EMPLOYMENT TRIBUNALS

Claimant: Mrs P Tummon

Respondent: NFAG Limited

Heard at: Manchester **On:** 5-9 March 2018

Before: Employment Judge Langridge
(sitting alone)

REPRESENTATION:

Claimant: Mr P Johnson, Solicitor
Respondent: Mr S Sweeney, Counsel

JUDGMENT having been sent to the parties on 5 April 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This unfair dismissal claim arose from the claimant's summary dismissal on 25 January 2017 on the grounds of gross misconduct. The claimant had been employed by the respondent fostering agency as a supervising social worker. The respondent relied on three allegations relating to breaches of confidentiality and breaches of its IT policies, which it said together or separately amounted to gross misconduct. The claimant disputed that there were any such breaches and also complained that the respondent's rules about IT use were insufficiently clear. She alleged that the respondent was looking for a reason to terminate her employment, and that the sanction of dismissal was too harsh.

2. There was a significant overlap in the circumstances of this case and the case of Mrs Collette Luty, a colleague whose unfair dismissal claim (case number 2403129/2017) for other alleged breaches of the respondent's IT policy was heard together with this claim.

3. The claimant gave evidence on her own behalf and called her husband as a witness. An agreed bundle was provided to the Tribunal. After hearing evidence relating to both claims, judgment was given orally at the end of the five day hearing.

Issues and relevant law

4. The first question for the Tribunal was to determine the reason for dismissal. The respondent, who carried the burden of proving that the reason was a potentially fair one under section 98 Employment Rights Act 1996 ('the Act'), relied on conduct under section 98(2)(b) and asserted that this was genuinely the reason for dismissal. In assessing the evidence, the Tribunal had to examine whether the facts supported the claimant's argument that there was an ulterior motive for dismissal, even though she did not specify what that motive might have been.

5. The next stage was to consider the question of fairness in accordance with section 98(4) of the Act, which requires the Tribunal to take into account equity and the substantial merits of the case, the size and administrative resources of the employer, and the circumstances of the case. Those circumstances may include, for example, issues about the consistency of treatment between individuals and the fairness of procedures.

6. The leading case on fairness in conduct cases is British Home Stores v Burchell [1978] IRLR 379 which set out three elements to consider: firstly, whether the respondent's belief in its reason for dismissal was a genuine one; secondly, whether that belief was held on reasonable grounds; and thirdly, whether the respondent had carried out a reasonable investigation. The Tribunal also took account the principles laid down in Foley v Post Office [2000] IRLR 827, as well as Sainsbury v Hitt [2003] IRLR 23, Iceland Frozen Foods v Jones [1982] IRLR 439 and the other authorities (not recited here) referred to by the parties' representatives in their submissions.

7. The Tribunal had to avoid bringing its own view of the dismissal decision into consideration, but instead had to decide whether this respondent's decision to dismiss fell within the range of reasonable responses which an employer might apply when considering the conduct in question. This range also applied to the procedures followed and the sanction itself.

8. Applying these principles to the arguments in the present case, the Tribunal had to address the following questions of law:

8.1 Was there a reasonable basis on which the respondent could conclude that the claimant was guilty of gross misconduct, as distinct from misconduct warranting a sanction other than dismissal?

8.2 Did the respondent actually believe that the claimant was guilty of gross misconduct, and was it entitled to hold such a belief on the basis of the evidence it had gathered?

8.3 When the respondent decided that dismissal should be the outcome, was it entitled reasonably to take that view, and was that sanction within the range of responses open to a reasonable employer?

Alternatively, was it a decision which no employer, acting reasonably, could have reached on the evidence?

9. The key issues of fact in this case included whether:

9.1 the claimant was (or should have been) aware of the respondent's rules and policies on the use of IT;

9.2 the respondent did enough to ensure the claimant understood those rules and policies;

9.3 there were any mitigating factors or circumstances to be taken into account;

9.4 the respondent's decision was inconsistent with the way it treated other employees in the same or similar circumstances.

