



EMPLOYMENT TRIBUNALS

Claimant: N Irfanoglu
Respondent: Tower Hamlets GP Care Community Interest Group
Held at: East London Hearing Centre (by Cloud Video Platform)
On: 14 and 15 October 2021
Before: Employment Judge L Burge

Representation

Claimant: D Gray-Jones, Counsel
Respondent: R Hignett, Counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is:

The Claimant's claim for unfair dismissal does not succeed and is dismissed.

REASONS

Introduction

1. The Claimant claimed that her dismissal was unfair within section 98 of the Employment Rights Act 1996. The Respondent said that the Claimant was fairly dismissed for capability.

The evidence

2. Nicholas Percival, Zainab Arian and David Robertson gave evidence on behalf of the Respondent. The Claimant, Nazan Irfanoglu, gave evidence on her own behalf. The Claimant also submitted the witness statement of Ahmed Mansour but because he did not attend the hearing the Tribunal attached limited weight to it.
3. The Tribunal was referred during the hearing to documents relating to liability in a hearing bundle of 441 pages. A remedy bundle was also

submitted but as the claim was not successful, it was not opened by the Tribunal.

4. Both Mr Grey-Jones and Mr Hignett provided the Tribunal with written and oral closing submissions.

Issues for the Tribunal to decide

5. The Tribunal agreed with the parties the issues to be decided. These were:
 - a. What was the reason or principal reason for the Claimant's dismissal? The Respondent said that the Claimant was dismissed for capability and that this was a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA").
 - b. Did the Respondent have reasonable grounds for thinking that the Claimant's performance was below what was required?
 - i. The Claimant said that the Claimant's first formal capability meeting held on 21 May 2018 was based on incorrect information.
 - c. Did the Respondent undertake a reasonable investigation to reach that conclusion and followed a reasonably fair procedure? Was the Claimant notified of where the deficiencies lay and what needed to be done to improve? Was the Claimant then given a fair chance to reach the required standard?
 - i. The Claimant said there was no evidence provided that there was an issue with her capability, other than meeting notes supplied by managers.
 - ii. The Respondent said that the sort of capability issues such as not switching on systems, not replying to emails, not inputting entries into the system did not lend themselves to documentary evidence.
 - iii. The Claimant said that she was not provided with the opportunity to have a Union representative or work colleague to attend meetings with her.
 - iv. In relation to the meeting on 20 February 2019 the Claimant's concern was that Ms Zainab Arian erred in failing to find that the Respondent's policy and procedures were not followed.
 - v. The Claimant alleged that the Respondent failed to follow paragraphs 3, 4.1 and 6 of its capability procedure. Were there failures:
 1. in disclosure of documentary evidence to show performance issues
 2. in consultation
 3. to provide sufficient training

4. to provide sufficient reviews of the capability process;
 5. in not properly communicating the outcome; and/or
 6. to provide a right of appeal against the decision to move to the formal stage of the capability process.
- vi. The Claimant said some meetings did not take place (31 July, 16 October, 4 December and 20 December 2017).
 - vii. The Claimant said that proper meeting notes were not provided to the Claimant at the time.
- d. If so, was the decision to dismiss rather than take some other form of action (demotion, redeployment) within the band of reasonable responses?
 - e. If the Claimant has been unfairly dismissed, should there be any reduction or adjustment to compensation:
 - i. to reflect the chance that the Claimant would have been dismissed in any event and that any procedural errors accordingly made no difference to the outcome in accordance with the principles in *Polkey v AE Dayton Services Ltd* [1987] UKHL 8;
 - ii. for failure to adhere to the ACAS Code of Practice; and/or
 - iii. to reflect any contributory fault on the Claimant's behalf towards her own dismissal?

Witnesses

6. The Tribunal found all four witnesses (including the Claimant) to be honest witnesses. The informal capability procedure had started in February 2017 and ended on 1 March 2019. This case had finally been heard in the Tribunal in October 2021. Memories had faded.

