



THE EMPLOYMENT TRIBUNALS

Claimant: Miss T Moyo
Respondent: Southend Borough Council
Heard at: London East Employment Tribunal
On: 21 & 22 February 2019
Before: Employment Judge M Warren (sitting alone)

Representation

Claimant: Mr Powlesland, counsel
Respondent: Miss Azib, counsel

JUDGMENT

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

REASONS

Background

1. By a claim form dated 17 April 2018, Miss Moyo complains of unfair dismissal arising out of her dismissal from her employment with the Respondent as a social worker on 20 December 2017. In simple terms, she was accused of plagiarism in report writing.

The Issues

2. At the outset of the hearing, I asked Mr Powlesland to summarise the bullet point reasons why Miss Moyo says that her dismissal was unfair. He said that broadly speaking, the facts were not in dispute; Miss Moyo will say that she did not have adequate training, but her primary argument is that the dismissal was outside the band of reasonable responses.

3. In closing submissions, Mr Powlesland's arguments were, in summary:
 - 3.1. There was a culture of cutting and pasting;
 - 3.2. Cutting and pasting was to a degree, endorsed by management;
 - 3.3. This was not grappled with by the disciplinary officer, Ms Lansley;
 - 3.4. Had Miss Moyo's first report been reviewed at an early stage, that what she was doing was wrong would have been picked up and corrected;
 - 3.5. There was no evidence that the training provided made clear that what Miss Moyo did was wrong;
 - 3.6. Ms Lansley did not properly consider Miss Moyo's honesty and wrongly concluded that she was dishonest;
 - 3.7. Ms Lansley did not consider alternatives to dismissal, and
 - 3.8. Ms Lansley did not take into account Miss Moyo's long and unblemished service or her mitigating circumstances.

Evidence

4. I had before me for the Claimant, a very short witness statement from Miss Moyo herself and a statement from a colleague, Mrs Doreen Maton.
5. For the Respondent, I had witness statements from Ms Sarah Range, (Principal Social Worker, discovered the plagiarism issue) Ms Hannah Morgan, (Miss Moyo's supervisor) Ms Jacqui Lansley, (dismissing officer) and Mrs Diane Keens, (investigator).
6. I heard evidence from each of those witnesses.
7. I was provided with a bundle of documents properly paginated and indexed, originally running to page 715, contained in two lever arch files. At the request of Mr Powlesland and without objection, we added pages 451 A to G, 716 and 717.
8. During an adjournment, I read the witness statements and read or looked at the documents referred to in the same. On resuming, I warned the representatives not to assume that I had read everything and to make sure they took me to what they consider to be important passages during cross-examination.

The Law

9. Section 94 of the Employment Rights Act 1996 contains the right not to be unfairly dismissed. Section 98 at subsections (1) and (2) set out five

potentially fair reasons for dismissal, one of which at subsection (2)(b) is the conduct of the employee. Section 98(4) then sets out the test of fairness to be applied if the employer is able to show that the reason for dismissal was one of those potentially fair reasons. The test of fairness reads:

“Where the employer has fulfilled the requirement of subsection (1) the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer)

(a) depends on whether in the circumstances including the size and administrative resources of the employer’s undertaking the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

(b) shall be determined in accordance with equity and the substantial merits of the case.”

10. We have guidance from the appeal courts on how to apply that test where the grounds for dismissal relied upon by the employer is misconduct. The first is the test set out in the case of British Home Stores v Burchell [1980] ICR 303. The Tribunal must be satisfied that the employer holds a genuine belief, based upon reasonable grounds and reached after a reasonable investigation. It is for the employer to show the genuine belief, the burden of proof in respect of the reasonable grounds and the investigation is neutral.
11. If the employer is able to satisfy that test, the Employment Tribunal must go on to apply the test set out in Iceland Frozen Foods Ltd v Jones [1982] IRLR 439. The function of the Tribunal is to determine whether in the particular circumstances a decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If a dismissal falls within the band the dismissal is fair, if the dismissal falls outside the band it is unfair. In judging the reasonableness of the employer’s conduct, the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer.
12. The investigation should be into what the employee wishes to say in mitigation as well as in defence or explanation of the alleged misconduct.
13. Mitigation must be actively considered by the decision maker.
14. We should look at the overall fairness of the process and not be distracted by questions such as whether an appeal is a rehearing or a review, see Taylor v OCS [2006] IRLR 613.
15. In this case, the Respondents say that Miss Moyo was guilty of gross misconduct justifying dismissal without warning. The test for gross misconduct, or repudiation, is that the conduct must so undermine the trust and confidence which is inherent in the particular contract of

employment that the employer should no longer be required to retain the employee in its employment, see Neary v Dean of Westminster Special Commissions [1999] IRLR 288.