Findings of fact

10. The following is not a comprehensive recital of all the evidence heard or taken into account, but rather a summary of the Tribunal's main findings so far as they are relevant to the issues in the case.

11. The respondent is a fostering agency which employs social workers to liaise with children and foster families. The requirements of such work include meeting high personal standards of conduct, safeguarding the interests of service users, and protecting the highly confidential data belonging to them. For this reason, the respondent took various measures to ensure its employees were aware of its policies and rules regarding the handling of such data.

12. The claimant began working for the respondent on 30 September 2007 as a supervisory social worker, a relatively senior position which reflected her professional experience in the field. In that capacity she was required to work to certain professional standards, not just those set by her employer but also the standards issued by the Health & Care Professions Council (HCPC). The HCPC operated a Code of Conduct regulating conduct, performance and ethics, which the claimant was familiar with and which she was required to abide by.

13. During her induction on joining the organisation the claimant was made aware of the respondent's policies on IT and computer use. On 8 January 2013 she signed a new contract of employment which included various provisions defining confidential information. This imposed upon her a duty to familiarise herself with policies, and made very clear that email and internet usage may be monitored and was for business use only.

14. Those provisions were reinforced by numerous policies which were issued or updated in the period between around January 2011 and August 2016, of which the claimant had sufficient knowledge to understand the principles set out. Without reciting the detail of those policies, they included the following rules and requirements:

- use of the IT system is for business use only;

- emails should not be used for personal use, including chit chat;
- company data must not be emailed to home or other private email addresses;
- comments with derogatory or inappropriate content should not be sent.

15. Under a former manager, Gill Guy-Edwards, a more relaxed approach had been taken to some personal use of work email addresses, but this had already changed before the claimant signed her new contract. Although the exact date was not clear from the evidence, this change appears to date from around November 2011, when the claimant purchased her own laptop and created her own personal email address. The claimant said in her evidence (without being able to identify a date), that at some point employees were instructed to stop using the IT systems for personal use, for example for the purposes of shopping. She maintained, however, that personal communications between colleagues fell into a different category. From around November 2011, in recognition of the respondent's rules, the claimant began to limit her personal use of the work email address only to interactions with colleagues, seeing this as a substitute for the workplace 'water cooler conversation'. This was valued by the claimant and those of her colleagues with whom she was on friendly terms, because they were all home workers.

16. The manager who succeeded Ms Guy-Edwards (Christine Crynch) did not use emails for personal purposes nor did she share the relaxed attitude of her predecessor about the use of IT, though other aspects of her conduct were challenged by the claimant and Mrs Luty.

17. In March 2013, shortly after signing her new contract, the claimant attended a team meeting which was followed by an IT training session led by Ian Cameron. This covered general aspects of IT usage from the perspective of protecting security. The mechanics of scanning documents – which the claimant did not understand – were not covered at the training session, but the risks associated with scanning were, as was the use of personal mailboxes. Training on the mechanics of using a scanner was not provided to the claimant at any later date, but nor did she seek advice from IT colleagues or line managers about that.

18. In around December 2014 the respondent introduced a new requirement for unannounced visit reports to be signed, following visits by social workers to the homes of foster families. Under its policy on 'Expectations of Home Workers' those reports (like other records) had to be entered onto its database within one month of the visit. That policy did not change, though for a period between around December 2014 and January 2015 some additional urgency on the entering of records was created by an instruction from Ms Crynch, by then the manager. The instruction was that social workers should follow best practice by carrying out two annual visits rather than one, and that they should also endeavour to clear a backlog of paperwork to help get the respondent ready for an Ofsted inspection.