Findings of Fact

7. The Claimant was employed by the Respondent as a nursery nurse (Baby Friendly Infant Feeding co-ordinator). She had initially started working for Barts Trust in 2003 and was transferred to the Respondent when they won the award contract for the health visiting service in Tower Hamlets on 1 April 2016. The Respondent is a federation of 36 general medical practices operating in the Tower Hamlets area providing a range of community healthcare services, along with a range of complementary ancillary services. At the time of the Claimant's dismissal they had approximately 170 employees.
8. In February 2017 Jo Naylor (a Breastfeeding coordinator) emailed Janine Ellul (The Clinical Lead for North East locality) as she was "very concerned that [the Claimant's] knowledge on infant feeding is inadequate and would be worried that she could inadvertently give misleading or incorrect information to a mum". Ms Ellul, emailed Human Resources on 20 February

2017 saying that the “band 7s” had also raised concerns about the Claimant’s ability to complete her role and that they had been giving her very limited jobs to do and not giving advice to patients. Nicholas Percival (then HR Consultant) advised Ms Ellul to keep the Claimant on her usual duties and that it was his understanding that she had been in the role for some years so the Respondent needed to understand what was going on with her. The capability process should be followed and the first step was to meet with the Claimant to find out what was going on, give support and agree some clear objectives.

9. In March 2017, Pamela Poole (a Band 7, the Claimant’s line manager) and Ms Ellul became aware that the Claimant was having investigations at hospital for a potential sleep related condition. Redeployment was considered by the Respondent but disregarded as the Claimant was not capable of carrying out basic administrative duties. An Occupational Health referral was made and on 26 July 2017 Ms Ellul received the report from the Occupational Health practitioner saying that the Claimant did not have a specific medical condition as she had been assessed with nothing found.
10. In July 2017, an informal capacity process was initiated. An email shows that on 24 July 2017 the Claimant met with Ms Poole and they discussed 6 competencies:

“The competencies are:

- 1. You need to read and respond to your emails every working day*
- 2. Weigh children under supervision and plot the weight in pencil in the Red book*
- 3. Answer the office phone and record any messages clearly in the message book.*
- 4. Keep the clinic display stocked with leaflets and make sure leaflets are ordered as required.*
- 5. Enter the weight on the midwifery discharge summary onto Emis and make sure the Healthy Start forms are completed in time for the six week review.*

- 6. Manage meet and greet at clinic:*

This will include greeting people as they come into the clinic

: asking why they have come and directing immunization appointments to book in at the desk

: asking patients to sit and wait to be called before they undress their baby,

: taking red book to scales

: staying at the entrance end of the clinic room and not drifting towards the scales and starting to talk to colleagues are weighing babies.”

11. The email ended that the next review would take place on 31 July 2017.
12. A note set out that a meeting took place on 31 July 2017 and that the competencies were discussed. It is disputed by the Claimant that this meeting took place.
13. On 4 September 2017 the first informal review meeting took place with the Claimant, Ms Poole and Ms Ellul in attendance. Issues discussed included that the Claimant did not work independently or take initiative within her role. She had not completed public health sessions such as weaning sessions and there was a lack of follow up on families including home visiting. Ms Poole also raised concerns around retaining information and following processes such as writing messages in the message book and dealing with accident and emergency notifications. Support was discussed.
14. An action plan was drawn up. The Objectives were to act independently on referrals and assessment, to follow policies and procedures around record keeping and message taking, to join work around processing and follow up on accident and emergency notifications, managing emails and electronic diary independently, manager 2.5 year reviews independently including doing catch up clinics, set up and delivery support clinics where needs have been identified during reviews, to manage emails and electronic diary independently and ensure that she had access to the case management system at all times. Each objective had specifics, how it was measurable, how it was achievable, whether it was realistic and the time scale that they should be completed in (4 weeks).
15. At a meeting on 8 September 2017 Ms Poole and the Claimant went through the competencies and Ms Poole said where the Claimant was not achieving them. The Claimant was not accessing her emails regularly and the standard of message taking remained poor.
16. To assist with the objective of working more independently the Claimant was provided with the opportunity to shadow a nursery nurse at a different health care centre. The Claimant confirmed in her evidence before the Tribunal that she did the shadowing and that this was a supportive measure.
17. On 28 September 2017 Ms Poole and the Claimant met and the Claimant was told that she should make sure that leaflets were well stocked and that Ms Poole had observed her during a "Meet and Greet" clinic. While she had been very helpful to some clients the Claimant had lost interest and wandered over to talk to colleagues. The Claimant was told it was important that she remained by the door to meet and greet people.
18. On 9 October 2017 a further informal meeting took place. The leaflets were better stocked and the Claimant said she was now accessing her emails every day. The importance of message taking and having the case management system open was discussed so that confusion was not caused when professionals called to speak to a named Health Visitor.

