



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Kosar

**Respondent:** Family Action

**Heard at:** Leeds by CVP

**On:** 6-8 October 2021

**Before:** Employment Judge Maidment (sitting alone)

## Representation

**Claimant:** Miss T Ahari, Counsel

**Respondent:** Mr N Clarke, Counsel

# RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is well founded and succeeds. Any basic and compensatory award shall be reduced by a factor of 25% to reflect the claimant's conduct prior to dismissal.
2. The claimant was dismissed in breach of contract and is entitled to damages in respect of her period of notice.
3. The matter will be listed for a hearing as to remedy to take place by CVP videoconferencing and with a time estimate of 3 hours.

# REASONS

## Issues

1. The claimant brings a claim of unfair dismissal where the respondent relies upon conduct as the reason for dismissal. The claimant was employed as a support worker at a refuge for women and families who were the victims of domestic violence. There were a substantial number of allegations against the claimant, not all of them upheld. Mr Clarke confirmed at the outset that the conduct issues before the tribunal involved: an allegation of the chastisement of a resident, BB, regarding her use of taxis; shouting at residents and threatening them; speaking to BB in a hostile manner: belittling, harassing and demeaning her; and shouting at residents' children and threatening them.

2. The claimant also seeks damages for breach of contract arising out of the termination of her employment without notice.

### **Evidence**

3. The tribunal had before it an agreed bundle of documents to which were added by the claimant, without objection, a small number of additional documents including a record of the initial complaint raised by BB. The bundle then numbered some 655 pages.
4. The tribunal had had, in advance of the live hearing, time to read into the witness statements and relevant documentation. The tribunal heard firstly, on behalf the respondent, from Sian Kilcommons, Service Manager (Children's Services), followed by Louise Hudson, Operations Manager. The claimant then gave evidence on her own behalf to accommodate availability issues affecting the respondent's witnesses. The tribunal then heard from Catherine O'Melia, Deputy Director of Services & Innovation (Central Region) and Lousie Theophile, HR Business Partner.
5. Having considered all relevant evidence, the tribunal makes the factual findings set out below.

### **Facts**

6. The claimant was employed as a child and family support worker at a refuge in Bradford for women and children from BAME backgrounds who had been victims of domestic violence/abuse.
7. The claimant had been employed at the refuge operated by Bradford Women's Aid from September 2005 but her employment transferred to the respondent pursuant to TUPE on 1 October 2019 when a consortium consisting of the respondent and an organisation known as Staying Put took over the activities of the refuge.
8. The claimant ceased to work at the refuge from around late October, which was then operated by Staying Put and employees of Bradford Women's Aid who had transferred to it.
9. A service user, BB, who had been a resident at the refuge made a complaint about the claimant in December 2019. This was a verbal complaint which was passed to the manager at the time, employed by Staying Put, who did not follow the complaints process. When this complaint came to light, Shabana Hussain, Staying Put's Head of Service, contacted Sian Kilcommons, Service Manager (Children's Services) for the respondent during the week commencing 13 January 2020. They decided to begin a formal complaints process in partnership together as allegations had been made against staff members in fact now employed in both organisations (by reason of the TUPE transfer).

10. BB was not a confident speaker in English and preferred to speak Urdu/Punjabi. She was very vulnerable, a victim of domestic abuse and had recently had her 5 infant children removed from her care. She was still residing in refuge accommodation, albeit no longer at the same refuge where the complaints arose. She had had 3 key workers assigned to her including the claimant, Yasmeen and Shazia, although the claimant's particular responsibility was for the children.
11. The complaint of BB, as relayed to Staying Put and recorded in writing (in all likelihood by the refuge's manager, Helen Picken) was sent to Ms Kilcommons by Ms Hussain on 21 January 2020. Whilst Ms Kilcommons forwarded it to the respondent's HR team, it was not part of her subsequent investigation report nor put before ultimately the disciplinary or appeal panel. She said the respondent had already started its own process and had booked a time in which to take a statement of the formal complaint from BB. She described the record of the original complaint as "not verified" and "confused".
12. Within the document recording the initial complaint it was noted that staff at the refuge BB was living at had struggled to get her to stop constantly bringing up and changing her story about things and they were concerned about her capacity. There was a comment that BB seemed to be unable to accept responsibility for her own actions in parenting and had constantly stated that matters reported to social care were lies. There was reference to BB having called other residents at the refuge she had previously been staying at (and where the claimant had worked with her) asking them to assist in getting her children back. It was said that these had been quite threatening calls, making out that other residents were in some way also to blame the children being removed. One resident had reported BB saying that she wanted to prove the claimant wrong.
13. On 20 December 2019 another former resident of the refuge, SB, made a written complaint against the claimant which was also to be considered as part of this process. The complaint was headed: "Letter for taking the custody of [BB's] kids back to mum." This was then expanded by a further written complaint of another former resident, GF, dated 3 January 2020.
14. The decision was taken that Ms Hussain would interview BB on 21 January 2020. She also then interviewed SB and GF together on 28 January - they had requested this so that they could provide support for one another. Ms Kilcommons recognised that this was not an ideal situation, but the complainants would not have felt comfortable to go ahead with the interview otherwise. Ms Kilcommons was unavailable to participate in the interviews on those dates and it was decided that she should not meet with BB thereafter for a second interview owing to concerns about BB's welfare.

15. Ms Kilcommons and Ms Hussain then booked a series of interviews with staff members to try to speak to everyone who worked in the refuge over the relevant time period. Residents who were still living in the refuge were also approached. There was one group meeting of current refuge residents.
16. Questions were prepared in advance to put to the interviewees, but with the flexibility to ask supplementary questions depending upon the information they provided.
17. The claimant was also interviewed as part of the investigation on 6 February by both Ms Kilcommons and Ms Hussain.
18. Ms Kilcommons was asked if she had given consideration to BB's vulnerabilities in giving weight to her evidence. She said that she did not make any judgements about her background. She had the right to bring a complaint. She recognised that she felt aggrieved as her children had been removed, but said it was not unusual for residents to be angry with staff. She said it was unclear how connected BB, GF and SB were in terms of any personal friendship and said that that was not particularly in her mind.
19. Ms Kilcommons had briefly been the claimant's manager and agreed she had a good relationship with her and liked her. She confirmed that there was nothing before these complaints which would cause her to disbelieve the claimant in terms of her personal honesty and integrity. She said that she recognised that the claimant had been at the refuge for 14 years without any conduct or performance issues, but a number of staff had said that they had not been properly supervised at the refuge for a long period.
20. On the completion of the investigation, HR advice was sought, the matter was referred to the Local Authority Designated Officer and the claimant was suspended on 12 February on unspecified allegations of gross misconduct. An investigation report was prepared by Ms Kilcommons. HR advice was that the matter could then go straight to a disciplinary hearing.
21. It was put to Ms Kilcommons that rather than a straightforward fact find, she had come to conclusions on the various allegations made against the claimant. She said that when she said allegations were "upheld" she was not saying this "as fact" but "on the balance of probabilities".
22. Ms Kilcommons referred in her report to the claimant calling residents derogatory names in Punjabi. She accepted that in fact only the support worker, Yasmeen, had made this allegation. She did not understand the name which was said to have been used - it had been explained to her, but it was not something she was able to communicate properly to the tribunal.