19. On 10 June 2016 the claimant returned to work following a period of sick leave and for the first time met her new line manager, Tracy Mese. The two women had never met before but the claimant was aware that some colleagues had had issues with Ms Mese by that point. The claimant was unhappy that Ms Mese interrupted her supervision that day, but the main cause of her unhappiness was the

way Ms Mese spoke in response to finding out that the claimant had had pneumonia. The claimant felt the tone of voice in which Ms Mese replied, "Really?" suggested that the claimant was not being truthful. She decided to submit a complaint about Ms Mese to Christine Crynch, and did so by email the same day.

20. On 11 June the claimant forwarded that complaint to four social worker colleagues with whom she was on especially friendly terms. This group of five included the claimant, Mrs Luty and Jackie McMillan, whose name later arose at the time of the disciplinary investigation. The claimant's message led to a chain of emails that day ending in the claimant emailing one of the five colleagues in terms which were extremely offensive about Ms Mese, using an ill-disguised profanity (calling her a "c*nting cowbag") and commenting, "punch her for me". This email was not seen by Ms Mese or any other manager at the time but came to light during the later investigation. It is referred to in this judgment as the '11 June email'.

21. In October 2016 the claimant started using the respondent's laptop, having established by then that she should have been given the respondent's equipment rather than using her own. The respondent had no knowledge or awareness at the time that the claimant was using a home scanner, or using it in the particular manner which later came to light.

22. In November 2016 an independent investigator called Andy Whitehouse was asked by the respondent to investigate issues relating to Ms McMillan. In his report dated 11 November 2016, Mr Whitehouse advised that "it may be necessary to investigate the other supervising social workers implicated in the email … for similar breaches of policies and procedures". As a result, the claimant was suspended on 7 December. She was given a script identifying that an initial review of an email account had identified a number of concerns. This was linked to the fact that she had been in regular correspondence with a person described in that document as an ex-employee, meaning Jackie McMillan. The fact of their being in contact was not in itself described as an allegation. The scrutiny of Ms McMillan's email account was the trigger for the claimant being suspended and investigated.

23. On the same day the claimant was given a letter confirming her suspension and the reasons for it. That letter identified Allegations 1, 2, 3 and 4. Allegation 3 was later abandoned by the respondent and did not form part of the disciplinary hearing. The remaining allegations (using the respondent's labelling) which the claimant faced were as follows:

23.1 Allegation 1 – scanning confidential information relating to service users via her husband's home scanner, which was attached to his personal email account;

23.2 Allegation 2 – personal use of the work email account (without specific mention of the 11 June email);

23.3 Allegation 4 – breach of the HCPC standards in relation to Allegation 1 (expressed to be an independent point).

24. In relation to Allegation 1, the essential facts were that the claimant allowed her husband to see confidential information relating to the names of children for a

brief moment when he helped her to scan paperwork on his home scanner. Mr Tummon looked at the scanned documents in order to identify a name to help his wife identify what she was receiving. Once the document appeared on his PC as a pdf, he named each one and then emailed it from his personal email account to the claimant's work email address, typing the relevant name into the subject line. The claimant allowed her husband to see that data, albeit very briefly, and then to send it via his private email address. The pdf document created during scanning was immediately deleted by Mr Tummon, but the outgoing email to which it was attached was not deleted at the time. All of those sent emails and their attachments sat in the trash folder on Mr Tummon's home computer for about two years, during which time the information was vulnerable, for example if the computer had been stolen or the email account hacked.

25. After the initial investigation had revealed some concerns, the respondent appointed a new independent investigator, Ms Beverley Ashby, to conduct an investigation relating to the claimant's conduct. The claimant was able to participate fully in this investigation. It resulted in a report dated 19 December 2016.

26. On 28 December the claimant was invited to a disciplinary hearing. The allegations were framed in that letter in broadly the same terms as the suspension letter. Allegation 2 was not amended to refer explicitly to the content of the 11 June email, it being treated as subsumed within the general allegation of inappropriate personal use of email. Nevertheless, by that time the claimant was aware that the 11 June email and its contents were an area for concern, and she was ready and able to address that at the disciplinary hearing. This took place on 18 January 2107 and was chaired by the respondent's manager, Ms Bailey. The allegations were discussed in detail at the hearing and the claimant had an opportunity to present her case.

