



EMPLOYMENT TRIBUNALS

Claimant: Mrs P Prescott

Respondent: Brothers of Charity Services

Heard at: Liverpool **On:** 28-29 March & (in chambers) 4 May 2018

Before: Employment Judge Wardle

Representation

Claimant: Mr J Heath - Solicitor

Respondent: Miss J Duane - Advocate

RESERVED JUDGMENT

The claimant's complaints of unfair dismissal and wrongful dismissal are not well-founded.

REASONS

1. By her claim form the claimant complains that she was both unfairly dismissed and wrongfully dismissed contending that whilst the respondent believed that she was guilty of misconduct it did not have reasonable grounds for its belief and nor did it carry out as much investigation as was reasonable in the circumstances. She further contends that the disciplinary procedure adopted by the respondent was unfair in that it (a) decided there was a disciplinary case to answer before putting the allegations to her at an investigatory hearing (b) failed to provide the claimant with copies of all the documents relied upon by it and /or (c) failed to disclose to her exculpatory documents..
2. By its response the respondent denies the claimant was dismissed unfairly as alleged or at all averring that her dismissal for gross misconduct following a full and thorough investigation was fair and reasonable in all the circumstances. It further denies that she is entitled to any payment in respect of notice in that her conduct justified it in dismissing her summarily.

3. The Tribunal heard evidence from the claimant and on her behalf from Ms Hiral Shah, former Locality Manager. For the respondent it heard from Ms Katie Cringle, Head of Services for Thingwall and Mr Paul Jones, Head of Services for Liverpool. Each of the witnesses gave their evidence by written statements, which were supplemented by oral responses to questions posed. There was an extensive bundle of documents, which was marked "R1".
4. The parties were informed at the conclusion of the hearing that the Tribunal would be reserving its judgment. Having since had the opportunity to consider the evidence, submissions and the applicable law in chambers on 4 May 2018 the Tribunal has been able to reach conclusions on the matters requiring determination by it.
5. Having heard and considered the evidence the Tribunal found the following facts.

Facts

6. The claimant was employed by the respondent as a Locality Manager in its Liverpool/Sefton Service from 31 March 2008 until 24 March 2017 when she was summarily dismissed for gross misconduct.
7. The respondent is a charity which provides care services to adults with learning difficulties in various locations including their homes, as well as within its residential care homes. It employs over 500 people throughout the North West in services in St Helens, Knowsley, Liverpool, Sefton and Greater Manchester.
8. The claimant's role was to be responsible for the management of the care and housing support accommodation and floating support services, staff resources and budgets within her area in accordance with the respondent's policies and procedures.
9. The events leading up to the claimant's dismissal began with the respondent receiving a letter of complaint from a member of a service user's ("A") family that he was not spending enough time outside of his residing property in line with his care plan. Ms Cringle was asked to visit the location at 52 Rawcliffe Road to investigate whether there was any substance to the complaint, which she did on 24 January 2017.
10. She began her investigation by reviewing the vehicle logs against service user A's daily record, which confirmed that he was not getting out in line with the requirements set out in his care plan. In addition her investigation showed that he was not receiving the adequate 1-2-1 hours with his support worker in line with his care plan. She also noted that the vehicle and mileage logs were not in order and were not compliant with the respondent's procedures. She noticed further that there was only one member of staff on duty when there ought to have been two when both service users were at the property. When she queried this with the staff member he told her that the claimant had advised him that he would be working alone that day. She identified this as a significant compliance issue. On continuing with her compliance checks she noticed an amount of important and confidential documentation left on the kitchen and in the

staff office. She identified this manner of storage of the information as a potential breach of data protection legislation and the respondent's data protection policy.

