



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Jackson

**Respondent:** Leeds City Council

**On:** 24 November 2021  
14 January 2022  
16 February 2022 (in Chambers)

**Before:** Employment Judge McAvoy News

**Heard at:** Leeds Employment Tribunal

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mr F Mortin, Counsel

## RESERVED JUDGMENT

The Claimant was not unfairly dismissed. Consequently, his claim for unfair dismissal is not well-founded and is dismissed.

## REASONS

### Issues

1. It was agreed at the outset of the hearing that the issues were as follows:
  - a. What was the reason for the Claimant's dismissal? Was it related to the Claimant's conduct? Alternatively, was it some other substantial reason of such a kind to justify the Claimant's dismissal? In this regard, the Claimant accepted that he was dismissed because of his failure to inform the Respondent that he had been arrested and subsequently

charged with drugs related offences and that, from the Respondent's perspective, this amounted to a fundamental breach of trust. The Claimant did not however accept that this was a fair reason for his dismissal;

- b. Was the Respondent's belief in the above mentioned act of misconduct (which the Claimant accepted was genuinely held and followed a reasonable investigation) based on reasonable grounds? The Claimant did not accept this because:
    - i. The Respondent did not request a DBS check; and
    - ii. It had been confirmed that the Respondent did not need to report the matter to the Local Authority Designated Officers ("LADO") and the Respondent failed to give this sufficient consideration. Furthermore, in the email exchange containing LADO's advice, there was reference to situations whereby it might be expected for an employee to report an arrest which the Claimant believed the Respondent was unfairly influenced by;
  - c. Did the Respondent act in all the circumstances reasonably in treating its reason as sufficient reason to dismiss the Claimant? In this regard, the Claimant's specific complaints were:
    - i. He was provided with insufficient support from the Respondent during his suspension;
    - ii. The period of suspension was unreasonably long; and
    - iii. The disciplinary hearing ought to have taken place fully in person (rather than partially remote).
  - d. Was dismissal within the band of reasonable responses of a reasonable employer? This was the crux of the Claimant's claim. In this regard the Claimant asserted that dismissal was too harsh a sanction and a final written warning would have been more reasonable. This was particularly the case bearing in mind the Claimant's considerable length of unblemished service and his mental health condition at the time.
2. It was confirmed that, as Employment Judge Cox had observed in her letter dated 24 August 2021, the Claimant was only pursuing a claim for unfair dismissal. He was not pursuing a claim for whistleblowing or discrimination, notwithstanding the references to the same in his ET1 or witness statement. Furthermore, it was explained that the Claimant's complaints about the Respondent's handling of his data subject access request would not be dealt with as part of these proceedings.

## Evidence

3. The Claimant served a witness statement and was cross examined on that statement. The Respondent served witness statements for Rachel Roberts (Claimant's Line Manager and Investigating Manager), Andrew White (Dismissing Manager) and John Woolmer (Appeal Manager). Mr Woolmer and Mr White were cross examined on those statements. Ms Roberts did not attend the hearing and was not cross examined on her statement. The Respondent was informed that little weight would be accorded to Ms Roberts' witness statement, particularly as the Claimant confirmed that he wished to challenge aspects of it. The Respondent was content with this on the basis that it sought to rely on the contemporaneous documents prepared by Ms Roberts at the time of the events.
4. The Claimant also provided several character references. I have read these and taken them into account, to the extent that they were relevant to the issues in the case and to the extent that I am permitted to do so, bearing in mind that the individuals providing these references did not attend the hearing in order to be cross examined on them.
5. I also had sight of a large bundle of documents. I informed the parties that I would only be reading those documents that were specifically brought to my attention during the evidence, which the parties acknowledged.
6. Having considered the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities.

### Findings of fact

#### *Background*

7. The Claimant commenced employment with the Respondent on 1 March 2001. His employment terminated on 30 April 2021 following a disciplinary process. The Respondent is the local authority for the City of Leeds.
8. At the time of his dismissal, the Claimant was employed as a Residential Practitioner based at St Catherine's Drive Children's Home in Leeds. He was managed by Ms Roberts.
9. His role involved working 24 hour shifts with young people in care aged between 11 and 18 years. This involved: planning shifts, conducting one to ones, cooking, cleaning, taking young people to appointments and being involved in the young people's education. The Claimant accepted that some of the young people in the Respondent's care had criminal records and/or had difficulties regarding substance abuse.
10. The Claimant's job description states:
  - a. "All staff are required to support the Home's main purpose of encouraging and enabling children and young people to develop behaviourally, educationally and emotionally in order that they may

deliver positive contributions to their families, society and their local communities”;

- b. Staff should: “Work to proactively reduce the likelihood that a child/young person becomes criminalised, encouraging restorative approaches and outcomes”; and
- c. “Any applicant is obliged to disclose ALL convictions and cautions, no matter how long ago they occurred and regardless of whether the offences were committed as an adult or juvenile” [51].