19. On 1 November 2017 a meeting was to take place with the Claimant Ms Poole and Ms Ellul but it did not take place because the Claimant was upset about the performance management.
20. On 13 November 2017 the Claimant met with Ms Poole to discuss the Claimant's progress against the competencies. The Claimant had been asked to document an unwell child who appeared to have speech and developmental delay. The Health Visitor reviewed the Claimant's entry and found it to be of poor standard with no information about the concerns of the Health Visitor and Nursery staff. The Claimant had also not been completing the healthy start forms in time for a child's six week review and so they discussed what was needed. They also discussed a family that had been allocated to the Claimant. Ms Poole did not think that the Claimant had understood what had been asked of her and so she sent a follow up email to the Claimant requesting that a full assessment be carried out of a family's needs and a detailed care plan be written up. She was reminded of the competencies that had been agreed in July.
21. On 27 November 2017 Ms Poole and the Claimant discussed the progress in relation to the family she was supporting. The importance of capturing each visit on the case management system was discussed. The Care Plan was still not completed. All competencies were being carried out but with frequent reminders from team members.
22. There was a brief note of meetings that took place on 4 December 2019 and 20 December 2017.
23. The Claimant went off sick with stress between December 2017 and April 2018. When she returned in April 2018 she did so on a phased return working reduced hours and alternate days. Prior to the Claimant's return the Respondent carried out a stress risk assessment.
24. In a March 2018 risk assessment, EHA training was identified as a training for the Claimant and she underwent the training in June and August 2018.
25. In an email of 5 June 2018 and a letter of 9 July 2018 the Claimant was told that she was moving to the formal stage of the capability process. The Respondent had an Employee Performance (Capability) Policy (the "Policy") which included a flow chart setting out the Capability Procedure. The Policy gave a right of accompaniment during the formal capability procedure and the Claimant had a Trade Union representative accompanying her. The Claimant also had a copy of the Policy. In the policy there was a right of appeal against moving to the formal stage. This was not communicated by the Respondent in the letter and email, nor was it picked up on by the Claimant and the Trade Union Representative.
26. The Claimant's first formal capability meeting took place on 3 July 2018. The Claimant was accompanied by a Trade Union Representative. A letter set out the contents of that meeting, dated 9 July 2018. At this meeting the history and the nature of the concerns around the Claimant's performance were set out. The concerns that were raised around the Claimant's performance included a lack of independence when identifying and working

with families in line with her role, poor documentation including a lack of written evidence of assessment and care planning in the electronic record for clients that she worked with. Previous objectives had not been met to the agreed standard. The Claimant had a lack of IT skills. Support and training needs were discussed as was the Claimant's long term medical condition. The objectives were discussed, as was the flow chart within the capability policy and possible redeployment, although opportunities would be limited. Training needs were discussed but no further training needs were identified by the Claimant or her representative. The Claimant was told that if the objectives were not met then the next stage of the capability policy could lead to dismissal.

27. On 9 July 2018 a competency review meeting took place with Jane Vessey (Health Visitor) and the Claimant. Discussion points and action points were set out and included that the Claimant needed to take more care with spelling and punctuation, especially in referrals made to other teams, ensuring that audiology referrals as routine, to always use a template not just comment for a face to face contact, to do a joint visit with Amal to feel more confident in using a specific questionnaire, to report her fall and that initially her attendance note of an A+E would be checked by a Nurse of Health Visitor. The Claimant was told she should come and see Ms Vessey if there was anything she was unsure about.
28. A competency review took place on 16 July 2018 and an emailed note of that meeting was sent to the Claimant on 18 July 2018. The importance of emails had been discussed, the Claimant had not read the two emails sent about location change. The Claimant had now observed and used the questionnaire tool and felt more confident in when and how to use it. The Claimant's care plans needed to be clearer in terms of who was doing what and when. She also needed to start using spell check to ensure records are accurate and clear.
29. On 22 August 2018 a competency review took place with Ms Vessey and the Claimant. Some of the Claimant's diary was not complete. The Claimant was going to go to a toilet training session the following day with a view to setting up one herself. The Claimant asked Ms Vessey to review a record and Ms Vessey's view was that it needed a lot more detail before it could be submitted.
30. On 26 September 2018 a meeting took place to discuss the end of the formal capability period. The Claimant, her Union representative, Ms Vessey and Ms Ellul were present. No real progress had been made on the objectives. A contemporaneous note was prepared by Ms Ellul. She had not organised the sessions on toilet training or school readiness with the children's centres as had been previously discussed. The Claimant had not been reading her emails regularly and this was causing difficulties due to the new mobile working and locality bases. Concerns were again expressed about the Claimant's record keeping. The close supervision she required was not conducive with her role that required a certain amount of initiative which she had not been able to show. She was only able to follow direct instruction in most cases and this was not sustainable and was causing increasing pressure within the team. The Claimant did not have a reply other

than she felt that Ms Ellul “wanted her out”. The Claimant was told she would now be referred to Human Resources, as per the policy. The Trade Union representative said that he thought the Respondent had done everything that it could and had been fair and supportive.