The Facts

16. The Respondent is a Local Authority with at the relevant time, 1638 employees.
17. Miss Moyo, aged in her mid-50's, qualified as a social worker in 2007. Her employment with the Respondent as a social worker commenced on 1 April 2009. She worked in the in Adult Learning Disability Team. Since 2009, she has accumulated experience in the regular writing of assessments in her role.
18. Core values of a social worker are honesty, integrity, transparency and accountability.
19. One role of social workers working in this field, is to undertake Deprivation of Liberty assessments, (DoL's). The Alzheimer's society explains as follows:

Deprivation of liberty is care that amounts to the fact that the person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements.

The kind of care that people receive in care homes or hospitals will usually involve both supervision and control. Staff will monitor and watch residents or patients, they will decide activities, and they will control things such as meals, leisure time and bedtimes. This care is often what a person needs, but it can deprive people of their freedom, if they have not consented to it...

If a person is not free to leave the place where they are being cared for, they may be deprived of their liberty... The person may not be physically able to leave by themselves but the question is still the same – if they tried to leave, would they be stopped? If the answer is yes – i.e. they did not consent to this care and are not free to leave – then they are being deprived of their liberty....

The care a person receives can only deprive them of their liberty if they have not consented to it... A deprivation of liberty can only occur in cases where someone lacks the ability to decide themselves, known as, "mental capacity"...

To have capacity to make a decision, someone must be able to:

- *Understand the information about the decision...*
- *Retain that information long enough to be able to make a decision*

- *Weigh up the information...*
- *Communicate the decision...*

If a care home or hospital plans to deprive a person of their liberty in the ways listed above, they must get permission to do this, they must follow strict processes called the Deprivation of Liberty Safeguards, (DoL). DoLs are a set of checks that are designed to ensure that a person who is deprived of their liberty is protected...

The key elements of these safeguards are:

- *To provide the person with a representative...*
- *The right to challenge a deprivation of liberty through the Court of Protection*
- *To provide a mechanism for a deprivation of liberty to be reviewed and monitored regularly”*

20. It is generally understood that to carry out such an assessment requires approximately 12 hours of work by a suitably qualified social worker.
21. The Respondent estimates that it has to do about 100 such assessments a year.
22. To undertake this task requires a qualification known as a Best Interests Assessor, (BIA) which is a Master's Degree level qualification.
23. Because of recent case law developments, there has been a huge increased need for such assessments.
24. The Respondent expects its social workers to qualify as a BIA after 2 years' experience as a qualified social worker. A BIA receives a pay supplement of £75 per month for undertaking such assessments.
25. Miss Moyo was funded by the Respondent to obtain a BIA qualification from Bournemouth University. She attended a course there during May and June 2015. To complete the course, she was required to complete and submit, an assignment.
26. The Respondent was informed in 2016 that Miss Moyo had committed a plagiarism offence. She had cut and pasted into her assignment from a source on the internet. She was initially failed, but was subsequently allowed to re-do the work and she obtained her BIA qualification in January 2017. The qualification means that the university has assessed the individual as competent to undertake the role of a BIA.
27. Completing DoLs is a serious piece of work; quite apart from the personal dignity and civil liberties aspect, to get it wrong will mean that the decision

and actions which flow from it can be challenged in the courts, there could be a finding that the individual concerned has been falsely imprisoned, (and therefore entitled to damages) and the Respondent could be fined.

28. There is Best practice guidance on completing the form for a DoL assessment, (page 652) which includes the following:

“It should be a professional report based on factual information and professional judgment....

There should be professional ownership of the report by the BIA... Ensure that documents relied on during the assessment are clearly identified within the report

The BIA is expected to write in the first person.

The BIA should articulate their reasons as well as their conclusions...

Where opinions, assumptions or hearsay are recorded they should be clearly framed as such.

Where information is being taken from previous assessments the source should be referenced (particularly relevant for reviews/renewals).”

29. There is also an Independent Mental Capacity Advocate best practice guide to report writing, (page 678 to 715) which includes that all reports should be evidence based, should be a reflective account of what the report writer has done in order to ascertain the individual’s wishes, that assessments are about the, “here and now” and that a report written several weeks earlier may no longer reflect the current situation.
30. Once qualified and before embarking upon preparing their own reports, the Respondent arranges that a BIA first shadows experienced BIA practitioners. Miss Moyo shadowed three such practitioners.
31. Miss Moyo completed her first DoL assessment in March 2017.
32. As is usual with social workers, Miss Moyo had regular monthly supervision meetings, in her case with Ms Morgan. In anticipation of such meetings, she was required to complete sections on the supervision record which gave her the opportunity to provide information on how she was feeling, whether she had any issues with her workload and whether she had any issues in respect of her role as a BIA. She gave no adverse indications in these monthly meetings.
33. A Ms Tibbles, Practice Leader MCA/DOLS Safeguarding provided voluntary group supervision sessions. Miss Moyo attended 2 such supervisions on 16 March and 25 July 2017.

34. Miss Moyo also attended a BIA forum on 26 May 2017.
35. Ms Range is a, "Signatory" of DoL assessments. This role entails examining DoL assessments and ensuring that they are sufficiently robust.
36. On 18 August 2017, Ms Range met with Miss Moyo to review her assessment of a Mr DB, (page 591). She was surprised at the mature, eloquent writing style, which she knew to be uncharacteristic of Miss Moyo. This prompted her to look at an earlier assessment of the same person carried out by Ms Morgan, (page 467). She saw that large sections of the two reports were word for word identical. Her impression was that 90% of Miss Moyo's assessment seemed to have been copied from Ms Morgan's earlier assessment.
37. Ms Range then looked at another assessment, for a Ms IC, (page 555). She found references to Ms IC living somewhere she did not live and references to the subject of the report being a male person, Mr W. She looked at an earlier assessment of Mr W carried out by a Mr Mbawa, (page 496) and found that large passages of text in Mr W's assessment were apparently duplicated in Ms IC's assessment.
38. Ms Range then looked for earlier assessments of Ms IC and found an earlier social work, (not DoL) assessment by a Ms Clarke, (at that time an unqualified social worker). This is at page 495A. She saw that large passages of text from that had also been copied into Miss Moyo's assessment of Ms IC.
39. As Ms Range was travelling abroad that evening, she informed others of her findings.
40. Miss Moyo was suspended, confirmed in a letter bizarrely dated 22 March 2017, a copy of which is at page 167. The reason given for suspension was:

"to allow for a full investigation to be conducted into the allegations that you plagiarised a deprivation of liberty assessment. This has called into question your professional integrity and the trust and confidence that the Council must have in you".

41. Mrs Keens, Group Manager, was appointed to investigate. She was from outside the department in which Miss Moyo worked.
42. On 19 September 2017, Mrs Keens interviewed Ms Tibbles, (page 212). She had on request, examined the 4 DoL assessments Miss Moyo had carried out. She explained to Mrs Keens the process. She explained she had found information on the 4 reports which had been cut and pasted from other reports, not only about the same service user to which the report related, but wording had been copied from reports about other service users too. She explained that capacity assessments would never be the same, they are date and time specific; it is an assessment by the the individual social worker at any particular point in time. There is a

passage in the notes of this interview, (page 219) of which Mr Powlesland made a great deal, it quotes Ms Tibbles:

“...as part of the assessment there is a part that comes to regarding the benefits and burdens of somebody being in a care home. So you would compare if they was in the care home and if they was living in the community and what are the benefits and the burdens? They can be cut and pasted because they probably would not change unless there was a deterioration in that persons wellbeing, then you might get additional benefits for them being in a care home setting.”

43. A little later in the interview, (page 221) Ms Tibbles further acknowledges that it may be acceptable to cut-and-paste elements of the assessment where background information would be the same.

44. Ms Tibbles summarised to Mrs Keens what she had found in the reports as follows, (page 229):

“The first one was literally word for word, the second one was the majority of the information had been cut and pasted from a previous capacity assessment. The third one, although a lot of the information was in relation to that person, I noticed that at the start of the capacity assessment and within the body of it, the residential placement was incorrectly stated and the name of the person is different as well so if she had been talking about Mrs AB within the capacity assessment, she talked about Mr TB residing at a different place... And then on the last one there were just there were paragraphs cut and pasted from previous capacity assessments... all relating as I recall to the same person”

45. On 20 September 2017, Mrs Keens met with Miss Moyo, (page 234). Miss Moyo was accompanied by a trade union representative. Miss Moyo acknowledged that she knew where to turn if she needed advice regarding her DoL assessments. She acknowledged that the assessment should be in her words. She suggested that it might be acceptable to copy from other reports but acknowledged that in doing so, she should say where she got her information from. Directly asked whether in expressing her opinion in an assessment, it was acceptable to use word for word, earlier assessments, she acknowledged that it was not. She however went on to suggest that it was acceptable to copy from earlier reports when the information remained the same and she thought that was routine. Asked how she coped with written work, she replied that she was a writer, that she wrote poetry and was in the middle of writing a book. She also said that she had always been an “A” student. She said she did not struggle with writing at all.

46. On 26 September 2017, Mrs Keens met Miss Moyo’s manager, Ms Morgan, (page 267). She confirmed that Miss Moyo attended monthly supervisions, which included discussion about DoL assessments. She confirmed that different capacity assessments about the same person

should never be the same.

47. On 28 September 2017, Mrs Keens met Ms Range, who explained that the four assessments carried out by Miss Moyo had to be re-done by someone else, as they could not be relied on.
48. Mrs Keens had someone else undertake random checks on DoL assessment prepared by other BIAs, to check whether what Miss Moyo had done was not something others did too. They found that Miss Moyo's cutting and pasting practices did not appear to be common practice; no similar examples by others were found.
49. So that it is clearly understood what it is that Miss Moyo had done that gave rise to this disciplinary process and her subsequent dismissal, I will paraphrase from Mrs Keens summary of, (none exhaustive) examples set out in her witness statement at paragraph 27, which was unchallenged and plainly accurate from the documents in the bundle:

Re DB

- 49.1. *A section regarding whether a service user could retain information was taken word for word from a previous assessment completed by someone else, including an answer that he gave to a question posed.*
- 49.2. The background and current situation sections were word for word identical to another worker's earlier assessment.
- 49.3. A section for the views of others was identical to an earlier report by another, including the phrase, "Mrs X informed me that".
- 49.4. The section entitled, "the reasons for my opinion" regarding deprivation of liberty is word for word identical to a previous workers assessment.

Re VH

- 49.5. In a section to set out steps taken to enable the individual to take part in the decision process, the wording is identical from an earlier assessment by somebody else, including the comment, "I also rang his son. He stated that...".
- 49.6. The mental capacity assessment is virtually word for word identical to the previous workers assessment.
- 49.7. In the section for recording how the person's understanding has been tested, the wording is identical to a previous workers assessment.
- 49.8. Reporting on how she had tested the individual's ability to retain information, Miss Mayo began a paragraph, "from my assessment"

and then copied word for word from a worker's earlier assessment.

- 49.9. In a section setting out why the service user was unable to make a specific decision, she began a passage, "H did not understand... When prompted, she was able to...". This was copied from an earlier report by another worker.
- 49.10. In a large copied passage on background information, (much of which, no doubt, does often remain the same) she has included quotations without attributing her source.
- 49.11. In the section, "reasons for my opinion" all appears to have been copied from an earlier report by another worker.

Re IC

- 49.12. The mental capacity assessment initial information is taken from another workers report, on a different service user, as is apparent from the use of different initials.
- 49.13. Large passages from the, "reasons for my opinion" are copied from somebody else's report on a different service user, so that in several places the gender is male rather than female.

Re AC

- 49.14. In describing the individual's lack of understanding, Miss Moyo quoted conversations which were copied from another workers report completed a year earlier.
 - 49.15. Setting out the views of other relevant people, Miss Moyo referred to being introduced by her key worker and relays the subsequent conversation and what she observed, all copied from the previous worker's report two years earlier.
- 50. On 17 October 2017, Mrs Keens met Miss Moyo for a second time, in order to discuss her findings. The notes are at page 310. Miss Moyo suggested she was unaware of best practice guidance. She suggested that her supervision arrangements had been inadequate and complained of the lack of formal feedback on the preparation of her reports. Her view was that there was no reason not to use the wording from previous reports and did not regard the matters of concern as serious.
 - 51. Mrs Keens provided a full written report, (pages 384 to 401) and recommended disciplinary action.
 - 52. By letter dated 27 November 2017, Miss Moyo was invited to attend a disciplinary hearing, (page 369). A copy of Mrs Keens' report was enclosed. The allegations were that she had plagiarised the DoL reports of

others, that her professional integrity had been called into question and that she had demonstrated errors of judgment leading to a loss of trust and confidence, potentially bringing the Respondent into disrepute.

53. The disciplinary hearing took place on 15 December 2017. The chair was Ms Lansley, Director of Strategy Commissioning and Procurement. Notes of the hearing begin at page 402. Miss Moyo was accompanied by a trade union representative. Mrs Keens attended to present the case against her.
54. Ms Lansley heard evidence from Ms Range: about the importance of the reports, about the training and supervision regime, that cutting and pasting was unlawful, following a case in 2011, LB Hillingdon v Neary 2011 EWHC 1377 (Court of Protection), that earlier reviews of the Miss Moyo's cases would not have made a difference, (either the offence would simply have been discovered sooner or it would not have been noticed at all, if the reviewer did not spot the copying, in which case the practice would have continued).
55. Miss Moyo did not dispute the allegations. She accepted that what she had done was wrong and that her integrity had been called into question. She said that she regretted her errors of judgment, which she acknowledged had lead to a loss of trust and confidence.
56. Ms Lansley took the view that:
 - 56.1. Miss Moyo knew the seriousness of plagiarism from her experience of having been failed on her university course.
 - 56.2. Her subsequent actions with the DoL reports suggested a pattern of behaviour
 - 56.3. She did understand that the reports were meant to be in her own words, should express her own opinion and that she knew this from her university course
 - 56.4. Although Miss Moyo had referred to the availability of an option called, "peek and grab", (a form of cutting and pasting) in the CareFirst data base programme used by social workers and had suggested this was an endorsement of the practice of cutting and pasting from earlier reports, this function was not available in those sections of the software and the documents stored on it that related to the expressions of opinion.
 - 56.5. It was well understood by social workers that in their report writing practice, where duplication was acceptably used, such as in the recital of an individual's history, it was important to attribute, or reference, that the information was duplicated and where it was taken from.
 - 56.6. Miss Moyo was aware that her expressions of opinion should be time specific

- 56.7. Miss Moyo had been employed by the Respondent as a social worker since 2009 and no previous concerns had been raised about her report writing. She concluded from this that Miss Moyo would have been well aware of best practice in social work report writing and that the matters at hand were a question of conduct, not capability.
- 56.8. The training and supervision arrangements had been adequate.
- 56.9. Miss Moyo acknowledged that 2 of her assessments had been reviewed by a colleague and she had been given feedback. She accepted that the colleague would not have realised that the reports were not Miss Moyo's own work.
- 56.10. She noted that Miss Moyo had told Ms Keens that she did not struggle with writing and indeed, that she was writing a book, but that subsequently, Miss Moyo had said that she struggled with expressing herself in writing.
- 56.11. Miss Moyo had a good relationship with her supervisor, Ms Morgan; if she was struggling with writing her assessments, she could and would have raised that with her.
- 56.12. The potential consequences of Miss Moyo's actions were that families could be upset, there might be a legal challenge to the Respondent's actions and there was potential for damage to the reputation of the Respondent and its social workers.
57. Ms Lansley was concerned that whilst Miss Mayo acknowledged that she had done wrong, she seemed to take no professional responsibility for what she had done, but sought to blame management and the Respondent's processes.
58. Having heard evidence from Ms Lansley, I am satisfied that in reaching her conclusion as to the appropriate sanction, she had regard to Miss Mayo's hitherto, unblemished 8 year's service and to alternative sanctions to dismissal. She also had regard to mitigating factors put forward by Miss Moyo: the serious illness and death of her nephew, the behavioural issues and imprisonment of her son.
59. Ms Lansley concluded that Miss Moyo's actions were deliberate, that this was a serious breach of trust and that she should be summarily dismissed for gross misconduct. She considered whether any lesser sanction might be possible, but she regarded Miss Moyo's actions as dishonest and the breach of trust such that her continued employment could not be contemplated.
60. The decision to dismiss was confirmed in a letter dated 20 December 2017 a copy of which is at page 435. Ms Lansley gave a detailed explanation of her findings and conclusions.