11. As applicants for his role were obliged to disclose convictions and cautions, it is reasonable for the Respondent to expect current job holders to do the same. The Claimant accepted this in cross examination.
12. The Respondent’s Code of Conduct, which the Claimant accepted in cross examination formed part of his contract of employment, states: “You have a duty to report suspicions or knowledge of wrong-doing you become aware of, for example... activities which you believe to be illegal, improper, unethical or otherwise inconsistent with the Code” [80]. This included the Claimant’s arrest, which the Claimant accepted in cross examination.
13. Although I find that the Respondent could have taken more steps to proactively bring the Code to the Claimant’s attention, I find that the Claimant was or ought to have been aware of it. Mr White’s evidence was that he believed that the Code was communicated to all staff by their managers, perhaps at the induction stage but accepted that the Respondent’s communication regarding this could be better. The Claimant’s evidence was that never in his 20 years working for the Respondent had he sat in a meeting with a manager to discuss the Code. He accepted however that the Code may have been provided to him at the outset of his employment, although he was unable to remember. Reference is also made to the Code in his contract of employment [59].
14. The Respondent’s disciplinary procedure states: “If suspension is considered appropriate it will be for as short a period as possible in order to carry out an investigation or an alleged serious offence... Where there is a requirement to extend suspension beyond two months, then this will be discussed with the employee and their representative. All parties can make representations to the Head of HR who will decide the appropriate course of action” [68]. It lists “dishonesty, theft or fraud” as non-exhaustive examples of conduct that may be gross misconduct [69].
15. Prior to initiation of the disciplinary proceedings mentioned below, the Claimant had an unblemished disciplinary record and was regarded as a very good employee. This is clear both from the documents contained in the hearing bundle as well as the character statements mentioned earlier.

#### *Claimant’s arrest*

16. The Claimant became aware, in November 2018, that a tenant residing in his personal property had been cultivating cannabis in that property. He discovered this when he returned to the property following a relationship breakdown. He was arrested for cultivation of cannabis from his home address. Shortly afterwards, with the support of a neighbour, the tenant was evicted. The Claimant did not inform the Respondent about this arrest at the time.
17. Very little evidence regarding the progression of these criminal proceedings was provided to me. I saw no correspondence between the Claimant, the Criminal Courts and his representatives. The Claimant's evidence was that he had told the police that he had not cultivated the cannabis himself, although he accepted that he was aware that it was being cultivated from his property. The Claimant believed that the police accepted this and would not be progressing the case against him any further. As stated later in these Reasons, this was one of the Claimant's reasons for not bringing the arrest to the Respondent's attention.

*April 2020 hearing*

18. A hearing was listed for April 2020 which was postponed due to the COVID-19 pandemic. For the following reasons, I have found that the:
  - a. purpose of this hearing was for the Claimant to plead regarding the criminal charges that he pleaded to in June 2020 (considered later); and
  - b. the Claimant was aware of such hearing when he spoke to Ms Roberts on 11 and 12 June 2020 (considered later).
19. A file note (at page 99) of a conversation between the Claimant and Ms Roberts on 12 June 2020 records the following: "he stated he wasn't aware of the court case next week (but he was aware he was due to attend in April and this has been postponed)".
20. Ms Roberts did not attend the hearing and therefore the Claimant was unable to challenge her on the accuracy of this note. However, in a subsequent letter to the Claimant dated 30 June 2020, Ms Roberts stated: "During that telephone conversation with you on 12<sup>th</sup> June 2020 you advised me that you were not aware of any court case involving you for that following week but you were aware that you were due to attend court in April but that case was postponed" [102]. There is no evidence of the Claimant disputing Ms Roberts' recollection of their conversation at the time. For example, the Claimant could have sent correspondence to Ms Roberts stating that she had misunderstood what the Claimant had said during this conversation. Furthermore, the Claimant acknowledged during the disciplinary hearing that a court hearing had been arranged for April 2020 [189-190].
21. During this hearing, the Respondent's representative questioned the Claimant about the April 2020 hearing. The Claimant's replies were vague. He replied: "Can't recall. Got some paperwork through saying hearing scheduled and postponed because of covid". He said he received both letters at the same time

(both the notice of the hearing and the notice of the postponement) when he returned to the property.