31. On 3 December 2018 the Claimant was written to and told that she was required to attend a final stage hearing under the policy and that the hearing would consider her capability to do her job and the process that had been followed to support her. She was warned that the outcome of the meeting could be a sanction up to and including dismissal.
32. The final stage hearing was rescheduled a few times at the request of both the Claimant and the Respondent. It finally took place on 20 February 2019 and was chaired by Zainab Arian (Director of Finance). Mr Percival was the second panel member and HR consultant. The Claimant was accompanied by a Trade Union representative.
33. A capability Case Management report dated 13 February 2019 had been filed by Natalie Boulter (Clinical Lead (Interim) Health Visitor) and the Claimant had advance notice of it. It was a detailed report and set out the history of the Claimant’s performance since February 2017.
34. At the final stage hearing Ms Boulter and Ms Poole presented the management case. In addition to the history and procedure followed, they said that the close supervision she required was not conducive with her role that required a certain amount of initiative which she had not been able to show. She was only able to follow direct instruction in most cases and this was not sustainable and was causing increasing pressure within the team.
35. The Claimant submitted a document setting out the points that she did not agree with. She did not accept she had poor communication skills, she said she did access emails after the morning clinics, she said she did not lose interest during Meet and Greet sessions but had to relay information to Health Visitors, she said she did not document on the case management system because there was a message book, she had taken on the Healthy Start forms when a colleague went on maternity leave, while she may not have had a care plan she did follow up and since the last meeting she was up to date with catching up on her 2 year reviews. She was disappointed, she had worked for 15 years and felt that the new Health Visitors had higher expectations. She said she had been micromanaged and felt she was being discriminated against. In summary the Claimant did not agree that she was not capable of performing her role.
36. Ms Arian decided that the relevant process had been followed in managing the Claimant’s performance, in line with the Policy. Performance expectations were reasonable and relevant to the Claimant’s job role and she had received advice, support and an opportunity to demonstrate her capability to do her job. The Claimant and her representatives did not argue that she should have been redeployed to a particular job. The Policy indicated that there should be consideration of redeployment at dismissal stage and Ms Arian concluded that redeployment was not appropriate as the Claimant was not achieving basic competencies and there was no role

for her to be redeployed into. Ms Arian concluded that the Claimant would be dismissed on the grounds of capability and she would receive statutory notice of 12 weeks. This was communicated to the Claimant by letter dated 1 March 2019, the day on which her employment ended. The Claimant was given details of how to appeal.

37. The Claimant appealed the decision to dismiss her. David Robertson (Chief Operating Officer of the Respondent) heard the appeal which took place on 23 May 2019. Debbie Russell was the second panel member providing HR support. The Claimant was accompanied by a Trade Union representative. The Claimant had written a personal statement which said that she did not agree with the outcome of the final hearing. She said that she was unsupported and had been targeted. She complained about being unaccompanied at the earlier meetings and that they had made her feel useless. She also said that she had emailed about a slot for potty training but had received no reply, had referred as necessary and had let another team member use her laptop. She agreed she had training opportunities but that she could not do certain days. She was shocked that her illness had become part of the competency exercise.
38. At the meeting the Trade Union representative focused on whether or not the meetings of 4 and 20 December 2017 had taken place. At first she said that she had not been there for either of them. However, when he took her to the notes, the Claimant backtracked and agreed that she had in fact been there. At this point the Claimant's union representative intervened to tell the Claimant she should not say that. The Claimant denied that this took place. The Tribunal prefers Mr Robertson's account, his evidence was clear.
39. After the hearing Mr Robertson made enquiries about the meetings and concluded that they were probably informal discussions but that the issue was peripheral as the process had continued for some time afterwards. Mr Robertson considered the capability case overall. He felt that the decision and process by which it had been reached was fair. He confirmed this in a letter dated 13 June 2019 and did not uphold the Claimant's appeal.

