsistency in treatment, that he could not provide details for reasons of confidentiality, but that he had satisfied himself that Mrs Stannard had not been treated unfairly compared to others. With regard to the complaint that it was not possible to achieve target without working more than three days, Mr Brodie recorded that Mrs Stannard had said that she had always worked more than three days a week, but that previously she had not found the targets as challenging. His view was that Mrs Stannard had the correct number of accounts for the days that she worked and the fact that she could not achieve target, even when putting in extra time, confirmed in his eyes that there was a capability issue. The appeal outcome letter also dealt with other matters Mrs Stannard had raised during the appeal hearing which I do not consider it necessary to dwell upon. I was not taken to them and they do not pertain to the issues before me in the unfair dismissal claim.
47. On 10 February 2017, (a Friday) Mr Thompson wrote by email to Mrs Stannard to warn her that there were two working days left before the end of her review and that she needed to achieve £5000 more of business to meet the objectives which had been set.
48. Mrs Stannard missed the objectives, her target had been a total income of £73,634 and she had achieved £69,700. By letter dated 20 February 2017, she was invited to attend a further disciplinary hearing on 1 March 2017. The

invitation letter sets out the statistics and informs her of the right to be accompanied. She was made aware that a possible outcome may be dismissal and that the Final Written Warning would be taken into account.

49. The disciplinary hearing took place on 1 March 2017, chaired by Mr Thompson. Minutes of that meeting appear at page 173. Once again, I have been referred to that document but I have not been taken to any particular passage in it. The outcome was that Mr Thompson took the decision that Mrs Stannard should be dismissed because of her poor performance.
50. The letter confirming that Mrs Stannard was dismissed is dated 9 March 2017, (page 192). Reference was made to the objectives set in the Final Written Warning and the statistics are set out, demonstrating that she had failed to meet those objectives. Mr Thompson goes on to set out and deal with the points in mitigation that Mrs Stannard had raised during the disciplinary hearing:
 - 50.1. She had complained that she had been given just two days to bring in £5000. Mr Thompson explained that the objectives had been made clear at the outset. She had thought that anything she had sold on 14 February would have been taken into account and had that been the case, she would only have missed target by £719. Mr Thompson said that she had been working to objectives previously and would have understood how it worked. He said that 14 February would have been the 19th day of the review period, which would have given her an extra day and that it is only possible to measure what is on something called, "CMT".
 - 50.2. She complained that the Respondent had been responsible for the cancellation of one order worth £890. Mr Thompson answered that targets are set with a tolerance for cancellations and non-renewal of accounts in mind.
 - 50.3. She complained that Christmas and some training during the review period, affected performance. Mr Thompson replied that the training day and leave over Christmas had not counted toward the 18 target days.
 - 50.4. Mrs Stannard had said that she did not believe that the targets were achievable, particularly bearing in mind the nature of her territory. Mr Thompson replied that the targets which she was set were based upon the fact that her territory is rural and a lower daily growth is therefore set as a target. He wrote, "*there are many people up and down the country working in Rural Territories that are regularly hitting target*". He also wrote, "*with regards the region last quarter saw 31 people out of 53 achieve target. Of those 31, 17 have hit every quarter ending Q3*".
 - 50.5. Mrs Stannard said that she believed her performance had been improving; when her objectives were first set she was delivering 87% and now she was delivering 95%. She said that she was also

forecasting the second best result in her team for Quarter 4. Mr Thompson replied that forecast was no guarantee of performance and he could not make a decision on that basis. He accepted there had been an improvement, but made the point that since the objectives had been set on 12 December 2016, targets for Account Managers generally, had increased but those increases has not been applied to Mrs Stannard. Had they been, he said that her deficit would have been even greater. Although 95% was an improvement, his view was that it did not demonstrate that she had the capability to achieve target on an ongoing basis.

51. Mr Thompson wrote that he had taken into account Mrs Stannard's length of service. He pointed out that over the previous year, in Quarter 1 she had achieved 85.5% of target, in Quarter 2 83.4% of target and in Quarter 3 75.2% of target. He said that demonstrated performance in decline.

52. Mrs Stannard appealed against her dismissal by letter dated 6 March 2017, (page 181):

52.1. She complained that Mr Thompson had used inaccurate information, because of the method he used for compiling his figures.

52.2. She said that during the monitoring period, she had been given additional accounts from another territory to handle.

52.3. She made reference to what she saw as a mistake in setting objectives for the last two days of the monitoring period, for which she said Mr Thompson had apologised.

