



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107490/2019

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Held in Glasgow on 2, 3, 4, 5 and 16 December 2019

Employment Judge S MacLean

10 **Ms R Porter**

**Claimant
Represented by:
Mr D M Hutchison,
Solicitor**

15 **Student Loans Company Limited**

**Respondent
Represented by:
Ms J Skeoch,
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the application is dismissed.

REASONS

Introduction

- 25 1. In the claim form sent to the Tribunal's office on 1 July 2019 the claimant complains of unfair dismissal and non-payment of notice pay. The respondent accepts the claimant was dismissed but denies unfairly dismissing her as alleged or at all. The respondent contends that having dismissed the claimant fairly for gross misconduct, it was entitled to dismiss the claimant summarily.
- 30 The respondent submits that the claim should be dismissed.
2. By email sent on 21 November 2019, the respondent made an application to amend its grounds of resistance to include the following as a new paragraph:

E.T. Z4 (WR)

“If, which is denied, the circumstances giving rise to the dismissal of the claimant do not amount to gross misconduct, the respondent will contend that it was the substantial reason of a kind such as to justify dismissal of the claimant.”

- 5 3. Having heard parties, the Tribunal determined at the start of the final hearing that the application to amend would be allowed.
4. It was agreed that the final hearing was restricted to the issue of liability. If appropriate remedy would be considered at a further hearing.
5. For the respondent, the Tribunal heard evidence from Louise Love, formerly
10 Head of Internal Audit, Jackie Currie, Head of Operations Glasgow, and Jacqui Smillie, Chief Financial Officer. The claimant gave evidence on her own account.
6. The parties prepared a joint set of productions to which the Tribunal was referred.
- 15 7. The parties gave oral submissions and helpfully provided a copy in writing. A summary of the submissions is below.

The Relevant Law

8. Section 94 of the Employment Rights Act 1996 (the ERA) provides that an employee has the right not to be unfairly dismissed.
- 20 9. Section 98 of the ERA sets out that for a dismissal to be fair, the employer must show the reason for the dismissal and that it is one of the potentially fair reasons set out in section 98 (1) or (2) of the ERA.
10. A reason relating to the conduct of the employee is one of the potentially fair reasons for dismissal (section 98(2)(b) of the ERA).
- 25 11. Some other substantial reason is also a potentially fair reason for dismissal (section 98(1)(b) of the ERA).
12. The burden of proof on the employers at this stage 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 (see *Gilham & others v Kent County Council* (No2) 1985 ICR 233, CA).

13. The Tribunal is entitled to make a finding that the reason for dismissal is one other than the reason relied on by an employer (see *Logan v Future Technology Devices International Limited* [2019] CSIH46).
14. In terms of section 98(4) of the ERA, if the Tribunal is satisfied that the respondent has established a potentially fair reason for dismissal, it must then determine the question of whether the dismissal was fair or unfair having regard to the matters set out in section 98(4) (a) and (b): whether taking into account the size and administrative resources of the employer, it acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee and the equity and substantial merits of the case.
15. Once it is established that the claimant was dismissed for a potentially fair reason, the test of the substantive fairness outlined in *British Home Stores Limited v Burchell* 1978 IRLR 380 was relevant to the question of whether it was reasonable for the respondent to treat that reason as sufficient to justify dismissal.
16. When applying the Burchell test, the Tribunal should consider three issues:
 - a. whether the employer genuinely believed that the employee was guilty of misconduct;
 - b. did the employer have in its mind reasonable grounds on which to sustain that belief and at the stage in which the employer formed the belief on those grounds; and
 - c. had the employer carried out as much investigation into the matter as was reasonable in the circumstances?
17. The ultimate test in determining the application at section 98(4) is whether the dismissal fell within the “band of reasonable responses”, a test which reflects the fact that inevitably there may be different decisions reached by different

employers in the same circumstances (see *British Leyland (UK Limited) v Swift* 1981 IRLR 91).

18. In applying section 98(4) of the ERA, the Tribunal must not substitute its own view of the matter for that of the employer but must apply an objective test of whether the dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer (see *Iceland Frozen Foods Limited v Jones* [1982] IRLR 439, *Post Office v Foley* and *HSBC Bank plc (formerly Midland Bank plc) v Madden* [2000] IRLR 827CA).
19. There is always an area of discretion within which a respondent may decide on a range of disciplinary sanctions all of which might be considered reasonable. It is not for the Tribunal to ask whether a lesser sanction would have been reasonable but whether or not the dismissal was reasonable (see *Boys & Girls Welfare Society v McDonald* [1996] IRLR 129).
20. For a summary dismissal to be fair, the misconduct in question must amount to gross misconduct: conduct being a deliberate and wilful contradiction of the contractual terms or amount to gross negligence (see *Laws v London Chronical (Indicator Newspapers Limited)* 1959 1 WLR 698CA and *Sandwell & another v Westwood* EAT 0032/09). Gross negligence can constitute gross misconduct (see *Adesokan v Sainsbury's Supermarkets Limited* 2017 EWCA Civ 22).
21. Gross negligence in the field of employment might be “a really serious failure to achieve a standard of skill and care objectively to be expected... of the grade and experience of the [claimant]” (see *Dietmann v Brent London Borough Council* [1987] ICR 737 (QDB)).
22. Section 98(4) of the ERA requires Tribunals to determine reasonableness in accordance with equity and substantial merits of the case which may include inconsistency of punishment (see *Post Office v Fannell* 1981 IRLR 221 CA) and when an employee may be under the impression that they would not have been dismissed for certain conduct.

Issues to be determined

23. The Tribunal considered that it had to determine the following issues:

- a. What was the principle reason for dismissal?
- b. Was it a potentially fair reason in accordance with section 98(1) and (2) of the ERA?
- c. If so, was the dismissal fair or unfair in accordance with section 98(4) of the ERA and in particular:
 - i. Did the respondent believe that the claimant was guilty of gross misconduct?
 - ii. If so, did the respondent have reasonable grounds for believing that the employee was guilty of gross misconduct?
 - iii. Did the respondent carry out as much investigation as was reasonable?
 - iv. Did the respondent's decision to dismiss fall within the range of reasonable responses available to the reasonable employer in the circumstances?

Findings in fact

24. The Tribunal made the following findings in fact.

25. The respondent is a non-profit making, government owned organisation with its head office in Glasgow. It is a publicly funded organisation. The respondent was set up in 1989 to provide loans and grants to students at universities and colleges in the United Kingdom.

26. The respondent employed the claimant from 1 June 1996 until her summary dismissal on 29 March 2019. The claimant was based at the respondent's head office. Her gross weekly earnings was £858, and her net weekly earnings was £551.

27. The claimant's job title at the time of her dismissal was Asset and Configuration Manager, a role that she held for approximately 12 years before

her dismissal. The case centred on the asset management element of her role.

28. The claimant was graded at the upper end of grade 4 (management level). She line managed a team of people. The claimant was in a position of trust and did not expect to be micromanaged. She was a manager with responsibility for asset management.
29. The claimant's job description states that her job purpose included managing the asset, configuration and release management functions ensuring a quality service is provided; and owning and developing process documentation procedures and improvement plans.
30. The claimant's key accountabilities in her job description included:
- a. Managing the team to deliver software/hardware/licence renewals for ICT. This involves obtaining quotes dealing with third party suppliers, raising purchase orders within Oracle, receiving invoices when orders are fulfilled, asset tagging new hardware and accurately recording in the CMDB (the respondent's asset register for configurable items which includes laptops, surface pros, PCs, plasmas etc) (the asset register);
 - b. Ensuring all appropriate database and documentation are updated;
 - c. Ensuring regular audits are carried out/comms room/desktops/laptops etc. This could include arranging third party or BIS requirements and reconcile against the asset register.
31. The desirable skills and experience required of the claimant in her job description was strong organisational, time management and prioritisation skills.
32. The claimant attended regular performance reviews. These were conducted on a midyear and end of year basis. The midyear review was around October of each year and the end of year reviews in or around early April each year.

