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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108183/2019

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Held at Dundee on 17, 18 and 19 March 2020

Employment Judge I McFatridge

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Mr D Carswell

**Claimant
In person**

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Camphill Blairdrummond Trust

**Respondent
Represented by
Mr Hardman,
Advocate**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Tribunal is that the claimant was not unfairly dismissed by the respondent. The claim is dismissed.

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REASONS

Introduction

1. The claimant submitted a claim to the Tribunal in which he claimed that he had been unfairly dismissed by the respondent. The respondent submitted a response in which they denied the claim. They accepted that the claimant had been dismissed but stated that he had been summarily dismissed for gross misconduct and that the dismissal was procedurally and substantively fair. At the hearing evidence was led on behalf of the respondent from Ms Andrea Khan the respondent's HR partner who gave general background evidence as well as speaking to her involvement in the investigation of the matter which led to the claimant's dismissal and Mr Alistair B Grimes a Business Consultant who is a Trustee of the respondent who had conducted the disciplinary hearing and made the decision to dismiss the claimant. Initially the respondent had also intended to lead evidence from Mr Scott who is another Trustee of the respondent and who had heard the claimant's unsuccessful appeal against dismissal. Unfortunately, Mr Scott required to self-isolate due to the current Covid-19 epidemic immediately prior to the hearing. Having led evidence from his first two witnesses the respondent's representative decided that he no longer required to lead evidence from Mr Scott. The claimant gave evidence on his own behalf and also led evidence from three witnesses he had arranged to be cited to appear. The first was Sandra Sabiston who had been the respondent's Assistant Director at the time of the claimant's dismissal and who gave evidence regarding the investigation she had carried out into the disciplinary matter which led to the claimant's dismissal including evidence in relation to her interviews with Andrew Gavin and Gerry McKeown. He also led evidence from Gerry McKeown and Bridget McKeown in relation to the incident in 2015 which formed the background to the claimant's dismissal. Both parties lodged a bundle of documentary productions. On the basis of the evidence and the productions I found the following essential factual matters relevant to the claim to be proved or agreed.

Findings in fact

2. The respondent is a charitable organisation which provides residential and daycare services for people with learning disabilities. They operate primarily from a substantial former mansion house in Stirlingshire which has extensive grounds. The claimant commenced employment with the respondent in or about 2011. The claimant had previously had a career in the banking industry where he worked as an actuarial assessor. The claimant decided on a career change and obtained an HNC and other qualifications in care before he commenced work with the respondent.
3. The claimant commenced work at Blairdrummond House. This is the main property operated by the respondent and has space for around 45 residents. In addition to the residents there are around 50 day students. The respondent employed around 80 employees at the time including the claimant. The claimant was employed latterly as a Workshop Leader. He worked at an outside area within the grounds of the house known as 'Eastwood'. He helped students and residents carry out general gardening and estate work. The claimant reported to Gerry McKeown who was Day Services Manager. The claimant's statements of terms and conditions of service were lodged. The current statement is at pages 59-65. Previous statements are lodged at 45-51 and 52-58. As is to be expected the respondent has a number of policies which the claimant was bound by. The respondent's disciplinary policy and procedure was lodged (pages 70-93).
4. Although the claimant did not have to personally register with the Scottish Social Services Council (SSSC) the claimant's employment was subject to various safeguarding regulations imposed by the SSSC. The SSSC has a Code of Conduct and the claimant was required in general terms to comply with this Code. Although the claimant was not himself personally registered with the SSSC various members of staff at the respondent were and SSSC could take personal action against them if they failed to meet the standard set out in the Code. An important feature of the Code is that if an allegation of abuse is made against any registered social worker then this requires to be reported to the SSSC.

5. In late 2017/early 2018 the claimant made an informal complaint relating to one of his supervisors, a Mr GB. He made a substantial number of allegations against GB. This coincided with the claimant being signed off with stress and a possible heart condition by his GP. The claimant met with Sandra Sabiston to discuss the complaint and claimed, amongst other things, that GB had caused an electronic device to emit a high-pitched screeching sound which had made the claimant unwell. Ms Sabiston arranged for the claimant to be referred to the respondent's Occupational Health provider. GB then submitted a grievance against the claimant and the claimant decided to submit a formal grievance against GB and others.

6. A grievance investigation was launched by the respondent which was carried out by David Provan. A grievance investigation meeting was held with the claimant on 7 June 2018. At the hearing the claimant handed over a written statement setting out the details surrounding his grievance. As well as making a number of allegations about GB he also raised allegations against Bridget McKeown, Gerry McKeown, Sandra Sabiston and Jason Glass the respondent's CEO. He also included a section entitled "Camphill major incident since joining" where he listed what he claimed were certain incidents which would constitute breaches of the SSSC Code. With regard to Gerry McKeown it is as well to set out the relevant paragraph in full. He stated

"Gerry McKeown once asked me , 'are you fuckin Dawn' during a review. This was in relation to an external support worker who was with a student.

Gerry McKeown once told me, 'I'm going 2 say something 2 say 2 u I will deny if asked about it'

Gerry McKeown threatened to punch a student 'I' and told me and Alex Gavin to leave the forest.

Gerry McKeown put me into day services as a demotion to humiliate me when he knew I couldn't pull on latex glove without it ripping while clean. Never mind how I would remove it when soiled.

Staff knew I was being demoted from WSL to be a 1 to 1 before I was informed."

7. The reference to the claimant being demoted was a reference to the fact that following the claimant making his informal complaint about GB the claimant was moved from working with GB to working one to one with a particular service user. The claimant's position was that being asked to work on a one to one basis with a service user meant he was being expected to do personal care. The claimant has a physical disability which makes it impossible for him to provide personal care.
8. On 29 June 2018 Mr Provan wrote to the claimant providing the outcome of his grievance. The letter was lodged (pages 133-139). Mr Provan divided the claimant's grievance into 10 separate points. He did not uphold eight of the points. He did uphold two points, one related to the claimant's claim that he had been asked to perform tasks that he was unable to carry out fully due to his disability. The second related to a concern that Sandra Sabiston had written to him in January 2018 (p106-107) in terms which the claimant considered inappropriate. Ms Sabiston's letter had been written following her meeting with the claimant where she had discussed his initial complaint against Mr Bashford. She suggested in two paragraphs in the letter that she would like to refer the claimant for a "professional assessment of your physical and mental wellbeing". The claimant had been upset by this. Mr Provan agreed with the claimant's concern and as part of the outcome of the grievance he asked Ms Sabiston to apologise to the claimant. On 24 July 2018 Ms Sabiston wrote a letter of apology to the claimant. This was lodged (page 141).
9. At this point the claimant remained off sick. The claimant appealed the grievance outcome.
10. At the initial grievance hearing, HR support to Mr Provan had been provided by Vicky Murphy who at that time acted as an HR consultant to the respondents. Andrea Khan who at that time was the respondent's appeals manager took notes. Ms Khan had prior to starting work with the respondent had a career in HR. Accordingly, as well as being appeals manager she was also designated HR co-ordinator.
11. In preparation for the appeal, Ms Khan was asked by Jason Glass the respondent's CEO to go through the documentation to see if any further