11. She subsequently advised Sue Quayle, Regional Director of Care, of the non-compliance issues she had discovered, which demonstrated the claimant's lack of attendance at the property, of the poor cleanliness of the kitchen and that service user A was not meeting his personal outcomes in his care plan as he was not encouraged to leave the property. On 25 January 2017 Ms Quayle and Ms Cringle met with the claimant to discuss these compliance concerns. These were set out in a bullet point list that was handed to the claimant at page 459. On Ms Cringle's evidence the claimant demonstrated a clear lack of accountability for any of the compliance issues raised with her and as they were not resolved at the meeting she and the claimant agreed to meet at the property on 27 January 2017 in order for her to show the claimant the specific areas of non-compliance.
12. As arranged Ms Cringle visited the property with Jennie Smith, Administrator, on this date to discuss with the claimant the issues of non-compliance and poor cleanliness and to meet with service user A's family. In this latter regard it was Ms Cringle's evidence that the family were extremely unhappy with the claimant's approach in the meeting believing that she was not interested in the concerns they had and that she herself felt that the manner and style of the claimant during the meeting was unprofessional and unacceptable. In regard to the other purpose of the visit Ms Cringle and the claimant did a full quality monitor, during which the claimant confirmed that her checks were not being done on a regular basis but stated that the reason why some checks were not being completed was because she did not have a senior in post for this location. It was Ms Cringle's evidence that the claimant continued to demonstrate an indifferent attitude and did not accept any responsibility for the shortcomings in the location. During the visit Ms Cringle also audited each file in the location and noted a number of missing documents, which she did not believe could be put down solely to staff moving them. Rather in the absence of any stated reason she thought that they were not available because they had not been completed.
13. Following the visit Ms Cringle prepared a Quality and Compliance Report at pages 303-312 in respect of 52 Rawcliffe Road, which was provided to Ms Quayle. On feeding back to her it was agreed that visits to all of the locations under the responsibility of the claimant needed to be carried out. The claimant was advised by letter on 30 January 2017 from Debra Naden, HR Team Leader that following the recent compliance visit she was now under investigation regarding performance issues and that further compliance visits to the locations under her responsibility would be carried out, after which she would be invited to an investigatory meeting of a fact-finding nature.
14. On 31 January 2017 Ms Cringle and Ms Smith visited 61 Queens Drive and 44 Fazakerley Road to carry out compliance checks, records of which are at pages 314-316 and 317-319 respectively. On Ms Cringle's evidence these showed that there was a recurring theme of non-compliance across the claimant's service area noting that many of the service users' support

plans and outcomes had not been reviewed within the prescribed timescales. Following these visits she supplied Ms Quayle with her visit reports. She shared Ms Cringle's level of concern regarding the non-compliance issues at these properties and deemed it necessary to investigate the matter further, which saw Ms Cringle compiling an initial investigation report at pages 108-115. This listed 6 allegations as follows: (1) failure to ensure that support plans and outcomes were reviewed every six months in line with the outcome framework and the requirement laid down in the care plan (2) failure to monitor effectively the health and safety of the work areas where staff were deployed and to ensure that the appropriate agency carried out their responsibilities for maintenance, repairs and security (3) failure to ensure that regular vehicle checks were undertaken and to maintain accurate records of all expenditure and mileage (4) failure to take responsibility for the implementation of the service quality assurance procedures in line with her job description (5) failure to maintain regular contact, visits and monitoring at all locations and operations where she had responsibility and (6) failure to ensure the locations for which she had responsibility were staffed appropriately and commissioned hours were delivered accurately.

15. On 8 February 2017 in the light of the allegations levelled against the claimant she was written to by Ms Naden to inform her that she was to be suspended on pay whilst the investigation into the concerns around her performance and conduct arising from the recent compliance visit was finalised. The letter went on to say that she was required to co-operate with the respondent's investigations and that she may be required to attend for investigative interviews or disciplinary meetings. Two days later on 10 February 2017 the claimant was required to attend a disciplinary hearing to be held on 17 February 2017. Enclosed with her letter were copies of the respondent's disciplinary rules and procedure and a summary of the findings of its investigations and relevant information obtained during the course of the investigation. The letter also advised of her right to be accompanied at the hearing and that it would be conducted by Paul Jones in the company of Ms Naden.
16. Following receipt of the disciplinary hearing invitation the claimant wrote to Ms Naden on 15 February 2017 stating that with no investigation meeting having taken place in order to have enabled her to gather information needed for the disciplinary hearing she required a host of information as set out at pages 116-117 to be available for it. Later that day Ms Naden responded to say that Ms Cringle was happy to reconvene an investigation meeting with her and that it had been agreed that the meeting scheduled for 17 February 2017 would be converted to one so that she was clear on any findings from the investigation and was allowed time to respond.
17. The investigation meeting on 17 February 2017 was conducted by Ms Cringle in the company of Jack McAdam, HR Officer, as minute taker. It was Ms Cringle's intention to outline in detail each of the allegations as previously notified and to invite the claimant to respond, which she explained at the outset. However the claimant was unwilling to continue with the investigation as she had not received the documents that she had requested from Ms Naden. The meeting therefore concluded without any further discussion concerning the respondent's areas of concern.