33. The claimant received positive performance reviews for 2014/15, 2015/16, 2016/17, 2017/18 and 2018/19. The claimant did not attend an end of year review for 2018/19 and she had by that stage been dismissed.

34. Around November 2014, several laptop computers went missing from a batch of 25 recently delivered to the respondent's Darlington office. The respondent's internal audit team undertook a review that included an evaluation of the respondent's control environment for the physical security, asset acquisition, management and disposal of ICT assets. The findings of the review were set out in a report dated 28 November 2014 (the 2014 Report).

35. The following recommendations set out in the 2014 Report were allocated to the claimant who was aware of and agreed to the recommendations:

“Recommendation 7: annual stock checks should be completed on an annual basis of all ICT assets and approximately documented as being completed. This could be rolled into other checking exercise if appropriate throughout the year.

Management response: annual stock checks should take place. Current risk/issues register will be updated to capture that these have not taken place due to resourcing issues and this will be escalated to senior management.

Recommendation 8: asset stock checks should include a check to the unique disc ID to ensure the asset checked is the asset purchased and tagged and recorded on the asset register. Consideration should be given to reviewing the current methodology for asset tagging to establish if there is a more effective/efficient way of recording assets on the asset register to include the unique disc ID that would reduce the risk of error/fraud.

Management response: stock checks will include verification of the asset to the unique disc ID.

Recommendation 12: Asset tags are currently used to provide an environment for the control of assets through an asset register. Asset tags

and their use must be effectively controlled by ensuring they are both held securely and their use is subject to a segregation of duties control. This should be documented in procedures by configuration management and are made available to all staff with the responsibility of asset tagging.

5 Management response: a spreadsheet will be introduced to control the use of asset tags to sub teams responsible for asset tagging. Procedures will be documented with the control and use of asset tags.

10 Recommendation 13: When assets are tagged, this should be reviewed and reconciled by a segregation officer before AI (Assyst Incident) update which includes confirmation of asset numbers to unique disc IDs. This should be incorporated into a documented procedure outlining the process and rationale for the asset tagging to minimise the potential risk of error/fraud.

15 Management response: procedures will be documented for asset tagging.

Recommendation for team: assets held in stock pre-configuration should be regularly monitored and reconciled to stock listings to reduce the risk of theft or overprovision of unused stock.

20 Management response: assets held in stock will be reviewed on a quarterly basis.”

36. The claimant was aware of the weaknesses in procedures for asset management. She knew that it was her responsibility to own and develop effective processes and procedures and conduct annual audits.

25 37. In October 2017, an external company (Capgemini) conducted an audit of the respondent’s hardware. A report was produced detailing the findings of that audit (the Capgemini Report). The claimant had sight of the Capgemini Report which highlighted discrepancies between the asset register and the assets physically in the business. The claimant did not take any action.

38. In the claimant's performance development document for 2017/2018 the claimant noted her 'Personal Objective 1' as 'define/improve roles, responsibilities and processes associated with ICT configuration management'. In the column next to that, which is labelled 'Performance Measures', the claimant wrote the following:

"Create processes and workflows to be used for successful asset management. This includes separate processes for:

- asset on boarding;
- asset moves;
- asset disposal;
- asset theft/loss."

39. Below that the claimant noted that the evidence required in relation to those performance measures would be as follows:

"Completed documents detailing the stages that this goes through, who is responsible for each stage and what the consequences are for non-compliance of process. Consideration will need to be given to the different types of assets we want to capture".

40. In 2018, Scott Moncrieff reviewed the respondent's hardware and software management. The object of the review included confirming that formal hardware and software management procedures are documented; an inventory of hardware and software assets is maintained which contains appropriate identification information; the inventory of assets is periodically reconciled with trusted sources; and there are formal processes in place for the addition, changes and removal of assets to the estate.

41. A report was issued in March 2018 detailing their findings (the 2018 Report). The conclusion was that there was a lack of established processes in place to monitor and manage the inventory of hardware and software assets. There was a need for procedural documentation to be updated and/or created and then implemented to achieve consistent approaches to management and controls of hardware and software assets. There was also a need to regular

reconcile hardware and software registers to confirm their completeness and accuracy of hardware and software assets. It was also noted that during the review, that the team responsible for hardware and software management has not been fully staffed, this being a result of challenges in retention and recruitment of staff. This had resulted in business as usual activity taking precedence over establishing formal standards and monitoring activities.

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42. All the recommendations made in the 2018 Report were allocated to the claimant with a target date of 1 January 2019. The claimant was aware of and agreed to those recommendations. She did not take immediate remedial action.

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43. Around September 2018, the respondent became aware of the alleged theft of several laptops from the respondent's Glasgow office.

44. In October 2018, Louise Love, Head of the Internal Audit Division, investigated the matter.

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45. The claimant attended an investigatory interview with Ms Love and Andrew Armstrong (also of Internal Audit) on 3 October 2018. Alan Robertson, Head of Service Management and the claimant's line manager, was interviewed on 29 October 2018.

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46. The claimant attended a second investigatory interview with Ms Love and Mr Armstrong on 28 November 2018. At the second interview, the claimant was informed that any responses may form part of further proceedings including disciplinary proceedings and may be passed to the relevant authorities. The claimant was happy to proceed without representation.

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47. On 30 January 2019, Ms Love produced an investigation report (the Investigation Report).

48. The Investigation Report found that during the investigation into the alleged theft, it was apparent that the control environment in place was inadequate and this may have contributed to the thefts being perpetrated and

subsequently going undetected. Control weaknesses were noted in the following processes:

- a. The receipt of goods and recording of assets into stock records;
- 5 b. The issue and return of assets to employees and recording of movements in the asset register;
- c. Maintenance of the asset register as a reliable source and information on company assets;
- 10 d. Capgemini review of asset control;
- e. Disposable assets at the end of their useful life and the subsequent update of asset records.

15 49. The Investigation Report recorded that a number of these processes fell under the claimant's responsibility and considered whether the claimant had fulfilled her duties and responsibilities in accordance with her contract of employment and objectives. It was noted that in the 2014 Report, the claimant agreed to several recommendations to improve the control framework over hardware
20 assets. However, the claimant had not actioned these which had allowed identifiable control weaknesses to go unaddressed. Therefore, a further control weakness was noted as a failure to implement agreed audit recommendations.

25 50. The investigation involved consideration of the 2014 Report, the Capgemini Report, the 2018 Report, exemplar weekly reports carried out by the claimant, examples of equipment records and related correspondence. Sample tests were carried out to ascertain stock levels. The sampling focused on orders placed over the preceding twelve-month period by the department from which the theft was suspected.

30 51. The Investigation Report found that items to the value of over £100,000 were unaccounted for. This only represented what was unearthed by the limited

sampling exercise and was not a potential total loss across the respondent's business.

52. The Investigation Report made the following findings:

- 5 a. The working practices that the claimant instigated were inadequate and did not ensure sufficient substantive checks that assets purchased were physically present. The claimant's team would not physically check assets upon delivery and "asset tag" them. The claimant's team relied on other departments assigning asset tags to assets and advising the claimant's team who would in turn update the asset register. The system relied on the relevant departments knowing about the process and trusting that they would comply with it. The claimant was aware there may be gaps in the records of goods ordered and goods recorded but she had presented insufficient evidence that she has either taken action to remedy this or escalate it to her line management.
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- b. Stock records of departing employees was unavailable on the respondent's electronic system making it difficult to keep track of what equipment had been returned, reassigned or disposed. Control procedures are required to secure assets rather than relying upon trust. The procedures process has been put in place by the claimant.
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- c. The asset register was not up to date and no regular stock counts or reconciliation are undertaken between assets purchased and assets recorded in the assets register. There was evidence of discrepancies.
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- d. The claimant was involved in the process carried out by Capgemini. She did not raise any issue with the quality of the report and cleared their invoice for payment. The Capgemini Report was not acted upon despite the significant cost.
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- e. The process for ingathering equipment from departing employees was not being followed.

