



EMPLOYMENT TRIBUNALS

Claimant: Mr. D Sumner

Respondent: Harrogate & District NHS Foundation Trust

Heard at: Leeds

On:10-11 October 2018
Deliberations 28 November 2018

Before: Employment Judge Rogerson

Representation

Claimant: Mr. A Sugarman (counsel)

Respondent: Mr. N Newman

RESERVED JUDGMENT

- 1.The complaint of unfair dismissal fails and is dismissed.
- 2.The complaint of wrongful dismissal is withdrawn and is dismissed.

REASONS

Issues.

1. The issues in this case, a complaint of unfair dismissal, were identified and agreed at the beginning of the case. Put simply what was the reason for dismissal? and on the facts as found by the tribunal, has the respondent acted reasonably in dismissing for that reason?
2. The respondent relies upon the potentially fair reason of 'some other substantial reason' which was that the claimant accepted a 'simple caution' on 8 December 2017, for 2 offences of "assault by beating", relating to his children, on 21 and 22 August 2017 which then made his position as an Advanced Podiatrist untenable. The claimant accepts that was the reason for dismissal, but challenges the fairness of his dismissal for that reason.

Findings of fact

3. I heard evidence for the Respondent from Mr. Robert Hull (General Manager and Dismissing Officer and from Ms. Laura Robson a Non - Executive Director and the Appeals Officer. For the claimant I heard evidence from the claimant. I also saw documents from an agreed

bundle. Most of the factual background was not in dispute and based on the evidence I saw and heard I made the following findings of fact:

4. The claimant was employed by the respondent, an NHS Foundation Trust, as an Advanced Podiatrist band 7. This is a Senior Clinical role involving the diagnosis and treatment of complex conditions within the podiatry specialism. The claimant had 25 years of service and an unblemished disciplinary record prior to his dismissal on 2 January 2018.
5. Podiatry patients include children and vulnerable adults and because of this, the claimant's job description and person specification required an Enhanced DBS Clearance. It was accepted a 'clear' DBS check was required for most roles within the Trust, because of the patient contact involved. This means the DBS check should not disclose any offence that might pose a safeguarding risk to children/vulnerable adults.
6. For those already in employment, the Health and Care Professions Council ('HCPC') applies codes of conduct to all professionals, including podiatrists. As registered professionals they are subject to the HCPC standards of conduct, performance and ethics which specifically require a registrant to notify the HCPC if "*you accept a caution from the police or you have been charged with or found guilty of, a criminal offence*". This is so that the HCPC can assess the registrant's fitness to practice in the light of the caution/conviction that has been issued.
7. The HCPC's assessment of fitness to practice is separate from an employer's responsibility to assess fitness to practice/suitability in the light of any caution/conviction for a criminal offence.
8. The respondent's policies and procedures require employees who deal with patients to exhibit a good understanding of safeguarding principles and policies and to follow them in practice. As part of his role the claimant was required to, and did attend annual mandatory training to ensure that he understood those expectations and was last trained on safeguarding in December 2016.
9. The respondent also has in place safeguarding policies which deal with how they will respond to allegations of abuse or neglect of a child made against an employee. This covers situations where it is alleged that a person working within the Trust has "*behaved in a way that has harmed a child may have harmed a child, possibly committed a criminal offence against or related to a child; or behaved towards a child or children in a way that indicates she/he may pose a risk of harm to children or young people*".
10. To assist the respondent with its safeguarding responsibilities, it has a team of specialists providing safeguarding advice, which includes: Lorraine Fox, the Safeguarding Lead, Emma Curran, Named Nurse and Janet Farnhill, Senior Nurse. These are full-time safeguarding nurses who are qualified to provide advice and guidance on safeguarding issues as and when they arise. Additionally, the respondent's Chief Nurse Jill Foster also provides input into safeguarding issues.