22. The Respondent's representative put to the Claimant that as the June 2020 hearing was a plea hearing, it is likely that the April 2020 hearing would have had the same purpose. Therefore, he would have been aware of the purpose of the April 2020 hearing before his conversations with Ms Roberts on 11 and 12 June 2020 (considered later). The Claimant denied this outright saying that he hadn't been to the property in over a year and when he went there after his conversations with Ms Roberts all of the post was piled up. He refused to accept the logic behind the Respondent's representative's assertion.
23. The Claimant said he did not disclose the letters from the Court because they had been thrown away at the time. There is no way of determining whether this is true. However, given the importance of these letters to the Claimant's case, if April 2020 hearing was unrelated to the June 2020 hearing (considered later), I would have expected the Claimant to make some attempts to obtain copies of these letters and disclose them as part of these proceedings. These could have been obtained from his legal representatives or the Court itself. There is no evidence before me of the Claimant even attempting to retrieve copies of this correspondence. I have found that the Claimant's failure to do so was because the contents of these letters did not support his assertions that the April 2020 hearing was unrelated to the June 2020 hearing.

*Report of the Claimant's arrest to the Respondent*

24. On 11 June 2020, a police officer notified and then reported to the Respondent via the LADO that the Claimant had been arrested and charged with cultivation of cannabis, informing them that he was due to attend the Leeds Magistrates Court in relation to these criminal charges on 19 June 2020. This was the first time that the Claimant's arrest was brought to the Respondent's attention.

*Calls between the Claimant and Ms Roberts – 11 and 12 June 2020*

25. As mentioned earlier, telephone conversations took place between the Claimant and Ms Roberts on 11 and 12 June 2020.
26. By the 12 June 2020 call, Ms Roberts had learned from the LADO that the Claimant had been charged with permitting the cultivation of cannabis. Ms Roberts relayed to the Claimant what the LADO had informed her and referred to the hearing due to take place the following week.
27. For the following reasons, I have found that during these conversations the Claimant informed Ms Roberts that:
  - a. he was not aware of any court summons to attend a hearing on 19 June 2020 as he was not staying at the property at the time; and

- b. he had been able to prove to the police that he was not living at the address at the time that the cannabis was cultivated, thereby suggesting to Ms Roberts that the charges would not be upheld.
28. The file note mentioned earlier records: "Peter is stating it occurred in his house that he lets a friend live in and he stated he has been able to prove to the police that he wasn't living at the address". Reference is also made to this in the above mentioned letter dated 30 June 2020 which stated: "You also stated that the criminal allegations you were facing you had denied as they had only occurred in your house which you 'let' to a friend to live there and that you had been able to prove to the police that you were not living at the address subject to the allegations in effect you denied the criminal allegations" [102]. Then, in her investigation report, Ms Roberts stated: "Peter stated that he was not aware of the pending court case and that he stated he has been able to prove to the police that he was not living at the address subject to the allegations" [129]. During the disciplinary hearing, she said: "there was sort of opportunity for him to discuss that with me and sort of be honest with me at that point. And Peter didn't take that opportunity" [175].
29. Although I recognise that the Claimant did not have an opportunity to challenge Ms Roberts about these points during this hearing, he could have done so during the internal proceedings including as part of the appeal. He could have written to Ms Roberts after receiving one of the above mentioned letters, or the investigation report, and told her that her recollection of the conversation was incorrect. He did not do so.
30. During the disciplinary hearing an exchange between the Claimant and Ms Roberts took place as follows [189-190]:
- PJ: I think you might have got confused. My recollection is that when you rang and asked me, I never denied anything. I hadn't got the letter.
- RR: So, Pete, my recollection of that was the first time we spoke, you denied that and it was the second telephone discussion where I said that...because I'd sort of taken that information from LADO what they had told me. And I relayed that back to you and said that the letter will have gone to the other property in Rothwell. And that was when you said there'd been a court case that had been adjourned or cancelled or, do you, in the April?
- PJ: Yeah. I mean, I think it's only a slight difference but I think it's quite an important one. To me, there's no recollection of denying anything happened".
31. The Claimant's evidence during this hearing about what was said during these conversations was vague. In his witness statement, he stated: "As soon as my manager asked me about the issue, I was totally honest about what had transpired". However, he did not specify what he said. When asked about this in cross examination, the Claimant said he does not remember this conversation well.