- f. The disposal of assets was uncontrolled, and the disposal records were unreliable and inaccurate.

- 5 53. The Investigation Report stated that the claimant did not undertake the management actions that she had agreed in the 2014 Report. This allowed known control weaknesses to persist and allow the current situation to go undetected. There was no evidence provided that the claimant escalated the situation regarding failure to undertake key tasks to her line manager. While
10 the claimant produced exemplar reports dated January/February 2017, these did not highlight any issues regarding stock counts, nor specifically highlight that these were not being undertaken.
- 15 54. The Investigation Report noted that the claimant asserted throughout the investigation that a lack of resource prevented her from undertaking the tasks pertaining to her job role. However, she had not provided evidence of this to Ms Love or that the claimant's line manager was made aware.
- 20 55. By letter dated 13 March 2019, the claimant was invited by Jackie Currie to attend a disciplinary hearing at which Louise Mayer, HR Advisor, would attend to provide support and take notes. The letter stated that the purpose of the disciplinary hearing was to discuss the alleged gross misconduct of failure to follow up on internal audit recommendations; and conduct which falls short of the standard as detailed in the Leading the Way Framework and the respondent's Code of Conduct.
- 25 56. Enclosed with the letter was a copy of the respondent's disciplinary policy and procedure, Leading the Way Framework; Code of Conduct and the evidence pack comprising of the Investigation Report and supplementary documents. The claimant was advised that disciplinary hearing could result in a formal disciplinary sanction issued in line with the disciplinary policy and procedure on the grounds of gross misconduct, one of which was dismissal. The
30 claimant was also advised of her right to be accompanied and of the employee assistance programme.

57. In preparation for an initial disciplinary hearing, Ms Currie spoke to Mr Robertson to clarify the claimant's key responsibilities. She also reviewed with him the claimant's personal development reviews. Ms Currie clarified that management of physical assets was the responsibility of the claimant's team and that as part of her role, there was an expectation that an audit of the hardware was carried out. Mr Robertson said that he assumed that this was happening as it was not flagged to him as not happening nor was it escalated or added to the risk register. He was aware of issues but not that the audits were not taking place. He had little involvement in the Capgemini project.
58. On 18 March 2019, the claimant attended an initial disciplinary hearing which was reconvened on 19 and 21 March 2019. The final disciplinary hearing took place on 29 March 2019. The letter inviting the claimant to the final disciplinary hearing enclosed a second evidence pack which included information gathered since the initial disciplinary hearing on 18 March 2019.
59. Each of the disciplinary hearings was chaired by Ms Currie with Ms Mayer in attendance. The claimant attended each of the disciplinary hearings. She was accompanied by Rhonda Carmichael an employee representative at the first three disciplinary hearings and by Mick McCormick at the final hearing.
60. Ms Currie confirmed at the initial disciplinary hearing that she had received the claimant's email sent on 15 March 2019 with various attachments. The claimant's email responds in detail to the points outlined in the Investigation Report.
61. At the various disciplinary hearings, the claimant was taken through each of the points outlined in the Investigation Report. She was given an opportunity to state her case, ask questions and present evidence. The claimant gave the following evidence:
- a. Her role included responsibility to ensure all physical assets on site were accounted for.
 - b. She accepted that she had committed to perform an annual audit of the assets within the business as part of the 2014 Report. This had not

been done due to lack of resources. The claimant now considered that it was not possible to perform a task of that magnitude. She referred to a high turnover of staff and lack of support from senior management.

5 c. The claimant accepted that she had not raised the lack of audits as a risk in the risk register. She produced an email to her former line manager, Natalie Watt, ICT Service Delivery Manager, sent on 9 June 2015 in which the claimant asked that the issue of asset tagging of the new equipment be added to the asset register.

10 d. The claimant accepted that the fact that audits were not being conducted was not reported to Mr Robertson as “he was only interested in successes”. The claimant did not raise any concern beyond Mr Robertson.

15 e. The claimant considered that the Capgemini Report was “not fit for purpose because of the way it was formatted and, in any event, became outdated because of stock movements”. The claimant paid Capgemini’s fees, but this was authorised by the Head of Technology, Eddie O’Hara.

20 f. The claimant accepted that she was aware of a potential gap in the process, that orders of equipment could be placed without her team’s knowledge and never recorded on the asset register. The claimant relied on the trust of others.

25 g. The claimant disputed the accuracy of the Investigation Report relating to stock records of departing employees. She produced information to support her position. The claimant provided certain documentation including spreadsheets.

h. The claimant submitted various items of evidence in support of her claim which was considered by Ms Currie.

62. Ms Currie adjourned the final disciplinary hearing for around 30 minutes to make her decision. Ms Currie considered that the claimant’s responsibilities included the effective management of the asset register by ensuring that all
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the respondent's hardware was accounted for. Her role was end to end asset management of the respondent's hardware and software. This involved managing assets that were brought into the business and recording appropriately. It also involved recording the movement of assets within the organisation and the disposal of assets when they ended their useful life.

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63. Ms Currie considered that from the claimant's job description, and performance reviews from 2014 to 2018, that the claimant required to develop effective process documentation and procedures for asset management. Ms Currie believed that the failure to develop an effective process and procedures for asset management was the claimant's responsibility.

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64. Ms Currie noted that the claimant had prepared a spreadsheet in order to record the issue of asset tags to sub teams who were responsible for tagging. There was no documented procedure and the claimant indicated that the spreadsheet was not up to date or complete. Ms Currie accepted that the claimant could not necessarily police whether all staff followed procedures but the lack of documented process would have contributed significantly towards inconsistent practices and poor asset management. Ms Currie considered that the claimant was aware of the weaknesses in the process for asset management and was aware of the ability to flag this in the risk register. Ms Currie was not persuaded by the claimant's suggestion that senior management did not care as it appeared the claimant did not raise her concerns beyond her own line manager. Ms Currie was also concerned that the claimant had indicated other teams could order equipment without informing her team and that the person who ordered the piece of equipment would then ask the configuration team for asset tags. Ms Currie was shocked by this explanation particularly as the claimant indicated she did not check whether the Assyst Incident was raised after she issued asset tags.

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65. During the disciplinary hearings, the claimant explained that the process had changed in the previous few months as she had been working along with Simon Blamire on emergency processes which he had asked the claimant to put together. Ms Currie considered that these changes had only been made

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since Mr Blamire's appointment as a consultant; the claimant did not put them in place of her own volition.

5 66. Ms Currie also considered whether a lack of resources may have contributed to the claimant's failings. Ms Currie accepted that resourcing issues can be a challenge, but she considered that employees can escalate matters to a manager or flag it on the risk register when resource issues mean they are unable to attend to critical tasks. Ms Currie considered that the claimant had failed to escalate her various failings and she had not flagged it on the risk register or even raised it at a risk. Ms Currie thought that the claimant's explanation at the disciplinary hearing about being too busy to undertake important tasks; that certain tasks were not her job and she saw no point in escalating matters to her managers as they did not care, were contradictory.