Legal principles relevant to the claims

Unfair dismissal

40. Section 94 ERA confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that they were dismissed by the Respondent under section 95, but the Respondent must show the reason for dismissing the Claimant (within section 95(1)(a) ERA).
41. S.98 ERA deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within s.98(2).

s.98 (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

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

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

(2) A reason falls within this subsection if it—

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

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

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

42. The second part of the test is that, if the Respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason:

s.98 *(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

43. For capability dismissals the test is similar to the “Burchell” test in misconduct cases. It is sufficient for the employer to show that it had an honest belief, based on reasonable grounds, that the employee was incapable or incompetent: *Taylor v Alidair* [1978] IRLR 82.

44. When establishing reasonable grounds for a belief the views of more senior employees as to the competence of the employee may carry some weight, but are not definitive. See *Cook v Thomas Linnell & Sons Ltd* [1977] ICR 770. Phillips J stated at p.774:

“When responsible employers have genuinely come to a conclusion over a reasonable period of time that a manager is incompetent we think that it is some evidence that he is incompetent. When one is dealing with routine operations which may be more precisely assessed there is no real problem.

It is more difficult when one is dealing with imponderables such as the quality of management. In such cases as this there may be two extremes. At one extreme is the case where it can be demonstrated, perhaps by reason of some calamitous performance, that the manager is incompetent. The other extreme is the case where no more can be said than that it is the opinion of the employer the manager is incompetent, that opinion being expressed shortly before his dismissal. In between there will be cases such as the present where it can be established that throughout the period of employment concerned the employers had progressively growing doubts about the manager to perform his task satisfactorily. If that can be shown, it is in our judgment some evidence of his incapacity. It will then be necessary to look to see whether there is any other supporting evidence."

45. The provisions of the ACAS Code apply to capability dismissals. A Tribunal must take any breaches of the Code into account when considering the fairness of a dismissal.

Conclusions

46. The Claimant said that the Respondent had dismissed her because they "wanted her out" for reasons that included to do with her pension but she could not explain what those reasons were or why her pension was connected with her dismissal. The Respondent had shown that there was a capability procedure lasting 2 years that culminated in the Claimant's dismissal. The Tribunal accepts the reason for dismissal was capability and that is a potentially fair reason under s.98 ERA.
47. The Claimant said that 4 meetings within the informal stage did not happen - 31 July, 16 October, 4 December and 20 December 2017. All these meetings were during the informal stage of the capability process (July - Dec 2017) and the Respondent's employees who attended those meetings did not give evidence to the Tribunal. Documentary evidence is inconclusive. During the appeal stages of the formal process the Claimant raised an issue via her Trade Union representative about the meetings on 4 December and 20 December 2017 but no issue was raised about either of the earlier meetings. David Robertson gave evidence that the Claimant accepted ultimately at the appeal that these two meetings had happened but was shushed by her representative. The Claimant herself referred to one of those meetings taking place in an email of 20 May 2019. She says "From December 4th after the meeting I felt so alone". Given that these meetings took place in the informal stage and that the Claimant describes being "micromanaged" throughout, the Tribunal concludes that, on balance, these meetings did take place, although they may not have been formal meetings and so not recognised as such by the Claimant. The Tribunal rejects the suggestion that the meetings and notes were fabricated.
48. The Respondent followed the Policy to a significant extent. The exception to this was that the process envisaged a right of appeal against the decision to move to the formal stage. The Claimant had the Policy, was represented at the final informal meeting and yet neither her nor her TU representative raised it. To the contrary the Claimant's TU representative is reported as having said at the conclusion of the informal stage of the capability process

that the Respondent had done “everything” and had been “fair and supportive”. It was an error by the Respondent not to inform the Claimant of her right to appeal the move from informal to formal.