18. On 20 February 2017 the claimant lodged a grievance at pages 133-136 expressing the belief that the organisation had created an unjust and unfair case with the intention of dismissing her unfairly. Her letter of grievance was acknowledged on 22 February 2017, when she was invited to attend a meeting to discuss her concerns the following day at 9.00 a.m. The timing of this hearing appears to have been influenced by the fact that the claimant had indicated in her letter that she was going to be out of the country for a week from 24 February 2017. The respondent's letter also advised that she would have a further opportunity to meet with Ms Cringle to raise any points she wished to discuss to enable it to address the additional concerns that had been raised that she would not discuss on 17 February 2017 at 11.00 a.m. on the same day.
19. The grievance hearing was conducted by Julie Khan, Regional Learning and Development Business Partner who had Sophie Cummings with her as a note-taker and the claimant was accompanied by Hilma Gornall. The typed notes of it are at pages 157-164. It concluded with the claimant being advised that she would have a response in writing on her return from annual leave. The outcome letter was emailed to her on 6 March 2017 at pages 217-222. The claimant had raised 15 areas of concern around the respondent's conduct of the process leading up to her being invited to attend a disciplinary hearing although there was a degree of repetition amongst them. Ms Khan's response noting this repetition dealt with the main parts of her grievance and found nothing to substantiate it. It also informed her of her right to appeal against the decision, which required the submission of written grounds of appeal to Julie Gelder, Director of HR and Workforce Development by 13 March 2017.
20. The investigation meeting proceeded at 11.20 a.m. on 23 February 2017 conducted by Ms Cringle, who was accompanied by Michael Kourellias, HR Administrator, as note-taker. According to the notes at pages 139-155 she began by explaining that she wanted firstly to give the claimant a further opportunity to respond to the original allegations and secondly to allow her to respond to new concerns which had arisen from the further compliance visits. She proceeded to go through each of the six allegations set out in the investigation report sent to the claimant on 10 February 2017.
21. The first of these related to the failure to ensure that support plans and outcomes were reviewed every six months. The claimant denied this allegation maintaining that she did review the documents and outcomes every six months, in response to which Ms Cringle pointed out that a number of documents she had audited at 52 Rawcliffe Road did not demonstrate this referring to the service user RM's Person Centred Support Plan (PCSP), which was last retyped in December 2015 and handwritten on the front May 2016 as reviewed, which should have seen a full review in November 2016, of which there was no evidence. In further regard to RM it was pointed out that no outcomes had been identified for him since April 2016 by Karen Bell. In relation to the review of his plan the claimant maintained that she had reviewed it with a social worker and that she had written 14 September 2016 on the back of the plan as the date of this review. Whilst not suggesting that a review had not been undertaken Ms Cringle pointed to the fact that there were no minutes of it and that the

document had not been updated, which meant that it was non-compliant. She also pointed out that when she visited Rawcliffe Road there was nothing written on the back of RM's PCSP.

22. She also referred to RM's Health Action Plan (HAP), which had a handwritten date of 19.4.16 as the next review, which should have been reviewed but wasn't, in response to which the claimant stated that there was no senior in post to support with the paperwork as this would be part of their role. Ms Cringle acknowledged that there was no senior in post but pointed out that it was her responsibility to ensure that the services she managed remained compliant. She moved on to ask why many of the clients had not identified or achieved any recent outcomes giving HP as an example, whose last outcome identified was "19.5.14 reviewed cinema pass", in response to which the claimant stated that HP was very sick and that it is very hard to do outcomes when he doesn't want to.
23. Ms Cringle also asked the claimant to explain why she had not completed an in-house review for all clients in December 2017 to ensure that documents remained compliant, as requested by Darren Orme, Director of Operations at a Senior Managers' meeting in November 2017, in response to which the claimant stated that there may not have been time to review every document plus the acting senior at 61 Queens Drive Faye Smith did not have any experience so she went through the documents with her.
24. The second of the allegations related to the failure to effectively monitor the health and safety of the work areas and to ensure steps for the maintenance, repairs and security of properties. This arose from the discovery during the compliance checks at all three properties (52 Rawcliffe Road, 61 Queen's Drive and 44 Fazakerley Road) that a number of health and safety documents were missing from the properties, which had gone unrecorded when completing the 4 weekly checklists and that some service certificates were out of date. Specifically referred to were concerns that on the visit on 27 January 2017 the Personal Emergency Evacuation Plans (PEEPS) for service users at Rawcliffe Road were out of date and that the Portable Appliance Testing (PAT) had expired the month before, in response to which the claimant stated that the PAT had been done but they had never received the certificate and that she had not had enough time to update the PEEPS because they had been short-staffed. Asked by Ms Cringle why so many of these mandatory documents were missing, the claimant replied that when she went through everything it was all there and that staff must have moved it before adding that if she had a senior in place (at 52 Rawcliffe Road) it would have been much easier. The claimant was also asked about a number of trip hazards in the rear garden at Rawcliffe Road, which had been there for a while, in response to which she stated that these had been reported and that she had asked staff to do this two or three times. Concerns were also raised about the fencing to the property and the lack of a lock on the gate, in response to which the claimant stated that she was unaware that the fence was broken and as regards the lock that one had been bought and that perhaps staff had taken it off to remove the bins and had not replaced it.
25. The third of the allegations related to the failure to ensure regular vehicle checks were undertaken and records of all expenditure and mileage were maintained accurately. This arose from the visit to Rawcliffe Road when