23. The claimant was invited to a disciplinary hearing by letter of 1 May 2020 which enclosed Ms Kilcommons' investigation report as well as a number, but not all or in complete form, of the appendices to it. The claimant's disciplinary hearing was scheduled to take place before Ms Louise Hudson, Operations Manager covering services in the West Midlands and Ms Sally Manzoni. It proceeded on 2 July 2020 by videoconferencing. Originally 2 hours had been set aside for the hearing, but it in fact lasted from 10am until 1:40pm. The claimant was accompanied by her union representative, Donna Willoughby.
24. The respondent was unable to conclude the hearing by 1:40pm and it was agreed that the claimant would send in the remainder of the submissions/evidence she wished the respondent to consider in the form of a written statement to Ms Louise Theophile, HR Business Partner at the respondent. It was also agreed that any questions raised by the claimant would be answered and that documents missing from the appendices to the investigation report would be provided to the claimant.
25. The claimant had hoped that a colleague, Tamina, would provide evidence in support of her. She, however, informed Ms Theophile that she did not wish to attend the hearing and provided a written statement instead by way of replies to written questions sent to her by Ms Willoughby.
26. Subsequently, the claimant did ask that the hearing be reconvened. However, Ms Hudson and Ms Manzoni considered that they had enough information to make their decision.
27. They made their decision based on the information presented at the hearing, including the investigation report and additional information provided by Ms Kilcommons and the claimant after the hearing. Ms Hudson's evidence was that they read, reviewed and considered each piece of evidence and whether it supported or mitigated each of the allegations. She had not met the claimant before and said that consideration was given to the fact that the claimant in her employment record did not have any previous misconduct issues.
28. A number of the allegations put forward (and "upheld") by Ms Kilcommons in her investigation report were not upheld by the disciplinary panel. This included allegation 1 that the claimant failed to uphold the respondent's safeguarding standards by lying to the children's social care professionals about the care of BB's children. Allegation 2.2 regarding the reporting back to a social worker of a headlice incident, 2.3 regarding excessive and unfair checking of kitchen and unit cleanliness and 2.4 of prejudice and unfair treatment of GF and other residents and their children based on them being non-British born/non-English speaking clients were not upheld. Allegation 3.3 of shouting at and telling residents to "shut up" was not upheld. Nor was allegation 4 of failing to uphold the respondent's safeguarding standards

through poor practice and alleged rough handling a child and allegation 5 of failing to observe a number of the respondent's policies and standards.

29. A number of allegations were upheld including the chastisement of BB in respect of her use of taxis (allegation 2.1), shouting at the residents and threatening them (3.1), speaking to BB in a hostile manner and belittling, harassing and demeaning her (3.2) and shouting at residents' children and threatening them (3.4). An outcome letter was sent to the claimant by email dated 24 August 2020 going through each allegation and the panel's conclusions. It was said that overall it was felt that there was no alternative other than to summarily dismiss the claimant on the grounds of gross misconduct - the parties agree that the claimant's effective date of termination was 25 August 2020. The gravity of misconduct in relation to allegation 3 was such that it was believed that trust and confidence placed in her as an employee had been undermined, particularly given that her role consisted of dealing with very vulnerable service users.
30. Ms Hudson said that when coming to an outcome they considered the possibility of a final written warning, but, based on the seriousness of the third allegation in particular which they had upheld, decided on an outcome of dismissal. This allegation was around behaviour and conduct that amounted to bullying and harassment and the above 3 elements of this allegation had been upheld.
31. The panel were aware that Staying Put had conducted an investigation into a member of their staff who had however not been dismissed, but they did not know the specific details of the allegations made against such individual and the claimant's case was considered independently from Staying Put.
32. Ms Hudson was taken through a document which had been prepared by them to aid their deliberations which she confirmed set out the evidence supportive of each allegation set against evidence which might refute it. She described this as a working document and said that there was a huge amount of documentation, all of which had been considered. This was, however, a comprehensive summary more likely than not, the tribunal considers, to contain all evidence considered to be material to the panel's deliberations
33. Some of the incidents considered arose under more than one heading of allegation in that the treatment of BB was also considered under the more general allegation of the treatment of residents and the treatment of residents might be relevant to the claimant's behaviour towards children if children had been in the vicinity at the time.
34. Part of an allegation upheld (2.1) related to the claimant's treatment of BB over her ordering a taxi to take her children to school. Ms Hudson

described, however, that this did not have a huge influence on their decision.

35. Again, Ms Hudson confirmed to the tribunal that she had not spoken to BB, that a complaint had arisen only after her children had been taken away from her and that she had not seen the note of the initial complaint.
36. She took from the interview Ms Hussain had conducted with BB that she alleged that the claimant had shouted at her and said: "don't use a taxi go walking you're wasting your money". When asked if she was spoken to in a caring and supportive manner, BB had responded: "not with care or respect, she used to shout, demeaning me, and having power over me."
37. Reliance was then placed on statements made by GF at her joint interview with SB on 28 January 2020. GF referred to the claimant asking her why BB had ordered a taxi saying that: "She got so mad about it..." GF said that others ordered taxis to take their children to school (pointing to SB) and the claimant had not told them off. GF referred to the claimant asking BB why she was ordering a taxi, inferring that it had happened on more than one occasion and saying that the claimant used to get angry when BB used a taxi. SB said she had heard the claimant say to BB: "Oh you have too much money to take taxi".
38. Ms Hudson told the tribunal that she did not have a full insight into BB's mind, when put to her that she ought to have considered BB's feelings towards the claimant. She said that they did consider that BB was ill disposed towards the claimant because she blamed the claimant for the removal of her children. She agreed that she preferred BB's account to the claimant's. She didn't accept that BB was making the allegations against the claimant arising out of the loss of her children. When put to Ms Hudson there was not in any event evidence of BB being chastised, she said that they saw it as an issue of residents being treated differently.
39. The evidence of GF and SB was preferred to that of the claimant. The claimant referred to starting her shift after BB would have left to do the school run. Ms Hudson accepted this, albeit the evidence was that the claimant would sometimes come in early and, whilst this might be after BB ought to have left to take the children to school, BB could have been running late.
40. The claimant, it was noted, had said that there was no reason to chastise BB because it had been agreed that she could use taxis as part of her support plan in September 2019 to assist in one of the action points BB was to achieve of getting her children to school on time. Ms Hudson said that the support plan had not been provided to them, nor requested.

