



EMPLOYMENT TRIBUNALS

Claimant: Mr M Rickard

Respondent: Unity Partnership Limited

Heard at: Manchester

On: 9 September 2019

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr J Searle of Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant's claim for unfair dismissal is dismissed.

REASONS

Introduction

1. The claim was brought by way of a claim form dated 18 April 2019 in which the claimant complained of unfair dismissal from his role as an Enforcement Agent (Bailiff) from the respondent, which is part of Oldham Metropolitan Brough Council, with effect from 14 January 2019.

2. The response form of 10 June 2019 defended the proceedings. It stated that the claimant was dismissed for gross misconduct and the dismissal was fair in all the circumstances.

The Issues

3. The claimant conceded that he did not challenge the reason for his dismissal and accepted it related to his conduct in accordance with section 98(2)(b) of the Employment Rights Act 1996.

4. However, the claimant did dispute that the respondent acted reasonably in treating it as a sufficient reason for dismissing the claimant, and challenged his dismissal and the reasonableness of it under section 98(4).

5. Therefore, the question for the Tribunal was: did the respondent, following a reasonable investigation, have reasonable grounds for sustaining the belief of misconduct? Was the dismissal within the range of reasonable responses available to the respondent?

Evidence

6. The parties agreed a joint bundle of written evidence running to 170 pages.

7. The claimant gave evidence and the respondent called one witness to give live evidence and submitted a statement from another witness who was unable to attend at the final hearing. Pam Siddall, the Head of Exchequer and Customer Services at the respondent, and the dismissing officer gave live evidence. A witness statement was also tendered on behalf of Joe Davies, the Chief Operating Officer at the respondent, who heard the claimant's appeal against dismissal. Mr Davies is currently receiving treatment.

8. The claimant advised that he did have questions for Mr Davies and the Tribunal noted the non-attendance of Mr Davies and advised that this would be taken into account when balancing the weight of the evidence he had given.

Relevant Legal Principles

9. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.

10. The primary provision is section 98 which, so far as relevant, provides as follows:

“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal and

(b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this sub-section if it ... relates to the conduct of the employee ...

(3) ...

(4) 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) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonable 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”.

11. If the employer fails to show a potentially fair reason for dismissal (in this case, conduct), dismissal is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied.

12. In a misconduct case the correct approach under section 98(4) was helpfully summarised by Elias LJ in **Turner v East Midlands Trains Limited [2013] ICR 525** in paragraphs 16-22. The most important point is that the test to be applied is of the range or band of reasonable responses, a test which originated in **British Home Stores v Burchell [1980] ICR 303**, but which was subsequently approved in a number of decisions of the Court of Appeal. The “**Burchell test**” involves a consideration of three aspects of the employer’s conduct. Firstly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? Secondly, did the employer believe that the employee was guilty of the misconduct complained of? Thirdly, did the employer have reasonable grounds for that belief? If the answer to each of those questions is “yes”, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band falls short of encompassing termination of employment.

13. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice.

14. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613**.

Relevant Findings of Fact

Background

15. The respondent is a subsidiary of Oldham Metropolitan Borough Council and provides services to both public and private sector clients on behalf of the Council.

16. The claimant performed the role of an Enforcement Agent, also known as a Bailiff. The role of an agent is to primarily recover payment of council tax and business rates and other associated debts owed to the council. By the time of his dismissal the claimant had performed this role for the respondent for approximately seven years.

17. At any one time, the claimant states that he had up to 200 individual accounts which needed regular monitoring in order to ensure that the debtor kept up with the periodic payments. The claimant recalled, and the respondent accepted in evidence, that he was one of their highest performing and successful Enforcement Agents.

Public Complaint – 3 October 2018

18. On 3 October 2018 a member of the public attended at the Civic Centre and made a written complaint that the claimant had been sending her text messages; they did not relate to the council tax balance that she owed. The member of the public complained that she found the text messages to be inappropriate and wanted them to stop. The complainant was particularly aggrieved that the claimant had asked her out for a drink and found that request totally unacceptable.

19. The complainant provided screenshots of the text messages she had received from the claimant by way of evidence.

20. The Tribunal can see from the text messages provided that the claimant had asked the complainant to message via his private mobile phone, and that a number of messages were sent after 9.00pm at night. Within those messages the claimant asks personal questions of the complainant which culminated in the complainant sending a picture of herself to the claimant, and the claimant making further personal comments.