32. It is impossible for me to determine whether the Claimant was aware of the June 2020 hearing during this conversation. As he was not living in the property at the time, he may well have not been aware. However, given that I have concluded that the April 2020 was a plea hearing for the same offence, and as it was postponed because of the COVID-19 pandemic (rather than because the charges had been dropped), the Claimant ought to have been expecting another hearing to be listed.
33. The Claimant did not specifically deny saying to Ms Roberts that he had been able to prove to the police that he was not living at the address subject to the allegations, thereby suggesting to her that the charges would be dropped. Considering the contemporaneous records mentioned above, the Claimant's failure to dispute this point at the time together with the Claimant's vague replies to this point during this hearing, I have found that he did say this to Ms Roberts.
34. Based on the evidence I have seen, there was no reasonable basis upon which the Claimant could inform the Respondent, with any confidence, that he expected the charges to be dropped, which is what he was seeking to do when he made this statement to Ms Roberts. The April 2020 hearing had been postponed due to the pandemic; the charges had not been dropped. If the charges had been dropped, or the Claimant had some objective evidence to support his assertions that they would be, he would have provided that either as part of the internal proceedings or during this hearing. He chose not to do so. Therefore, I find that when he made this statement to Ms Roberts, he was deliberately misleading her.
35. Following the above, Roberts decided to suspend the Claimant pending an investigation. On 12 June 2020 the Respondent wrote to the Claimant to confirm his suspension [100]. It explained that the suspension was precautionary pending further investigation into the arrest and charges brought in December 2020, the outcome of the imminent Court hearing and the Claimant's failure to communicate these matters to his line manager/the Respondent. The letter acknowledged that the Claimant may find his suspension stressful and referred him to the HELP Employee Assistance and Counselling service.

### *Criminal Court Hearings*

36. On 19 June 2020, at the Leeds Magistrates Court, the Claimant pleaded guilty to being involved in the permitting of the production of cannabis in the property that he rented out. The Claimant's evidence was that, prior to attending this hearing, he had no intention of pleading guilty. He had only done so because he had been advised by his legal representative, on the day of the hearing, that as the cannabis had been produced in his property, and he had admitted so to the police, he did not have a case. He was placed on unconditional bail pending sentencing at the Leeds Crown Court on 8 July 2020.
37. Following that sentencing hearing, the Claimant was fined £500 and ordered to pay Court costs of £150. It was accepted between the parties that, at the sentencing hearing (which Ms Roberts observed), it was disclosed that the



Claimant worked for the Respondent and the Judge remarked that, in his opinion, it would be appalling if the Claimant was to lose his job and requested that this information be relayed to the Respondent. It was also accepted that the Judge passed the lowest sentence he could give having considered the circumstances, read the Claimant's character references and personal information.

38. The Respondent considered that, as a result of the above, and the fact that he had not informed the Respondent about the arrest, and considering what he said during his conversations with Ms Roberts on 11 and 12 June 2020, the mutual obligation of trust and confidence between it and the Claimant may have been destroyed.

39. In evidence during the hearing, the Claimant accepted that what he did was wrong and his failure to disclose what had happened was an oversight. He also accepted that if he was applying for the job with the same conviction, such conviction would cast doubt on his suitability for the role.

### *Investigation*

40. On 24 June 2020, a member of the Respondent's HR Casework Team emailed Ms Roberts and stated: "I have been made aware that Peter does have to have a DBS check however he is under no obligation under council policy at this time to disclose his arrest and likewise his case is not a case where LADO would be involved. The fact that an individual who is subject to DBS checks does not have to report their arrest has been raised before to hierarchy and it is an issue that may have to be changed for the future as it has happened on more than none occasion. That being said we have council values which are at the heart of everything we do and they inform the way we design and deliver our services and the way we all work and behave and one particular value is being open, honest and trusted and by his actions of not being open honest and trusted regarding his arrest and subsequent charging with criminal offence(s) is of concern and the fact that he gave an explanation as to the fact that he was innocent. Peter has been seen informally and he denied the fact that he was guilty of the criminal allegations which has now been shown to be untrue" [290].