27. It is important to note that the claimant did not deny the facts of the allegations, only that they did not amount to conduct such as to warrant her dismissal, that there were mitigating factors, and that the respondent shared some of the responsibility for ensuring she understood the practicalities of protecting confidential information. The claimant has relied throughout, including at this hearing, on the fact that she did not understand the mechanics of how to scan a document.

28. On 25 January 2017 Ms Bailey wrote to the claimant with the decision to dismiss her summarily in reliance upon Allegations 1, 2 and 4. She treated Allegation 1 as misconduct but Allegation 4 as gross misconduct because she took into account the claimant's professional responsibilities as a social worker, which to her mind enhanced the gravity of the allegation. Allegation 2 was considered to be an act of gross misconduct in its own right.

29. In a letter dated 31 January 2017 the claimant exercised her right of appeal, setting out numerous grounds. The overarching ground of appeal was that the dismissal was harsh and unfair and there had been breaches in procedure. Particular points mentioned were the lack of training in IT, and the fact that breaches of confidentiality occurred regularly by accident and through ignorance – although no details of those were provided. The claimant said that Ms Crynch had sent a personally and professionally insulting and offensive email to Judith Fletcher, a

freelance assessor. The claimant had never seen this email but had been told about it by Mrs Luty. It was alleged, though not pursued here at the Tribunal hearing, that Ms Bailey was not impartial in chairing the hearing. Questions were raised in the grounds of appeal about what had triggered the launch of the investigation, as the claimant had a perception that it was due to her being in contact with Ms McMillan after the latter's employment ended.

30. A further ground of appeal was that others had not been disciplined. Those others were the colleagues involved in the email thread on 11 June 2016. Of that group of five, the claimant and Mrs Luty were investigated, disciplined and dismissed. Ms McMillan had resigned before any disciplinary process could be completed. This left two remaining colleagues. They were not dealt with formally through a disciplinary process, though they were spoken to informally. The reason for that difference in treatment was that the respondent felt them to be passive participants in the email exchanges, as recipients of the messages in question. They had not committed any acts which were comparable to the claimant's.

31. The claimant's appeal hearing took place on 9 March 2017 before a director of the respondent, Liz Cowling, who wrote on 24 March with a detailed letter giving the outcome. Mrs Cowling combined Allegations 1 and 4 as a single allegation amounting, in her view, to gross misconduct. She felt that Allegation 2 also amounted to gross misconduct. She upheld the decision to dismiss. Referring to other colleagues' cases, Mrs Cowling did not halt the claimant's appeal in order to look into the point, but said appropriate action would be taken with others on a case by case basis.

32. Mrs Cowling's decision took account of everything the claimant put forward in support of her appeal, but for the detailed reasons set out in her letter she rejected those explanations.

Conclusions

33. The context in which these allegations arose is an important feature of the case and has been taken into consideration by the Tribunal as part of the circumstances of the case, in accordance with s.98(4) of the Act.

34. The claimant is an experienced social worker with knowledge and awareness of professional standards and also knowledge and awareness of the respondent's policies on confidential information and the use of IT. It was the claimant's responsibility to follow those rules and standards and to update herself from time to time. It was the respondent's responsibility to ensure the standards were implemented in a clear and consistent manner and to provide training and support as needed. As an experienced social worker, the claimant ought also to have understood the importance of protecting highly sensitive confidential information belonging to service users, without the need for ongoing instruction or training.