21. During the course of a subsequent text conversation the claimant provided financial advice to the complainant and offered to take the complainant out for a drink should she pass her exams.

22. On 4 October 2018 the claimant attended a meeting with Diane Thorpe, the HR Advisory Manager, accompanied by a colleague, Phil Webster. At that meeting the claimant was informed of the allegations made by the complainant, which in the view of the respondent, constituted gross misconduct because of:

- (a) an abusive position in relation to a vulnerable adult; and
- (b) sending inappropriate/overly familiar messages by text.

23. The claimant was informed that as a result of the allegations, he would be suspended on full pay. Nick Davies was appointed as the investigating officer.

Investigation

24. On 10 October 2018 Nick Davies invited the claimant to an investigatory interview. The invitation letter confirmed the allegations outlined at the suspension meeting and that the respondent considered that they could potentially constitute gross misconduct.

25. The investigatory interview took place on 15 October 2018 at which the claimant and his colleague from the Unite trade union, Daryl Davenport, were in attendance. The investigating officer was assisted by the HR Adviser, Jen Windle.

26. During that meeting the claimant informed the respondent that the complainant was a vulnerable adult. The claimant confirmed that he had used his personal mobile phone because the battery on his work mobile did not last long. The claimant acknowledged that he should not have sent text messages at 11.18pm and further that he prolonged the conversation by sending an emoji. The claimant acknowledged with hindsight that it was inappropriate to contact the complainant on

a personal phone but mitigated that due to the age of his work phone and the issues with it, it was easier to use his personal phone.

27. The claimant denied ever cancelling any debt for the complainant after she had defaulted on her payments. However, rather than issuing court proceedings, he agreed to reset the payment arrangements.

28. The claimant admitted that he had initiated contact with the complainant in October and had asked her about her exam results and taking her for a drink. The claimant accepted, with hindsight, that this conversation was inappropriate, but mitigated that when dealing with thousands of debtors he could sometimes be friendly, jokey and flirtatious.

29. At the end of the meeting, the investigating officer advised the claimant that they would be checking his work mobile phone as part of the investigation. The claimant subsequently signed the copy of the notes from that meeting to confirm that they were a true and accurate account.

30. Following interrogation of the claimant's work phone, the respondent wrote to the claimant on 23 October 2018 inviting him to a second investigatory interview to discuss allegations which could potentially constitute gross misconduct on the grounds of:

- (a) abuse of position in relation to a debtor; and
- (b) sending inappropriate/overly familiar messages by text to a debtor.

31. The second investigatory meeting took place on 6 November 2018 at which the claimant was accompanied by his trade union representative, Daryl Davenport, and the investigating officer was again assisted by the HR Adviser, Jen Windle.

32. At that meeting, text messages that had been taken off the claimant's work mobile phone were put to him, and in particular that:

- (a) The claimant had sent a text message to a debtor making reference to her losing money down her cleavage;
- (b) Had called the debtor "hunny";
- (c) Had called the debtor "cute" and a "cranky woman", "cheeky";
- (d) (with reference to the previous "cleavage" comment) that the debtor's money was well and truly hidden;
- (e) With reference to the same comment, that it was "lost for ever down there then";
- (f) Calling the debtor a "whining woman";
- (g) Providing the debtor with his personal mobile number and asking for a selfie so he can "take a butchers";
- (h) A second request to send a selfie but not specifically to his work mobile;

- (i) That the debtor was a “good girl” and questioned whether she was “pissed yet”, followed by a third request for a selfie.

33. At the meeting on 6 November 2018 the claimant informed the investigating officer that this debtor was a flirtatious individual and he went along with it to keep the arrangement for payment going. The claimant acknowledged that the text messages taken individually were not appropriate, but mitigated that they were in the context of a conversation in order to keep the debtor paying her bill. When asked about the reference to the debtor’s cleavage, the claimant accepted in hindsight that it was not appropriate but that it was all in the spirit of the communication.

34. The claimant asked the investigating officer to view the messages as friendly banter whilst acknowledging that they could be discriminatory. The claimant explained that because of the nature of the conversation, he felt it appropriate to ask the debtor for a selfie so he could see who he was talking to.

35. When asked whether it was appropriate to have banter type conversations with debtors, the claimant felt that it was with the right type of person and explained the reason he had been so successful in his role was because he had developed relationships with debtors in order that they stick to the payment arrangements.

36. The claimant queried whether this particular debtor had complained about him and the investigating officer confirmed that there was no such complaint. The claimant contended that this debtor did not find his text messages inappropriate or offensive. The claimant was informed that the investigating officer had found evidence of more text messages received from this debtor on the claimant's work mobile but due to the storage facilities, he was unable to interrogate them further.

37. The claimant was clear that he had never had any relationships with people outside of text and that he was in a long-term relationship with his girlfriend. The claimant acknowledged that some debtors would be horrified by this type of contact but that others would not find it inappropriate. The claimant apologised if it was deemed inappropriate.

38. The claimant signed the notes of that meeting to confirm that they were a true and accurate account of the discussion.

39. On 3 December 2018 the investigating officer wrote to the claimant informing him that he had determined that there was a case to answer and he should face a disciplinary hearing because his actions could potentially constitute gross misconduct. On 20 December 2018 the claimant was invited to attend a disciplinary hearing and was warned that should be allegations be proven, they could result in his summary dismissal.

Claimant's Grievance

40. On 10 January 2019 the claimant raised a formal letter of grievance with Pam Siddall and complained that he had been subject to bullying and victimisation by his line managers, which he believed had led to the vigorous and relentless pursuance of the disciplinary matter by the investigating officer, Nick Davies.

41. Pam Siddall decided that the grievance was unconnected to the allegations made in the disciplinary matter which had been triggered as a result of a complaint from the member of the public, and the disciplinary hearing would proceed.

42. The claimant's grievance was upheld in part as the respondent found that he had been subject to poor supervisory practice.

Disciplinary Hearing

43. The disciplinary hearing took place on 14 January 2019 at which the claimant was accompanied by his trade union representative, Daryl Davenport, and the Chair of the hearing, Pam Siddall, was assisted by Diane Thorpe, HR Advisory Manager. Also in attendance was Nick Davies as the investigating officer supported by the Senior HR Adviser, Jen Windle.

44. In preparation for that hearing, the investigating officer had prepared a report in which he expressed an opinion that the claimant was dealing with vulnerable adults and there were concerns around the claimant's behaviour with these debtors. The investigating officer felt that there was an issue with the trust and confidence in the claimant dealing with female debtors in general and that should the text messages get into the public domain, there would be serious reputational consequences for the respondent.

45. The investigating officer expressed the view that whilst the claimant felt his messages were the best approach to collecting money, he also accepted that they could be inappropriate and unprofessional. The investigating officer was of the view that the claimant pursued conversations that were non work related, they were unprofessional and inappropriate and would have a detrimental effect on the reputation of the respondent should they get into the public domain and for that reason, he had recommended a disciplinary hearing.

46. At the disciplinary hearing it was the management case that the Enforcement Agents were given guidance in regard to the use of personal phones and the hours of work in the Bailiff's Procedure Manual. It was contended by the claimant's trade union representative that the claimant had not received diversity training and had not been provided with a charger for his work mobile phone. It was submitted on behalf of the claimant that the messages had been taken out of context and that ordinarily his method worked and he was one of the top collectors of money. It was acknowledged that the texts did not look good and the claimant would refrain from using that method in the future, and apologised for causing any upset.

47. The claimant was of the view that the complainant was going along with the communication and she generated 50% of the contact. The claimant acknowledged that the complainant had mental and social issues, but that the complainant had flipped.

48. The panel Chair informed the claimant that he was in a position of power dealing with a vulnerable adult and queried whether he could see the disconnect with the suggestion that this was the appropriate way to deal with such an individual. It was the view of the panel Chair that the complainant may have felt that she had no choice other than to go along with the tone of the conversation. The panel Chair

expressed a concern that, whilst the trade union representative said the claimant was sorry, the claimant had no realisation of what he had done wrong.

Dismissal

49. On 16 January 2019 a letter was sent to the claimant informing him that the allegations were proven and he was dismissed with immediate effect. Pam Siddall informed the claimant that she had taken into account the serious possible outcomes of his conduct and the potential damage to the respondent's reputation and the risk presented in regard to bringing the respondent into disrepute.

50. The claimant was informed that his acts were of a discriminatory nature and his failure to keep his behaviour beyond reproach was a clear abuse of his power towards two debtors, one of which was vulnerable. The claimant was informed that Pam Siddall was of the view that he was unable to demonstrate awareness and acceptance of the inappropriateness of what he had done in the performance of his role. The claimant was informed that Pam Siddall was particularly concerned that he continued to explain and defend his actions as banter and attempted to justify the complaint on the grounds of the complainant's mental health problems and the fact that she "flipped".

51. The claimant was informed that it was not accepted that training would have solved the problem and should have never been necessary in his position. Rather, Pam Siddall was of the view that the claimant's demeanour and explanations during the hearing made it clear that he would not recognise or accept the graveness of the actions he had taken.

52. Pam Siddall was particularly concerned that that the claimant was of the view that one of the debtors had "gone along with it" as a result of being worried about what action he would take, and that the claimant showed no understanding or remorse as how this could be seen as taking advantage of a vulnerable debtor. Pam Siddall was particularly concerned that the claimant did not personally apologise or explain how he would behave differently going forward.

53. Finally, the claimant was informed that Pam Siddall had taken into account the fact that he had not faced any previous disciplinary action.

Appeal Hearing

54. On 15 January 2019 the claimant submitted an appeal against his dismissal on the grounds that the decision was too harsh a punishment for a minor misconduct issue. The claimant also submitted that Pam Siddall had ignored or discounted the incidents of bullying and victimisation that he had raised in his formal grievance letter, which he was of the view contributed to the disciplinary case levelled against him.

55. The appeal hearing took place on 12 March 2019 and was chaired by Joe Davies, who was assisted by Stuart Hinley, a HR Adviser. Also in attendance was Pam Siddall assisted by Diane Thorpe, a HR Adviser. The claimant was in attendance with his trade union representative, Daryl Davenport.

56. On 14 March 2019 Joe Davies sent a letter to the claimant informing him that his appeal had been unsuccessful. In that letter, it is recorded that the claimant was of the view that the allegations were not of a serious nature and had been taken out of proportion, and that he dealt with people in a familiar manner in order to assist with increasing collections.

57. It was also recorded that the claimant did not believe his actions amounted to intimidation, were rude or offensive, but he accepted that some of the messages were inappropriate and over familiar and apologised. It was also recorded that the claimant had not received diversity training and was aware that the complainant had mental health issues. The claimant also contended that another colleague had gained from his suspension.

58. The letter informed the claimant that the panel took everything into consideration, including the fact that he had no previous disciplinary issues, but it was their view that the claimant had shown a level of naivety and lack of professional curiosity. It was the panel's view that this led to the gross misconduct in carrying out the claimant's duties and could have serious reputational consequences for the respondent.

59. The claimant was informed that the panel were of the view that the sanction of dismissal was appropriate due to the serious nature of the allegations that had been found proven, and his appeal would be dismissed.

Submissions

Claimant's Submissions

60. The claimant submitted that all the respondent was interested in was his collection figures and there was no mention of ethics or how you should speak to people. The claimant asserted that he had spoken to his managers on numerous occasions in regard to his work phone, that no charger was available and he had to use his own phone.

61. The claimant submitted that the diversity training was non-existent and he had incompetent managers for which the grievance was upheld.

62. It is the claimant's submission that the options available to the respondent were plentiful: he had no previous disciplinary record and the full gambit was available. However, the respondent had chosen the most severe sanction. It was the claimant's view that he could have done far worse and fully admitted that he should not have sent those messages. The claimant did not think that it was appropriate to compare what he had done with those who were guilty of misconduct of theft and fraud: this was ludicrous.

63. The claimant contends that he did apologise at the second investigatory meeting and that his approach was geared to get payments. The claimant reiterated that he apologised again at the appeal hearing.

Respondent's Submissions

64. The respondent submitted that it was for the Tribunal to consider fairness in all the circumstances in accordance with section 98(4) of the Employment Rights Act 1996. The Tribunal was reminded that it had to consider the size and administrative resources of the respondent and equity and the substantial merits of the case.

65. The Tribunal was told that because they were dealing with unfair dismissal, it was incumbent to decide whether the reason for the dismissal was fair, and there was a neutral burden of proof on the parties. In addition, the Tribunal was reminded that they had to consider whether the respondent had dealt in a fair and proper way in accordance with the ACAS Code of Practice.

66. The respondent submitted that it had gone beyond the Code of Practice as a Local Authority and that credit should be given to the claimant that he had not sought to criticise the respondent's procedure. The claimant had been suspended in writing, there had been two investigatory meetings and he had the right to a trade union representative at each meeting, albeit that this was not contained within the Code of Practice.

67. It was contended that at each stage the claimant knew what the charges were and he was listened to. Further, it was contended that the claimant knew why he was dismissed and the dismissal letter which set out the rationale of the dismissing officer.

68. It was acknowledged that whilst the dismissal letter did not expressly refer to the disciplinary procedure and what amounted to gross misconduct, the reason is conduct: the claimant knew this and knew he had a right to an appeal, which he exercised. The respondent contends that the findings of the dismissal officer amount to gross misconduct as detailed at points 4, 15, 21 and 22 of the examples of gross misconduct given in the disciplinary policy.

69. The respondent submitted that in evidence the claimant admitted that his behaviour amounted to example 15: "harassment of, or discrimination against, employees, contractors, clients or members of the public on unlawful grounds of otherwise". However, it was the claimant's case that he disagreed with the sanction and would have accepted a final written warning.

70. The respondent reminded the Tribunal that the test for reasonable responses was a narrow one. The respondent submits that whilst the Tribunal may find this was a harsh decision and have sympathy for the claimant in light of the duration of his employment and exemplary record, the finding of gross misconduct wipes this out, and whilst it was a harsh decision, it was not unfair.

71. The respondent contended that in order for the claimant to win he would have to show that no employer faced with these circumstances would have dismissed. The respondent submits that the claimant has already accepted his behaviour was inappropriate and so bad that he would have accepted a final written warning. The Tribunal was reminded that the margin between a final written warning and dismissal was so fine that it ought not to interfere with a fair dismissal.

72. The respondent submits that the Local Authority has obligations and a responsibility to those it serves and to protect them from individuals who are predatory. The respondent was particularly concerned that the claimant knew that the complainant had mental health issues but, that he raised this point in the context of attacking the complaint rather than seeing it as an aggravating factor.

73. The respondent submits that the complainant walked in to the Civic Centre and complained; the fact that she was asked to put the complaint in writing was appropriate. The respondent submits that these are the only two females that the respondent is aware of, and this may be the tip of the iceberg. The respondent reminded the Tribunal that the claimant would not provide access to his private mobile and the explanation of the poor battery on his work mobile was an excuse to divert the respondent's attention. The respondent submits that the claimant could have dealt with the phone issue properly and there is no evidence trail to show he was asking for a new mobile phone.

74. The respondent contends that the claimant's behaviour was predatory, sexual and of a sexist nature for which no training can be given. The respondent contends that the claimant asks the Tribunal to accept that he is very good at his job, but then raises a training issue when it suits him.

75. The respondent acknowledges that the claimant must have some ability to do the job so well. However, the respondent is afraid that he is demonstrably misguided and worryingly warped with a lens that is not in focus.

76. The Tribunal was reminded that the claimant had admitted in evidence that the nature of the message changed depending on the gender of the recipient.

77. The respondent contends that the dismissing officer was right to view the messages as harassment and discrimination. As a result the dismissing officer lost trust and confidence in the claimant's ability to act appropriately going forward and the dismissal was fair.

78. Finally, the respondent submitted that if the Tribunal was not with it in regard to fairness, that **Polkey** would apply and that any contributory conduct should be valued as 100% and any compensatory awards should be reduced to nil.

Discussion and Conclusions

Reasonable Investigation

79. At the outset of the hearing, the claimant confirmed he had no complaint in regard to the procedural aspect of the investigation. The Tribunal notes that no evidence was tendered from the investigating officer, Nick Davies.

80. However, during live evidence the claimant made a complaint that he did not believe the investigating officer was impartial and had dealt with the matter disproportionately because he had a gripe against him.

81. As the Tribunal did not have witness evidence from the investigating officer, it was necessary to interrogate the documentation in some detail to make a finding on the claimant's allegation. In evidence, the claimant accepted that from the outset he

had an understanding of the allegation and was offered appropriate support via the Employee Assistance Programme.

82. The claimant accepted that he was given the opportunity to be accompanied by his union representative and had an opportunity to reflect on the minutes of each meeting before signing as to their accuracy. When asked directly whether his grievance had anything to do with the fact that he had sent messages, which he accepted in evidence had been inappropriate, the claimant said “no”. When asked whether he was complaining about the sanction rather than the process, the claimant confirmed that this was the case.

83. Having considered the documentary evidence within the bundle and the claimant's clarification of his case, the Tribunal is of the view that the process followed by the respondent during the investigation was in accordance with the respondent's own policy and the ACAS Code of Practice. The claimant was given an opportunity to answer the allegations at the first investigatory meeting and a further opportunity to answer further allegations at a second investigatory meeting before the decision was taken to convene a disciplinary hearing.

84. The claimant's grievance was considered before the disciplinary hearing took place, and the explanation given by the Chair of the disciplinary hearing as to why that grievance was not allowed to hold up the disciplinary hearing was reasonable. A complaint had been received from a member of the public in writing with corroborating evidence. The Tribunal finds it hard to see how a reasonable employer could not have investigated such a complaint.

Genuine Belief

85. I have considered the investigating officer's report in detail and the views expressed by the dismissing officer at the end of the disciplinary hearing and again in her witness statement. It is clear to me that the respondent had a genuine belief that the claimant was guilty of misconduct.

Reasonable Grounds

86. During the investigatory meetings the claimant conceded that with hindsight his messages were inappropriate and what some might view as “horrific”. It was also conceded by the claimant during live evidence that his behaviour could amount to gross misconduct as per example 15 of the respondent's disciplinary policy. The dismissing officer concluded that his behaviour was discriminatory in nature.

87. Pam Siddall, was clear that the diversity and ethics policy and dignity at work policy would have been available to the claimant on the intranet, and the claimant admitted that he knew of the intranet but had chosen not to use it.

88. The claimant accepted that the comments were sexist, but they were banter and should be seen in a context and that they were reciprocated by the recipient. The claimant also admitted that he wanted photographs of the recipients to know who he was talking to.

89. During evidence the claimant maintained that his approach was no more than friendliness in order to maintain the agreed payments.

90. The dismissing officer was clear in her own mind that the claimant would have seen the manual and have had relevant training.

91. The dismissing officer was particularly concerned by the text message sent by the claimant to the complainant offering to reset the payment arrangement rather than take more serious action. She was of the view that this was evidence that the claimant was in a position of power and his subsequent messages to this complainant had to be seen in that context.

92. The dismissing officer was also clear that she considered both message threads when formulating her view of the seriousness of the allegations made against the claimant.

93. Pam Siddall was of the view that the claimant could not see the problem with his actions and throughout the investigation and the disciplinary hearing attempted to justify and defend, what he himself admitted, could be viewed by others as “horrible”.

94. The dismissing officer acknowledged that she would not expect every inappropriate comment made by a debtor to be reported to a more senior manager and that this would be a judgment call for the Enforcement Agents. However, she did expect there to be a report if the responses crossed a line where they had become offensive or did not abide by the Code of Conduct.

95. The dismissing officer took the view, and it was admitted by the claimant during live evidence, that his responses to debtors depended on their gender. She was not of the view that he would have made such familiar and discriminatory comments to male debtors. The dismissing officer reiterated what she had set out in her rationale for dismissal, that there had been no acceptance or connection with the claimant as to why these messages were so inappropriate and the damage that could be caused to the respondent should they get into the public domain. The dismissing officer was clear that she did not think a warning or a final warning was appropriate for these reasons; she was of the view that the fact that the claimant used the complainant’s mental health as a form of defence was enough to justify his dismissal.

96. I am of the view that the dismissing officer did have reasonable grounds for her belief that the claimant was guilty of misconduct.

Sanction

97. The appeal Chair considered the rationale provided by the dismissing officer in her report prepared for the appeal and allowed her and the Claimant to make representations during the appeal hearing. There was no suggestion from the claimant that the appeal Chair was not independent, and the appeal Chair reached the view that the dismissal was the appropriate sanction.

98. The claimant accepts that the text messages he sent were inappropriate and on questioning from the Tribunal admitted that they were discriminatory within the interpretation given in the examples of gross misconduct in the respondent’s disciplinary procedure.

99. Despite this acceptance and admission, the claimant maintained that the sanction of dismissal was disproportionate and he could have been given a final written warning.

100. In light of the nature of the complaint, the claimant's admissions and acceptances, but also his determination to maintain that his actions were not serious to justify dismissal, it was in the band of reasonable responses for the respondent to dismiss the claimant.

101. The respondent is a Local Authority with overarching duties to the public in the performance of its functions. The claimant had demonstrated that he was not fit to hold the position of power he held at the time he committed the misconduct nor in the future given his complete lack of reflection.

102. For these reasons, the Tribunal finds that the claimant's claim of unfair dismissal is dismissed.

Employment Judge Ainscough

Date: 28th October 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON
12 November 2019

FOR THE TRIBUNAL OFFICE

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