61. In a short letter dated 22 December 2017, Miss Moyo appealed, (page 439) asserting that the charge of gross misconduct had not been proved, that mitigating circumstances had not been given sufficient weight and that therefore, the sanction of dismissal was too harsh.
62. The appeal was heard by a panel of 6 councillors on 16 March 2018. The notes of the appeal hearing start at page 443. I was not taken to anything therein. The decision to dismiss was upheld, confirmed in a letter, again bizarrely, dated 16 February 2018, at page 452

Conclusions

63. The reason Miss Mayo was dismissed was the potentially fair reason of conduct i.e. her misconduct.
64. There is no suggestion that the decision to dismiss was procedurally unfair, save that Mr Powlesland suggests that the Respondent should have checked more than four reports from other BIA's to test whether there was a culture of cutting and pasting. An investigation does not have to be a perfect investigation, it just has to be a reasonable investigation; one that was within the range of what a reasonable employer would have undertaken. This employer was alert to the possibility that that Miss Mayo's actions were symptomatic of what others were doing and checked. There was no suggestion at the time that more checks should have been undertaken. Miss Moyo admitted that she knew what she had done was wrong. Ms Lansley was entitled to rely on the information she had before her that there was not a culture of cutting and pasting to the extent practiced by Miss Mayo.
65. There was a thorough investigation, a disciplinary hearing conducted by an independent person, at which the Claimant was represented, she had all relevant information in good time before hand and had every opportunity to put forward her case. She was able to appeal and her appeal was heard promptly by a panel of 6 no less, councillors. The dismissal was procedurally fair.
66. Was the decision to dismiss within the range of reasonable responses? I consider each of Mr Powlesland's submissions as to why it was not, in turn. I need to keep in mind that I must judge the decision to dismiss on the basis of the information before Ms Lansley and I must not substitute my own opinion for hers.
67. The first of Mr Powlesland's points is that it is suggested that there was a culture of cutting and pasting. This is putting it too simplistically. All witnesses were clear and the evidence before Ms Lansley was clear, cutting and pasting of unchanged information was acceptable, provided the source was referenced. The evidence before Ms Lansley was that cutting and pasting of expressions of opinion was not acceptable. Cutting and pasting of interactions with individuals which were not a genuine and contemporary reflection of what was said was not acceptable. Although

not evidence before Ms Lansley, I note that Miss Moyo's own witness, Ms Maton, gave evidence to that effect, in cross examination.

68. The second related point is that Mr Powlesland says that cutting and pasting was endorsed by management. Well it was, to the extent that I have just explained.
69. These two points are then developed by Mr Powlesland; he says that Ms Lansley did not grapple with the fact that some cutting and pasting was acceptable and some was not, so that she simply took the black and white view that any cutting and pasting was not permissible and therefore Miss Mayo was guilty of gross misconduct. Mr Powlesland took Ms Lansley to the passage of the interview of Ms Tibbles at page 219 that I have quoted above and put it to her that the benefit and burdens of someone living in care homes is an expression of opinion and therefore on her evidence, cutting and pasting from a previous report on that subject must never be acceptable, which would mean that she thinks Ms Tibbles is wrong. That is a misrepresentation of Ms Lansley's evidence, who occasionally faltered in coping with Mr Powlesland's cross examination, but her evidence ultimately was clear: it is a question of interpretation, she viewed the benefits and burdens of being in a care home as factual and provided they remain the same, they can be cut and pasted from an earlier report, provided it is made clear that is what has been done.
70. It is suggested that had Miss Moyo's first report been reviewed at an early stage, that she was doing wrong would have been picked up and corrected; four such reports is far more serious than one, which alone would not have led to dismissal. In my view Ms Lansley is entitled to point out that if the dishonesty of Miss Moyo's actions had been discovered in the first instance, that would still have been seen as gross misconduct and would have led to dismissal. The first report prepared by Miss Moyo was in respect of a VH, the report is in the bundle starting at 528, the passages of duplication are highlighted and I can see that a recital of whole lengthy conversations with the service user and others has been copied from earlier reports. To suggest precisely those same conversations, eliciting the same answers, were later replicated between VH and Miss Moyo is wholly implausible. I can entirely understand why Ms Lansley might conclude that Miss Moyo's actions were dishonest and why she suggests that, providing the duplication was spotted on review, that would have led to the same outcome.
71. Miss Moyo's case is that she had insufficient training and that there is no evidence that the training provided made clear that what she did was wrong. I have over the years been involved in many a case involving what used to be called social services and social workers, I have some understanding of the world the protagonists in this case work in. It is utterly implausible for Miss Moyo to argue that she did not realise that what she was doing was seriously unacceptable. The more so given the consequences of plagiarism in connection with her academic work, which at the very least would have brought to the forefront of her mind, that plagiarism was unacceptable. She acknowledged that she knew she had