35. The claimant did attend training from time to time on general aspects of IT usage, and in March 2013 she was present at a training session which followed a team meeting. Specific training on the mechanics of scanning was not provided but nor would that have changed anything. The minutes of the team meeting that day did not provide much detail about what was covered, but Ian Cameron had provided

evidence to the investigation about the topics covered in the training session. At this hearing the claimant sought to argue that a missing page from the minutes of this meeting had been deliberately withheld from the bundle. This argument was rejected, for a number of reasons. Firstly, the entire document had previously been disclosed to the claimant and so there was no withholding from her. Secondly, it was not difficult to infer that the page was originally missing from the bundle only because the reverse of a double-sided document had not been photocopied. The most important point is that the respondent was reasonably entitled to rely on the evidence obtained from Mr Cameron, that the claimant had been reminded in this relatively recent training session of the risks of scanning and using private email accounts to send confidential documents.

36. By early 2013 the claimant had been aware of the rule that information should not be sent to a personal email address and she adhered to that rule except in the case of her husband's email account. At this hearing the claimant and her husband both suggested that because he was trustworthy, this did not amount to a breach of confidentiality. Nevertheless, the claimant must have known, had she addressed her mind to it, that the practice of scanning documents to her husband's computer, to be forwarded via his personal email address, was improper and a breach of the respondent's rules as well as her professional responsibilities. Her husband, no matter how trustworthy, should not have seen even a glimpse of any confidential information, including the names of service users. The fact that neither of them thought to delete the sent emails with the documents attached also reveals a serious lack of thought and good judgement.

37. Another relevant part of the context is the poor relationship which existed between the claimant and her colleagues on the one hand (the group of five referred to above) and the respondent and some of its managers on the other. The claimant gave somewhat contradictory evidence about her views on Mrs Crynch, saying that she was quite fond of her, but nevertheless she brought Mrs Crynch's motives into question during the disciplinary proceedings. The senior managers who dealt with the disciplinary and appeal stages, whose evidence to the Tribunal was accepted, said that Mrs Crynch had not played a part in the internal proceedings. The Tribunal also accepted the respondent's explanation that the trigger for the investigation arose as a consequence of information obtained by the initial Whitehouse investigation and not by virtue of any contact the claimant had had with Ms McMillan. The claimant's immediate misconception about that contact nevertheless played a part in how she responded to the allegations. The claimant saw a conspiracy where there was none.

38. The claimant's poor view of management had a direct bearing on the email exchanges on 11 June 2016. Such personal messages were in themselves a breach of the respondent's email and internet policy, as the claimant well knew. This formed the basis of Allegation 2. The respondent was concerned, as it was entitled to be, about both the personal use of its email accounts and also the content of the 11 June email. For the claimant to reveal details of her complaint against Ms Mese, a newly-appointed manager, to colleagues was an error of judgement on her part. Ms Mese and the respondent had a right to protect the confidentiality of that complaint, which may or may not have been well-founded. Disclosing it to the claimant's peers meant that their relationship with and opinion of Ms Mese was vulnerable to being impaired, with potentially damaging consequences for the respondent.

39. On the claimant's behalf Mr Johnson submitted that to swear at a manager may be culpable, whereas to swear about them in private, and not in their hearing, was not. The Tribunal did not accept this argument. It might be the case that employees in any workplace privately complain to each other or even swear about their managers, but they run the risk of being accidentally overheard. If so, they may expect to face disciplinary consequences. Here, using the respondent's email account for such 'chit-chat' was in itself a direct breach of the email and internet policy as well as referring to a manager in extremely offensive terms. The 11 June email might not have been intended to be seen by managers, but such behaviour runs the risk that this will happen. The policy made clear that emails may be monitored, reinforcing the point that personal use of company emails carried no expectation of privacy.

40. A common thread relating to both allegations is that the claimant did not believe any actual harm was done. This does not assist her, if it was reasonable for the respondent to conclude that the risk of harm was a sufficiently serious concern as to warrant dismissal. An error of judgement may be forgivable to some employers, but not to others if they feel the potential consequences are too great, as recognised in Alidair v Taylor 1978 ICR 445. This respondent's decision to treat the allegations as very serious fell within the range of reasonable responses and is not one with which the Tribunal can interfere.