investigation required to be carried out before the matter was referred to a grievance appeal manager. Ms Khan noted that there appeared to have been no investigation of the allegation which the claimant had made to the effect that his line manager Gerry McKeown had threatened to punch a service user (I). Ms Khan was surprised at this as she considered that such an allegation was an extremely serious matter. Her understanding was that Mr McKeown was himself registered with the SSSC and the allegation might have to be referred to the SSSC. At that stage she was not aware that the allegation related to an incident which had occurred over two years before the claimant brought it to the attention of the respondent. She discussed the matter with Jason Glass who asked that she and Ms Sabiston, who was effectively Mr Glass' deputy, investigate the matter. Ms Glass and Ms Sabiston then decided to interview Mr McKeown. Ms Sabiston conducted the interview and Ms Khan took a note. The note was lodged (pages 149-150). It is probably as well to set out the note in full. It is headed up with the names of Ms Sabiston as Investigating Officer and Andrea Khan as HR Co-ordinator. It states

"In reviewing the information presented by David Carswell in preparation for his Appeal Hearing, it was noted that three allegations forming part of David's grievance had not been recorded as being addressed.

As a result, it was felt appropriate to address these allegations with Gerry McKeown in order to have a complete response.

Sandra asked Gerry to respond to the following allegations:

'Gerry McKeown threatened to punch a student 'I' and told me and Alex Gavin to leave the forest'

Sandra asked Gerry if he recalled the incident and if he could provide a description of what happened. Sandra also asked if the Chair of the grievance (Stuart Provan) had already addressed this with Gerry.

Gerry said that he did not remember discussing the particular incident with Stuart Provan. He did recall the incident, student IE was hypoglycaemic and his behaviour had deteriorated and he had left the community grounds. Gerry had gone into the woods after IE along with a couple of employees but he wasn't sure who, possibly David Carswell was one of them.

Gerry advised that IE was quite unreasonable due to the state he was in and IE had punched Gerry in the face with his fist. After that, the situation, had fairly quickly calmed down and IE had drunk some juice and then he had exited the woods.

5 Sandra advised Gerry there was an allegation that he had threatened to punch the student in the face. Gerry stated categorically that this was not the case and that IE had punched him. Gerry confirmed that at no time ever had he threatened to punch IE.

10 Sandra asked Gerry if he had ever asked to be alone with IE during the incident. Gerry confirmed he had not, that due to the state IE was in, he would never ask to be left alone and would have wanted to be supported by others as, had he been left alone and the situation had escalated both he and the student could have been at risk.

15 Gerry confirmed that the punch had left him on the floor. Sandra asked if restraint had been used. Gerry wasn't sure but advised that if it had been, there would have been more than one person involved. Gerry confirmed there would be an incident report on file for IE and agreed to retrieve it for filing with this statement.

20 *'Gerry McKeown once told me 'I'm going 2 say something 2 say 2 u I will deny if asked about it'*

Sandra asked Gerry if he could recall ever saying this to David Carswell. Gerry said that at no time had he ever said that to anyone at all and definitely not to David Carswell."

12. Ms Khan typed up Mr McKeown's statement. At some point Mr McKeown signed a copy of the statement however the signed copy was not lodged with the Tribunal. A further copy was signed by Ms Sabiston and that was the copy which was lodged before the Tribunal. At the tribunal hearing Mr McKeown confirmed that it was an accurate record of what he had said. I accepted that this was an accurate record of what Mr McKeown told Ms Sabiston and Ms Khan at the time.

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13. Subsequent to his meeting with Ms Sabiston, Mr McKeown directed Ms Khan to the incident report which had been lodged in respect of this incident at the time. The incident report is dated 25 August 2015 i.e. nearly three years before the claimant first raised the matter at his grievance

hearing on 7 June 2018. The incident report was lodged (pages 67-69). It is signed by Bridget McKeown who was the Assistant Manager of Day Services and reported to Gerry McKeown. It refers to the background of the incident as follows:

5 "It was 12.25 and IE came into the dining room GC & JM asked IE to come to meds cupboard to do his blood count ...

IE went over to do his bloods and GC asked him what it was IE refused to show CG and she explained as to why she needed to know, IE was reluctant to give her the information and put the machine away. GC asked IE again to which he told her to 'fuck off' and walked out the room. GC then followed him out the room and got him into the sitting room, once in there he still refusing to tell her what his reading was at so GC decided to call GMCK. (Gerry McKeown) While GC was on the phone IE left the room and left CBD. Staff DH GC LS then went by foot in car to find IE.

15 DC (Mr Carswell), GMCK, AG then went by mini bus out CBD ground to locate IE.

.....

20 IE was found by DC, AG, and GMCK at the woods at the back of estate workshop.

They tried to reason with IE to leave and go back to CBD.

IE wanted to go back to his supported living accommodation and was shouting and screaming.

GMCK was talking to IE trying to reason and calm him down.

25 IE was very agitated and verbally abusive towards the staff present.

IE was swinging his bag at the staff and hit GMCK in the face.

IE was becoming increasingly agitated going further into the woods.

MAPA restraint was used by DC/AG for 1 min, as Gerry observed for his safety.

30 After 1 min IE was then calm.

IE was then calm enough to walk back to CBD to DS.

Observation on returning of IE behaviour and colour warranted a call by BMCK to dad to consent to giving further insulin.

Dad refused to allow CBD staff to give insulin.

An Ambulance was called to take IE to hospital where he was given Insulin and stayed overnight”

14. The report then goes on to state in the box under “If any injuries occurred please state action taken and outcomes.”:

5 “Yes GMCK was hit in the face by IE with a large satchel.”

The copy report was signed by Bridget McKeown on 28 August 2015.

15. Ms Sabiston and Ms Khan then interviewed Alex Gavin, Support Worker who had been with Mr Carswell and Mr McKeown in the woods on the day in question. Ms Sabiston conducted the interview and again Ms Khan took notes. Ms Khan’s notes were lodged at pages 144-145. Again, it is probably as well to set out the note in full.
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“In reviewing the information presented by David Carswell in preparation for his Appeal Hearing, it was noted that an allegation about an incident with a student forming part of David’s grievance had not been recorded as being addressed.

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As a result, it was felt appropriate to address these allegations with Alex Gavin, Support Worker in order to have a complete response.

Sandra asked Alex to respond to the following allegations:

‘Gerry McKeown threatened to punch a student ‘I’ and told me and Alex Gavin to leave the forest’

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Sandra asked Alex if he recalled the student and the incident and if he could provide a description of what happened.

Alex did recall the student and advised he, Gerry McKeown and David Carswell and gone to look for IE and that he had been found by them in the woods. He advised that he could not recall word for word what was said, but told Sandra that they had been trying to reassure IE and calm the situation down. Alex thought IE was stating that he either wanted to go somewhere else or get someone to come and see him. Alex recalled that Gerry had said to IE that if that was what he wanted, he would need to come out of the woods and they could go and do what he wanted.

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Sandra asked Alex if the three of them had been with IE the whole time the incident was taking place. Alex advised that when IE first

disappeared, staff had split up to try and find him and then the three of them had come together in the woods. He thought that they had been together the whole time.

5 Sandra asked Alex if Gerry had ever asked David and Alex to leave the forest. Alex said he couldn't recall Gerry asking them to leave, he thought that the three of them may have moved away from IE to discuss a plan of action but couldn't recall being asked to leave Gerry alone with IE.

10 Alex recalled that IE had some kind of satchel or shoulder bag and that IE was hitting out with the bag, swinging it about. He said that it was predominantly Gerry that was getting the brunt of it and that it was hitting Gerry and he was sure that Gerry had been caught on the face. Alex confirmed that the three of them had discussed whether the use of restraint was required.

15 Sandra asked if they did restrain IE. Alex confirmed that they had, that he and David had taken a side each and had managed to restrain IE at the second attempt using MAPA techniques.

20 Alex said that that was when they had managed to get through to IE and he had started to calm down. He then walked out of the woods on his own.

Alex thought he recalled the paramedics turning up to assist with IE and his low blood sugars but IE didn't want to go with them.

25 Sandra asked Alex if he had heard Gerry threatening to punch IE when they were in the woods. Alex responded 'No, no'. He went on to state that Gerry had tried to calm IE down, IE was wanting something specifically and that Alex had not heard any threats toward IE."

16. Ms Khan typed up her note and e-mailed a copy of this to Mr Gavin a couple of days later. The reason she did this was because Mr Gavin was not available to sign his copy of the statement. The e-mail chain was
30 lodged (page 146). Mr Gavin confirmed that the note was correct. He stated

"As I said at the time of interview, it was a long time ago, but that is as much as I can remember. This is therefore as true a recollection as I can possibly give."

17. Ms Khan discussed the matter with Mr Glass and decided that it would be appropriate to start a disciplinary investigation however at this point in time the appeal in respect of Mr Carswell's grievance had still to be heard. Mr Carswell was still off work sick. Mr Carswell was not advised at this time that any disciplinary investigation was in contemplation.
18. The respondent arranged for a member of the Board, Pat Middleton to conduct the grievance appeal. The grievance appeal meeting took place on 24 October and was chaired by Ms Middleton who was assisted by Ms Vicky Murphy from STEP HR. Andrea Khan attended and took notes. On 25 October 2018 Ms Middleton wrote to the claimant providing the outcome of his grievance appeal. This letter was lodged (page 151). It was decided that no further action would be taken with regards to the claimant's allegations.
19. In the meantime the claimant continued to be absent from work through ill health. He attended an absence management meeting with Ms Khan and Jason Glass on 10 December 2018 which discussed his return to work. Following this meeting Ms Khan wrote to the claimant regarding the claimant's return to work. It was agreed that the claimant was fit to return to work but that instead of returning immediately he would take the accrued annual leave which he had built up during his absence. During the meeting the claimant discussed various matters and raised various comments about a file which he was preparing in relation to alleged shortcomings on the part of the respondent which he intended to submit to the Care Inspectorate. Following this meeting Ms Khan wrote to the claimant setting out her understanding of what had been discussed and what had been agreed. This was lodged (page 152-154). Within the body of this letter Ms Khan made it clear that she had deliberately not referenced all of the comments made by the claimant regarding his Care Inspectorate paperwork but this was on the basis that the meeting was to discuss the claimant's sickness absence only.
20. The claimant was due to return to work after the Christmas/New Year holidays on or about 7 January. On the Thursday before this (3 January) the claimant was advised that he would not be permitted to return to work but instead would be suspended pending a disciplinary investigation. The

respondent wrote to him on 3 January 2019 confirming this (page 154A-154B). The claimant was advised that the matter being investigated was

“significant concerns and allegations that you:

- Have made a false allegation that may cause irreparable reputational damage
- Have displayed conduct that is neither in keeping with the ethos and standards of Camphill Blair Drummond nor the Scottish Social Services Council Codes of Practice for Social Service Workers: point 6.5 – *‘working openly and co-operatively with colleagues and treating them with respect’.*”

The second allegation (which was eventually not proceeded with) related to a number of remarks made by various of the claimant’s colleagues during the grievance process about the way the claimant interacted with them.

21. The respondent appointed a Mr Munt, a residential care leader with the respondents, as investigator. The investigation meeting took place on 28 January 2019. A note of this meeting was prepared by Ms Khan who attended as note taker. The note was lodged (page 158-161). During the meeting the claimant was asked by Mr Munt to provide further information about the incident he was referring to. He goes on to state

“DC stated that he and Gerry McKeown were in the forest, DC was in the castle. 3 females were sitting at side tables at the side of the estate building. They told DC as he approached the workshop that IE had left CBD grounds and was in the forest behind the workshop area.

IE had been in workshops with DC for most of his time at CBD and DC had gone to catch up with them in the forest as he thought he may be able to help, given his experience with IE. He caught up with the group and found that IE was not listening and was being petulant.

DC recalled that GM was quite close to IE & IE punched GM in the face, a straight punch. DC said that GM lost it and asked DC & colleague Alex Gavin (AG) to leave the forest. DC thought that anyone getting punched would lose it & GM lost it.”

22. Following further question the claimant was asked how GM had lost it. The note goes on to state:

5 “DC did not describe as such but said that he had seen GM like that before and that he was screaming at IE and AG. Something like ‘the two of you get out of here, I’ll deal with it’. DC stated that he had the actual words written down in the house and that he would send it on to NM.”

23. Following the meeting the claimant provided Mr Munt with a document headed “IE INCIDENT, USE IN CONJUNCTION WITH REF: GM2 MAP”.
10 The document was lodged (page 163-164). The claimant indicated that this document was part of a “dossier” which he kept at home. He had not brought it to the attention of any member of the respondent staff prior to this. The document goes on to describe the incident as follows:

15 “I returned to Eastwood at lunchtime where a support worker was sitting. They explained that IE (Student) was in the forest and Gerry (Day services manager) and Alex Gavin (House support worker) had followed him in.

I caught up to the group in the forest and walked along with them. IE was a regular Estate workshop attendee and I thought I could assist.
20 Gerry was doing all the talking and was a couple of meters behind IE. I joined Alec who was roughly four meters to the side of IE. IE had his satchel bag slung over his shoulder held tight to his body and was repeating ‘I want to go home’, Gerry was trying to coerce him to return to the main building.

25 IE was getting wound up by Gerry and turned around and hit him once to the face. IE set off at a quicker pace. Gerry turned to Alec and I and barked ‘you two get out of here, I’m going to sort him out’ I replied ‘we are going nowhere’ Gerry ordered ‘you two get out of here, I’m going to sort him out, I’ll punch him’. I again replied ‘we are going
30 nowhere’ Alec never said anything.

Alex and I caught up with it and shadowed him at the same distance as before. Gerry followed a little further back taunting IE in a raised voice ‘you are out of here’ ‘you are never getting in here, I’m in charge of who gets a place here.’

IE stopped and held a stick to his arm and threatened to self-harm. IE was visibly more upset and started saying 'right, well I'll just end it all' 'well then, I've got nothing to live for' 'nobody will care if I'm not here'. We judged between the three of us that IE required an intervention.
5 Alex and I helped IE to the ground after removing the stick, we did not think due to Gerry's unhinged state he should be involved in case of retribution.

We could feel IE loosen up as the tension subsided. After half a minute Alex asked IE if he was okay to get up. IE stood and was calm and reasonable as normal. We asked him to check his blood which
10 he did, he then ate a couple of biscuits which he said he needed.

As we walked back, I told Gerry that he was out of order for what he said to IE. He rebuffed this and my request to contribute to the incident report which he replied 'no, he would complete it himself'.

15 I was contacted by Debbie Hunter and asked to come with her in the car with IE to his current home residence in Dunblane. IE was okay on the trip and said nothing about what had happened previously. On the way back to CBD, Debbie told me that IE would never be back at CBD."

20 24. Following the investigation meeting on 24 January Mr Munt wrote to the claimant on 21 February advising that he was in the process of finalising his report and hoped to be in contact with the claimant in the near future. The letter was lodged (page 166).

25 25. Mr Munt subsequently produced a report which was lodged (page 167-174). It bears to be signed by Mr Munt on 28 February 2019 and recommends formal disciplinary action. The report refers to both of the allegations against the claimant. In respect of the first allegation, that relating to the making of a false allegation against Gerry McKeown, he refers to a number of supporting documents. These were minutes of the
30 meeting with David Carswell 24 January 19, e-mails from David Carswell 30 January 2019 (this enclosed his report on the 2015 incident), written statement from GMcK, written statement from Employee X. (This was a copy of Mr Gavin's statement which had been anonymised and referred to him as employee X). There was also enclosed copies of the

respondent's policies on safeguarding vulnerable adults from abuse, record keeping, data protection, information security and use of IT. With regard to the second allegation, four witness statements were also included.

5 26. The report was not sent to the claimant at this time but was sent to Ms Khan. In accordance with the recommendations Ms Khan wrote to the claimant on 5 March inviting the claimant to a disciplinary hearing. She sent him a copy of Mr Munt's report together with all the various supporting documents. This letter was lodged (page 175-176). The claimant was
10 invited to a meeting to take place on 11 March and he was advised of his right to be accompanied. He was advised that the outcome of the hearing might lead to disciplinary action up to and including dismissal. The two allegations were as follows:

- 15 • Have made a false allegation against Gerry McKeown that may cause irreparable reputational damage
 - Have displayed conduct that is neither in keeping with the ethos and standards of Camphill Blair Drummond nor the Scottish Social Services Council Codes of Practice for Social Service Workers: point 6.5 – *'working openly and co-operatively with colleagues and treating them with respect'.*
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27. Ms Khan asked Mr Grimes, one of the respondent's trustees, to conduct the disciplinary hearing. He was sent a copy of the letter to the claimant together with the report and documentation included at the same time as the claimant. Mr Grimes has had a career as a business consultant mainly
25 involved with social enterprises. He joined the Camphill Blair Drummond Board in or around 2017 and had not had any contact with the claimant prior to being asked to conduct the disciplinary hearing.

28. On 7 March the claimant sent an e-mail to Mr Munt stating that he would be at the hearing and that he would be accompanied by Jeremy Wyatt.
30 Mr Munt confirmed that this would be in order.

29. The claimant duly attended the disciplinary hearing on 11 March. He was accompanied by Mr Wyatt. Mr Grimes conducted the hearing and was assisted by Vicky Murphy an HR Manager with STEP HR who provided

advise to the claimant together with Ms Khan who took notes. Ms Khan's notes of the meeting were lodged (pages 189-195). I considered these to be an accurate although not verbatim record of what took place at the hearing.

5 30. At the commencement of the hearing Mr Grimes introduced himself to the claimant and gave a brief history. He said that he was there to hear the claimant's response to the allegations. The claimant made the point that he felt he had not been given reasonable notice. Mr Grimes said he could have asked for witnesses to attend and could have said he required more
10 time to arrange for them to be present. The claimant said he did not wish to call any witnesses at this stage since he felt there was a legal argument to be made. The claimant confirmed that he was happy to proceed on the day without witnesses. Mr Grimes reiterated to the claimant that he could have asked for more time.

15 31. They then discussed Mr Munt's report. The claimant considered that the report was nonsense. There was then a discussion around what happened in 2015. The claimant maintained his position that Mr McKeown's version of events was a lie. The claimant said that he needed to know who employee X was. He felt it was unreasonable to rely
20 on the evidence of employee X. The claimant made it clear that he considered Mr McKeown was telling falsehoods. He was critical of Mr McKeown stating that Mr McKeown had the reputation of being liberal with the truth. He said he enjoyed telling stories that were not 100% factual based. The claimant said Mr McKeown had a history of this and the
25 claimant had evidence of this. The claimant was critical of the way the investigation had been carried out and he was critical of the way Mr Grimes was conducting the meeting. He said they should have had a list of witnesses in advance and then gone through their testimony. His position was that he stood by the allegation and that Mr McKeown was not
30 telling the truth. Mr Grimes sought to obtain from the claimant some indication as to why the claimant did not report the incident at the time. The claimant did not give any clear answer to this. The claimant said that he believed that Alex Gavin would be able to prove that Mr McKeown's statement was not true. At the time the claimant was unaware that Alex

Gavin was employee X. Mr Grimes' understanding was that, given that there were only three people in the woods who were employees it was fairly obvious that employee X was in fact Mr Gavin. Mr Grimes asked the claimant if he had other witnesses. The claimant indicated he had witnesses who could speak to Mr McKeown's general untruthfulness. Mr Grimes then stated that he had noted the claimant's response and he was closing off allegation 1. He then went on to discuss allegation 2.

32. Following the hearing Mr Grimes adjourned at 12 o'clock in order to consider his decision.

10 33. Mr Grimes had read all of the documents in the case before he met the claimant. It appeared to him that Mr Munt's investigation had been fairly thorough and well-organised. He felt that allegation 1, as opposed to allegation 2, was a self-contained very specific allegation which was either factually correct or not. He noted the clear statements from Mr McKeown and from employee X. He was aware that it would be open to him to re-open the investigation and re-interview Mr McKeown and employee X and indeed anyone else if he wished to do this. On the other hand he felt that the statements were extremely clear and there was really nothing else that he could put to either Mr McKeown or employee X which they had not already answered. He felt with allegation 1 that he had enough information before him to decide that it had been established that the claimant had made a serious allegation against Mr McKeown which was not true. The allegation was that Mr McKeown had threatened to punch a student. He felt this was a very serious allegation to make. He felt that given that the allegation was not true then the claimant must be acting maliciously in making it.

25 34. With his background in the third sector and social enterprises Mr Grimes was aware of the highly regulated environment in which they operate. He noted that the claimant's position at the hearing was that he was maintaining that Mr McKeown was guilty of the serious misconduct which the claimant had alleged. The claimant had not provided any explanation as to why he had not raised this issue at the time but instead waited over two and a half years to drop it into a grievance he had raised about

something else. He felt that it had been established to his satisfaction that the claimant had made a false allegation against Mr McKeown.

35. With regard to allegation 2 he felt that this was a much less clear-cut and much less precise allegation. The allegation was based on poor personal relationships between the claimant and various colleagues and Mr Grimes felt that he needed to investigate matters a bit more before he could decide whether the allegation was justified or not.
36. With regard to allegation 1 however he felt that this was an extremely serious matter. The respondent operates in a regulated environment and such an allegation is one which could have a serious effect both on Mr McKeown as an individual and on the whole organisation. He considered that the claimant would know that this was the type of allegation which if properly made would have required to be referred to the SSSC. The immediate effect on Mr McKeown would have been serious. In addition he felt there could have been a serious impact on those who provided funding for the respondent. Clearly it would be totally unacceptable for a student to be threatened in this way by a senior member of staff. The claimant would have known this was a very serious allegation yet he had chosen not to pursue it properly but to simply store it away and drop it in to his grievance a couple of years later. He also referred to keeping a dossier at home of similar incidents. Mr Grimes' view was that allegation 1 on its own merited summary dismissal.
37. Following the adjournment he advised the claimant that he had found allegation 1 to be proved and that the claimant would be summarily dismissed as a result of this. With regard to allegation 2 he said he was still considering the matter but that given the verdict in relation to allegation 1 he wished to advise the claimant of this at once.
38. Very shortly after the hearing was completed the claimant sent an e-mail to Ms Khan in which he provided a list of people he said he wished to interview as witnesses. He had not provided Ms Khan with this in advance of the hearing. His e-mail was lodged (page 186).
39. Mr Grimes wrote formally to the claimant in a letter dated 15 March 2019 confirming the decision to summarily dismiss him and setting out his

reasonings. This letter was lodged (page 197-198). With regard to allegation 2 Mr Grimes indicated that due to the sanction for allegation 1 being to summarily dismiss him he had decided that he would not carry out any further investigations in relation to allegation 2. With regard to allegation 1 he stated

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“My findings confirm that you did make a false allegation against Gerry McKeown that may have caused irreparable reputational damage, which I confirm is gross misconduct and the sanction for this is summary dismissal. I advised you that as a result of this you would be summarily dismissed. I took into account the fact that, had the incident occurred, you should have disclosed it as per the well-established procedure and would not simply have recorded it in a ‘Dossier’ ‘you kept at home’. If I hadn’t come to the conclusion that your allegation of misconduct was false then I would be recommending that dismissal be considered on the grounds that you failed to adequately report an incident which was clearly covered by guidelines.”

40. The claimant’s formal letter of appeal was lodged (page 200) dated 20 March. The claimant stated:-

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“My reason for doing this is because my integrity has been besmirched and my reputation as an employee sullied. I cannot rest until this is reversed.

As Mr Grimes has said, this dismissal rests entirely on an extremely serious incident that took place in the grounds adjacent to Camphill. I will be presenting, amongst other things, my report of the incident which I submitted to Nigel Munt on 30th January 2019. I therefore also require Mr McKeown’s report of the same incident. My reason for requiring this is that if it shows the same details as my report, my name will be cleared.

I also require the report by ‘Witness X’ and disclosure of his or her name. I myself am certain that the only people who were involved with this incident were the student, Mr McKeown, Alec Gavin and myself.

I hope very much that you will provide these documents. If they are not provided and my appeal is not upheld I will have no other option than to take this further.

5 I enclose a list of the witnesses I require to be released from Camphill for the hearing which includes students. This will demonstrate concern by others relating to integrity within the operations of Camphill. I would remind you that I have been wrongly sacked for lying.”

The list was attached (pages 201-202). It contains around 43 names.

10 41. In a letter dated 17 April Ms Khan wrote to the claimant regarding the appeal hearing. It stated that the appeal would be heard on the following points only.

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- “• You will tell us where we have erred in not accepting your version of events surrounding the ‘extremely serious incident’ that occurred in August 2015, where you make an allegation that Gerry McKeown had ‘threatened to punch’ a student.
 - We will explore further the reasons you did not report this incident, as per policy and procedure.”

20 42. Ms Khan noted that the claimant had asked for a total of 58 witnesses and indicated that the respondent considered this to be unreasonable. She indicated that she would be asking the witnesses named by the claimant to give consent for their contact details to be released to the claimant so that he might contact them with a view to obtaining a statement.

25 43. In a letter dated 15 May 2019 the claimant was invited to a disciplinary appeal hearing which was to take place on 27 May 2019. The letter was lodged (page 207-208). Ms Khan indicated that as agreed with the claimant letters had been issued to five witnesses and that returns had been received from them which were enclosed. She also indicated that the respondent had now taken legal advice and were in a position to
30 advise the identity of witness X. She confirmed that witness X was Mr Alex Gavin. She enclosed a copy of Mr Gavin’s original statement. She asked that the claimant provide copies of any witness statements he was lodging

no later than 27 May and advised that she would be in touch regarding the date.

5 44. At some point around this time the claimant visited Camphill in order to obtain copies of various e-mails which he had sent. He described these as red flagged e-mails. These were e-mails which he had sent over the years in relation to various incidents. The claimant discovered that his e-mail account had been deleted.

10 45. On 29 May Ms Khan wrote to the claimant providing further information regarding the hearing and changing the date. (page 223). On 29 May the claimant wrote a lengthy letter to Ms Khan in which he set out grounds of appeal. This was lodged (page 221-222).

15 46. The claimant duly attended the hearing. He provided the hearing with two witness statements. These were lodged (pages 219 and 220). The statements answered generic questions such as did the witness think the claimant was honest and whether incident reports and notes had been completed correctly. They did not address the central facts relating to allegation 1.

20 47. The claimant attended the hearing on 5 July 2019. He was accompanied. The hearing was conducted by John Scott the Chairman of the Board of Trustees who was assisted by Ms Khan. The hearing was not a reconsideration of the matters considered at the disciplinary hearing but was simply a review so as to ensure that the procedure to date had been in accordance with the respondent's procedures. The appeal meeting lasted around 25 minutes. The claimant did not raise any new matters during the appeal hearing. In a letter dated 9 July 2019 Mr Scott wrote to the claimant confirming that his appeal was not upheld. He stated

"During the hearing it was confirmed there were three main points to your appeal:

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1. Your belief that a conscientious investigation into an incident involving Mr Gerry McKeown in 2015 had not been undertaken;
 2. It is unfair to believe that you had made a false allegation against Mr McKeown; and
 3. The penalty of dismissal was too severe.

We explored the reasons for your appeal in relation to the first of these points. You advised me that you did not have faith in the investigation conducted by Sandra Sabiston into the allegation, which ultimately led to your dismissal. You also called into question the accuracy of the incident report completed at the time of the incident in 2015.

Before moving on to the second and third points of your appeal you advised me that you did not deem it necessary to explore the associated details, and that everything you wished to be explored was in the letter you submitted by email to Andrea Khan on 29 May 2019. You re-affirmed this by telling me that your advisors had confirmed this was all the information you needed to present.

I then asked you if you had anything else to add and you confirmed that you did not.

I adjourned the meeting by advising you that I would consider the information you had presented at the hearing and make a decision.

...”

48. Following his dismissal the claimant registered for state benefits. He has been in receipt of Universal Credit since shortly after the date of his dismissal. He has applied for various jobs in the care industry. He has not applied for any jobs in his former career of banking. The claimant considers that his disability counts against him as many care jobs require the employee to carry out personal care and he is not able to do this. He is also of the view that unless his name is ‘cleared’ by the Employment Tribunal he will have difficulty in obtaining a job. He has not tested this assumption by contacting the SSSC or any other organisation.

49. As a result of the claimant’s continued failure to find work he has been allocated a specialist adviser by the Stirling branch of the employment service who are advising him. He was unemployed as at the date of the hearing.

Matters arising from the evidence

50. I consider that Ms Khan and Mr Grimes, Ms Sabiston, Ms Bridget McKeown and Gerry McKeown were all attempting to assist the Tribunal by giving truthful evidence in relation to the matters they had been involved

in. They made appropriate concessions during cross examination but the tenor of their evidence remained intact. During examination in chief each of the respondent's witnesses spoke succinctly to the matters which were relevant to the case. I found the claimant's cross examination to be somewhat wide ranging and many of the questions which were asked of both witnesses were objected to as being of doubtful relevancy. I generally allowed the line of questioning to continue under reservation on the basis that it was unclear to me exactly where the claimant was going. At the end of the day few of the questions asked by the claimant were in relation to matters which were relevant to the matters which I required to adjudicate on. It was clear to me that the claimant has a burning sense of injustice about the way he has been treated. Over and above that however he appears to have a strong sense that his previous employers had a flawed approach to the way they managed their affairs generally. Much of the claimant's questioning appeared designed to demonstrate that somehow the respondent were incompetent at what they did or did not meet their responsibilities as they should. The claimant was critical of the various written notes of meetings which were produced. Despite this he did not himself give any detail as to what he said had happened differently at these meetings.

51. I did not hear detailed evidence in respect of a number of the meetings other than from Ms Khan. I did however hear evidence from Mr Grimes in relation to the disciplinary hearing and from Ms Sabiston, Ms Khan and Mr McKeown who were able to speak in relation to the investigation meeting carried out with Mr McKeown and with Mr Gavin. I considered this evidence clearly showed that the report of these meetings compiled by Ms Khan was indeed correct. I was also able to make a finding that the report of the disciplinary hearing produced by Ms Khan was correct. The claimant's position was that Mr McKeown was lying but he did not in fact put this to Mr McKeown directly in cross examination. Instead his general approach appeared to be to show that because there were some internal inconsistencies between Mr Gavin's report of what had taken place, Mr McKeown's report of what had taken place and the incident report compiled at the time by Bridget McKeown (who had not seen the incident herself but relied on what Mr Gavin and Mr McKeown told her) then the

claimant's version was to be preferred. The claimant also made reference to a number of matters where he considered Mr McKeown had not done things properly. He made an issue out of the fact that he believed Mr McKeown had not acted in accordance with his MAPA training in that he should not have been standing close enough to the student to be punched by the student.

52. I have to say I started off this case feeling considerable scepticism about the case put forward by the respondent. The respondent is a care organisation and here we have an employee who has made an allegation of abuse against a service user and the employee making the allegation is then dismissed because the employer decides that the allegation was false. At the end of Mr Grimes' cross examination by the claimant I felt that absolutely none of the points which could properly have been put to Mr Grimes had been made by the claimant. I therefore subjected Mr Grimes to a fairly extensive series of questions in order to establish exactly what his thought processes had been. I was satisfied on the basis of his answers that he was giving honest evidence when he set out the way that he had considered matters and how he had come to the conclusion he had reached on the basis of the evidence before him.

53. The claimant's own evidence was primarily about setting the context and I have made factual findings in line with what he told me about the sequence of events which led to him making his first grievance and how matters progressed from there. In cross examination the claimant was not keen on answering direct questions and it is still unclear to me why, if it actually happened in the way alleged by the claimant he did not raise the matter of the alleged threat by Mr McKeown at the time.

54. There was one factual dispute between the witnesses in relation to Bridget McKeown's incident report. It was quite clear from the evidence that Ms McKeown had produced this report without herself having been present in the woods and seeing for herself what had happened. It was also clear to me that she had based her report on what she had been told by Mr McKeown and Mr Gavin. She did not claim to have spoken to the claimant and the claimant did not claim to have spoken to her. Ms McKeown's understanding was that these reports were available to all

members of Camphill staff online. The claimant's position was that whilst such incident reports were now available online, back in 2015 they were not available to other members of staff as a matter of course. I have checked my notes and although Ms Khan does not appear to have been asked about this specifically I have her recorded as agreeing with the claimant that such reports would not necessarily have been made available to other members of staff at the time and my finding is therefore that the claimant would not necessarily have had access to an online version of the written report back in 2015. That having been said it appeared to me that the burning question which any employer in the situation of the respondent would want to know is why the claimant waited some two and a half years before making the allegation and why if it were true he did not raise it as a safeguarding issue at the time.

Discussion and decision

55. The sole claim being made by the claimant was a claim of unfair dismissal in terms of section 98 of the Employment Rights Act 1996. For the avoidance of doubt the claimant did not assert that he had made a protected disclosure or that his dismissal was automatically unfair in terms of section 103A.

56. Section 98 of the Employment Rights Act 1996 states

“(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.”

57. The case of *Abernethy v Mott, Hay and Anderson* [1974] ICR 323 states that for the purposes of the statute a reason for the dismissal of an employee is a set of facts known to the employer or it may be of beliefs held by him which cause him to dismiss the employee.

58. In this case I was satisfied on the basis of the evidence that the reason for the claimant's dismissal was the employer's belief that he was guilty of gross misconduct. Conduct is a potentially fair reason for dismissal falling within section 98(2)(b) of the Employment Rights Act 1996. I noted that although the claimant did not dispute the reason for dismissal in his ET1, at various points during the hearing he appeared to indicate that he considered that the alleged gross misconduct was simply a pretext for his dismissal and that the respondent wished to dismiss him for other reasons. This was one of the issues which I questioned Mr Grimes on extensively. I was entirely satisfied on the basis of Mr Grimes' responses that the sole reason in his mind for dismissing the claimant was in relation to the misconduct which was the subject of allegation 1. I noted Mr Grimes' characterisation of the allegations comprised in allegation 2 as being imprecise. There was clearly a background in this case of difficult personal relationships between the claimant and some of the other people he was working with. That having been said, I considered that, on the evidence, the reason for the claimant's dismissal was the fact that the respondent believed that he was guilty of the making a serious false allegation against a colleague. I did not consider this to be a pretext but the genuine reason for the dismissal.

59. Having established that the reason for dismissal was potentially fair I then required to consider the terms of section 98(4). This states

“(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.”

60. Both parties made full submissions. The respondent's representative provided a written submission in which he set out what he understood to be the legal provisions which applied. I consider that he accurately

referred me to the appropriate authorities which in any case are well known to employment lawyers. Rather than repeat each side's submissions in full and no doubt fail to do justice to them I will simply refer to them where appropriate in the discussion below.

5 **Discussion and decision**

61. As indicated by the respondent's representative in his submission, the approach which an Employment Tribunal requires to take in answering the questions posed by section 98(4) in a conduct dismissal is set out in the case of ***British Home Stores Ltd -v- Burchell [1978] IRLR 379***. The employer who discharged the employee on the ground of the misconduct in question must have entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. This involves three elements. There must be established by the employer the fact of that belief i.e that the employer did believe it. Secondly it must be shown that the employer had in his mind reasonable grounds upon which to sustain that belief and third the employer at the stage at which he formed that belief on those grounds must have carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

62. The respondent's representative has also correctly stated the law when he goes on to say that an employer who discharges the onus of demonstrating these three matters must not be examined further and that it is not necessary that the Employment Tribunal itself would have shared the same view in these circumstances. There is a substantial body of case law where an Employment Tribunal which has fallen into the error of substituting its own view of the employee's guilt of the allegation rather than looking at the reasonableness of the employer's decision in the way suggested by Burchell has been over turned in the higher courts. These cases have cautioned Tribunals against entering into a "substitution mindset".

63. In this case, as I have noted above there is no doubt in my mind, having comprehensively questioned Mr Grimes on the subject, that Mr Grimes did have a genuine belief that the claimant was guilty of the misconduct in

question. It appeared to me that he had come to the matter with an open mind but had then come to the decision on the basis of the information before him that the allegation made by the claimant against Mr McKeown was false.

5 64. I then required to look at whether or not Mr Grimes had reasonable grounds on which to form that belief. In doing so I am conscious of the various strictures against entering a substitution mindset.

65. I was referred by the respondent to the case of ***Iceland Frozen Foods Ltd -v- Jones***. This well-known case sets out the basics of the use of the
10 “band of reasonable responses” test in Employment Tribunal proceedings. I would agree with the respondent’s representative’s summary of the law.

“(1) The starting point should always be the words of section 98(4) themselves;

15 (2) in applying the section an Employment Tribunal must consider the reasonableness of the employer’s conduct not simply whether they (the members of the Employment Tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer’s conduct an Employment Tribunal must not substitute its decision as to what was
20 the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a range of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, another quite reasonably take another;

25 (5) the function of the Employment Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case 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
30 outside the band it is unfair.”

66. In the present case the information before Mr Grimes was to the effect that it was not disputed that the claimant had made the allegation in question. The claimant had made the allegation in writing first of all in his written

grievance (page 122). He had then expanded on this at the disciplinary investigation meeting and provided an extract from what he described as his dossier in which he repeated the allegation. He had then repeated it again at the disciplinary hearing. The real issue which Mr Grimes had to determine was whether the allegation was false. In this regard Mr Grimes had the statement of the claimant, the statement of Mr McKeown and the statement of Mr Gavin. They were the only individuals there apart from the student.

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67. Whilst the claimant pointed to various differences between the version of events given by Mr Gavin and Mr McKeown both statements are crystal clear in respect of the central element of the allegation which is that Mr McKeown at no time threatened to punch the student. There was no suggestion by the claimant that there had been any collusion between Mr McKeown and Mr Gavin. Mr Grimes was careful in the disciplinary hearing to give the claimant the opportunity to suggest any other witness or any other evidence he wished to bring, all that the claimant could suggest was that a statement be obtained from Mr Gavin but it would have been quite clear to Mr. Grimes, albeit I accepted the claimant's evidence that he did not appreciate this until later, that employee X could be nobody other than Mr Gavin. It appeared to me that given the quite clear statements from Mr Gavin and Mr McKeown there were reasonable grounds for Mr Grimes to come to the view that the allegation made by the claimant was false. This is particularly the case when one looks at the circumstances in which the allegation came to be made by the claimant some two and a half years after the incident in question. It appeared to me that Mr Grimes was perfectly entitled on the basis of the evidence to come to the conclusion that this was a malicious allegation which was made to bolster the claimant's grievance.

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68. The issue of the reasonableness of the investigation troubled me. I can see that the claimant felt aggrieved that neither Mr Gavin nor Mr McKeown were presented as witnesses for him to cross examine. That having been said, employment law is quite clear that there is absolutely no requirement for this to be done, see for example ***Ulster Bus v Henderson [1989] IRLR 251 NICA***. The case of ***Sainsbury's Supermarkets Ltd v Hitt [2003]***

IRLR 23 CA makes it clear that the range of reasonable responses test applies as much to the question of whether an investigation into a suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of a decision to dismiss a person from his employment for a conduct reason. I also considered whether the investigation was defective in that although the initial allegation made by the claimant in his grievance at page 122 was put to the two witnesses the fuller version of the claimant's allegation as submitted in writing to Mr Munt (pages 162-163) was not put in front of either Mr McKeown or Mr Gavin. At the end of the day I decided, applying the band of reasonable responses test, that whilst some employers might have thought it important to do this it could not be said that no reasonable employer would fail to do this. The allegation against the claimant was in respect of the simple one line allegation which he made in his grievance which was that Mr McKeown had threatened to punch a student. It was the truthfulness of this allegation which was put to the two witnesses and which the two witnesses responded to. I felt that Mr Grimes answered the point well when I put it to him that he should have interviewed Mr Gavin and Mr McKeown himself by saying that he did not feel that there was anything more that he could have put to them other than what had already been put to them by Ms Sabiston when she carried out the investigatory interview. I also note that when Mr McKeown was available to be cross examined at the tribunal hearing he entirely stuck by his statement.

69. Although the claimant did not raise the point I myself asked Ms Khan whether it would have been possible to interview the student who was the subject of the allegation (IE) and she indicated that the student no longer attended Camphill and in any event, given his various difficulties, she did not consider that it would have been appropriate to do this. I accepted this explanation. My finding was therefore that the investigation was reasonable in all the circumstances. It is therefore my view that in terms of section 98(4) the employer acted reasonably in finding that the claimant had committed the misconduct alleged against him.

70. The case of ***Polkey v A E Dayton Services Ltd*** makes it clear that procedural fairness is an important part of overall fairness. In this case

while I considered that there were a number of instances where other employers might have conducted things differently the procedure adopted by the respondent was well within the range of reasonable responses test. I felt that there was a lack of documentation in relation to the earlier
5 investigative proceedings and in particular the notes of the meetings with Mr Gavin and Mr McKeown did not clearly state when and where the interview took place. There was also a degree of fuzziness about how the decision to investigate the claimant's allegation which was made in or about February 2018 was not taken until around October 2018 and
10 thereafter when the decision was made that the matter be referred to a disciplinary investigation. I was concerned about the relatively short time between the invitation to the disciplinary hearing and the hearing itself, however I was satisfied that Mr Grimes had given the claimant the opportunity to ask for the hearing to be delayed and also given him the
15 opportunity to call witnesses. I accepted that the claimant had said that he was happy to proceed with the hearing on the day. These things having been said I did not consider that these matters interfered with the overall procedural fairness of the dismissal.

71. The final question which I required to determine was whether, given that
20 the claimant was reasonably found to be guilty of the misconduct alleged, the decision to dismiss was itself within the range of reasonable responses. I accepted the respondent's evidence that the making of this type of malicious allegation by one colleague against their manager is something which can have extremely serious consequences both for the
25 organisation and for the individual manager concerned. The public are, very rightly, highly sensitive to allegations that vulnerable service users are abused by those whose job it is to care for them. The making of a false allegation of abuse is therefore an extremely serious matter. It certainly brings the organisation into disrepute. I would agree with
30 Mr Grimes that to make such an allegation in the way the claimant did when there are clear legitimate avenues for reporting such abuse at the time is something which the employer were entitled to take extremely seriously. On balance therefore I am entirely satisfied that having found that the claimant was guilty of the alleged misconduct the decision to

dismiss was within the band of reasonable responses. The claim is therefore dismissed.

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Employment Judge:

Ian McFatridge

Date of Judgment:

27 March 2020

Date sent to parties:

27 March 2020

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