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11. 'Safeguarding' is relevant to most roles within the trust where all staff have a responsibility to safeguard children and vulnerable adults at any risk of abuse or neglect. As a clinician, the claimant is expected to recognise and identify safeguarding risks with the patients he treats and to refer any concerns he identifies to the appropriate agency to act upon.
12. The claimant was part of the podiatry team covering Scarborough, Whitby, Ryedale. He carried out his clinical role alone, without supervision.
13. On 23 August 2017, the claimant was absent from work following two incidents. The first involving his daughter on 21 August 2017 and the second involving his 12 year old son on 22 August 2017.
14. The claimant refers to the 2 incidents with his children at paragraph 7 of his witness statement where he states "*I became involved in an altercation on 21 August 2017 whereby, regrettably, I found myself swearing and shouting at my two children. During this breakdown I grabbed my daughter's cheeks to make her look at some damage she had done to her bed and the next day I pushed my son's chest with a stick I had grabbed from him during an argument*".
15. On 8 December 2017, the claimant accepted a caution for these incidents which were treated as 2 offences of "assault by beating" contrary to section 39 of the Criminal Justice Act 1988.
16. On 23 August 2017, the claimant was absent from work for depression. The respondent was not aware of the two incidents involving the claimant's children until October 2017.
17. Claire Brown the claimant's line manager, first knew about them 'informally' after the claimant had dropped off a sick note on 23 October 2017 when he told a colleague that he was being investigated following allegations made by his children. The claimant accepted in cross examination that he only told his colleagues and not his employer because he did not think he was required to inform his employer.
18. From the information provided the respondent understood that the claimant was under police investigation and that he had been reported to social services and was only allowed to contact his children by text message.
19. Sarah Wilson (HR business Partner), completed a North Yorkshire Safeguarding Unit, Local Authority Designated Officer 'LADO' referral form. The respondent has a duty to make this referral and to send it to the 'appropriate persons'. The claimant accepted that his children's counsellor had informed social services who in turn notified the police. He believed that having informed his colleague of the incidents the Trust had then informed LADO "to fulfil their safeguarding obligations" (see paragraph 7 page 190).
20. On 20 November 2017, Robert Hull, Sarah Wilson and Janet Farnhill attended an initial evaluation meeting to discuss these incidents further.

This was a 'North Yorkshire Safeguarding Children Board' initial evaluation meeting which is a multidisciplinary forum which includes representatives from social services and the police.

21. A detailed record of that meeting is at pages 106 to 119 in the bundle. In the notes the allegation records that an anonymous referral was received on 9th October 2017 via children social care that the claimant's children had been physically hurt by the claimant in August 2017. The police were considering what action was to be taken and indicated that the claimant was likely to be interviewed. After discussion it was agreed *'by all that the allegations were substantiated because they have been corroborated by all involved'* which included an admission by the claimant.
22. On 23 November 2017, Mr. Hull completed a HCPC fitness to practice referral which he was required to do in accordance with his professional obligations. The claimant also had an obligation to report these allegations to the HCPC.
23. On 29 November 2017, Mr. Hull and Miss Wilson met with the claimant to discuss the situation. They were unaware that the claimant had secretly recorded the meeting and a transcript of the meeting is in the bundle.
24. The purpose of the meeting was to find out more about the current situation, consider the implications of this incident on the claimant's work and to offer some pastoral care. No decisions had been made regarding a potential return to work at that stage because of the claimant's continuing sickness absence. The claimant was asked to keep Mr. Hull informed of any developments with social services or the police.
25. On 1st December 2017, Mr. Hull wrote to the claimant with an update confirming he would be chasing up 'LADO' for the report from the November meeting, and that it would be very difficult to come to a final decision about a return to work until he had further feedback from social service/police. He explained that the Trust had to consider any potential risk to patients, both children and vulnerable adults, and the risk that the claimant might not recognise a safeguarding concern raised by anybody he was treating.
26. Mr. Hull conducted his own risk assessment at this stage which was a balanced and fair risk assessment. He concluded there was an unacceptable level of risk and that the claimant could not be allowed to return to work while investigations by social services and the police were ongoing. He decided that it was appropriate to suspend the claimant because of the concerns he had and because the job was patient based and there were no other alternatives.
27. On 8 December 2017, Mr. Hull met with the claimant to inform him of the suspension which the claimant accepts did not come as a surprise to him. Again, the claimant secretly recorded the discussion.