inconsistencies were discovered in the record keeping. Receipts in the finance book for the service user RM conflicted with the mileage log for his vehicle and again with his daily records. In response the claimant stated that she had been pushing with Jennie Smith and Darren Orme for a new process regarding the mileage record as staff were currently using multiple pads for recording mileage. Asked how she could effectively audit using the current system the claimant stated that she couldn't, notwithstanding that these were mandatory records to evidence mileage and journeys undertaken. Also addressed with the claimant was the fact that the mileage logs showed that at weekends RM was not using his car frequently and that he was not accessing the community regularly, in answer to which the claimant stated that this was because of the other service user's (CH) hours or sometimes their being short staffed.

26. The fourth of the allegations related to the failure to take responsibility for the implementation of the service quality assurance procedures. This arose in the context of instructions having been given by Mr Orme at senior manager meetings around compliance and the implementation of specific documentation and the findings made by Ms Cringle from her additional visits of missing and out of date documents. The concerns here were multiple. Included amongst them were (a) the lack of recent supervisions of staff at 61 Queens Drive in response to which the claimant stated that Faye Smith, the acting senior had not known how to complete supervisions (b) on call manager details were out of date or not in place in response to which the claimant stated that she had dropped the information off at the locations so was unsure where staff had put it (c) there were no cleaning rotas at the locations despite an instruction for their implementation given in October 2016 (d) red policy files contained out of date and missing policies (e) there was no structure to files with clients having several files that contained varying information (f) all documents ought to have been reviewed in December 2017 but many had not been within given timescales (g) health passports did not contain current information (h) health action plans were out of date and had large gaps in the weights of clients (i) staff at 61 Queens Drive had advised that they had looked through documents and recorded that they had been reviewed in January 2017, which work should have been undertaken by the claimant (j) dignity in care audits and preferred priorities for care were left blank in locations and not implemented, in response to which the claimant claimed that she had given them to staff but these were documents that staff were not used to completing (k) there were gaps in daily records and no clients had outcomes for January 2017 identified, which pointed to their not being audited regularly (l) the new medication files that should have been implemented across the service area were not in place and there were no procedures for checking and signing in medication and (m) there were no minutes from any client recent reviews or evidence of review requests within the files.

27. The fifth allegation related to the failure to maintain regular contact, visits and monitoring at all locations. This arose in the context of managers having been instructed that they need to ensure that they are visiting each property at least once a week and it having been noticed that the claimant was not adhering to this instruction. Asked why this was the claimant stated that she had been on annual leave from 9-20 December 2016 and that that she had had to move all PCSPs onto the new documents which

had been very time-consuming as well as being caught up with other stuff and seeing Faye (Smith). In regard to monitoring it was pointed out that none of the compliance issues uncovered had been recorded on the 4 weekly checklists and the claimant was asked why this was, in response to which she stated that she would try to fix them rather than record them and that she had asked Rose at Fazakerley to fill them in and submit them to her whilst there was no senior at the location.