10 67. Ms Currie considered that the claimant's explanation about her failure to conduct an annual audit of assets following the 2014 Report was unreliable. The claimant initially said that she remembered the 2014 Report and that she had planned to conduct the annual audits, but it had not happened. The claimant then suggested that she must have misunderstood the 2014 Report and she considered it would have been impossible for her to have audited the respondent's assets and that she should not have agreed to do so. Ms Currie also considered the claimant's evidence about her capacity to conduct the annual audits was due to lack of resourcing, but this was never escalated to management. The claimant provided two weekly reports in October 2016 and February 2017. Ms Currie did not consider that these indicated that annual audits were not taking place. Ms Currie considered that the failure to undertake annual audits impacted the reliability of the asset register as it was the only way was to ensure that the asset register was up to date. It should have been the respondent's "single source of trust".

25 68. Ms Currie also considered that in relation to the Capgemini Report, the claimant missed an opportunity as it indicated discrepancies between the assets register and the assets physically present in the business. The claimant did not take any remedial action. This was only done by the claimant

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after the alleged thefts and as a result of being instructed to do so by Mr Blamire.

69. Ms Currie also considered whether Mr Robertson's management of the claimant might mitigate her conduct in some way. Ms Currie was concerned that on reviewing the claimant's performance reviews, she received relatively high-performance scores despite having failed to carry out key parts of her role. When interviewing Mr Robertson, Ms Currie's impression was that his line management skills were lacking. Ms Currie however considered that the claimant had committed as part of the 2014 and 2018 internal audits to undertake certain roles and she knew what she required to do but did not do it. Further, Ms Currie was of the view that the claimant had misled Mr Robertson about what she was and was not doing. Ms Currie considered that the claimant was inferring that work was being done when it was in fact not being done. While Ms Currie had concerns regarding Mr Robertson's performance, it did not in her view mitigate the claimant's own negligence. The claimant was in a senior position and knew what was required of her. Ms Currie considered that the claimant's actions amounted to gross negligence justifying gross misconduct.

70. In deciding which sanction to impose, Ms Currie considered whether a lesser sanction was appropriate such as demotion and/or a final written warning. She was torn about the decision but concluded that a lesser sanction was not appropriate. Ms Currie's concern was that during the disciplinary hearings, the claimant did not appear to take responsibility for the lack of asset control within the business and she failed to acknowledge the risk which the business was placed in as a result of the lack of control. The claimant did not apologise. Ms Currie considered that the claimant was unlikely or unwilling to change her behaviours. Notwithstanding, the claimant's length of service and previous record Ms Currie decided that the claimant should be dismissed summarily.

71. Ms Currie reconvened the final disciplinary hearing and informed the claimant of her decision to dismiss the claimant without notice for gross misconduct. Ms Currie wrote to the claimant on 2 April 2019 confirming her decision and setting out the reasons why the sanction was considered necessary and

appropriate. The effective date of termination was 29 March 2019. The claimant was advised of her right of appeal.

72. The claimant appealed against the decision to dismiss her by an email sent on 7 April 2019. Her grounds of appeal were as follows:

- 5 a. The investigation's evidence provided by internal audit was false and inaccurate. She believed that the evidence which she provided was not taken into consideration.
- b. The ordering, receipting and returning of assets to employees was not part of her area responsibility, and the responsibility lies with various
10 teams within the technical group, not configuration management. She did not believe that this was understood by the investigation team or that Ms Currie had taken it into account.
- c. The Capgemini review of asset control was sanctioned and the payment authorised and approved by Mr O'Hara. The claimant was
15 merely carrying out his instruction and Mr Robertson was aware of this.
- d. The disposal of assets is robust and follows the WEE directive. The claimant had provided evidence of this and it was not taken into consideration.
- e. The claimant implemented agreed audit recommendations from a
20 previous audit in 2014 which were acceptable at the time. Five years have elapsed and no failures have been highlighted regarding those recommendations.
- f. Until the issue in October 2018, the claimant believed that the
25 recommendations were being followed. The claimant did not understand why the current findings should reference an office audit from five years previously. Why it had taken five years for this issue to be mentioned and allegations raised against her that she had failed to implement the recommendations?

g. The conclusion of the disciplinary hearing only took 30 minutes and therefore the decision to terminate the employment had been taken without taking into account all the evidence.

h. The severity of the punishment imposed was extremely harsh and no alternative was given consideration.

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73. Jacqui Smillie, Chief Financial Officer was asked to chair the appeal hearing. She had no conflict of interest or previous involvement. Ms Smillie reviewed the investigation and disciplinary hearing documentation. She spoke to Ms Currie to discuss appeal points (g) and (h) above.

10 74. The appeal hearing took place on 24 April 2019 and was chaired by Ms Smillie. Gavin Kerr, HR Business Partner, was also present. The claimant attended and was accompanied by Ms Carmichael.

15 75. The claimant was given the opportunity to discuss her grounds of appeal. After making further enquiries, Ms Smillie upheld one of the eight grounds of appeal relating to the payment in respect of the Capgemini Report which was found to have been authorised by Mr O'Hara. Ms Smillie's view was that this finding had no impact of the conclusions of the missing office equipment and did not undermine Ms Currie's decision.

20 76. Ms Smillie was satisfied that in relation to those grounds of appeal where the claimant said that evidence produced by her was not considered by Ms Currie, consideration had been given.

25 77. Ms Smillie was surprised that someone of the claimant's grade would not assume that because no issues were raised that the audit recommendations were fit for purpose on an ongoing basis without carrying out rigorous routine checks and audits. The internal audits revealed that stock was unaccounted for. Ms Smillie considered that if robust governance controls had been implemented and regularly reviewed for compliance the October 2018 incident may not have occurred.

30 78. Ms Smillie also considered that while the conclusion of the final disciplinary hearing only took 30 minutes given the time involved in investigating and a

disciplinary process involving four hearings the time taken by Ms Currie to reach her decision was reasonable. Ms Smillie was also satisfied that the decision to dismiss the claimant was in line with the respondent's policy.

5 79. The decision was therefore upheld, and the response with reasons was sent out in a letter to the claimant on 17 May 2019.

Observations on witnesses and conflict of evidence

10 80. For the respondent the Tribunal heard evidence from Ms Love, Ms Currie and Ms Smillie. Their evidence was credible, reliable and supported by relevant documentation. The Tribunal agreed with the respondent's submission that Ms Currie spoke with sincerity and in a balanced and reasoned manner. She did not waiver from his decision-making process despite being pressed on cross-examination.

15 81. The Tribunal considered that the claimant gave her evidence candidly. Having heard the respondent's evidence, she very fairly made several concessions. She did at times contradict herself and gave evidence which was inconsistent with the written contemporaneous documentation. The Tribunal did not consider that this was done to mislead it.

20 82. In relation to material findings in fact the Tribunal considered that there was little conflicting evidence and to the extent there was the Tribunal preferred the evidence of the respodnent's witnesses which tended to be consistent with the contemporaneous documentary evidence.

Submissions for the respondent

25 83. The respondent's principal submission is that the reason for the claimant's dismissal was her conduct. Ms Currie's evidence was that she believed the claimant was guilty of gross misconduct and explained the grounds for that belief by reference to documents. The claimant had considerable opportunities to put forward her factual version of events at the initial disciplinary hearing; the reconvened hearings and the final disciplinary hearing. Ms Smillie gave evidence about the reasons for her decision at the
30 appeal hearing.