41. Having examined the investigation and disciplinary process as a whole, the Tribunal concludes that the respondent adhered to expected standards of fairness. It carried out an initial investigation which provided a reasonable basis on which to suspend the claimant pending further investigation. Reasons for suspension were given in writing; there were no undue delays; there was an opportunity to participate in the investigation including submitting written information. The claimant received details about the allegations and the supporting evidence in advance; she had an opportunity to review them and to prepare herself for a disciplinary hearing. At the hearing the claimant attended with a companion and had an opportunity to respond to the allegations; and finally a fair and impartial appeal was provided.

42. No serious challenge was made during the internal proceedings or here at the Tribunal as to the unfairness of the procedure. While the claimant did use that label to raise some of her grounds of appeal, the grounds were not really of that nature or quality.

43. The respondent took a conscientious approach to considering all that the claimant had to say in defending herself, and this included taking into account the potentially mitigating factors. The respondent listened to what was said about the conduct of others, which according to the claimant's case came down to three particular points. She relied on the fact that:

40.1 Mrs Crynch had sent an offensive email about Judith Fletcher, but no specific information was provided to the respondent;

40.2 Others in the group of five colleagues had not been disciplined;

40.3 Regular and accidental breaches of confidentiality were taking place, but again no detail was identified.

44. The respondent was under an obligation to act reasonably on receipt of this information. Its conduct is to be judged why what it knew or ought reasonably to have known at the time. The Tribunal's conclusion is that it was not reasonable to expect the respondent to act on the Fletcher email in the absence of any specific information about its content. A copy having been obtained during the hearing of this claim, it is worth noting (as an aside) the great contrast between how that email was described during the evidence of the claimant and Mrs Luty compared with the content and tone of the email itself, which is critical of Mrs Fletcher but not in any way abusive.

45. The role of other colleagues involved in the personal email communications (including the 16 June email) had come to light through Mr Whitehouse's initial investigation and appropriate actions were taken. The respondent correctly approached this on a case by case basis, addressing its mind to whether there were distinguishing features in the case of the two colleagues who were spoken to but not disciplined. The circumstances were not comparable, or truly parallel, so as to meet the test set out in Hadjioannou v Coral Casinos 1981 IRLR 352.

46. The third argument about consistency amounts to a generalised assertion of other breaches of confidentiality. The Tribunal does not consider that the respondent could reasonably have been expected to carry out a company-wide or even region-wide search of all IT usage by all employees before coming to its decision in the claimant's case. It was reasonable for the respondent to expect to be provided with specific information on which to justify embarking on such a broad exercise, and to proceed to make a decision about the claimant's case in the absence of that.

47. It cannot reasonably be said that this disciplinary hearing should have been paused while such other broad enquiries took place, with no way of knowing where they might lead. If the respondent discovered other breaches then it would have to make decisions on the facts of those other cases. The position might be different if the conduct of others had been examined before the claimant's disciplinary hearing, and others had been dealt with in a different way in sufficiently similar circumstances, but that is not where the facts of this case lead.

48. The Tribunal concludes that the scope and quality of the investigation was carried out to a reasonable standard, and that the respondent obtained sufficient material to support a reasonable belief in the misconduct. In reaching that view it is important not to overlook the fact that the claimant made admissions as to the central facts. She did not dispute that she scanned documents to her husband's computer, or that she used work emails for personal conversations with colleagues. Such admissions are likely to have a bearing on how far an investigation needs to explore the detailed facts.

49. The Tribunal has taken into account the fact that Ian Cameron was not interviewed further, having been interviewed by the initial investigator. This is because no reason was put forward to the respondent at the time to suggest that this was a reasonable step to take.

50. Having admitted the conduct, the claimant did challenge that it was a breach or a serious breach of the respondent's policies or her professional standards as a social worker. She argued that she should not have lost her job over the allegations.