52.4. She felt that given her length of service, the monitoring period should have been extended to the end of Quarter 4, giving her a further 12 working days, as she felt that her forecast was strong and she was confident of achieving by the end of that quarter.

53. The appeal against dismissal was heard by Regional Sales Manager, Mr John Caldwell, on 15 March 2017. Once again, minutes of that hearing are at page 185, I was taken to the document but not to anything in particular within the document.

54. Mr Caldwell's decision was that the dismissal should be upheld. He confirmed this in a letter dated 3 April 2017, (page 197). He dealt with the four points raised by Mrs Stannard in her appeal as follows:

54.1. He investigated the complaint about the way that sales were tracked on the Respondent's system. He concluded that the approach taken by Mr Thompson had been appropriate and that had he not done so, Mrs Stannard would have been accountable for accounts that were no longer within her ambit.

54.2. He confirmed that, having spoken to Mr Thompson, Mrs Stannard had been asked to look after five additional accounts during the monitoring

period, as she was geographically closer to those accounts. As I understand it, this arose because someone had left and there were accounts in that person's territory that needed looking after, on an interim basis. He had established from Mr Thompson that of the five accounts, Mrs Stannard had renewed three of them which had taken her 30% further forward toward her target. In respect of the two accounts which she had failed to renew, Mr Thompson had put those against himself so that they did not affect her performance statistics.

- 54.3. Mr Caldwell investigated the complaint that interpretation of the final two day warning had been confusing. He took the view that the performance objectives set out on 12 December 2016 were clear and the relevant dates clearly visible.
- 54.4. Mr Caldwell asked Mr Thompson why he had not extended the objectives deadline to the end of the quarter, in view of Mrs Stannard's optimism that she was going to meet her Quarter 4 target. He explained that in the two previous quarters, Mrs Stannard had not met her forecasts. He felt that objectives had been set over a specified period and had not been met. Mr Caldwell agreed with that approach
55. Mr Caldwell recognised Mrs Stannard's 22 years service but he felt that the process had been fair and he agreed with the outcome. The decision to dismiss was therefore upheld.
56. Mrs Stannard's case is that the real reason she was dismissed was that the Respondent wanted to reduce its headcount. I accept the evidence of Mr Thompson and Mr Caldwell and make as a finding of fact, that on the contrary, the Respondent did not intend to reduce its headcount and was anxious to avoid losing Account Managers, including Mrs Stannard, because of the difficulties encountered in recruiting and the time and expense involved in training a new recruit.

Conclusions

57. I find that the reason for dismissal was that Mr Thompson genuinely believed that Mrs Stannard lacked the ability to perform her role. The reason for dismissal was the potentially fair reason of capability.
58. As I indicated in my findings of fact, I accept the evidence of Mr Thompson and Mr Caldwell that the Respondent was not looking to reduce its headcount.
59. Having established a potentially fair reason for dismissal, the Respondent must now pass the test set out in section 98(4). I must ask myself whether the Respondent acted reasonably or unreasonably in treating capability as a reason for dismissing Mrs Stannard.
60. What I must not do, is substitute what I would have done for that of the Respondent. There is usually a range of different responses that an employer might have to a given situation, that might be regarded as reasonable. The

question is, does the Respondent's decision in this case fall within that range? It may be that I, or a different reasonable employer, might have taken the view that after 22 years' service, Mrs Stannard might have been permitted the benefit of the final review period being extended to the end of the quarter, to see if she met the quarters target, given her forecast. A different reasonable employer might have provided her with more training or more time. But it is not a question of what I might have done or what another reasonable employer would have done, it is a question of whether what this Respondent did was within the range of what a reasonable employer might do.

61. The nature of the business changed; we all know that in the modern world the paper Yellow Pages had become less and less important. The Respondent was finding other ways to provide the information service that it does to the public. This called for a change in approach to sales, which required a greater emphasis on prospecting, on finding new customers. The Respondent was entitled to change its approach and adopt its methods accordingly. The Respondent was entitled to expect its employees to also adapt accordingly.

62. The stark facts are that:

62.1. In the year 2014/2015, Mrs Stannard missed her targets in 2 quarters out of 4. For the year as a whole, she missed her target by 98.1%;

62.2. In the year 2015/2016, she missed her targets in Quarters 1, 2 and 3. She only exceeded her target in Quarter 4, and

62.3. In the year 2016/2017, she continued the pattern of missing targets, doing so in Quarters 1, 2 and 3.

63. Mrs Stannard accepted that the expectation was that targets would be met. The Respondent accepted that it was not the norm for Account Managers to hit target every consecutive month without fail, that some month's targets were not met, but when that was the case, they were usually met or exceeded in subsequent months. What the Respondent had here was a consistent pattern of missing targets.