28. The sixth allegation related to the failure to ensure her locations were adequately staffed. This arose in the context of Ms Cringle being informed by Colin at Rawcliffe Road on her visit on 24 January 2017 that he would be on his own for the evening shift as the claimant had told him that there was nobody to cover it, which it transpired was not an isolated incident as the sister of service user CH had subsequently in a complaint about his care mentioned that there had only been one member of staff on duty on three different weekends when she had visited him. In response the claimant stated that this was due to a lack of staff and there being no lead support worker at Rawcliffe Road for 8 months, of which Mr Orme was aware.
29. In addition to the six allegations Ms Cringle raised several further matters of concern which had come to light from ongoing compliance visits made by Lee James and Ann Adcock. The first related to a possible unsafe admission at Monville Road with a move-in date set but no review completed where the hoist service in the intended room for the potential client was out of date and where the admission would have meant a large drop in hours for one of the other clients. In response the claimant stated that nothing had been agreed. However, this conflicted with what Mr James had been told by the social worker involved with the case, who stated that all had been agreed with the claimant for the move yet no admission assessment had been undertaken. The second related to a service user H at Monville being put to bed at 6.30 p.m due to staff leaving at 7.00 p.m.. and remaining there until 9.30 a.m. when the morning staff began. In response the claimant stated that she was never told by staff that he was asleep at 6.30 p.m. and that whenever she visited he was always up at this time. The third and final concern related to the discovery that two clients H and C who had been prescribed thickener in drinks were not receiving this. In the case of the former (H) the claimant stated that there was a letter on his file off the GP and his family to the effect that he will not drink anything with thickener in it, which was incorrect as it was just from the family. In such circumstances it was pointed out that a best interests decision ought to have been taken before he withdrew from taking it. In regard to the latter (C) she stated that she was aware that he wasn't taking the thickener and that she didn't recall him to choke or anything.
30. Subsequently on 3 March 2017 Ms Cringle carried out an investigation interview with Mr Orme, the notes of which are at pages 407-409. In this she asked first of all if the claimant had made him aware that she was struggling with staffing at 52 Rawcliffe Road. He responded that she had spoken to him about staffing around the service user CH moving in and that they moved Chris Davison and Tasha Dube in to cover Des O'Connor's hours when split, which filled the gap adding that she did not

say that she was unable to cover shifts and that he had said the lead position would be looked at as part of the restructure.

31. In this latter connection Ms Cringle put to him that the claimant had claimed that she was struggling to manage without a senior at Rawcliffe and that he told her that she could not have someone acting as he had someone in mind. In answer Mr Orme denied that she had ever mentioned that she was struggling to manage and explained that when Karen Bell left in July 2016 the organisation was going through a restructure so he knew that the position would be filled as there were too many senior support workers for the available positions so short term they moved Anthony O'Toole to cover Karen's hours, meaning staffing wise they were a bit overstaffed adding that Des O'Connor then took up his post (as senior) following application and interview before leaving in mid November resulting in the claimant having 5 weeks without a senior.
32. She also put to him that the claimant had said that when CH was allocated additional hours she had told him that she did not have the staff and that he had replied that the local authority did not need to know that they had not been delivered. In response Mr Orme denied this had happened stating that he had emailed her about staff holidays and how she intended to manage them with the additional support required for CH, which was to cover the bank holidays and weekends over the Christmas and New Year period and she did not say that she did not have the staff to deliver the additional hours and that when he mentioned staffing levels she indicated that her area was overstaffed.
33. Also explored with him was the claimant's claim that following his compliance visits to Rawcliffe and 44 Fazakerley Road (on 31 October 2016) she had not received the quality assurance action plans, in response to which he confirmed that she had stating that he sat with her the next day or the next time she was on duty and went through the main issues.
34. On 8 March 2017 the claimant was emailed by Mr Kourellias with an attached letter at pages 224-225 requiring her attendance at a disciplinary hearing on 13 March 2017 to consider an allegation of gross misconduct comprising the matters that had been raised with her by Ms Cringle at the investigation hearing on 23 February 2017 following which it had been concluded that there was evidence to support each of the allegations and that a disciplinary hearing was required. Separately the claimant was sent the same day a hard copy of the invitation letter and the investigation pack at pages 226-425 by recorded delivery post.
35. On 10 March 2017 the claimant emailed Mr Kourellias requesting a significant number of documents asking that they be sent to her home by registered post and stating that once received and she had had sufficient opportunity to prepare for the hearing she would provide an appropriate date and time. He replied the same afternoon to advise that it was not felt that the information being requested was relevant to the issues at hand and that until it was understood why it was the organisation was not happy to disclose it. In the light of a further email from the claimant later that day maintaining that all the documentation she had requested was mentioned in the investigation report Ms Naden contacted Mr Jones, who was to

conduct the disciplinary hearing to ask for his comments on the claimant's request and to confirm whether he felt that the individual documents were relevant for the hearing. At this time on his evidence he had considered the investigation pack and was fully conversant with the allegations and with this knowledge he assessed the relevance of each document in turn before replying to Ms Naden on 13 March 2017 at pages 447-448 indicating in his view that all but two of the documents were irrelevant for the purposes of the disciplinary hearing.