done wrong in her first interview and in the disciplinary hearing. It was only in the second interview that she appeared to try and obfuscate that.

72. Mr Powlesland submits that Ms Lansley did not properly consider Miss Moyo's honesty and wrongly concluded that she was dishonest. As I have indicated in the previous paragraph, Ms Lansley had good reason and was entitled to conclude that the way that Miss Moyo completed her assessments was dishonest. She expressed that view in cross examination and her evidence was credible. She can be criticised for not expressing in terms, her conclusion of dishonesty in the dismissal letter, but it is perhaps understandable that she might be reluctant to do so and there was no reason to do so. Miss Moyo was not dismissed for dishonesty, she was dismissed for gross misconduct in the manner that she had deliberately completed her BIA assessments.
73. As I have said in my findings of fact, I accept that Ms Lansley did consider the mitigation put forward by Mrs Moyo, did take into account her unblemished length of service and did consider alternatives to dismissal. Mr Powlesland submits that mitigation is only mentioned once in the dismissal letter, that length of service and alternative sanctions are not mentioned at all and that these considerations are not mentioned in the dismissal letter, nor in Ms Lansley's witness statement. As I have said in my findings of fact, I find that all these factors were considered by Ms Lansley in her decision making:
- 73.1. Mitigation is mentioned more than once in the dismissal letter; Miss Moyo's personal circumstances are mentioned several times. Ms Lansley refers to taking into account mitigation in her decision making in her witness statement and confirmed as such in cross examination.
- 73.2. Length of service and alternatives to dismissal are not mentioned in the dismissal letter, nor in Ms Lansley's witness statement. That makes it significantly harder for a decision maker to satisfy a tribunal that these important factors have been considered. However, Ms Lansley was a compelling witness, she stood up well to Mr Powlesland's excellent cross examination and convinced me that she did have these matters in mind in her decision making. I suspect the absence of references to length of service and alternatives to dismissal is more a failing on the part of whoever helped her draft her dismissal letter and whoever drafted her witness statements. Whether that be the case or not, I accept that she did take these factors into account.
74. Having considered Mr Powlesland's submissions, I return to the legal test of fairness set out in section 98(4). Ms Lansley genuinely believed that Miss Moyo was guilty of the misconduct of which she was accused. She had reasonable grounds for that belief based upon a reasonable investigation.
75. Was the decision to dismiss within the range of reasonable responses?

Some of the cutting and pasting was trivial and it was clear on the evidence, permissible. But some of it was dreadful. One can imagine the relative of a service user being furious upon reading such an assessment, when it is so blatantly obvious that the author takes this serious task so lightly that they copy conclusions from another users assessment and not even bother to change their name, gender or place of residence. One can imagine the scathing criticism the Respondent would have been subjected to by the courts, if one of these reports had become evidence in legal proceedings. The deprivation of an individual's liberty by the state is an extremely serious matter and should only take place after the most scrupulous and fair of processes. A social worker of 9 years' experience would know that copying opinions and assessments in the way that Miss Moyo had was entirely unacceptable, regardless of what BIA training she had. In fact, the University of Bournemouth had certified her as competent to undertake this specific type of assessment. The Respondent had every good reason to regard her protestations of ignorance as unconvincing. Miss Moyo's conduct destroyed the Respondent's trust and confidence in her and the decision to dismiss summarily was within the range of the responses that a reasonable employer might make to this set of facts.

76. Mrs Moyo's complaint of unfair dismissal fails and is dismissed.

Employment Judge M Warren

1 March 2019