It is not for the Tribunal to substitute its own decision as to what sanction should have been applied, but rather to consider whether the respondent's decision fell outside the range of potential responses so as to be unreasonable.

51. It is also not for the Tribunal to decide whether the claimant is actually guilty of the gross misconduct in question; only whether the respondent believed that to be the case, and whether it was reasonably entitled to hold that belief on the strength of the evidence it gathered. Mitigation was put forward, and the claimant was entitled to argue that she felt dismissal was too harsh. Whether or not the Tribunal agrees that it was harsh is immaterial, and the Tribunal must not substitute its view of what it would have done in the respondent's position.

52. Allegations 1 and 4 were correctly treated as amounting to a single allegation, by the time of the appeal hearing. Given that there was a clear breach of policies and HCPC standards, the question is whether the respondent was entitled to conclude that these allegations amounted to gross misconduct, and the Tribunal concludes that it was entitled to reach that view.

53. Allegation 2 had at first glance an appearance of being less serious. In the past, under Ms Guy-Edwards' management, there was a practice of colleagues using email to chat with each other and this appears to have been tolerated for a time. However, by November 2011 the claimant knew that this was no longer permitted. Furthermore, the email and internet policy explicitly prohibited the use of work emails for that purpose, and the claimant knew about these rules. There are some more serious features to this allegation than home-working colleagues chatting with each other by email. One is the claimant's forwarding of her complaint about Tracy Mese to her colleagues in breach of Ms Mese's right to confidentiality in relation to that complaint. This had the potential to cause harm to the relationship between colleagues and their new manager. The more serious aspect of this allegation was the sending of the extremely offensive and ill-judged 11 June email.

54. Examining all the elements of Allegation 2, the Tribunal concludes that the respondent was entitled to treat this as gross misconduct. Even if others were using email for general chit chat to replace the office 'water cooler moments', the seriousness of the offence here was clear from the abusive content of the email of 11 June. The fact that it was not intended to be read by Tracy Mese or any manager did not prevent it from having the potential to undermine the employer and employee relationship. This potential was recognised in Wilson v Racher 1974 ICR 428, where it was held that the use of "extremely bad language" "made the continuation of the relationship impossible".

55. It is one thing for an employee to be considered guilty of gross misconduct, but that does not mean that the sanction of dismissal is automatically a fair one. The sanction of summary dismissal could only be unfair under section 98(4) of the Act and the relevant case law, if no reasonable employer acting reasonably could have come to that conclusion, applying the range of reasonable responses test. In the Tribunal's judgement it cannot be said that no reasonable employer faced with the evidence in front of the respondent, including the mitigation, would have dismissed summarily. It is possible that another employer might have issued a final written warning, but this employer's decision to dismiss did fall within the band of reasonable responses. In reaching this view the Tribunal has taken into account the good faith

of the respondent's decision-makers, the importance of its values and professional standards, and the requirement that the respondent be able to place trust in its key employees. That trust includes a legitimate expectation that supervising social workers will follow its policies and procedures, adhere to professional standards, behave in a respectful way towards colleagues, exercise good judgement, and protect highly confidential information belonging to service users.

56. In conclusion, the Tribunal finds that the reason for dismissal is made out as conduct under section 98(2)(b) of the Act. While the claimant put forward her theories and suspicions about ulterior motives there was no evidence to support that. Having considered all of the circumstances of the case under section 98(4) of the Act and applying the Burchell guidelines, the Tribunal concludes that the claimant's dismissal was for gross misconduct, that the respondent acted in good faith and with a genuine belief in that misconduct, that the respondent had evidence including the claimant's own admissions to support that belief, and that the investigation carried out was reasonable.

57. For these reasons the claimant's unfair dismissal claim fails and is dismissed.

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Employment Judge Langridge

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Date 27 July 2018

REASONS SENT TO THE PARTIES ON
30 July 2018
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FOR THE TRIBUNAL OFFICE