36. On 12 March 2017 the claimant submitted a letter of appeal against the decision upon her grievance at pages 434-445, in response to which on 14 March 2017 Mr Kourellias emailed her attaching an invitation letter to an appeal hearing to be held on 16 March 2017.
37. On 15 March 2017 Mr Kourellias wrote to the claimant by registered post and email under the heading of reconvened disciplinary hearing giving her the new date of 20 March 2017. In this letter at pages 451-454 he also dealt with her request for disclosure of documentation setting out Mr Jones' reasoning in respect of those documents that were not considered relevant and enclosed the two that Mr Jones had identified as disclosable.
38. The grievance appeal hearing went ahead as planned on 16 March 2017, the notes of which are at pages 469-473. It was not upheld and this outcome was communicated to the claimant by Ms Gelder in a letter dated 23 March 2017 at pages 531-535.
39. In the meantime the claimant attended the rescheduled disciplinary hearing on 20 March 2017. She had been notified of her entitlement to representation but chose not to avail herself of this right. Mr Jones conducted the hearing and he had with him Jack McAdam, HR Officer, as a note-taker. The notes are at pages 483-503. At the start Mr Jones asked the claimant whether she had arranged for the attendance of any witnesses, in response to which she stated that she had been unable to contact anyone but that she would like to call Jennie Smith, Lee McClure and Christine Kinsey. A short adjournment was then taken to check on these witnesses' availability. All three confirmed they were available and happy to attend when required. On the hearing's` resumption Mr Jones went through the investigation pack and each allegation in turn with the claimant in order to provide her with a full opportunity to respond. She was also provided with the opportunity to call and question her three witnesses.
40. At the hearing's conclusion, which lasted over 5 hours, Mr Jones informed the claimant that a decision would not be delivered that day but would be given by post as soon as possible. On 24 March 2017 he wrote to her at pages 540-541 with the decision that her employment was to be terminated without notice for gross misconduct involving a serious breach of her obligations. His letter enclosed a disciplinary hearing report at pages 535-539 setting out his findings in support of his decision and a copy of the handwritten notes of the meeting and advised that the typed minutes would follow in due course. It also advised her of her right to appeal his decision and of the arrangements for this.
41. On 31 March 2017 the claimant wrote a letter of appeal to Ms Quayle at pages 545-565, which saw her being invited on 10 April 2017 to an appeal

hearing to be held on 19 April 2017 by Simon Buxton, Director of Greater Manchester Services in the company of Helen Ryan, Regional HR Business Partner. The hearing proceeded on this date as arranged with the claimant accompanied by Karen Bell and management having the services of Sophie Cummings as note-taker. Her notes are at pages 570-573. As with the disciplinary hearing the claimant was informed that the response would be given by letter, which saw Mr Buxton writing on 26 April 2017 at page 575-579 to inform her that he considered that the decision to dismiss her had been an appropriate one and that her appeal was therefore not upheld. This outcome concluded the respondent's internal procedures.

42. The claimant subsequently presented her claim to the Employment Tribunals on 18 August 2017 having commenced early conciliation on 22 June 2017, which was responded to by the respondent within the prescribed time-frame on 20 September 2017.

Law

43. The relevant law in relation to the complaint of unfair dismissal is contained in the Employment Rights Act 1996 (ERA). Section 94(1) provides that an employee has the right not to be unfairly dismissed by his employer.
44. Section 98(1) provides that in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason for the dismissal and, if more than one, the principal one and that it is a reason falling within section 98(2) or some other reason of a kind to justify the dismissal of an employee holding the position which the employee held. The reasons contained in section 98(2) include the conduct of the employee.
45. Section 98(4) provides that where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) 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 this shall be determined in accordance with equity and the substantial merits of the case.
46. The Tribunal also had regard to the principles laid down in *British Home Stores v Burchell* [1978] IRLR 379 and *Polkey v AE Dayton Service Limited* [1988] ICR 142 HL. In the *Burchell* case the EAT set out a three stage test in cases of dismissal for misconduct. The employer must show that he had a reasonable belief based on reasonable grounds after reasonable investigation that the employee was guilty of misconduct. He need not have conclusive proof of the employee's misconduct only a genuine and reasonable belief, reasonably tested.
47. For a dismissal to be procedurally fair in cases of misconduct it was said in *Polkey* that the procedural steps necessary in the great majority of cases of misconduct is a full investigation of the conduct and a fair hearing to hear what the employee wants to say in explanation or mitigation.