41. The claimant had also provided a copy of an agreement with a local taxi company regarding arrangements to collect residents. Ms Hudson referred to this in the column of factors supporting the allegation. She agreed that it was a factor against the claimant when asked in cross examination as she said the statement related to the whole refuge and not specifically to BB. When then put to her that it did not support an allegation of BB being chastised, she agreed and said that the reference had been placed in that column in error.
42. One of the allegations the panel did not uphold was of excessive and unfair checking of BB's kitchen and unit cleanliness. The evidence in support of this allegation predominantly came from GF when she was interviewed and who had said she had seen BB questioned by the claimant over her kitchen on many times, yet the claimant had never checked on anyone else's kitchen. Ms Hudson said that this evidence of GF was not accepted, referring to there being no evidence in BB's case notes that the claimant had checked her kitchen and having ascertained that this was not part of the claimant's role. Ms Hudson agreed that this had not stopped the panel accepting GF's evidence in respect of other allegations. She said that in those cases there were other accounts supportive of the allegations.
43. Another allegation of prejudicial and unfair treatment of GF herself and others based on their ethnicity was not upheld. GF complained among other things that she had not been able to borrow a baby bouncer. However, the panel had accepted the evidence of Tamina that she had provided GF with a baby bouncer so that there was no reason for her to ask for one.
44. Ms Hudson recognised that, whilst she had not seen BB's care plan, BB had 3 key workers including the claimant and that the support programme in place for her was intensive. She said that they considered whether the complaints made against the claimant arose out of her policing of BB's behaviour in the context of that plan. However, they had looked at the claimant's case notes and thought that her observations of BB were very direct and that there were references to the claimant telling BB what to do rather than supporting her to correct her behaviour. Ms Hudson confirmed that they had not looked at the case notes of BB prepared by her other key workers, Yasmeen and Shazia. Ms Hudson agreed that she had no knowledge of how the claimant's previous employer had expected case notes to be kept or the guidance given to staff, if any. Ms Hudson did accept that the case notes would have been reviewed with the claimant as part of regular compulsory management supervision. There was no evidence of any concern being identified previously.
45. As part of the allegation of speaking to BB in a hostile manner and belittling, harassing and demeaning her, was an allegation by BB that the claimant had said "your children are alive, they are not dead" around the time her children were removed from her. It was noted that the claimant denied saying this. A witness, KF, had said that she had heard from GF that the



claimant had made the comment. Ms Hudson told the tribunal that this alleged comment was not considered proven and taken into consideration in their decision-making – the evidence was described as second/third hand.

46. Held against the claimant was a case note entry where the claimant recorded that she had: “Advised BB she does not supervise children properly”. Ms Hudson sought to maintain that this was evidence of hostility and of BB being “told” something. Another case note was relied upon where the claimant recorded telling BB to put her child back as she was only screaming for attention. Again, Ms Hudson confirmed that they concluded that this was hostile and belittling. It was suggested instead that it was evidence of the claimant doing her job of supporting BB. Ms Hudson conceded ultimately that, on reflection, this did show support which the claimant was giving. She agreed that she had not referred to that part of the claimant’s written submission to the panel explaining that she was trying to introduce the concept of controlled crying as a tool for BB to use. Ms Hudson said that this could be seen as an oversight by the panel.
  
47. As part of the allegation of shouting at residents/residents’ children and threatening them, the aforementioned taxi issue was listed as evidence in support. Ms Hudson said that that was because they considered that children were present during altercations involving the claimant. She accepted in cross examination that was quite different from an allegation of shouting at and threatening children. Subsequently, she confirmed that the reference to children in this part of her schedule of evidence was a typographical error.
  
48. Ms Hudson referred in support of the allegation about the claimant’s conduct towards children to their consideration of a case record where the claimant had told a child to get up off the floor. This was a reference to a case note completed by the claimant on 8 May 2019. Within this the claimant described one of BB’s children as refusing to move and throwing herself on the floor. BB was said to have tried to pick her up, but she wouldn’t move. She continued in the case notes: “I asked [ ] to stand up but she wouldn’t. Counted to 5 and informed her if she doesn’t get up I would physically have to pick her up. [ ] refused to move so I had to carry her.” Ms Hudson confirmed that this was perceived by the panel as threatening behaviour. The claimant should have supported BB to deal with the child. It wasn’t her role to pick up the child. Ms Hudson acknowledged that at the refuge there had been no policy against picking children up. She agreed that the respondent accepted that children could be picked up, but only where there was a risk to safety. They said they recognised that the claimant had said that at times the children were in harm’s way, for example, when sat close to a door which might be opened on them. Ms Hudson acknowledged that this had also been recognised by Portia, the childrens’ social worker.

49. The claimant had submitted an email dated 19 June 2020 from Portia to herself. This included Portia's own contemporaneous note of her 8 May 2019 visit. This described her observing a child "playing up" and the claimant having to step in and help with the child. Another child then was described as putting himself on the floor and refusing to budge. The claimant was described as having helped him to get in. Portia went on to express a view that there was no rough handling by the claimant and the child did not resist being picked up by the claimant. The claimant was described as very helpful, patient and understanding towards BB. She said it was appropriate for 2 of BB's children to be given "time out" in order to promote good behaviour and to give them space to calm down. She said that she fully supported the high-intensity routine implemented by the claimant and the two other key workers to enable BB to manage the children's behaviour and parent them appropriately. She went on that, from her discussion with BB, BB was happy with the support she received and that there was no language barrier as staff spoke the same language as her, which she contrasted to a previous refuge she had lived at.
50. When Portia's statement was put to Ms Hudson in cross-examination, she continued to maintain that the case note supported the claimant shouting and being threatening and said that it was felt that the claimant's behaviour had been inappropriate. She considered that the social worker had been talking about a slightly different incident. Subsequently in her evidence she however accepted that the claimant's reason for picking up BB's child seemed plausible.
51. Separately, Yasmeen was noted as having said that the children were scared of the claimant and would refer to her as "Gabar Singh", a reference to a 1970s Bollywood character. Ms Hudson confirmed that they did not believe that the children were likely to have referred to the claimant by that name and their conclusion on the evidence was that Yasmeen herself had adopted the name with reference to the claimant.
52. Ms Hudson confirmed that they had looked at allegations of shouting at residents together with the allegation regarding children, if children were present as well. In answer to a further question, she conceded that there was no other example which involved threats to children beyond what has become known as the four-way meeting.
53. Tamina, when interviewed on 6 February 2020, had been recorded in her interview notes as describing an incident where the claimant spoke to BB in the office in front of children. This was a reference to a meeting where BB was said to have been invited into the office with the claimant, Yasmeen and Shazia also in attendance (hence the four-way meeting). The situation was introduced to Tamina by it being said that a member of staff remembered the meeting as being quite confrontational and in front of a child. Tamina herself was said to have been described as part of the group and being quite confrontational. Tamina said that the meeting could have