49. The ACAS Guide: Discipline and Grievances at Work (2019) sets out the importance of an appeal being offered as being essential to natural justice. Mr Gray-Jones submitted that failing to provide an appeal for the decision to move to the formal procedures renders the dismissal unfair. The Tribunal disagrees. It was flawed but not to the extent that it renders the process unfair on its own, as it was likely to have done had there been no appeal for the dismissal for example. There was an error in not providing an appeal from the decision to move to the formal procedure. It is one of the factors that the Tribunal takes into account when determining whether the process was fair. In any event the Tribunal concludes that had the right been communicated and had it been exercised – there would have been a short delay at most, but the process would have continued as the Claimant’s performance continued to be lacking.
50. The Claimant also said that the meeting of 26 September 2018 was conducted in an inappropriate manner. There is nothing in the contemporaneous notes to substantiate this. The Claimant was represented at this meeting and no issue was raised at the time or afterwards. There is nothing in the Claimant’s personal statement for the hearing in February 2019 nor her appeal statement.
51. The Respondent was medium sized and had resources such as HR support. The capability process was conducted over a lengthy period. The informal period lasted from July 2017 – December 2017. The Claimant’s medical issue was looked into. The Claimant had a period of sickness and had a phased return and stress impact assessment upon her return. From July 2018 – September 2018 the formal procedure was in place. The final decision making part of the procedure took place December 2018 – March 2019. Contrary to the Claimant’s complaints, she was accompanied by a Trade Union representative at all formal meetings. She was notified of where the deficiencies lay and what needed to be done to improve at regular meetings over a lengthy period. To assist with the objective of working more independently the Claimant had been provided with the opportunity to shadow a nursery nurse at a different health care centre. She was given a fair chance to reach the required standard.
52. Ms Arian had the management case reported in writing as well as orally at the final hearing. She had the history of the capability procedure within the management notes. The evidence from the management team was that the Claimant had been set objectives and, while she had met some of them, she was still underperforming. The close supervision she required was not conducive to her role that required an amount of initiative which she had not been able to show. She was only able to follow direct instruction in most cases and this was not sustainable and was causing increasing pressure within the team. It is reasonable that management opinion was accepted as evidence of this. It was also reasonable for other issues to be evidenced by management opinion such as needing reminders to work to competencies, keeping the system open, reading emails, weighing children

under supervision and plotting in the Red Book with pencil, answering the office telephone, keeping the clinic display stocked with leaflets, making sure leaflets were ordered as required, meeting and greeting people as they came to clinic, asking why they have come and directing them appropriately.

53. However, some performance concerns, such as that the Claimant did not respond to emails every day, record messages or clearly enter weight on the case management system were not substantiated with documentary evidence and could have been. An entry on the case management system was found to be of poor standard by a Health Visitor, but again, evidence of this entry was not provided with the report.
54. The Claimant received advance notice of the Management case and provided her own statement. She disagreed that she was not capable. Yet she did not provide any documentary evidence to contradict what management were saying about her. This is not a criticism of the Claimant. It is for an employer to form an honest belief, based on reasonable grounds, about the Claimant's competency.
55. Based on the documents and oral evidence in front of her, did Ms Arian have an honest belief that the Claimant was not capable? The Tribunal concludes that she did. Ms Arian was an honest witness, the documents and her witness evidence show that she decided that the Claimant was not capable based on the management reports. The Tribunal has considered the case of *Cook v Thomas Linnell & Sons Ltd* [1977] ICR770 and concluded that for some of the allegations of poor standards of work documentary evidence should have been provided. However a number of the poor performance concerns did not need documentary evidence to substantiate them, management were best placed to comment on them and did so over a long period of time. The Tribunal reminds itself that it is not for a Respondent to undertake a perfect process and it is not the Tribunal's view of whether it would have dismissed the Claimant that matters, it is whether the Respondent had reasonable grounds to believe that the Claimant lacked capacity. The Tribunal concludes that in this case, it did.
56. Ms Arian grappled with the issues, Mr Robertson provided a reasonable appeal of the decision. The Respondent undertook a reasonable investigation to reach the conclusion that the Claimant's performance was below the required standard and followed a reasonably fair procedure.
57. Was the decision to dismiss rather than take some other form of action (demotion, redeployment) within the band of reasonable responses? The Claimant said that there was no reasonable consideration given to demotion and re-deployment. The Tribunal accepted the Respondent's evidence that redeployment/ demotion was not feasible because the Respondent had no roles that did not require the sort of basic skills and ability to follow instructions that the Claimant struggled with.
58. It is therefore the decision of the Tribunal that the Claimant was fairly dismissed by reason of capability. The Claimant's claims therefore fail and are dismissed.

59. Mr Gray-Jones submitted that no contributory conduct was being sought. Given the Tribunal's conclusions that the Claimant was fairly dismissed, the Tribunal does not need to consider whether an ACAS uplift/reduction or *Polkey* deduction would be just and equitable.

Employment Judge L Burge
Date: 10 November 2021