Conclusions

48. Applying the law to the facts as found the Tribunal reached the following conclusions. It considered first of all if the respondent had demonstrated a potentially fair reason for the dismissal of the claimant. The reason relied upon by it was conduct namely that the claimant was in serious breach of her obligations as a Locality Manager in the form of large-scale non-compliance across areas such as (i) the reviewing of service users' support plans and outcomes; (ii) the monitoring of health and safety; (iii) the maintenance of accurate records in respect of vehicle usage; (iv) the implementation of service quality assurance procedures; (v) the maintenance of regular visits to and monitoring of locations and (vi) the ensuring of appropriate staffing of locations.
49. The question for the Tribunal was therefore whether Mr Jones, who had taken the decision on behalf of the respondent to dismiss the claimant, entertained a reasonable suspicion amounting to a belief that the claimant by her acts or omissions was guilty of the matters of which she was accused. In this regard it was accepted by the claimant that the respondent did believe that she was guilty of misconduct but it is her case that it did not have reasonable grounds for its belief and that it did not carry out as much investigation as was reasonable in the circumstances.
50. In terms of these second and third limbs of the Burchell test the Tribunal reminded itself first of all the evidence that was before Mr Jones in respect of these non-compliance issues. Against a backdrop of a complaint being received from the family of service user A (RM) resident at Rawcliffe Road and the location being visited by Ms Cringle on 24 January 2017, which gave rise to concerns regarding mandatory record keeping, adequacy of staffing and data protection the respondent carried out a further compliance visit with the claimant in attendance on 27 January 2017 which uncovered more serious non-compliance issues and then on 31 January undertook similar visits to two other locations at 61 Queens Drive and 44 Fazakerley Road, which demonstrated a recurring theme of non-compliance and which also proved to be the case when visits were later made to the claimants' locations at Monville Road and Caldly Road. The concerns uncovered at the original three locations were grouped under the six broad headings set out above and were detailed in an initial investigation report prepared by Ms Cringle. This report subsequently formed the basis of the investigation interview carried out with the claimant on 23 February 2017, which led to the conclusion that she had a case to answer as confirmed in the second investigation report, which was expanded to take account of the additional matters arising from the Monville and Caldly visits, which had been put to the claimant at the investigation interview.
51. In regard to the six broad allegations Mr Jones found each of them to be proven. In relation to the first concerning a failure to ensure support plans and outcomes were reviewed every six months in line with the outcome framework and the requirements laid down on the care plan his finding was that the evidence within the locations of out of date reviews and a lack of outcomes and in some cases handwritten review dates having been added but without any evidence within the Person Centred Support Plan

(PCSP) of their having been undertaken showed a complete lack of reviews taking place, which he considered was supported by the lack of any updated outcomes within many of the PCSPs with the last dated outcome typically being over a year ago regarding it as highly unusual for a client's outcomes to remain unchanged during such a period and being unconvinced by the claimant's argument that no updates were necessary at the point of review.

52. In relation to the second allegation it was his finding that the claimant was in breach of her duty to monitor health and safety by failing to carry out such checks at her properties noting that there were a number of health and safety documents missing from them and that PAT test certificates were in some cases more than two years out of date, notwithstanding which she had completed her four-weekly check list at each property to say that health and safety checks and documents had been completed and were in place. He also noted that in some locations clients' Personal Emergency Evacuation Plans (PEEPs) were out of date with no review having been undertaken for over a year and that generic risk assessment documentation was blank or incomplete in some properties. In coming to this conclusion he discounted the claimant's explanation that she was waiting for the respondent's Health and Safety Manager to source certificates as in respect of some of her properties they are supplied by the Housing Association but there was no documentation in the health and safety monitoring logs to this effect and he did not accept her explanation that updated documents were elsewhere in the properties as these were not found by those visiting the properties and that if it was true she had failed to follow the correct procedure in storing them.
53. In relation to the third allegation he was satisfied that the claimant had failed both in her responsibility to ensure regular vehicle checks (in relation to RM's vehicle) were undertaken on the basis of the investigating officer finding no records to evidence that they had been carried out and also in her responsibility to maintain accurate records in respect of the vehicle's usage in the light of the discrepancies found between the mileage log, the daily records for RM and the finance records noting that the proposed changed monitoring documentation had yet to be signed off and that the claimant acknowledged that there were unresolved difficulties in this area.
54. In relation to the fourth allegation it was his finding that the claimant was in breach of her responsibility to implement the service's quality assurance procedures noting the multiple and varied issues of non-compliance discovered by the investigation such as the lack of staff supervisions, out-of-date on-call information, lack of cleaning rotas and dirty locations, out of date and missing policies, out of date food, deteriorating equipment and appliances, out of date risk assessments, incomplete and out of date health passports, out of date health action plans, gaps in daily records and the concerns around medication administration (including a lack of seizure protocols for epilepsy, no PRN forms, lack of medication audits and home-made Medicine Administration Records (MAR) sheets and failures in documentation relating to client PEG feeds), which had potentially serious consequences for clients. He further noted that these issues were against a backdrop of Mr Orme having highlighted major compliance issues at two of her locations (Rawcliffe and Fazakerley) following his visits on 31 October 2016 as documented in his Quality and Compliance Reports and