84. This case clearly passes the low hurdle of a potentially fair reason for dismissal and that the respondent has discharged the burden of proof in that regard.
85. In relation to the first part of the *Burchell* test: did the employer genuinely believe that the employee was guilty of misconduct, the respondent submits that when the relevant documentary and witness evidence is considered, the Tribunal can readily reach the view that the respondent genuinely believed that the claimant had committed gross misconduct. This is a matter which is not challenged by the claimant.
86. Turning to the question whether the respondent had in its mind reasonable grounds to sustain the belief, that the claimant was guilty of the allegations against her. The respondent envisages the Tribunal will determine that the respondent's belief was supported by the information available at the time of the relevant decisions.
87. The Tribunal was referred to the oral evidence of the respondent's witnesses and the minutes of the disciplinary and appeal hearings.
88. The Tribunal have heard consistent and credible evidence from the respondent's witnesses about the claimant's responsibilities and duties in relation to asset management. The claimant was taken through her job description and key accountabilities and she accepted the accuracy of the document.
89. The claimant's responsibilities included the effective management of the asset register by ensuring that all company hardware was accounted for. A central part of this responsibility required the claimant to own and develop effective process documentation and procedures. From the documentary evidence that the claimant required to own and develop effective process documentation and procedures for asset management, and she was required to conduct annual audits of the respondent's asset estate.
90. The Tribunal can be in no doubt that the respondent had reasonable grounds to believe that the failings which were identified fell within the claimant's duties

and responsibilities. The claimant candidly accepted this during cross examination (albeit she believed she had explanations for these failings).

- 5 91. One of the central planks of the respondent's grounds for concluding that the claimant was guilty of the misconduct in question was her failure to put in place robust processes and procedures for asset management. This was a fundamental requirement of her role. She also agreed audit actions in the 2014 Report and the 2018 Reports and yet persistently failed to create robust, documented processes to manage and control the respondent's assets
- 10 92. The claimant was aware of weaknesses in the processes for asset management and the risk this introduced. Except for an email dated 9 June 2015, she failed to raise this formally. Her mitigation against this was that "*no one cares*". Ms Currie found to be a wholly unsatisfactory explanation. The claimant had not attempted to raise those concerns beyond her own line manager.
- 15 93. During the disciplinary process, the claimant's view was that these were not necessary as staff were aware of what was required, it just was not written down. The claimant also acknowledged that staff did not follow procedures. Ms Currie's view was clear that the lack of clearly documented processes was likely to have contributed significantly towards losses incurred by the respondent.
- 20 94. Ms Currie also explored what happened in practice in relation to the delivery and asset tagging of assets. The claimant explained that other teams could order equipment without informing her or her team of the order. Individuals would then come to the claimant to tell her that they had received an order, and they would ask the configuration team for asset tags. The person who
- 25 had ordered the piece of equipment would then take the asset tags away. Neither the claimant nor her team physically attached the asset tag to the item. Ms Currie was shocked by this explanation given the risk to which the respondent's business was exposed as a result of the claimant's approach for on-boarding and asset tagging. During cross-examination, the claimant
- 30 conceded that there was a gap in the process whereby she and her team were

entirely cut out of the receipting process, and this meant that she would have no idea if assets had been stolen or not.

95. The claimant's evidence to the Tribunal, was that she and/or her team would follow up with the people they had issued asset tags to, in order to make sure that her team received the necessary information to update the asset register. That explanation contradicts the explanation that she gave to Ms Currie during the disciplinary hearing. When asked about this contradiction during cross examination, the claimant said that she did not know why she said that during the disciplinary hearing (but notably did not deny that she had said it). When asked in cross examination whether she accepted that her response during the disciplinary hearing would have been of concern to Ms Currie, she conceded that it would have been.

96. Throughout the disciplinary hearings, the claimant asserted that ordering assets was 'not her job', and asked Ms Currie how she was meant to know that assets had been ordered if other teams did not tell her. Ms Currie said that she understood that it was not the claimant's job to personally order all assets for the respondent, but it was her job to put in place robust asset Mr Blamire on processes, as he had asked the claimant to put together an emergency process. Ms Currie concluded that this did not amount to reasonable mitigation for the claimant's negligence; positive changes had only been made since Mr Blamire had come on board and after the claimant became aware that she was being investigated. She did not do so of her own volition and conceded this under cross-examination.

97. To the extent that the claimant asserts that she was too busy (or had insufficient resource) to put in place written procedures, the respondent would invited the Tribunal to assess the credibility of this argument when viewed against the claimant's own admission that she was able to put in place processes/procedures within a fairly limited timeframe upon the instruction of Mr Blamire (but only when the disciplinary process had already commenced). Ms Currie properly considered whether a lack of resources may have contributed to the claimant's failings. Ms Currie acknowledged that resourcing issues can be a challenge, but in those circumstances, it is critical that an

employee escalates the matter to a manager or flags it on the risk register when resourcing issues mean that they are unable to get to critical tasks. Ms Currie concluded the claimant had failed to escalate her various failings, and failed to raise it as a risk. In her evidence, Ms Currie found it hard to reconcile the various contradictory explanations given by the claimant in this regard. The claimant's circular arguments in this regard provide evidence of her shifting position, at least on certain issues, throughout the internal process.

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98. The creation and maintenance of documented procedures were critical aspects of the claimant's role. The importance of them was underlined in the 2014 Report, in the context of minimising the chances of thefts happening again – this was one of the lessons to be learned. The claimant conceded all of this on cross examination, and candidly conceded that except for the spreadsheet and emergency procedures, she had failed in this aspect of her duties.
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99. There were grounds for concluding that the claimant had failed to conduct annual audits of the asset estate, despite previously having agreed to do so. The claimant can have been in no doubt that she was required to conduct annual audits. The 2014 Report could not have been clearer. As early as 2014, the claimant specifically undertook to conduct annual audits of all ICT assets. The claimant has admitted to failing to conduct an annual audit of assets on any occasion during four years following the 2014 Report (and that no annual audit of all assets had been conducted in the two years prior to the 2014 Report). The claimant's position on this was inconsistent. While the claimant referred to resourcing she did not escalate the non-completion of these actions, or should have raised the non-completion of these actions as a risk on the risk register. The claimant again failed to do so. The claimant pointed as potential evidence of her having raised the matter with her manager to two weekly summary reports dated 20 October to 27 October 2016 and 9 February to 16 February 2017. However, there was nothing in those reports which could have indicated to her manager that annual audits were not taking place. If anything, those reports were misleading in their lack of information about the key areas of the claimant's role which were not being
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carried out, Ms Currie reasonably concluded that the claimant had misled her manager in this regard. Ms Currie also considered the claimant's explanation that her manager was not interested. Ms Currie considered the claimant's comment that 'he's only interested in successes, so why would he be interested in what I'm not doing' to be unsatisfactory.

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100. Ms Currie said that annual audits would have ensured that the assets register was kept up to date. The claimant was responsible for the maintenance of the assets register as an accurate record of company assets. The assets register was far from up to date or accurate. In excess of £100,000 worth of assets had been purchased but not logged on the assets register. Those assets were never found. Annual audits of the respondent's asset estate would have ensured that the assets register was kept up to date, but the claimant failed to conduct any such audits.

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101. The claimant accepted during cross-examination that an annual audit of all assets would have been the only way to ensure that the assets register was accurate. She also admitted that, at the time of her dismissal, her team had not undertaken an annual audit of all assets for at least six years. She admitted that, as a result, she had no way of knowing with certainty that the assets register was up to date. The claimant also accepted the respondent's loss could have been reduced had she kept the assets register up to date. She accepted that stock can go missing if not accurately recorded on the assets register. It was inaccurate as a result of the claimant's negligence.

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102. The claimant missed Significant opportunities to address the risk which the lack of procedures and control within asset management had created. The Capgemini review conducted in 2017 highlighted significant discrepancies between assets register and assets physically present in the business, an issue which lay within the claimant's remit. This finding was completely disregarded by the claimant and no action was taken by her to consider whether any further investigation or remedial action might be required.

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103. Despite being interviewed by internal audit in October and November 2018 and being aware of the alleged theft of company assets, and the gaps in the

controls around this, the claimant failed to take any remedial action of her own volition. Any remedial action undertaken by the claimant occurred after the alleged thefts, once the claimant was under investigation and only as a direct result of her being explicitly instructed to do so by Mr Blamire, who was taken on as a consultant in September 2018 with a view to remedying the problems highlighted by the thefts. The claimant accepted this on cross examination.

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104. The claimant was a senior member of staff in a management position and was able to raise concerns with the respondent. consideration was given by Ms Currie about Mr Robertson's management of the claimant might mitigate her conduct in some way. Having reviewed the claimant's performance reviews, she was concerned that the claimant appeared to be receiving relatively high-performance scores, despite having failed to carry out key parts of her role. Ms Currie said having interviewed Mr Robertson, she got the impression that his line management skills were lacking. In coming to her decision to dismiss the claimant, Ms Currie duly considered the possibility that lack of support from Mr Robertson could have contributed to her failings (as she alleged). However, when Ms Currie looked at what the claimant had committed to do as part of the 2014 and 2018 internal audits, it was clear to her that the claimant should have had no misunderstanding about what was required of her. The claimant knew what was required and did not do it. Ms Currie concluded that the claimant had misled her line manager about what she was and was not doing; she was inferring that work was being done, when in fact it was not being done. The concerns that Ms Currie had about Mr Robertson's performance did not mitigate the claimant's negligence.

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105. Formal action was in fact taken against Mr Robertson as a result of his poor management. Inadequacies of other employees should not be a fact which renders the respondent's conclusions in relation to the claimant unreasonable. An employer cannot be barred from acting against an employee when there are sufficient grounds to do so.

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106. The Tribunal to find that the respondent had reasonable grounds to believe that the Ms Smillie fell within that range. Several of the claimant's concessions during cross examination indicated an acceptance of her failings and

negligence (albeit such acknowledgments were not made during the disciplinary process). At the time of the decision to dismiss and to reject the appeal, the respondent had reasonable grounds to sustain its belief that the claimant had been grossly negligent in her duties and was therefore guilty of the misconduct in question.

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107. The claim form does not state that there was a failure to carry out a reasonable investigation. A reasonable investigation was carried out. Two investigatory meetings were held. The claimant was given a full opportunity during her investigation meetings and during the various disciplinary hearings to put forward his version of events.

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108. The investigation was thorough, appropriate and fell within the range of reasonable responses. It continued throughout the disciplinary process, and the claimant was asked on numerous occasions to provide specific mitigating information/documentation. Where information was provided by the claimant to counter some of the information collated during the investigation stage that information was duly considered by Ms Currie and those specific points were discounted by Ms Currie as a result of information provided by the claimant. During cross-examination, the claimant accepted that Ms Currie had discounted those elements of the allegations.

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109. The next question for the Tribunal is whether the respondent acted reasonably in treating the claimant's conduct as sufficient to justify summary dismissal. The respondent's decision fell squarely within the band of reasonable responses for the following reasons.

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110. For a summary dismissal to be fair, the misconduct in question must amount to gross misconduct. The respondent's position is that the claimant's actions fell within this definition and therefore amounted to gross negligence, justifying a finding of gross misconduct.

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111. It is generally accepted that for behaviour to amount to gross misconduct, it must be an act that fundamentally undermines the employment contract. This test is satisfied in the present case.

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112. The respondent is a publicly funded organisation with a duty to safeguard and be accountable for, public funds. Against the backdrop of the significant losses suffered by the respondent as a result of the claimant's actions and the fact that the claimant was repeatedly instructed to remedy the various issues over a period of several years and wilfully failed to do so, there can be no doubt in the Tribunal's mind that the respondent's categorisation of her gross negligence as gross misconduct was entirely appropriate, and consistent with the relevant authorities.
113. Having reasonably concluded that the claimant's negligence amounted to gross misconduct, dismissal would be within the range of reasonable responses open to the respondent.
114. Ms Currie considered a lesser sanction including demotion and/or a final written warning. She was "torn" and did not take the decision lightly, but she did not consider a lesser sanction to be appropriate. She did not take a closed mind approach to the outcome of the proceedings and acted reasonably in her decision-making process. Due to the level of risk that the respondent was exposed to as a result of the claimant's negligence, together with the claimant's failure to take responsibility for those failing and to commit to improvement, Ms Currie would have been entirely uncomfortable with any lesser sanction.
115. Ms Currie considered that the claimant failed to take responsibility for the lack of asset control within the business, and her failure to acknowledge the risk to which the business was recovered as a result of that the lack of control. This weighed heavily on Ms Currie when reaching her decision. At no point has the claimant apologised for her conduct. Throughout the disciplinary process, the claimant consistently failed to acknowledge that any accountability for the various issues sat with her. The claimant's failure to accept responsibility for the lack of asset control, and her failure to acknowledge the risk that this lack of control had exposed the business to was of significant concern and caused Ms Currie to conclude that that she was both unlikely and unwilling to change her behaviours.

116. During cross-examination, the claimant conceded that she did not accept responsibility for failing to put procedures in place or for failing to conduct audits during the disciplinary process. She went on to explain that she does now accept responsibility for those failings.
- 5 117. Where the respondent had no confidence that the claimant accepted any responsibility for her actions or demonstrated any willingness to change, that it was certainly within the range of reasonable responses for them to dismiss him. The claimant's length of service and previous disciplinary record were considered by Ms Currie.
- 10 118. The respondent considered all relevant factors, including the mitigation put forward by the claimant, but concluded that dismissal was appropriate, all in accordance with its disciplinary policy.
119. In determining the reasonableness of the decision to dismiss, the Tribunal will also consider whether the respondent followed a fair procedure.
- 15 120. The claimant was made aware of the case against her in the invite letters (and as further particularised within the investigation report. She knew that she could potentially be dismissed for gross misconduct. During each of the four disciplinary hearings, the claimant was taken through each of the six points outlined in the investigation report in detail. The claimant's awareness of the case against her is further evidenced by the relevant documentary evidence.
- 20 121. The claimant was afforded the right to be accompanied at every stage of the process. All supporting documentation was sent to the claimant in advance of the first disciplinary hearing and, as further information was collated throughout the process, all remaining documentation was sent to her along with the initiation to the final disciplinary hearing. The claimant was given every opportunity to state her case at the disciplinary proceedings.
- 25 122. The respondent's decision to dismiss was outlined in writing to the claimant. She was given the right of appeal. An appeal hearing took place where the claimant was given every opportunity to explain her grounds of appeal. The respondent carried out a reasonable investigation of the claimant's grounds
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for appeal. A considered appeal outcome letter was issued addressing all grounds of appeal.

123. The respondent's process not only complied with the ACAS Code of Practice but also complied with its own disciplinary procedures.

5 124. As an alternative position, the Tribunal would have more than sufficient evidence to conclude that the claimant's dismissal was fair on the alternative ground of some other substantial reason, namely a breakdown of trust and confidence.

10 125. Ms Currie said that, by the conclusion of the disciplinary process, all trust in the claimant was lost. This position is also mirrored in the appeal outcome letter. Over several years, the claimant failed to carry out key parts of her role, despite repeated and clear instructions from the respondent. The respondent reasonably concluded that the claimant had misled her manager about her failure to conduct annual audits. Crucially, the claimant's negligence almost
15 certainly contributed to the loss of over £100,000 in assets. Ms Currie concluded that the claimant refused to take any responsibility for the failings and more than that demonstrated an unwillingness to change. These were reasonable conclusions to reach. The claimant's employment was untenable. On that basis, it is open to the Tribunal to conclude that that the claimant's
20 dismissal was fair on the alternative ground of some other substantial reason, namely a breakdown of trust and confidence.

Submission for the claimant

126. The claimant was unfairly dismissed from her employment when consideration is given to section 98(4) of the ERA.

25 127. There were procedural flaws in relation to how the respondent dealt with the process. In relation to the investigation

- a. Ms Love confirmed that information that was gathered was insufficient. The Investigation Officer's role is to ingather all information, not just those against the claimant.

- b. Mr Armstrong had insufficient privileges to allow him to access the required information. This information ultimately had to be obtained by the claimant.
- c. Ms Love had a complete lack of understanding as to how disposals were dealt with by the respondent and did not view the certificate as well as the inventory.
- d. Even when the claimant did provide information, it was ignored or misunderstood by Ms Love.
- e. Despite it being clear that a number of points should not have been escalated, these ultimately were by Ms Love. Of the six matters investigated, three of which (points 2, 4 and 5 of Investigation Report) should not have been escalated
- f. There was a complete lack of understanding from Ms Love and Ms Currie in relation to the payment of the Capgemini Report. This was a point that was ultimately upheld at appeal.
128. Turning to the disciplinary hearing, the invite does not refer to the first five points that are referred to in the investigation meeting. The respondent's position is that the investigation report was used as the format for the disciplinary hearing. No reference is made to the Leading the Way Framework or the Code of Conduct in the invite letter or else in the notes. It is the disciplinary hearing outcome letter which refers to gross negligence.
129. Ms Currie accepted under cross-examination that the invite letter to the final disciplinary hearing includes the points 1-5 which were included in the Investigation Report. There was no reference at point number 6 in relation to these five points. She also accepted that some of these points were not valid, however, the letter does not make reference, for example to the disposal of assets or the leavers being removed from the allegations against her. There is also no reference to the fact that part of the Capgemini was not pursued by Ms Currie.

130. Turning to the band of reasonable responses, the claimant had 22 years of service and did not have any disciplinary proceedings against her. There were no allegations of her involvement in any thefts or her having had any personal gain. The claimant was an excellent employee who had integrity. If
5 consideration is given to the reviews between 2014 and 2019, then she is shown as having demonstrated several core values.

131. The claimant had a process in place; she required information from other departments. There were *circa* 88,000 pieces of kit within the business. The
10 claimant had issues in relation to her resources and high turnaround of staff. She was not in a position to do the work that was required. The claimant was not being dishonest; her position changed between 2014 and 2018.

132. The respondent repeatedly refused to take into account the work that has
15 been carried out by the claimant. It disputed and discounted the work that the claimant was doing since the 2018 Report. There was an agreed timescale for implementation in place. The respondent does not consider the work that was being done since around October 2018 on the basis that it was work was prompted by Mr Blamire. This calls into question the belief that the claimant
20 would not change her behaviour.

133. The second part of section 98(4) is in relation to equity. The claimant was dismissed from her employment, not because of theft, but because of not
25 putting in place processes. However, Mr Robertson's position, who also had clear failings as to his management of the claimant in not putting these processes in place. Also, Ms Currie raised concerns about the honesty and evasive nature of Mr Robertson. Accordingly, the claimant has had a disproportionate sanction applied to her when considering other individuals who were directly involved.

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134. The claimant's position was that she was being used as a scapegoat and considering the position of Mr Robertson in still being employed, it is difficult to argue with this point.

135. The dismissal was in relation to issues which happened in around 2014 and a failure to put in place processes. The claimant's position which does not appear to be challenged by the respondent is that some processes were put in place but that these processes were not sufficient. At no time during the period between 2014 and 2018 were these issues ever raised by the respondent. While the respondent puts great emphasis on public funds and the need for financial control; this was not emphasised by the respondent between 2014 and 2018.
136. Considering the evidence that was obtained by Ms Currie there was no evidence of a breakdown of trust and confidence, so it is not a justifiable reason for dismissal.
137. The Tribunal needs to look at the relationship between the parties over the claimant's employment but particular emphasis on the period between 2014 and 2018. The respondents still have trust and confidence in Mr Robertson since he is still employed. The claimant was seeking to put in place processes that would improve matters going forward. This would show that the claimant still wished to remain in employment with the respondent. While it may be that the claimant required further training and further monitoring in relation to tasks which were not carried out, this does not mean that there is a complete breakdown of the trust and confidence which means the relationship must come to an end. It is not automatic that if there is a disciplinary issue that there will be a breakdown of trust and confidence.
138. If the Tribunal finds that the claimant's dismissal was for a reason other than gross misconduct and was for some other substantial reason (which is denied by the claimant) then the claimant should be entitled to her notice pay of 12 weeks' pay that is £7,812.
139. If the Tribunal is of a view that the dismissal was for some other substantial reason, such as breakdown of trust and confidence, then a judgement can be issued that the claimant was unfairly dismissed from her employment but was dismissed for some other substantial reason and that the claimant should be

awarded her notice pay amounting to £7,812. The Tribunal could make such an award without the need for a remedy hearing.

140. The lack of trust and confidence is not accepted by the claimant but is simply
5 in answer to the respondent's alternative position.

Deliberations

141. The first issue to be determined was what was the principle reason for the
claimant's dismissal. It is for the respondent to show the reason for the
dismissal and that it was for one of the potentially fair reasons. The reason is
10 a set of facts known to the employer or may be of beliefs held by him which
cause him to dismiss the employee. At this stage the Tribunal was not
considering the question of reasonableness.

142. Ms Currie conducted the disciplinary hearings and decided to dismiss the
15 claimant. Ms Currie's evidence was that at the time of dismissal she believed
that the claimant was guilty of gross misconduct. Ms Currie said that she
considered the claimant's responsibilities included the effective management
of the asset register by ensuring that all the respondent's hardware was
accounted for. Ms Currie said that the claimant required to develop effective
20 process documentation and procedures for asset management and failed to
so do. Ms Currie believed that the lack of documented process would have
contributed significantly towards inconsistent practices and poor asset
management. Ms Currie believed that the claimant was aware of the
weaknesses in the process for asset management and of the ability to flag
25 this in the risk register. While there was a lack of resources in the claimant's
team, Ms Currie did not believe that this prevented the claimant from
escalating matters to management or flagging it on the risk register. The
claimant was in a senior position and knew what was required of her. Ms
Currie considered that the claimant's actions amounted to gross negligence
30 justifying gross misconduct.

143. The Tribunal did not understand the claimant to be suggesting that conduct was not the reason for her dismissal, but she considered that she was a “scapegoat”. The Tribunal considered that the respondent had shown that Ms Currie believed that the claimant knew that there were weaknesses in the process for asset management; she had failed to develop processes and procedures for asset management or escalate the issue to management or flag it on the risk register.
144. The Tribunal was satisfied that the respondent had shown that the claimant was dismissed for misconduct which is a potentially fair reason under section 98 of the ERA.
145. The Tribunal then considered if the dismissal was fair or unfair accordance with section 98(4) of the ERA. It noted that it had determine whether the dismissal was fair or unfair, having regard to the reasons shown by the employer, and the answer to that question depends upon whether, in the circumstances (including the size and administrative resources of the employers’ undertaking) the employer acted reasonably in treating the reason as a sufficient reason for dismissing the employee; and this should be determined in accordance with equity and the substantial merits of the case.
146. The Tribunal considered the reasonableness of the respondent’s conduct. The Tribunal noted that it must not substitute its own decision as to what the right course to adopt for that with the respondent. The Tribunal applied the range of reasonable responses approach whether the respondent had carried out a reasonable investigation and had reasonable grounds for its belief that the that the claimant was guilty of gross misconduct.
147. The investigation by Ms Love was prompted by an alleged theft of assets in the Glasgow office in September 2019. The investiagtion found that the asset control environment in place was inadequate and may have contributed to the thefts being perpetrated and subsequently going undetected. Ms Love’s investigation into the control environment culminated in the Investigation Report which found that the claimant accepted that her responsibilities

included the effective management of the asset register by ensuring that all company hardware was accounted for. The Investigation Report also identified that the claimant did not undertake the management actions that she had agreed in the 2014 Report. There was no evidence provided that the claimant escalated the situation regarding failure to undertake key tasks to her line manager. While the claimant produced reports these did not highlight any issues regarding stock counts, nor specifically highlight that these were not being undertaken.