64. Against that background, Mr Thompson did not step in and begin performance management immediately, as he might have done. He stepped in during June 2016, when it was apparent that the pattern of missing targets was going to continue. He explained to Mrs Stannard that she was failing to meet expectations, that she would need to improve. He set her clear objectives to achieve within a stipulated timeframe. He provided her with support and he provided her with training.

65. When Mrs Stannard failed to meet her objectives, only then did Mr Thompson begin the disciplinary process. He issued her with a First Written Warning which again, set clear objectives within a stipulated timeframe and made it clear that further disciplinary action was likely to ensue if the objectives were not met.

66. Having not met the objectives set out in the First Written Warning, Mr Thompson issued a Final Written Warning making it clear that Mrs Stannard was being given a final opportunity to improve her performance and meet the objectives set within the final timeframe.
67. Once again, the objectives were not met within the stipulated timeframe. At a disciplinary hearing, when Mrs Stannard well knew that dismissal was a likely outcome, Mr Thompson took the decision that she should be dismissed. After a period of three years with a history of not meeting targets and after eight months, when she knew that a failure to improve would likely lead to dismissal, Mrs Stannard was still unable to meet the Respondent's reasonable expectations of her, he was entitled to conclude that she lacked the ability to meet the Respondent's performance standards in the new era, when there was a greater emphasis on prospecting for new customers.
68. Mrs Stannard was able to appeal at each stage of the process. I see no merit in her complaint that Mr Brodie ought not to have heard both the appeal against the First Written Warning and the Final Written Warning. He appears to have been objective. He does not appear to have been biased. He does not appear to have closed his mind to Mrs Stannard's points. Indeed, he seems to have dealt with them. Equally, Mr Thompson appears to have dealt with, reasonably and rationally, the arguments put forward by Mrs Stannard at each stage. Mr Caldwell dealt also with her arguments reasonably and rationally.
69. Mrs Stannard's case as she puts it, is not in fact that she had inadequate warning or inadequate training, it is that her targets were unfair, given the nature of the territory. I am satisfied on the evidence that I have heard and seen that the Respondent had in place a fair and objective method of allocating territory to its Accounts Managers and that the territory allocated to Mrs Stannard did not place her at any greater disadvantage compared to her colleagues, in terms of the ease with which targets could be met. I was also satisfied that the Respondent had in place a fair and objective method for setting those targets and that the targets set for Mrs Stannard were no more difficult to attain in her area than it was in others.
70. I accept Mr Thompson's point that the fact Mrs Stannard consistently worked more than her contracted three days a week was sadly, indicative that there were capability issues.
71. It seems to be clear and I accept the Respondent's argument in this regard, that unfortunately, Mrs Stannard's abilities lay in cultivating existing clients, rather than in prospecting new clients. Recognising that this might be a problem for its Account Managers, the Respondent had put in place its Belfast team but unfortunately, Mrs Stannard was unable to make effective use of that facility.
72. Having heard from Mr Thompson and Mr Caldwell, I am satisfied that they acted honestly and diligently toward Mrs Stannard. They genuinely believed that she lacked the necessary capability. The decision to dismiss was taken

after fair warning of the need to improve over the course of 8 months and she had a reasonable opportunity to improve, with training and support.

73. This is a case where at the outset one is immediately struck by the fact that here we have a Claimant dismissed after 22 years' service. One asks oneself, as I asked the Respondent during the hearing, why is it that after 22 years' service, Mrs Stannard is suddenly regarded as not capable of doing her job? The answer is that the nature of the work had changed, so that there was now greater emphasis on prospecting. Furthermore, it is not a case of Mrs Stannard, "suddenly" not being capable of doing her job. It is something that emerged over the course of three years; the Respondent allowed her time to adapt before implementing performance management and then allowed her a reasonable period of time, under performance management, to try and improve.
74. I might have dealt with things differently, another employer might have dealt with things differently. Nevertheless, I find that the Respondent acted within the range of what was reasonable in the circumstances in the performance management process and in making the decision to dismiss. For these reasons, the Claimant's claim for unfair dismissal must fail and is dismissed.

Dated: 22 September 2017

Employment Judge M Warren

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE