



# EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

V

RESPONDENT

Mr D Mott

First Community Health and Care  
C.I.C

Heard at: London South  
Employment Tribunal

On: 5 November 2019

Before: Employment Judge Hyams-Parish (sitting alone)

Representation:

For the Claimant: Mr J Long (Union Representative)

For the Respondent: Mr S Sudra (Counsel)

## RESERVED JUDGMENT

1. The claim of wrongful dismissal is dismissed upon withdrawal by the Claimant.
2. The claim of unfair dismissal is not well founded and fails.

## REASONS

### Claims and legal issues

1. By a claim form presented to the Tribunal on 19 March 2019, the Claimant brings claims of unfair and wrongful dismissal against the Respondent.
2. The Claimant confirmed at the beginning of the hearing that the wrongful dismissal claim was no longer being pursued and therefore accepted, when asked by the Tribunal, that this claim could be dismissed upon withdrawal.
3. The questions which the Tribunal needs to answer in order to determine the

unfair dismissal claim were agreed at the beginning of the hearing and have been used as the structure for dealing with the Tribunal's conclusions and analysis below.

**Relevant legal principles**

4. The right not to be unfairly dismissed is set out in s.94 Employment Rights Act 1996 ("ERA"). The right to bring a claim for unfair dismissal is conditional upon an employee having two years' continuous service unless the reason for dismissal is one of those for which no minimum service is required.
5. The test for determining the fairness of a dismissal is set out in s.98 ERA which states the following:-

*(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 subsection (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 subsection if it—*

*(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*

*(b) relates to the conduct of the employee,*

*(c) is that the employee was redundant, or*

*(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*

*(3) In subsection (2)(a)—*

*(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and*

*(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.*

*(4) Where the employer has fulfilled the requirements of subsection (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 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.*

6. It is well established that the burden of proof on employers to prove the reason for dismissal is not a heavy one. The employer does not have to prove that the reason actually did justify the dismissal because that is a matter for the Tribunal to assess when considering the question of reasonableness. As Lord Justice Griffiths put it in **Gilham and ors v Kent County Council (No.2) 1985 ICR 233** “*The hurdle over which the employer has to jump at this stage of an inquiry into an unfair dismissal complaint is designed to deter employers from dismissing employees for some trivial or unworthy reason. If he does so, the dismissal is deemed unfair without the need to look further into its merits. But if on the face of it the reason could justify the dismissal, then it passes as a substantial reason, and the inquiry moves on to [S.98(4)], and the question of reasonableness*”.
7. In the case of **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 EAT**, guidance was given that the function of the Employment Tribunal was to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair. If the dismissal falls outside the band, it is unfair.
8. In the case of **Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23 CA**, guidance was given that the band of reasonable responses applies to both the procedures adopted by the employer as well as the dismissal.
9. The Tribunal is mindful of not falling in to a substitution mindset. The Court of Appeal in **London Ambulance NHS Trust v Small [2009] IRLR 563** warned that when determining the issue of liability, the Tribunal should confine its consideration of the facts to those found by the employer at the time of dismissal. It should be careful not to substitute its own view for that of the employer regarding the reasonableness of the dismissal for misconduct. In **Foley v Post Office; Midland Bank plc v Madden [2000] IRLR 82** the court said it is irrelevant whether or not the Tribunal would have dismissed the employee, or investigated things differently, if it had been in the employer’s shoes: the Tribunal must not “*substitute its view*” for that of the employer.

### **Evidence**

10. The Tribunal heard evidence from the Claimant, and on behalf of the Respondent, the following witnesses:
  - Adrian Baillieu – Director of Finance and Resources
  - Valerie Frost – Chief Operating Officer
  - Elaine Best – Chair of Board (retired in March 2019)
11. The Tribunal was referred to documents in a hearing bundle extending to 206 pages.

**Findings of fact**

12. The following findings of fact were reached by the Tribunal, on the balance of probabilities, having considered all of the evidence given by witnesses during the hearing, together with the documents referred to by them. Where the Tribunal's findings on disputed fact reflect those represented by one party, it is because the Tribunal preferred the evidence of that party. It has not been necessary to determine each and every fact in dispute where it is not relevant to determining the issues in the case.
13. The Respondent is an employee-owned social enterprise, providing community healthcare services to people living in east Surrey and parts of West Sussex. It operates from 13 sites and employs in the region of 470 staff.
14. The Claimant commenced employment with the Respondent on 10 November 2014 as Head of Information Management and Technology and Estates. During his employment he reported to Mr Baillieu. The Claimant was responsible for working with the Executive Management Team to deliver the Respondent's Estates and Information, Communications and Technology Strategy. In this role he managed a team that was responsible for ensuring staff had IT access. It was a role which potentially gave him access to any document or patient file, as well as safeguarding information and records for adults (including vulnerable adults) and children.
15. On 12 September 2018, Mr Baillieu received a phone call from Ms Rachel Buckingham (Head of Contracts) and was told that the Claimant had not arrived for work and that no one could get hold of him. The Claimant was due to attend a work meeting that morning with two colleagues. His colleagues tried to contact the Claimant on his work and personal telephone contact numbers without success and so they raised their concerns with Ms Buckingham as she was a senior colleague. Ms Buckingham tried to contact the Claimant on his home number but he did not answer and so she left a message.
16. At approximately 11am, Miss Buckingham interrupted Mr Baillieu, who at that time was attending a board meeting, to ask if he had heard from the Claimant or had received a call or text message from him. Mr Baillieu confirmed that he had not heard from the Claimant and then returned to his meeting.
17. At approximately 1pm on the same day, the Claimant called Ms Buckingham and told her that he had been arrested and taken into custody early that morning. The Claimant told Miss Buckingham that certain allegations had been made against him but that they were not work-related and therefore he gave no further information. He also stated during that call that he would "*resign to safeguard the organisation given the accusations against him*". At 1.20pm the Claimant also contacted the Deputy Director of Finance, Bernard O'Sullivan, and told him that he had been arrested that morning in relation to what the Claimant described as "*porn of the worst*

*kind*". Mr O'Sullivan reported the conversation to Mr Baillieu, including the fact that the Claimant had reported that someone unknown to him had emailed him with an attachment, and when he opened it, he discovered that it contained indecent images of children.

18. Mr Baillieu became extremely concerned about what he was being told and at 2.45pm he attempted to contact the Claimant on both his work and personal telephone numbers. He did not get a response and so he left a voicemail message.
19. At 2.51pm Mr Baillieu received a text message from the Claimant which read "*at the moment I have no good time, and I just want to save everyone the hassle by going away. I'm so sorry*".
20. Mr Baillieu contacted the Head of Human Resources, Angelique Humphris, and they both decided that an investigation meeting needed to be convened with the Claimant as soon as possible to discuss the circumstances surrounding the arrest. As the Claimant's line manager, Mr Baillieu decided that it would be appropriate for him to carry out the investigation.
21. An investigation meeting was arranged to be held at an off-site venue at 9am the following day on Thursday 13 September 2018. Mr Baillieu attempted to contact the Claimant to notify him of the meeting but once again he could not get a reply. He therefore left the Claimant a text message at approximately 3.25pm inviting the Claimant to attend a meeting with himself and Ms Humphris the next morning.
22. Mr Baillieu then received an email from the Claimant in which he stated "*I feel bad for letting you all down and I will be sorting myself out so if you cannot reach me, apologies but I cannot see a future. So I am isolating myself from everyone*". Mr Baillieu responded by encouraging the Claimant to use the Employee Assistance Programme ("EAP"). He also advised that it was important that they meet as scheduled the next day.
23. At 3.27pm Ms Buckingham emailed IT support to inform them that the Claimant would be out of the office on sick leave in case any enquiries came in whilst he was away from the office.
24. At approximately 5.31pm Mr Baillieu received a further email from the Claimant saying: "*Really sorry, I do not feel able to talk which I know is unfair on you but I cannot face any more questions. Really am sorry*".
25. Immediately after receiving the email, Mr Baillieu received a telephone call from the Claimant during which he refused to state the reason for his arrest and said he was unable to speak to anyone about it. He also stated that "*he had lost the career that he wanted*". Mr Baillieu again encouraged the Claimant to use the EAP and to speak to family and friends for support. The Claimant advised Mr Baillieu that he would attend the meeting on 13 September 2018 and that he would get his father to drive him there. Mr Baillieu said in evidence that the conversation between him and the

Claimant was quite stilted with lots of silences and that it felt awkward.

26. On 13 September 2018, Mr Baillieu and Ms Humphris attended the off-site meeting venue at approximately 8.30am for the investigatory meeting with the Claimant. By 9am the Claimant had failed to attend the meeting. Mr Baillieu tried to call the Claimant four times on his work mobile number and again on his personal mobile number, without success. He then called the Claimant's home telephone number and the Claimant's father answered. His father said that the Claimant was on another call and that he would get the Claimant to call him back. At 9.30am, Mr Baillieu rang the Claimant again and left a voicemail asking for the Claimant to return his call. At 9.45am Mr Baillieu called the Claimant's home telephone number again and his father answered. Initially the Claimant was taking another call but he then came on the telephone and spoke to Mr Baillieu. Mr Baillieu asked the Claimant to clarify the allegations against him but the Claimant refused to do so, saying that the police had told him that he did not need to tell his employer why he had been arrested. Mr Baillieu said that as an employee, he had a duty to inform his employer and keep them informed.
27. The Claimant then divulged that he had been arrested for the possession of indecent images of children and that the police investigation would take approximately 2 to 6 months to conclude. Mr Baillieu asked the Claimant to tell him what had happened and to tell him about the circumstances how he came into possession of the indecent images but the Claimant refused to say any more. Mr Baillieu described it as a rather awkward conversation.
28. Ms Humphris, who was also on the call, confirmed that the Claimant would need to be suspended and she then went through the conditions of suspension confirming that he would remain on full pay and that he was not permitted to attend any of the Respondent's premises. Ms Humphris also explained that due to the nature of the allegation, the matter would have to be referred to the local authority designated officer (the "LADO").
29. Later the same day, Mr Baillieu sent a letter to the Claimant confirming the terms of his suspension. The Claimant was asked to keep Mr Baillieu informed of any progress.
30. On 18 September 2018, Mr Baillieu received a call from PC Kemp of the Metropolitan Police Service confirming that the Claimant had been arrested for the possession of indecent images of children and that the police "*had evidence of this*". PC Kemp stated that he was contacting the Respondent pursuant to a process called Common Law Police Disclosure, which aims to ensure that, where there is a public protection risk, that the police pass information to the employer or regulatory body to allow them to act swiftly to mitigate any danger.
31. On 25 September 2018, the Respondent received a letter from PC Kemp confirming what he had been told on the telephone. The letter included the following extract: "*He was arrested, interviewed at Croydon police station, where David gave a full admission to the offence. David was bailed with one*

*condition; not to have intentional unsupervised contact with any child under 18 unless supervised by an adult aware of the particulars of the investigation, pending forensic examination of exhibits seized.....Initial forensic examination on some of David's devices have revealed a number of indecent images to have been found and will now require a full forensic download".*

32. Having received the letter from PC Kemp, Mr Baillieu and Ms Humphris considered whether they should invite the Claimant to a formal investigation meeting and allow him to be accompanied by a representative. However, Mr Baillieu said in evidence that on the basis of PC Kemp's letter, they decided that a further investigation meeting would have been futile and would not have changed the outcome. They considered that the Claimant had previously been evasive and so concluded that they would not get any more information from him.
33. On 11 October 2018, Mr Baillieu contacted PC Kemp to seek advice whether the Respondent was free to commence its own disciplinary proceedings against the Claimant bearing in mind the ongoing criminal investigation. A response was received by PC Kemp on 12 October 2018 who confirmed that the Respondent could proceed separately with its own internal processes and that this would not hinder the police investigation at all.
34. In October 2018, Mr Baillieu prepared a confidential management report in which he set out a chronology of events starting with the first day that the Claimant failed to attend work. In a section headed "*conclusions and recommendations*" Mr Baillieu said as follows:

***The above allegation and information has caused an irretrievable breakdown in the relationship between David and First Community due to the seriousness of the allegation and David's senior professional position with unrestricted access to our IT infrastructure and data (including data relating to safeguarding children) within the organisation.***

***The above allegation also places a significant risk on the organisation due to the potential reputational damage this could cause, notwithstanding the potential safeguarding risks to our patients.***

***In line with section 18 (Police Investigations or other legal proceedings) of the Disciplinary Policy (appendix 8), First Community 'reserves the right to take appropriate disciplinary action in circumstances where there are police or other legal proceedings. This would normally occur where the nature of the circumstances appears to have a bearing on the employee's performance, their ability to fulfil their employment contract or upon the employer's responsibilities to others'.***

***Taking all of the above into account, the recommendation is that David's employment is terminated on grounds of SOSR (some other substantial reason) and that he is paid his notice of four weeks in accordance with his contract of employment.***

***I deem that by dismissing David for SOSR is an appropriate disciplinary action in line with our policy and by paying him his statutory notice we***

*are not in breach of his contract of employment. The panel are asked to convene to consider the above evidence and the recommendation presented.*

35. On 12 November 2018, Ms Frost and Ms Sarah Billiald (Chief Executive Officer) received Mr Baillieu's report. They discussed the report and considered whether the matter should proceed to a disciplinary hearing in accordance with the Respondent's disciplinary policy and procedure. Having considered the report, Ms Frost and Ms Billiald decided that a disciplinary hearing was not necessary because the Claimant had already admitted to the offence and they considered that a hearing would not materially change the outcome. They considered the information given to them by PC Kemp to be compelling and Ms Frost said in evidence that they reached their findings largely on the content of his letter. They felt that a disciplinary hearing was not appropriate as there was a total breakdown in trust and confidence and the employment relationship had deteriorated to the point of being untenable. They also considered, given the serious nature of the offence and in view of the nature of the Respondent's work with vulnerable children, that they had a right to protect its reputation and a duty to safeguard those under its duty of care. They concluded therefore that it was extremely important to act swiftly to protect its reputation and safeguard those individuals and that it was not appropriate for the Respondent to wait until the conclusion of the police investigation.
36. In a letter dated 15 November 2018, the Claimant's employment was terminated. The letter said as follows:

*Having considered all of the facts and evidence presented to us we concluded the following:*

*Due to the seriousness of the allegation, the fact that you have admitted the charge and in consideration of your senior professional position with unrestricted access to our IT infrastructure and data (including data relating to safeguarding children) within the organisation, we consider that the above incident has caused an irretrievable breakdown of trust and confidence in the relationship between you and First Community.*

*The serious nature of the offence places a significant risk on the organisation due to the potential reputational risk that this could cause, notwithstanding the potential safeguarding risks to our patients and/or service users.*

*Section 18 (Police investigations or other legal proceedings) of the Disciplinary Policy (enclosed) states: "First Community reserves the right to take appropriate disciplinary action in circumstances where there are police or other legal proceedings. This would normally occur where the nature of the circumstances appears to have a bearing on the employee's performance, their ability to fulfil their employment contract or upon the employer's responsibilities to others".*

*Your actions and admission of the offence has caused an irretrievable breakdown in the relationship between you and the organisation, and as a result I'm dismissing you on the grounds of some other substantial reason. Your last contracted day with First Community will be 15 November 2018.*



***In accordance with your terms and conditions of employment you will be paid four weeks in lieu of notice. Your annual leave has been calculated and there is no outstanding annual leave owed to yourself by the organisation. Any outstanding payments will be made to you at the end of November.***

***Should your circumstances change significantly at a later date, i.e. the charges are dropped; we may reconsider our decision to terminate your contract of employment.***

37. By letter dated 19 November 2018, the Claimant appealed against his dismissal. The grounds of appeal were set out in the letter which extended to four pages of A4.
38. An appeal hearing was arranged for the Claimant to take place on Tuesday 11 December 2018.
39. By email dated 6 December 2018, the Claimant sent a detailed statement of case which went on for some nine pages. In evidence, the Claimant said that he received the assistance of his Union Representative in writing what the Tribunal considered to be a detailed and well written document. In it, the Claimant stated that due to his continuing ill-health he would not be attending the appeal hearing but that he wanted the appeal to proceed in his absence. He stated *"I do not want this hearing rescheduled as there are strict time frames to follow in relation to an ACAS ECR and ET1 applications"*. In his statement of case he made the following points (which are summarised):
  - a. PC Kemp and Mr Baillieu had colluded together; PC Kemp had provided Mr Baillieu with information that was inaccurate. He said that due to this, his return was untenable even if the appeal was successful. The Claimant said that he has lost all trust and confidence in his employer.
  - b. The person who suspended the Claimant (Mr Baillieu) was also the person who conducted the investigation. The Claimant said that it was unfair for the same person to deal with the whole disciplinary process.
  - c. There was no attempt to obtain medical reports about the Claimant from his GP or any other health professional either prior to or after the Claimant's suspension and/or dismissal.
  - d. He was not invited to attend any disciplinary hearing and the letter of dismissal did not provide for a right of appeal, notwithstanding that the Claimant did in fact appeal.
  - e. The decision to dismiss seems to have been heavily influenced by PC Kemp's assertion that the Claimant had admitted to the charges. The Claimant says that he did not admit to the offence at all and that he simply admitted to there being pornographic images on his computer.

- f. The fact that the Claimant has been disciplined and dismissed notwithstanding that no charges have been brought.
40. The appeal panel consisted of Ms Best together with two other senior individuals. They considered the Claimant's statement of case. The appeal was conducted as a full appeal hearing and was minuted notwithstanding that the Claimant did not attend. The minutes recorded the panel's conversation about each of the issues. Whilst the panel upheld certain claims by the Claimant, most notably that there had been no disciplinary hearing, they decided to uphold the original decision to dismiss.
41. During the Tribunal hearing the Representative for the Claimant asked very few questions of the Respondent's witnesses. Their evidence, therefore, remained largely unchallenged. The one issue that received most attention was the fact that Mr Baillieu suspended the Claimant as well as conducting the investigation.
42. In his evidence to the Tribunal, the Claimant's position was that the police had been incorrect when telling his employer that he had admitted to the offence of having indecent images of children on his computer. He said that he had admitted to the police that he had adult pornography on his computer. He did not, however, say anything about this defence in the written submissions sent to the Respondent in advance of the appeal hearing.
43. The Claimant was asked why, when he had one last opportunity to fight for his career, he did not attend the appeal hearing. He claimed to be unwell and not able to attend, yet it was put to the Claimant that he had been fit enough to construct a statement of case, which was a detailed and well written document. Whilst he said that the statement of case had been drafted by his Union Representative, he accepted that he would have provided instructions to his Union Representative and would have read through and checked the document. The Tribunal concludes that it was far more likely that the Claimant's wish to avoid attending the appeal hearing was out of a desire to avoid direct questioning about the alleged offences, particularly given what the police and the Claimant had already said about the matter.
44. The parties made oral submissions to the Tribunal at the end of the case and the Tribunal considered carefully these submissions in reaching its conclusions below.

### **Analysis and conclusions**

#### ***What was the reason for dismissal?***

45. The Tribunal concludes that the reason for dismissal was three-fold: firstly given the information provided by the Claimant and PC Kemp, including the information that the Claimant had admitted to the offences, the Respondent

had sufficient information before it that was extremely concerning and that given his role in the organisation, they had lost all trust and confidence in the Claimant; secondly, given the nature of the Respondent's service, there was a need to do all that they could to safeguard the children who used their services; and thirdly, given their position in the community, the Respondent was deeply concerned about its reputation if it were to be disclosed that their Head of IT, with access to all the data that comes with that position, had been charged with possession of indecent images of children.

46. The Tribunal accepts that the above falls within the definition of "some other substantial reason" and that this was the reason for dismissal.

***Was that belief based on reasonable grounds? At the time of forming that belief, had the Respondent carried out as much investigation as was reasonable in the circumstances?***

47. The Tribunal concludes that it was reasonable to rely on the letter provided by PC Kemp, together with the messages provided by the Claimant, including the fact that the Claimant had said that the charges related to "*porn of the worst kind*" and had admitted that he had received an email with an attachment containing indecent images of children.

48. During the hearing, the Claimant did not suggest other lines of enquiry that the Respondent should have followed or pursued in reaching its decision. The Tribunal concludes that there was nothing else that the Respondent could reasonably have done in terms of further investigation to put itself in a better position than it was already, to make a decision. The Tribunal concluded therefore that the investigation certainly fell within a band of reasonable responses.

***Was the dismissal procedurally fair?***

49. In answering this question, s.98 ERA requires the Tribunal to look at the whole of the process, including the appeal. In this case there was no disciplinary hearing at all. The Tribunal concludes that to simply decide that a disciplinary hearing would not have taken the matter any further, was not within the range of reasonable responses open to an employer to take. On its own, therefore, this defect would have been sufficient for the Tribunal to conclude that the dismissal was unfair.

50. The Tribunal therefore went on to consider the appeal and whether this turned what would otherwise have been an unfair process into a fair one.

51. The Tribunal looked at the appeal carefully. The Tribunal's impression of the appeal is that whilst it could easily have been a rubber stamping exercise, particularly as the Claimant had chosen not to attend, it was far from it. The minutes of the meeting were 27 pages long and the meeting lasted almost an hour and a half. During that meeting, the panel considered and discussed at some length all of the issues and the responses from the Claimant. At that stage they did not know about the Claimant's defence, that

all of the images apart from the ones attached to the email, were adult pornography, because the Claimant did not say anything about this in his statement of case. In the Tribunal's view the panel approached its task with an open mind, knowing that it was within their powers to reverse the decision to dismiss.

52. In a detailed 7 page letter, the panel informed the Claimant of its decision, and addressed each of the points raised in the statement of case. The panel acknowledged that the process was flawed because the Claimant had not been invited to a disciplinary hearing. It also accepted that the dismissal letter did not provide a right of appeal and notwithstanding this was an error on the Respondent's part, it was still a technical breach of procedure which was remedied in any event by the Claimant being offered an appeal hearing when he appealed against his dismissal.
53. To the Claimant's point that Mr Baillieu should not have suspended him *and* conducted the investigation, the panel found that there was no breach of fairness and the Tribunal cannot conclude that such decision was one that no reasonable employer would take. The Tribunal did query this issue with the Claimant's Representative during the hearing to understand the unfairness or prejudice suffered by the Claimant. However, all the Claimant's Representative could point to was his experience in other cases within the NHS where he said it was not usual for the same person to do both.
54. The Tribunal took into account the fact that with only one hearing, the Claimant did not have an opportunity to challenge any points arising out of the appeal. However the Tribunal notes that the Claimant did not raise any complaint about the appeal process. The Tribunal acknowledged that in many cases, it is unlikely that an appeal would remedy a substantial defect in procedure such as denying the Claimant a disciplinary hearing. However the Tribunal concluded that this was an exception, bearing in mind the quality of the appeal process and the particular circumstances of this case. The Tribunal therefore decided that the process overall, including the appeal, was a fair one.

***Did the dismissal fall within the range of reasonable responses open for the Respondent to take?***

55. The Tribunal is satisfied that the decision taken by the Respondent to dismiss the Claimant is one which other employers would take in these circumstances and therefore fell within the range of reasonable responses open to it.
56. For all of the above reasons the claim of unfair dismissal is not well founded and fails.

***Should there be any reduction to a compensatory award on the grounds of Polkey or contributory fault?***

57. Whilst the Tribunal did not need to answer this question given its finding that the dismissal was fair, had the Tribunal found the dismissal unfair on procedural grounds, it would have found a 100% *Polkey* reduction in any compensatory award to be appropriate as well as an equivalent reduction to the basic award on the grounds of contributory fault.

**Employment Judge Hyams-Parish  
6 December 2019**