10 148. The Tribunal considered that it was reasonable as part of the investigation into the alleged theft for Ms Love to raise queries with the claimant about the control and management of assets and look to the claimant for an explanation and to provide information. The Tribunal considered that by so doing Ms Love was demonstrating that she wanted all the information available not just that which had been located by her team. Ms Love recorded in the Investigation Report what evidence had not been collected and the reason why. There was no suggestion that Ms Love was not willing to consider information provided by the claimant.

20 149. The claimant submitted that not all the allegations in the Investigation Report ought to have been escalated to the disciplinary hearing. The Tribunal considered that the Investigation Report set out Ms Love's reasoning for so doing. The disciplinary hearing was further opportunity for the claimant to respond to the allegations and provided additional evidence which she did.

25 The investigation in the Tribunal's view did not end with the Investigation Report.

150. Ms Currie considered the Investigation Report as part of her preparation for the disciplinary hearing. She also carried out her own investigation by speaking to Mr Robertson about his understanding of the claimant's role; his supervision of the claimant and awareness of issues. Ms Currie considered the additional information provided by the claimant as attachments to the email sent on 15 March 2019. The investigation continued during the disciplinary hearings when the claimant provided information and comments

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on the allegations. Ms Currie also re-interviewed Mr Robertson. A second evidence pack was provided to the claimant before the final disciplinary hearing on which the claimant was given an opportunity to respond.

5 151. During the disciplinary hearings the claimant accepted that her role included the responsibility to ensure all physical assets on site were accounted for; she had committed to perform an annual audit of the assets within the business as part of the 2014 Report; she had not raised the lack of audits as a risk in the risk register or reported this to Mr Robertson or beyond; she accepted that
10 there was a potential gap in the process and she relied on the trust of others. The claimant considered that the Capgemini Report was “not fit for purpose because of the way it was formatted and in any event became outdated because of stock movements”. The claimant paid the fees which were authorised by Mr O’Hara. The claimant submitted various items of evidence
15 in support of her claim which Ms Currie considered.

152. The Tribunal considered that the respondent had carried out a reasonable investigation and had reasonable grounds for forming the belief that the claimant knew that there were weaknesses in the process for asset
20 management; she had failed to develop processes and procedures for asset management or escalate the issue to management or flag it on the risk register.

153. The Tribunal then asked if the respondent acted reasonably in treating the claimant’s conduct as gross misconduct. The respondent’s position was that
25 the claimant’s conduct fundamentally undermined the employment contract.

154. The Tribunal referred to its findings. The respondent is a publicly funded organisation. The loss of significant assets bought with public funds is a serious matter for it. The claimant was a manager with responsibility for asset
30 management. Against the background of unaccounted assets in 2014 the claimant agreed to own and develop effective process documentation and procedures for asset management, and she required to conduct annual audits of the respondent’s asset estate. She failed to conduct annual audits. The

claimant was aware of the weaknesses in the procedures for asset management. The claimant did not escalate this to senior management or flag it on the asset register. No remedial action was taken until after the investigation following the thefts in 2018 despite discrepancies being highlighted in the Capgemini Report and the 2018 Report.

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155. The Tribunal considered that there were reasonable grounds for the respondent concluding that the claimant's conduct amounted to gross misconduct.

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156. The Tribunal then applied the range of reasonable responses test to the decision to dismiss and the procedure by which that decision had been reached.

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157. As regards the investigation and disciplinary hearings for the reasons previously indicated the Tribunal was satisfied that there had been a reasonable investigation.

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158. The Tribunal considered that the wording of the letters inviting the claimant to the disciplinary hearings lacked clarity as they referred to company standards of conduct detailed in the Leading the Way Framework and the Code of Conduct as detailed in the Investigation Report. That said there was no suggestion by the claimant that she was unaware of the allegations against her. To the contrary her email response sent on 15 March 2019 demonstrated that she understood the allegations and was able to state her position. The claimant was offered the right to be accompanied at each stage of the internal process.

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159. The Tribunal observed that the letter inviting the claimant to the disciplinary hearings referred to gross misconduct. While the respondent's policy allowed for summary dismissal on the grounds of gross misconduct the Tribunal considered what the reaction of a reasonable employer would have been in the circumstances.

160. The claimant felt that Ms Currie's decision to dismiss her following a short adjournment at the final disciplinary hearing suggested that the decision was predetermined or automatic. The Tribunal did not agree. The Tribunal's impression was that Ms Currie approached all the disciplinary hearings with an open mind, she made further enquiries and considered the information supplied by the claimant. Other dismissing officers might have adjourned the final disciplinary hearing and not reconvened to give an oral decision. However, the Tribunal did not consider that by so doing that Ms Currie's decision was predetermined particularly as there were several disciplinary hearings and she had spent time reviewing and considering documentation before the final disciplinary hearing.
161. While the Tribunal had concluded that there were reasonable grounds for a finding of gross misconduct the Tribunal went onto consider whether it was within the band of reasonable responses for the respondent to dismiss the claimant for that gross misconduct.
162. The Tribunal was satisfied from Ms Currie's evidence that she did not automatically impose the sanction of dismissal; she knew that she was able to impose a lesser sanction; and did not take the decision to dismiss lightly. Ms Currie was aware that the claimant had a clean disciplinary record; she was not involved in any theft of the assets and had no personal gain.
163. The Tribunal was also satisfied that Ms Currie understood that there were resource challenges for the claimant. There was no issue about the claimant's ability to do her role although Ms Currie was concerned about the claimant's high-performance reviews despite having failed to carry out key parts of her role. Having interviewed Mr Robertson, Ms Currie was unimpressed with his line management skills. She considered whether this mitigated the claimant's gross misconduct. Ms Currie was satisfied from the 2014 Report and 2018 Report the claimant knew what was expected of her. Ms Currie did not consider that there was documentary evidence of the claimant seeking support from Mr Robertson in relation to annual audits or asset control procedures. Ms Currie considered that the claimant inferred the opposite; the

work was being done. Ms Currie was also aware that following the appointment of Mr Blamire the claimant had been working with him to put processes in place.

5 164. The impression of the Tribunal was that Ms Currie's concern was that while the claimant said that she understood her responsibilities the claimant did not accept responsibility for the lack of asset control nor did she acknowledge that this exposed the business to significant risk; and ought to have been escalated. It was this lack of awareness that caused Ms Currie to believe that
10 the claimant was unwilling and unlikely to change her behaviours.

165. The Tribunal concluded that Ms Currie's decision to dismiss the claimant fell within the band of reasonable responses which a reasonable employer might have adopted.

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166. The Tribunal noted that a failure to carry out a reasonable and proper procedure at each stage of the dismissal process, including the appeal stage is relevant to reasonableness of the whole dismissal process.

20 167. The Tribunal then considered the appeal process. Ms Smillie is senior to Ms Currie. She approached the appeal hearing by carefully considering the issues and the information before her. Ms Smillie spoke to Ms Currie about timescales and sought clarification. At the appeal hearing Ms Smillie asked the claimant to talk through her grounds of appeal. The Tribunal referred to
25 Ms Smillie's decision set out in her letter of 17 May 2019. The Tribunal considered that Ms Smillie thought about the points raised at the appeal hearing and had set out her reasons for reaching the conclusions that she did.

30 168. The Tribunal was satisfied that the respondent had carried out a reasonable and proper procedure at each stage of the dismissal process, including the appeal stage.

35 169. The Tribunal concluded that the dismissal was fair. Having reached this conclusion, the Tribunal did not consider it necessary to go onto determine the question of remedy.

170. The Tribunal therefore dismissed the claimant's claim for unfair dismissal.

Employment Judge:

S MacLean

5 Date of Judgement:

14 February 2020

Entered in Register,

Copied to Parties:

17 February 2020

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