been handled better and was noted as saying that the child should not have been there and was upset and crying. When asked about the tone, she said that the tone could have been better continuing: "it was more that staff were frustrated from having to repeat themselves. It could have been done better and separately." She described BB as always being in the office and not having the greatest of parenting skills. Tamina, it appears, had been unwilling to agree her interview notes. Tamina then provided a statement on 1 July 2020, before the disciplinary hearing, contradicting this. Ms Kilcommons told the panel that she was certain that Tamina at her initial interview had said that a child was present and was crying.

54. Shazana had said when interviewed on 6 February that BB was brought into the office with four members of staff present, two of them sat at their desks. She felt it was too overpowering and that she had tried to distract BB's daughter so that she couldn't hear what was being said. Ms Hudson agreed that this was not direct evidence of the claimant shouting or threatening children, but said that it was evidence of a threatening environment.
55. The claimant in her submission document recalled an incident when BB came into the office quite irate as she had had an altercation with the school regarding her children being late. The claimant referred to evidence of a conversation the claimant had had with the school. BB had walked into the office without being asked. She said that BB considered that she was being unfairly criticised by the school and she wanted the staff to confirm that the children were not arriving late. The claimant said that Shazia, Tamina and Yasmeen had tried to explain to BB that they were not able to confirm if this was true or not. BB believed that they could confirm the time she was leaving the refuge, but it was explained that this was not evidence of the time they arrived at the school. The claimant described the incident as becoming a little uncomfortable as BB was shouting and would not leave the office. They took it in turns to try to explain. She said there was no child present. She pointed out that Shazana, in her interview, recalled the child to be wandering around and did not mention the child was crying.
56. In a statement provided by the claimant, Shazia said that she believed that BB had walked into the office and was getting quite irate as the claimant was trying to explain something. She said that Tamina, Yasmeen and herself tried to explain to BB what the claimant was saying, but BB didn't seem to understand. She believed the issue had something to do with a concern about BB raised with the claimant by the school. She said that she did not recall a child being present. She said that Yasmeen was mistaken regarding the timing of the meeting. It happened at a later date, when Yasmeen was one of BB's key workers.
57. Tamina's statement supplied by the claimant referred to BB entering to speak to her key workers about a schooling issue. She also did not agree with Yasmeen who had thought that the meeting had occurred after BB had

returned from an earlier visit to Birmingham. She said that she did not speak to Yasmeen afterwards about any “horrendous” meeting as had been suggested by her.

58. Ms Hudson discounted Tamina’s more recent statement relying instead on the notes of her initial interview, albeit recognising that Tamina disputed that transcript. She confirmed that she preferred the evidence of Yasmeen and Shazana over that of the claimant and Shazia. In cross examination it was pointed out what Yasmeen had said on being interviewed on 6 February. She was asked if BBs daughter had been present and responded that she did not recall who was there “but with BB there was always a child present.” Ms Hudson said that there was still Shazana’s evidence that a child was present and that she had discussed that with Tamina the next day. Ms Hudson was directed to Tamina’s statement in which she denied that she had told Shazana how uneasy she had felt after the meeting.
59. Another allegation arose from a reference by GF to seeing the claimant shouting at BB after BB leaving her key card at the unit, where the claimant was alleged to have shouted that she was going to charge BB and that GF heard the claimant swear as GF was leaving the room.
60. The issue of the key card was indeed one raised by GF and not BB herself. In her written complaint GF had described the claimant as shouting and swearing at BB. The claimant was described as “very unprofessional slamming things and shouting”. She described the claimant as storming out of the office to find BB and verbally abusing her again. When GF was interviewed with SB present on 28 January, the incident recounted by GF referred to the claimant shouting in GF’s presence over the key card in circumstances where BB was not described as present in the office. Ms Hudson, before the tribunal, described any inconsistency as a small detail and considered that the same incident was being described and that all 3 of them were in the location when the incident took place. Ms Hudson agreed that the claimant in her submissions after the hearing had said that the key card would be handed to the staff member on duty and there would be no need for GF to hand it to the claimant. Ms Hudson accepted that this was not something which had been explored further. When put to her that it should have been, her response was: “potentially... We weren’t conducting an investigation, just going on the information presented to us at the hearing.”
61. It was pointed out to Ms Hudson that, ZB, interviewed on 3 February, had lived next to BB. When asked if she never witnessed any worker force BB or her children to do a task, she said that she had not. She had not seen anyone not talk nicely. She had not witnessed the children being shouted at. She said that BB used to tell her that the claimant was not nice, but she had seen her helping BB on a trip. Ms Hudson agreed that this contradicted GF’s account. She agreed she had not included this as evidence refuting the allegations of how BB was treated.

62. An interview with a group of residents had also taken place on 3 February. They had been asked if there was anything which the staff said or did which made them feel uncomfortable or uneasy. They said that there was not. They had never witnessed a staff member shouting at a resident or being disrespectful. They described the staff as very good and said they were happy with them. They never witnessed a staff member demeaning a resident. They had never felt scared or felt that residents were treated differently or unfairly.
63. As already referred to, another worker, Shazana, was interviewed on 6 February. She recalled the claimant telling BB off about something saying in Punjabi not to lie to her and that she wagged her finger. She described the tone as confrontational and loud but said that the claimant was not shouting but, rather, was loud using a raised voice.
64. Ms Hudson agreed that they had missed out this evidence in the column of evidence potentially supportive of the claimant's case (that she had not shouted), albeit she said that this was still evidence of inappropriate behaviour.
65. Another resident, Si, in an interview on 3 February, had described the claimant's tone as making everyone feel humiliated and the claimant as speaking to her aggressively. It is noted that she had been given a warning by the claimant which she felt to be unfair arising out of a childcare issue. The claimant submitted a further statement from her colleague Farzana of 24 June. Farzana had been Si's key worker. She recalled that Si had received a warning because of her tone and behaviour towards another resident. She recalled Si as not agreeing with the warning, but not complaining about the claimant being aggressive to her or ever suggesting that she was made to feel humiliated. Ms Hudson said that they had accepted Si's evidence.
66. Yasmeen was interviewed on 6 February – her evidence on other matters is referred to above. When asked about bullying of residents she referred to M who she said was shouted at and demeaned by the claimant. She said that this had been reported to the previous refuge manager, Cobie, but said that she didn't manage the claimant and tried to smooth over the situation. She said that a meeting was held with all the residents and the claimant "went for her [M]". She said that M was so upset that she said she would kill herself and her daughter.
67. In her submission document after the hearing the claimant said that Yasmeen's account was fabricated. She said that the resident, M, had been evicted. M and another resident had a falling out and the claimant and Tamina had tried to clear up the misunderstanding. In doing so they were the only two staff members present when M suggested that she was going

to kill herself and her child. Yasmeen was not at work at the time and the claimant updated her when she started in the afternoon. The statement of Tamina presented by the claimant supported the claimant's account and that Yasmeen had not been there.

68. Ms Hudson agreed that she not referred to this evidence in the schedule as supportive of the claimant's case. She denied that it had been ignored but said that they felt that Yasmeen's account was truthful. When asked upon what basis she said that it was having read the whole of her statement with detailed examples.
69. In the panel's summary it was recorded that Yasmeen had said that another resident had said that the claimant had "mentally tortured" her. In cross-examination, Ms Hudson accepted that they had made a mistake and the resident in question was still M and not an additional resident.
70. When considering the evidence, the panel had noted that the claimant herself had said that when BB was loud, she would have to speak louder herself in order to be heard. Ms Hudson explained that, with vulnerable clients, employees shouldn't raise their voice, even if they were speaking louder to be heard. It was not an appropriate type of interaction. Ms Hudson had further noted that the claimant's case records detailed her telling BB that she would inform the social worker "and go from there" if BB didn't let her work with her children. Ms Hudson noted that this could have been perceived as threatening. When put to her that the claimant was just telling BB that she needed to let her do her job otherwise she would have to raise the matter with her social worker, Ms Hudson agreed but said that the issue was the way she explained this to BB which could have left her anxious and unsure. Ms Hudson agreed that this was not in fact an incident raised by BB herself.
71. Ms Hudson was taken to the interview of Helen Picken on 6 February. Ms Picken queried whether there had been a fear factor to stop people speaking and, when asked who was feared, she named the claimant. She referenced an unhealthy power struggle within the team. The tribunal is clear that she was talking about staff members rather than residents fearing the claimant. Ms Hudson in her evidence confirmed that she read the interview transcript as referring to both staff and residents being fearful. She maintained that view.
72. Ms Hudson confirmed that before the dismissal decision she had also received an email from Peter Rutherford dated 18 June who had line managed BB's previous social worker, Louise. He confirmed that Louise had never raised any concerns about how staff dealt with BB and that BB had not raised concerns with her either. He himself had chaired a core group meeting following a child protection conference on 21 June 2019 and had observed that the claimant was supportive towards BB.

73. During the hearing the panel did not believe that the claimant had showed any remorse or acknowledged that her behaviour could have been seen as bullying or harassing. It was pointed out that in the dismissal hearing notes, the claimant was recorded as saying that everything she did was to keep the family together and that it was never her intention to make BB feel humiliated or belittled. The claimant said that she wished she had taken the four-way conversation away from the office. Ms Hudson agreed that this was an expression of self reflection and a willingness to learn. However, this was more a reflection on an incident rather than clear regret. Ms Hudson said that the panel accepted that the claimant had never by her conduct intended to belittle or humiliate.
74. Ms Hudson accepted in cross examination that when the dismissal outcome letter referred to the claimant showing no reflection, this was at odds with what the claimant was recorded as saying in the notes. She would accept that the decision letter ought to have referred to “some” reflection.
75. Whilst the panel accepted that within the refuge there had been a lack of procedures, little management oversight and supervision of staff, this was not considered as a mitigating factor in respect of the third allegation in particular. Ms Hudson said that the failure to work in accordance with the respondent’s values, as found to have occurred, overrode any lack of management support. A final written warning was not viewed as a reasonable sanction. The residents were very vulnerable people. When queried why they did not think that the claimant might learn from the incident and that she could be supported to improve, Ms Hudson said that the incidents had taken place and there was a culture of people being scared to speak out. She did not feel it was right for the claimant to go back into that environment.
76. The tribunal notes that Ms Hudson was unaware that the claimant had not been working at the refuge since her transfer to the respondent’s employment and that her time was now split between an advice role and a role where she supported children in schools or at a separate office of the respondent. Ms Hudson said that the claimant would still be working with vulnerable women and their children and that her considerations regarding a lack of trust in the claimant in such circumstances remained.
77. The claimant appealed the decision to terminate her employment and a hearing took place on 14 October 2020 by videoconferencing with Catherine O’Melia, Deputy Director of Services & Innovation (Central Region) and Michelle Corrigan, Deputy Director of Service (National Services). They had all of the documents which had been before the disciplinary panel along with 2 additional witness statements provided by the claimant and Ms Willoughby. The claimant presented her grounds of appeal by reading from a lengthy statement. She was then asked questions on it and provided a copy of her submission.

78. At the hearing, Ms O'Melia outlined that the intention was not to reinvestigate the original allegations or hold another disciplinary hearing, but to hear the grounds of appeal and then determine whether the original decision still stood.
79. The appeal panel did not ask to see the initial complaint of BB. When put to Ms O'Melia that had she seen the original complaint it would have made a difference regarding her consideration of BB's evidence, she responded that it would not have undermined it "completely" and that it did not discredit BB as a witness "entirely".
80. Ms O'Melia said that in her professional experience it was not uncommon for support workers to hold the involvement of a social worker over people as a threat. This could be felt as threatening by a resident. The tribunal found that evidence to be entirely plausible.
81. At the appeal, Ms O'Melia noted that the claimant said she would be prepared to apologise to residents. She was asked if she had any other reflections. The claimant said that she would never speak to somebody to make them feel belittled and humiliated. She reflected on her approach and wondered whether she did anything wrong. On reflection she would have relied on management more. She was the only support worker there working full-time and she would have asked for help with more staff. She did not believe she had behaved in the manner alleged, but if she had upset someone she would have apologised. She was shocked by the allegations. If this was how she was perceived, she would have reflected. In terms of what she might have done differently, she said she would not be as direct and would explore things a bit more having regard also to the level of her tone. People had said her tone was loud and she realised there was an issue regarding level of tone. Ms Hudson was at the hearing and said that she wanted to observe that there had been a difference in that the claimant had now shown more self-reflection which she said was reassuring to see.
82. Ms O'Melia said that she did consider the claimant's statements as well as the potential lesser sanction of a final written warning. She however felt that the extent of the allegations and their nature, involving as they did vulnerable service users, meant that dismissal was the right penalty. Any role of this nature involved working with vulnerable service users and she was not wholly convinced that the claimant would change. The main substance of her appeal was a denial of the allegations and there was a dissonance there with her claims of reflection.

### **Applicable law**

83. In a claim of unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason for dismissal is a reason related to conduct under Section 98(2)(b)



of the Employment Rights Act 1996 (“ERA”). This is the reason relied upon by the respondent.

84. If the respondent shows a potentially fair reason for dismissal, the tribunal shall determine whether dismissal was fair or unfair in accordance with Section 98(4) of the ERA, which provides:-

*“ [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 upon 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”.*

85. Classically in cases of misconduct a tribunal will determine whether the employer genuinely believed in the employee’s guilt of misconduct and whether it had reasonable grounds after reasonable investigation for such belief. The burden of proof is neutral in this regard.

86. The tribunal must not substitute its own view as to what sanction it would have imposed in particular circumstances. The tribunal has to determine whether the employer’s decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in these circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached.

87. A dismissal, however, may be unfair if there has been a breach of procedure which the tribunal considers as sufficient to render the decision to dismiss unreasonable. The tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

88. If there is such a defect sufficient to render dismissal unfair, the tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142**, determine whether and, if so, to what degree of likelihood the employee would still have been fairly dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed, then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

89. In addition, the tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the claimant and its contribution to her dismissal – ERA Section 123(6).
90. Under Section 122(2) of the ERA any basic award may also be reduced when it is just and equitable to do so on the ground of any kind conduct on the employee's part that occurred prior to the dismissal.
91. The assessment of conduct is, on these questions of compensation, one for the tribunal rather than one based upon any reasonable belief of the employer. This applies also to the tribunal's determination of the claimant's separate complaint seeking damages for breach of contract. The question there is whether the claimant did commit an act of gross misconduct entitling the respondent to terminate employment without notice.
92. Applying these principles to the facts as found, the tribunal reaches the following conclusions.

### **Conclusions**

93. The respondent terminated the claimant's employment for a reason related to conduct, a potentially fair reason.
94. The claimant has maintained that such dismissal was unfair arising out of a number of procedural defects. Mr Clarke is correct that the majority of those issues fell away as the case progressed.
95. There is no basis for concluding that Ms Kilcommons was not impartial from the outset in her investigation. There was nothing improper in the manner in which witnesses were questioned and the claimant had a full opportunity to explain her position. The investigation report suggested that Ms Kilcommons saw herself as the primary decision maker rather than a gatherer merely of evidence to be presented to a disciplinary panel. She expressly upheld a significant number of the allegations and the report was presented to the disciplinary panel as effectively a finding of substantial misconduct. However, it is clear that the disciplinary panel, by their rejection of a significant number of Ms Kilcommons's conclusions, did not see themselves as constrained by her findings and indeed applied fresh eyes to the evidence.
96. The investigation consisted of statements taken from a substantial number of current and former residents as well as staff. Alongside those, BB's case notes were reviewed, certainly in full by Ms Kilcommons.
97. Whilst the allegations at an earlier stage might have been expressed more clearly to the claimant, by the time the decision to terminate her employment was made she was aware of those matters which were being considered against her. The context was of a number of allegations of a quite general

nature albeit backed up by some more specific examples. The claimant did not have at the time of the disciplinary hearing all of the relevant documents, but this was in all material respects resolved by the time the decision was made and the claimant had an opportunity to make her very full written submission on the additional material. Again, it was unfortunate that the hearing could not be concluded on the day, but the claimant ultimately suffered no prejudice in circumstances where she again made her very full written submission. She might have benefited from a reconvened hearing. However, she was able to gather and present statements of witnesses she wished the panel to hear from. The decision not to reconvene the hearing was not, given the substantial material before the panel, outside a band of reasonable responses.

98. The tribunal considers that the original record of BB's complaint ought reasonably to have been disclosed to the claimant, the disciplinary and appeal panels. This is an issue that perhaps goes more to the basis of the panel's decision-making which is addressed further below.

99. There were case notes which the respondent did not have access to and which might have been illuminating regarding the treatment of other residents and the practices of other care workers. However, this in itself would in all the circumstances have been insufficient to render dismissal unfair.

100. The key issue in this case is whether or not the determination of the claimant's misconduct was reached on reasonable grounds. This is not a case of a number of allegations of misconduct, any one of which would have led to the respondent terminating the claimant's employment. The decision of Ms Hudson's panel was reached based on the totality of the allegations as a found against the claimant.

101. A significant number of the allegations made against the claimant were broadly framed without reference to any great detail involved in any specific incident. The prime complainant was BB, who clearly had a potential motive for wishing to get the claimant into trouble and who had not complained about the claimant prior to the removal of BB's children in circumstances where the claimant was the key worker with particular responsibility for the welfare of the children and had been for some time. The respondent knew this, but paid little regard to it. There was no consideration of the relationship between BB and the other main complainants who had been residents at the refuge with her, GF and SB. This was in circumstances where SB's written complaint was headed with an express aim of getting BB's children back.

102. As already referred to, whilst the note of BB's initial complaint had been obtained during the investigation, it was not provided to the dismissal or appeal panels. They did not show any interest in whether this could be

made available to them. The tribunal has received no explanation as to why it was omitted, ostensibly by HR, from the pack of materials for each panel. Often, evidence of what was said at an earlier and more contemporaneous point of time may be illuminating, not least as to the credibility of the allegations subsequently pursued. Certainly, a failure to consider this letter meant that the decision-makers were unaware that within the refuge BB currently resided there was a concern among staff that BB was prone to changing her story, repeatedly re-raising her concerns and a concern indeed about her capacity. It was commented that she was unable to accept responsibility, was prone to suggest that lies were being told about her, that she had been threatening residents and wanted to prove the claimant wrong. From the documentation which was before the panels, there was evidence of BB not only struggling to cope but of falling out and disagreeing with people in a number of contexts, including those at the childrens' school.

103. This was a situation where any reasonable employer would be particularly on notice that allegations being made against the claimant may be open to question. A degree of healthy scepticism is appropriate in many misconduct cases, if the person alleged of the misconduct is to have his/her case fairly considered. That is perhaps somewhat of an understatement in this case.
104. In the claimant, the respondent was considering an employee with 14 years of service and no record of prior complaints against her or of any misconduct committed. There was favourable evidence from social work professionals as to the claimant's practice and behaviour.
105. The respondent also had never operated itself the refuge at which the issues of concern had arisen and had little knowledge of how the refuge had been operated. It was of a view, however, that there was a lack of policies in place, that previous management had been lacking and employees had not been appropriately supervised.
106. The allegations fell into 2 broad categories involving firstly improper treatment of residents (of whom BB was a significant complainant) and shouting at and threatening residents' children.
107. As regards the first category, an allegation was upheld regarding the claimant chastising BB regarding her use of taxis to take her children to school. The disciplinary panel relied on BB's own evidence that the claimant had shouted at her and GF's evidence that the claimant had been angry with BB over this issue and had not treated her the same as she had other residents.
108. The claimant denied the allegation. She did so in circumstances where she maintained that BB's use of taxis was part of BB's support plan (something the panel chose not to view). An agreement was in place with a

local taxi company which enabled residents to order taxis. Whilst this was not particular to BB, it was irrational for that evidence raised by the claimant to apparently be held against her, according to the schedule Ms Hudson's panel prepared.

109. The tribunal was told that GF's evidence was preferred to that of the claimant. This was the panel's conclusion without any consideration of the view they had taken as to other aspects of GF's evidence. GF had alleged that the claimant had treated BB differently by constantly checking the cleanliness of the kitchen, whereas the panel did not conclude that the claimant carried out such checks. GF's complaint of unfair and prejudicial treatment based on ethnicity with reference to her not being provided with a baby bouncer was rejected. GF's evidence was not considered to be accurate. The tribunal has been given no rationale for the preference of GF other than GF providing some detail in her (upheld) allegations. There was detail, however, in the allegations rejected.
110. Whilst the evidence of Ms Hudson was that the decision on the taxi issue was not material to the conclusion to terminate the claimant's employment, the tribunal is still somewhat unclear as to what the claimant was found to have done that was wrong. Ms Hudson at one point said that this was not an example of chastisement, but of treating residents differently, yet the more general allegation of the claimant treating residents differently had been rejected. There was an unreasonable lack of consideration that the claimant's role was to support BB to change her own behavior and of the intensive regime of support which needed to be in place in BB's case.
111. An allegation by BB that the claimant had referred to her children "not being dead" was not upheld. BB's evidence was not accepted on that occasion.
112. Upheld against the claimant was, however, her behaviour when she advised, as she noted in the case notes, BB that she was not supervising the children properly and to put a child back as it was only screaming for attention. The tribunal observes that the claimant's own case notes were at various times held against her. These were case notes which the claimant prepared as records viewable by colleagues and managers and indeed which formed part of her regular supervision by managers and where no issue was ever raised regarding them displaying inappropriate conduct. As regards this allegation, Ms Hudson accepted that there had been an oversight made in not referring to the claimant's evidence regarding her trying to promote a technique of controlled crying. The respondent's conclusion was that the claimant in this incident had displayed hostility and belittled BB. Before the tribunal, Ms Hudson considered that in fact the incident showed support being provided to BB by the claimant.

113. An allegation regarding the claimant's treatment of BB over a missing key card was upheld. This was an allegation raised by GF not BB. The panel accepted GF's evidence of the claimant shouting at BB failing to recognise and consider that there was inconsistency in GF's complaint and what she said at her joint interview with SB, where it appeared that her account was that the claimant had shouted in GF's presence and not at BB. The claimant's case was that key cards did not involve herself and they would not be handed back to her. This was not explored by the panel.
114. Shazana referred to the claimant as telling BB "not to lie" in Punjabi and wagging her finger at her. Whilst Shazana did not make an accusation that the claimant was shouting, the evidence was of loud and potentially confrontational behaviour. It could reasonably be concluded that the claimant had been loud, not least in circumstances where the claimant said that she sometimes had to speak louder because of the loudness of BB's own voice and to make herself heard. The panel did reasonably view it is inappropriate to seek to resolve the situation by speaking louder than a vulnerable resident.
115. The claimant's case notes record when she referred to BB's refusal to let her work with the children and that she might inform a social worker and "go from there" were held against her. The tribunal, particularly in the light of Ms O'Melia's evidence, can understand how such a comment might be received by one of the residents as a threat.
116. As regards more general mistreatment of residents, Yasmeen had said that the claimant had bullied M, who, she said, had threatened to kill herself as a result. Yasmeen's account was preferred to the claimant's denial, albeit the tribunal has heard no explanation for the basis of reliance being placed upon her as a credible witness in circumstances where the panel rejected, for instance, her account of children referring to the claimant by a particular name. The claimant and Tamina gave detailed context of a conversation where M had threatened to kill herself and evidence that Yasmeen was not there at the time, but had the incident reported to her by the claimant thereafter.
117. The panel accepted that they had made a mistake in believing that Yameen was referring to more than one resident being bullied when a reference to M in respect of the claimant's behaviour was thought to relate to another resident. There was no reasonable basis for the respondent's acceptance of Yasmeen's allegations.
118. The panel had the evidence of Si that everyone felt humiliated by the claimant, but there was no consideration of Si's motivation for saying that in circumstances where there was evidence from Fazana that Si had been given a warning by the claimant with which she did not agree, yet had not at the time complained about the claimant's general treatment of her. Given

not least the lack of detail provided by Si. there was certainly no reasonable basis for a conclusion that the claimant made residents feel humiliated.

119. Ms Picken in her interview was understood to be saying that residents feared the claimant, when a proper reading of what she said was of an issue between co-workers and something of a power struggle amongst them.
120. ZB gave evidence that she had not observed the claimant behaving anything other than nicely. The group interview of residents was positive regarding the treatment they received from staff.
121. The tribunal has seen no balancing of evidence and cannot conclude that this allegation was upheld on reasonable grounds.
122. As regards the treatment of the children, one incident was relied upon which appeared in the case notes from 8 May 2019 where the claimant had referred to counting to 5, asking a child of BB's to get up off the floor and then picking her up. The tribunal is unclear as to how the respondent extracted a finding of threatening behaviour from the claimant's own relatively innocuous case note. The main issue for the respondent seems to have been that the claimant ought not to have picked up a child. That may not necessarily have been appropriate, but to equate the incident with some form of threatening behaviour is somewhat skewed. The panel accepted that children in harm's way could be picked up and there was evidence of the children playing in the proximity to doors which might be opened on them. The claimant provided evidence from the social worker, Portia, that the claimant was not guilty of rough handling of the child and effectively endorsing that the claimant had done nothing that was inappropriate. There was certainly nothing which she highlighted as a cause for concern. She referred also in more general terms to BB expressing that she was happy with the support she was receiving. Ultimately, before the tribunal, Ms Hudson conceded that the claimant's reason for picking up the child in this incident appeared plausible. The panel did not reasonably conclude that the claimant was guilty of shouting at and threatening a child.
123. Yasmeen alleged that the children referred to the claimant by the name Gabar Singh, but the panel did not believe Yasmeen's evidence.
124. The only matter then it seems pertaining to threats to children was the four-way meeting. The claimant accepted that the meeting had turned out to be inappropriate and with hindsight should have been conducted in a different manner. However, there was disagreement as to whether a child was present. The claimant and Shazia gave the panel evidence that none was. Tamina also provided evidence that there was no child. Ms Hudson did not accept this latter statement in circumstances where it was confirmed to her by Ms Kilcommons that Tamina had referred to the presence of a

child when originally interviewed. Those interview notes had not been accepted and agreed by Tamina. The panel seemed to have been very reluctant to accept an account which Tamina was now saying was the accurate one.

125. Set against that evidence was the account of Yasmeen who again had not been believed on all other points she raised. Here her evidence as to the comment she was alleged to have made to Tamina about the meeting being “horrendous” was rejected by Tamina. There was also a plausible and detailed account from the claimant and Tamina that Yasmeen was mixing up this meeting with an earlier one. Fundamentally, the panel did not take account of the actual words Yasmeen used when interviewed where she certainly did not say in unequivocal terms that a child was there. There was then the evidence of Shazana that a child had been at the very least wandering about and in the vicinity. However, this, it was accepted by Ms Hudson before the tribunal, was not direct evidence of the claimant threatening and shouting at a child. Ms Hudson said that what was shown was that a child was present within an environment which he/she may have found to be threatening.

126. The key issue in this case is the reasonableness of the respondent’s belief in the claimant’s acts of misconduct as found. The tribunal fully understand its limitations in the sense that it must avoid considering the conclusion it would have reached on the evidence, but rather must consider whether the respondent’s conclusions were within a band of reasonable responses. The tribunal should not be expecting perfection from decision makers faced with a substantial amount of conflicting evidence. The tribunal accepts that the table of evidence supporting and, on the other hand, refuting the allegations was never intended by the disciplinary panel to be subjected to the kind of forensic analysis which Ms Ahari has applied to it. Nevertheless, the purpose of the document was to guide the panel in their conclusions and can fairly be taken to be a comprehensive summation of the evidence which the panel considered to be relevant. Ms Hudson in cross examination has been to her credit open and honest regarding aspects of evidence which may have been missed or misinterpreted. She could not now justify her conclusions on a number of charges of misconduct.

127. The tribunal is mindful that the panel did not uphold many of the allegations and does not doubt that they acted genuinely in coming to the conclusions they did. It is insufficient however for the process to have been conducted with integrity. There must be reasonable grounds for the panel’s conclusions.

128. There were reasonable grounds for concluding that the claimant had at times not acted appropriately, in accordance with best practice and had at times been inappropriate in her tone and manner. The claimant should not have suggested that she would escalate matters to a social worker in circumstances where this might readily be perceived as an effective threat



by a vulnerable resident. She ought not at times to have raised her voice to speak over someone. She accepts that the four-way meeting should not have been allowed to have occurred in the way which it did. The respondent does not suggest, however, that it arrived at its decision other than based on the totality of the charges upheld or that it would have dismissed on the basis of more limited findings of misconduct. A substantial proportion of those charges having fallen away on Ms Hudson's admissions and the tribunal's findings of lack of reasonable grounds to support a conclusion of misconduct, the claimant was unfairly dismissed.

129. In all the circumstances, dismissal on the basis of the more limited (reasonably found) conduct would not have fallen within the band of reasonable responses. The tribunal has to say that even if there had been reasonable grounds for many of the respondent's other conclusions as to guilt of misconduct, it is highly questionable whether such conduct would have allowed for a dismissal within a band of reasonable responses in all the circumstances of the claimant's case. The tribunal notes again the lack of policy and management supervision and the finding of the panel that any adverse behavior of the claimant was unintentional. There was not conduct beyond the pale reasonably justifying an irretrievable loss of trust.

130. The tribunal turns to the question of the claimant's conduct prior to dismissal and whether it ought to be reflected in a reduction to the basic and/or compensatory award. Miss Ahari, at the conclusion of her submissions, said that the claimant did admit to being abrupt. That and the conclusions of the respondent which were reasonable (and which the tribunal finds also as a matter of fact to be blameworthy aspects of the claimant's conduct – being loud, threatening the intervention of a social worker and the four-way meeting) ought on balance to be reflected in a reduction of the awards. Miss Ahari herself puts forward that a reduction of 25% would be appropriate and this concurs exactly with the tribunal's own thinking as to the effective weight to be given to conduct which can be termed blameworthy in this case. It reflects the tribunal's view that the claimant was partially to blame for her dismissal, but certainly not equally with the respondent.

131. The tribunal must also consider, on the basis of its own findings, whether the claimant was guilty of an act of gross misconduct. Again, she was certainly guilty of abrupt behaviour, but this and her reference to a referral to a social worker, talking over people and her misjudgment regarding the four-way meeting as well as all other behavioural issues which can fairly be held against the claimant, do not amount to acts singularly and more particularly cumulatively of gross misconduct. The panel accepted that the claimant did not intend to belittle or harass any resident. She did not act in fundamental breach of her contract of employment so as to destroy the necessary trust and confidence in her. The respondent was not entitled to terminate the claimant's contract of employment without notice

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and therefore her separate complaint seeking damages for breach of contract must succeed.

Employment Judge Maidment

Date 28 October 2021