that while the claimant denied having ever received the reports Mr Orme had been clear in his evidence to the investigation that she had received them and that he had sat down with her immediately after his visits to go through the main issues. In explanation and/or mitigation of the discovered non-compliance the claimant attributed a lot of it to her not having a lead support worker in place but he did not consider that this fact relinquished her of her responsibility for compliance.

55. In relation to the fifth allegation he was satisfied that the claimant had failed to maintain regular contact with her locations noting that on 9 November 2016 Mr Orme had instructed managers that they must ensure that they are carrying out weekly visits to their properties but that the visitors' books in all her locations showed infrequent visits and that many of them were particularly short. In point of fact it was difficult to establish from the registers produced at pages 358-368, which of them related to which location but certainly from page 361 which clearly related to Rawcliffe Road it was evident that the claimant had failed to visit the property between 29 December 2016 and 16 January 2017 and then again until 25 January 2017 despite Mr Orme's instruction and the lack of a lead support worker.
56. In relation to the sixth allegation it was his finding that the claimant had failed in her responsibility to ensure that her locations were appropriately staffed noting the evidence found that family members had complained about understaffing and that support staff had been left alone on shift. Her explanation for this was that she had been understaffed for some time despite informing Mr Orme, who she claimed had told her that the local authority commissioners did not need to know that hours were not being delivered. Leaving aside the fact that such claim had been rejected by Mr Orme, Mr Jones was entitled to question why the claimant had not taken matters up with Ms Quayle, his line manager, had he have responded in the way alleged.
57. Having regard to these matters the Tribunal concluded that Mr Jones' belief that the claimant had committed the misconduct of which she was accused was genuine and that he had reasonable grounds for his belief. It also concluded that at the time he formed it there had been carried out a reasonable investigation. It did so because the documents show that the six broad allegations against the claimant formulated by Ms Cringle in her detailed investigation report, which with appendices ran to over 200 pages were thoroughly examined by means of a careful and comprehensive disciplinary hearing on 20 March 2017, at which the claimant was given the opportunity to be accompanied and to offer up whatever she wanted to say in explanation or mitigation of the charges against her following which she was provided with a reasoned decision letter and the opportunity to appeal against her dismissal, the hearing of which was conducted by Mr Buxton on 19 April 2017. in an equally careful manner and saw her receiving another reasoned letter in explanation of the non-upholding of her appeal.
58. The next question for the Tribunal was whether the respondent was reasonable or unreasonable in treating such misconduct as sufficient to justify the claimant's dismissal. In answering questions of fairness the Tribunal continued to have regard to the terms of section 98(4) ERA and it

strove not to substitute its judgment for that of the respondent. The issue for it throughout was not whether it would have done as the respondent did but whether its actions fell within the range of options reasonably open to it. Having approached the question in this way the Tribunal concluded that dismissal was a penalty that was reasonably open to the respondent as the claimant's failings over a range of matters, some more serious than others such as in respect of the health and safety of service users and medication administration in what is a highly regulated sector involving vulnerable adults could have had ramifications for the organisation in terms of its contractual arrangements with commissioners of care and could also potentially have placed service users at risk.

59. Accordingly, having concluded that a reasonable investigation had been undertaken and that allowance had been made for the claimant to say what she wanted to say in explanation or mitigation of her actions, the Tribunal was unable to say that the respondent in electing to dismiss the claimant, notwithstanding her hitherto good service and unblemished record, had acted in a way that no reasonable employer would have done.
60. The Tribunal therefore concluded that the claimant's complaint of unfair dismissal is not well-founded.
61. The Tribunal further concluded in the light of its finding that the respondent was justified in terminating the claimant's employment summarily that her complaint of wrongful dismissal is also not well-founded.

Employment Judge Wardle

Date: 31 May 2018

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

16 June 2018

FOR EMPLOYMENT TRIBUNALS