28. The suspension was confirmed by letter dated 8 December 2017. It refers to the LADO evaluation meeting on 20 November 2017 and to “*allegations of physical and emotional abuse towards your children*” and the “*impact the allegations have on your role and as an employee of this trust*”. The claimant was informed that a disciplinary investigation would take place. The suspension was on full pay and would be in place until the investigation had been concluded. The claimant was to keep Mr. Hull informed of the progress of the ongoing external investigation which would have an impact on the suspension.
29. On the same day, the claimant advised Mr. Hull that he had been called to attend an interview with the police. Mr. Hull advised the claimant that he should not attend on his own and should take legal advice.
30. Later the same day, Mr. Hull received a further phone call from the claimant stating that a caution had been issued by the police. Mr. Hull asked the claimant to provide him with a copy of the caution. The ‘Simple Caution’ (caution) which the claimant accepted is a page 162 to 163 in the bundle.
31. The caution identifies 2 offences of ‘assaults by beating’ on the 21 and 22 August 2017, contrary to section 39 of the Criminal Justice Act 1988. It contains a declaration that the claimant is required to read, and sign to confirm that he understands it. The declaration confirms that the claimant understands that he does not have to accept the caution. It confirms that, if the claimant applies for certain jobs and the organisation **requires him to have a criminal records check** via the Disclosure and Barring Service (DBS check) the Simple Caution **will be disclosed on a Standard or Enhanced Disclosure Certificate**. The declaration expressly states: “DBS may be requested by an **employer for jobs** or voluntary work **where you work with vulnerable groups including children** as well as other sensitive jobs involving a high level of trust”.
32. The claimant chose to accept the caution, fully aware of the consequences this would have on his employment. He knew his job involved working with **vulnerable groups including children** and required him to have a clear DBS check which was something he did not have after the caution was issued on 8 December 2017.
33. In answer to supplemental questions the claimant said that he did not believe the caution was for physically harming or hurting his children because “*it was physical action not beyond normal chastisement*” although he accepted it had “*put his children in fear*”.
34. The claimant’s account about the caution is that he was strongly advised to accept a caution for assault which he was told by the attending officer should have no impact upon his employment. He was concerned about the wording of the caution as he felt the term assault suggested something far more severe than what he had done. He says he was assured by the officer that this wording was simply ‘antiquated’ wording used for a wide spectrum of behavior and that the claimant’s behavior was at the lower end. He says he was very reluctant to accept the

caution **because he did not believe he had committed an assault**, however, on the basis of the assurances given by the police he did so.

35. It was odd that the claimant has sought to challenge the caution in this way at this hearing when he chose to accept it as issued on 8 December 2017, without any challenge. It was put to the claimant that he could have sought legal advice as Mr. Hull had suggested, if he felt the caution did not accurately reflect his actions towards his children. The claimant said he didn't want legal representation because he was at the police station to admit to what had happened. He wanted to go to his children and tell them he had accepted a caution for his actions.
36. The claimant accepted that he understood he would need to disclose this caution to an employer which would have an impact on his employment prospects but was told it would be wiped off in a few years.
37. In answer to my questions the claimant accepted that if he were to apply for a job now as podiatrist he would be required to disclose this caution, which would show that he did not have a clear DBS. The caution would be taken at face value by an employer and would impact on his employability. He also confirmed that he believed, at the time he accepted the caution, that he would lose his job because of it.
38. It was clear that irrespective of what the police officer said to the claimant at the time, he understood the significance of, and consequences of accepting the caution. Any standard or enhanced DBS check would reveal the caution. He would not have a clear DBS check which was he was required to have for his continued employment with the respondent.
39. On 18 December 2017, Mr. Hull was advised by the safeguarding team that because of the caution and the requirements of the claimant's role, a meeting should be convened with the claimant to discuss his ongoing employment. From a safeguarding perspective Mr. Hull was advised the claimant could not continue in his role. Sarah Wilson had also spoken to Jill Foster, the Chief Nurse, whose opinion was consistent with that of the safeguarding team. Her view was fed back to Mr. Hull on 21 December 2017.
40. By letter dated 27 December 2017, the claimant was invited to a disciplinary hearing on 2 January 2018 (page 164). The letter informs the claimant that the meeting was to discuss the caution and the claimant's continued employment "in light of this police caution". It warns that one possible outcome is dismissal and informs the claimant of his right to representation at the meeting and that he should contact his union for guidance or support.
41. At this stage, based on HR advice, a decision was taken that this was no longer a matter that came within the remit of the disciplinary policy because the determining factor now was the caution admitting offences which impacted on the claimant's ability to continue in his role from a safeguarding perspective, as a registered podiatrist. The claimant had accepted the caution and had therefore admitted the two offences. The

caution meant that the claimant lost his clear DBS status which was an essential requirement of the role.

42. Mr. Hull considered all the circumstances including the risk to the trust if the claimant was allowed, to continue to work as a podiatrist, with that caution. If the employment continued and there was another incident, the trust would be criticised for allowing the claimant to continue to practice, without DBS clearance. Mr. Hull was also concerned that there was a potential risk that if a patient under the claimant's care disclosed issues over their interactions with children raising safeguarding concerns, the claimant might not treat those issues as safeguarding concerns which would prevent him taking the appropriate action.
43. Mr. Hull also considered whether there was alternative employment available. However, all the roles were 'patient' based roles and he could not identify any alternatives. He could not see how he could make potential changes to the claimant's role which would remove vulnerable adults and children from the claimant's care. He did want to consider what the claimant had to say about 'alternatives' at the meeting so that if there was an alternative he hadn't considered he could consider it.
44. The claimant attended the meeting on 2 January 2018, supported by a colleague Ms. Abraham. Mr. Hull chaired the meeting supported by Ms. Wilson. The discussion started around the caution. Mr. Hull expressed his view that because of the safeguarding concerns raised in the allegations and the fact the claimant needed a clear enhanced DBS check which he no longer had, he believed the claimant's ongoing employment as a podiatrist was untenable.
45. The claimant told Mr. Hull that he had been told by the police that the caution would not impact upon his work. However, Mr. Hull considered the declaration wording in the caution which was clear. In the job the claimant did the caution would have an impact on his work. Once Mr. Hull had expressed his view, the claimant decided there was no point in any further discussion and left the meeting. Although Mr. Hull accepts that in hindsight he could have handled the meeting better the claimant did not help himself by leaving abruptly ending the possibility of any further discussion.
46. Mr. Hull concluded that the caution meant that the claimant presented a risk to patients and it went to the heart of the claimant's ability and judgements on matters relating to safeguarding. It was also very concerning to him from a reputational point of view and placed an unacceptable level of risk on the Trust. To Mr. Hull the context of the simple caution was also key to his decision-making because it resulted from the claimant's admitted inappropriate physical contact with his children which the claimant appeared to seek to minimize. For Mr. Hull the caution resulted in a serious and irreparable loss of trust and confidence in the claimant as an employee of the trust. For all those reasons he dismissed the claimant.

47. Although Mr. Hull found it a difficult decision to make because of the claimant's long length of service with the NHS, as the decision-maker he felt that it was the correct decision to make in all the circumstances.
48. By letter dated 2 January 2018, the dismissal was confirmed in writing and that letter is at pages 166-167 in the bundle. The letter states:

"the purpose of the meeting was to discuss your continued employment with the trust in light of the police caution issued to you on 8 December 2017. The caution details the following offences against your own children, assault by beating on the 21st of August 2017, assault by beating and 22 August 2017. You currently remain suspended from the workplace. We discussed the fact of the caution, the circumstances relating to it and your representations with regard to your employment with the trust. We discussed that we had considered a number of options in relation to whether we were able to support your continued employment in light of the caution, to include your current role and other nonclinical roles. We asked if you had any thoughts about redeployment and explained that it was very difficult to identify somewhere you can work within the trust in view of the caution, taking into account your objectives and skill set, and our safeguarding responsibilities, in particular noting that a satisfactory DBS is required for all employment within the trust. We concluded that the caution presents a risk to patient and colleagues and goes to the very heart of your ability and judgement on matters relating to safeguarding. We also concluded that the caution presents an unacceptable reputational risk to the trust.

We are concerned that you stated your mental health is the reason for your behavior of physically harming the children and not understanding and taking responsibility for this behavior. We took this into account, but it did not change our decision.

Due to the effects the caution has on your suitability to continue to be employed by the trust and the fact that we could not identify any suitable alternative employment, we concluded this was sufficiently serious to warrant terminating your contract of employment, having considered the matter in detail with advice we shared with you from representatives from Children's and Adult Safeguarding and Jill Foster, Chief Nurse. We also concluded that your actions resulted in a serious and irreparable loss of trust and confidence in you as an employee of the Trust".

49. By letter dated 12th of January 2018, the claimant appealed against his dismissal. He states:

*"a significant amount of reliance appears to have been put upon the wording of the police caution **with the assumption being made that I physically harmed my children** at a point in time I suffered a breakdown in late August. I enclose with this appeal letter an explanation from the police officer involved in my case....*

I have at all times admitted and accepted responsibility for my actions in a situation outside work in a time of crisis when I was having a breakdown contrary to the statements in my dismissal letter. Robin stated that I required a satisfactory DBS to work at the trust, there is no evidence of what my DBS now says and secondly I'm sure that there are other employees working at the trust who do not have clean DBS's but this was rejected out of hand at the meeting stating others did not have them for 'assault and battery,' this is inaccurate and misleading terminology".

50. In summary, the claimant felt his dismissal was unfair and far too harsh a sanction and he felt he didn't have a fair hearing.
51. The claimant referred to an email he had obtained following his dismissal from the police officer who had issued the caution. The email states:

*"as explained on the day you have accepted a police caution this was because the offence is low-level you made admissions to the offence there were no previous convictions or cautions".
.....essentially, assault offences are low-level and can (and do) occur even with no injury or anyone touching anyone.... It's all about the level of injury. As far as I'm aware both children **describe pain and discomfort** the term beating (caution) is an old-fashioned term for **the type of assault** and does not literally mean repeated beating. **Common assault is wide reaching and covers no injury to minor injury"**.*

52. Having received this email as part of the Appeal, HR contacted the police officer who then provided further information by an email dated 5 February 2018. In that email the police officer confirmed that the claimant had accepted a police caution and that paragraphs 1 to 10 of that caution were read out to him verbatim including the declarations that the claimant agreed and signed. He confirmed the alternative was for the claimant not to accept the caution but to attend court. Instead the claimant chose the caution. The email states: *"I advised Mr. Sumner this incident, or the fact he was getting caution should not affect his work. What I did say was that details of the caution would need to be disclosed in some circumstances, so that employers can conduct their own assessment. I added employers can make reasonable adjustments if appropriate"*.
53. Both the claimant and the respondent's dismissing officer prepared statements of case. In addition, the claimant had the benefit of having his solicitor representing him at the appeal hearing on 14 February 2018. The notes of that meeting are extensive running from pages 210 to 241 and demonstrate a full and thorough consideration of all the representations made by the claimant and his solicitor who was also allowed to question Mr. Hull.
54. Laura Robson was the chair of the appeal panel. She has significant safeguarding experience. It was clear from her evidence that safeguarding is a serious issue for the trust. She understood that ultimately it was for the employer to assess the suitability of the

claimant's continued employment in of the caution. Whatever other views there might be, the responsibility for that decision and liability for any consequences of that decision rested with the employer.

55. The outcome of the appeal was confirmed in writing (pages 242-245) and is detailed and thorough, addressing each of the points raised in the Appeal hearing.
56. The panel upheld the dismissal decision and the findings that had been made and were also satisfied that the process was fair. They were satisfied a reasonable investigation had been conducted and the claimant had not identified any further investigatory steps that ought to have been taken. There was no evidence of inconsistency of treatment and the claimant had not identified any instances of inconsistent treatment in comparable circumstances. They were satisfied alternatives had been considered, but could not be found. They did not accept the caution had been misinterpreted or over relied upon holding that "***the Trust takes any caution for assault very seriously and the panel concluded that it was correct to do so in these circumstances***". It also records the mitigation that was presented and considered: of length of service/record and the claimant's assertion that "*his actions were as a result of depression*".
57. Although the panel understood that the ACAS Code of Practice for Disciplinary and Grievance Procedures (2015) did not apply, they were satisfied that the principles of fairness, which flow from the code, were followed and they addressed those principles in the outcome letter.

Applicable Law.

58. Some Other Substantial Reason (SOSR) is one of the potentially fair reasons for dismissal which is set out in section 98(1)(b) Employment Rights Act 1996, which provides that:

"some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held".

59. 'SOSR' cannot be frivolous or trivial, nor whimsical or capricious.
60. If the employer has shown that SOSR was the reason for dismissal it is potentially fair and section 98(4) applies which states:

"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 employers 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.

61. It is not for the Tribunal to substitute its view for the employer but to determine fairness against the band of reasonable responses which are open to a reasonable employer in these circumstances and decide whether the dismissal falls within the band and is fair or is outside that band and is unfair.
62. Mr. Sugarman has also referred to the “ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 which at paragraph 31 provides that “if an employee is charged with or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to *what effect the charge or conviction has on the employee’s suitability to do the job and their relationship with their employer work colleagues and customers*”.
63. Additionally, the “ACAS Guide Discipline and Grievance at Work 2017 also refers to criminal charges or convictions and provides that “*an employee should not be dismissed or otherwise disciplined solely because he or she has been charged with or convicted of a criminal offence. The question to be asked in such cases is whether the employee’s conduct or conviction merits action because of its employment implications*”.

Conclusions.

64. The first issue to determine was the reason for dismissal which was not in dispute. Mr. Sugarman quite rightly accepts that the evidence suggests that the reason or principle reason was that the respondent no longer believed the claimant met an essential requirement of the role because he had accepted a caution that would show up on a DBS check, which meant he could no longer be said to have DBS clearance which was an essential requirement of his role which was therefore untenable.
65. My findings of fact and the letter of dismissal explain why the respondent decided the caution impacted on the claimant’s continued employment and made it untenable (see paragraphs 42-48 above). The claimant was employed by the Trust as a Podiatrist dealing with patients which include vulnerable groups which is why a clear DBS check was required. That is why the safeguarding risks and other risks of the caution for 2 admitted offences of assault on the claimant’s children were so significant. The caution had severe implications on his continued employment and the claimant knew that at the time. The claimant believed he would lose his job because of the caution. If the caution was for an offence that had no impact on his role as a podiatrist, for example a driving caution, a different outcome was possible. The reason for dismissal was clearly, a substantial reason of a kind justifying the dismissal of a podiatrist employed by an NHS Foundation Trust and was potentially fair.
66. As to reasonableness Mr. Sugarman submits that the claimant accepts that if in fact SOSR is made out on the facts, dismissal will generate different, less onerous, demands on an employer when looking at reasonableness under 98(4).

67. We did find that a substantial reason for dismissal was made out on the facts found by this tribunal and section 98(4) makes it clear that reasonableness is to be considered *having regard to the reason shown by the employer*.
68. The claimant understood that the caution meant he had no clear DBS which was an essential requirement of the role. He also knew the employer was waiting for the outcome of the police and social service investigation at the time. He was aware before he accepted the caution of the impact that the caution, for two offences of assault against his children, would have on his continued employment. He believed he would lose his job because of the caution.
69. The nature of the job performed by the claimant was significant and the employer correctly assessed the impact of the caution on the job performed by the claimant as a podiatrist. His work involved dealing with patients which included vulnerable adults and children. It involved safeguarding responsibilities and obligations. It was never the claimant's case as presented at dismissal or appeal that the caution was not relevant to his job or that a clear DBS was not an essential requirement. He felt the caution was being misinterpreted and over-relied upon. He states in his appeal letter "*a significant amount of reliance appears to have been put upon the wording of the police caution **with the assumption being made that I physically harmed my children***". He wanted his employer to interpret the caution as 2 less serious offences against his children. The appeal panel addressed that issue and confirmed the caution had been correctly interpreted and had correctly been treated very seriously by the Trust (see paragraph 55)
70. There is some contradiction in the claimant's position on the caution. In some parts of his evidence he fully accepts responsibility for the offences and wanted his children to know that he admitted them. In other parts he seeks to minimize his actions towards his children on those 2 days. Although the range of assaults covered by the offence are wide, the 2 admitted assaults by the claimant on his children had caused 'pain and discomfort' and had 'put them in fear'. Mr. Hull had advised the claimant to get legal representation and not attend the police station alone. The claimant chose to attend without legal representation and the caution was properly administered by the police. The claimant was aware of and did not exercise his right to challenge the caution through a court process.
71. By the appeal stage the police officer who had administered the caution had confirmed that the full declaration was read out to the claimant before it was signed and the options were clear. If the caution was not accepted a court process would follow.
72. The respondent as the employer was entitled to accept that caution at face value. The claimant accepted a caution for 2 offences of assault on his children which was also consistent with the admissions the claimant had made to the employer at the time.

73. Mr. Hull considered the risks (safeguarding risks to patients, the risks of the claimant not acting on safeguarding matters brought to his attention, reputational risk) and potential consequences if the employer allowed the employment to continue without a clear DBS check when it is an essential requirement of the job. He concluded the claimant's actions resulted in serious and irreparable loss of trust and confidence. Mr. Hull sought advice from the safeguarding experts and was entitled to rely on that advice which supported his view. He considered the long length of service and the previous good record and the claimant's depression which the claimant blamed for his actions. He considered alternative roles but there were none and the claimant never identified any roles to Mr. Hull or to the appeal panel. The outcome letters for the dismissal and appeal are clear and set out the rationale of Mr. Hull at dismissal and the appeal panel for the decisions made. They demonstrate a careful consideration of all the representations made before decisions were made.
74. It was difficult to see what more the employer could do in these circumstances. Having regard to the requirements of section 98(4) of the Employment Rights Act 1996, it was reasonable for the respondent to dismiss the claimant. The dismissal was a reasonable sanction falling within the band of reasonable responses open to a reasonable employer faced with these circumstances particularly the nature of the employment involved. The dismissal was fair and the appeal process that followed was also thorough and fair. In those circumstances the complaint of unfair dismissal fails and is dismissed.

Employment Judge Rogerson

Date 12 December 2018