41. As part of the investigation, on 10 July 2020, Mark Monkman (Service Delivery Manager in the Children and Families directorate) provided a statement [104]. In his statement, Mr Monkman stated: "Peter on a daily basis works with young people some of who have substance addictions, including cannabis and who are at risk of Child Criminal Exploitation (CCE)" [105]. He went on to state: "Although there is no direct evidence that Peter has mixed his personal life in relation to drugs related issues with his work life, the fact of the charge and court case his guilty plea and conviction in permitting his premises to be used for cultivation of a controlled drug cannabis gives cause for concern that he is involved in the system / process leading to supplying illegal substances which is involved with CCE [106]". Mr Monkman also acknowledged the earlier mentioned comments from the Judge conducting the criminal hearing but stated: "the Judge was not made aware of Peter's role in the council and council values, and his work with very vulnerable young people, often with substance

addictions” [107]. He concluded that his view was that “the mutual obligation of trust and confidence between Peter and Leeds City Council (the Council) has been destroyed” [108].

42. On 14 July 2020, Ms Roberts submitted her investigation report. She recommended that the case be referred to a Disciplinary Meeting Officer.
43. The Claimant’s evidence was that, during his suspension, he met with Ms Roberts on only two occasions, which was insufficient. He stated that on both occasions Ms Roberts had said she was supportive of him returning to work within her team, emphasising that she envisaged him becoming her Deputy Manager.

### *Disciplinary*

44. As stated above, Ms Roberts decided to refer the Claimant’s case to a Disciplinary Meeting Officer. She explained that a disciplinary meeting would take place to consider an allegation that the mutual trust and confidence between the Claimant and the Respondent had been destroyed, explaining why this may be the case.
45. In this regard, although the Claimant was informed that this allegation concerned his failure to tell the Respondent about the arrest, they did not specifically state that the Claimant had misled Ms Roberts during the conversations on 11 and 12 June 2020. The Claimant did not however take issue with this during this hearing and appeared to be aware that this formed part of the allegations being considered against him. He was informed that an outcome of that disciplinary hearing may be his dismissal [103].
46. The Respondent accepted that there was a delay in conducting this disciplinary hearing, which was heard in April 2021 (considered later). The Respondent explained that the reason for this delay was the COVID-19 pandemic. It however acknowledged that the pandemic only created delays in November 2020 and between January and March 2021. The Respondent offered no reason for the delay between July and November 2020.
47. On 18 December 2020, the Respondent wrote to the Claimant to invite him to a disciplinary meeting arranged for 18 January 2021. They informed the Claimant that Mr Andrew White, the Respondent’s Taxi and Private Hire Licensing Manager, had been appointed as the Disciplinary Meeting Officer. At this time it was proposed that the meeting take place in person. The letter repeated the allegation being considered against the Claimant. It also explained the possible outcomes of the disciplinary hearing which included no action, informal action, warnings, redeployment and dismissal. It also informed the Claimant about his right to be accompanied.
48. On 6 January 2021, the Respondent informed the Claimant that, as a result of the pandemic and the Government imposed lockdown, a face to face meeting was no longer possible and it may be some time before this could be facilitated. A virtual meeting was offered in recognition of the fact that it was in the

Claimant's interests to avoid further delays [134c]. The Claimant responded stating that he would "find a zoom meeting to be completely inadequate and impersonal" [134b]. Consequently, the hearing arranged for 18 January 2021 was cancelled.

49. On 7 April 2021, the Respondent wrote to the Claimant to invite him to a disciplinary hearing arranged to take place in person on 27 April 2021 [137].
50. During the disciplinary process the Claimant presented several character statements. These stated that the Claimant was badly "struggling with mental health issues" at the time of the arrest [148] and was "contemplating suicide" [153]. They also stated that the Claimant was well regarded within the Respondent as an honest, reliable and hard worker.

### *Disciplinary hearing*

51. The disciplinary hearing took place on 27 April 2021. The Claimant was accompanied by a Deputy Manager colleague. He attended in person, as did Mr White. However, the remaining staff who contributed to the hearing attended via Skype. The Respondent said that this was done so that social distancing could be implemented.
52. The Claimant challenged Mr White in cross examination about his decision to allow other participants to attend the hearing by Skype. Mr White accepted that the room was large enough for everyone to attend with social distancing measures being put in place. Mr White's concern however was not just social distancing inside the room but also in the other parts of the building, including queuing to get into the room.
53. The hearing was recorded and a lengthy transcript was provided [161]. Due to its length, the parties were informed at the outset that I would not read the entire document. I asked that the parties bring the relevant parts to my attention during the course of the evidence. The parties agreed to this.
54. The Claimant brought to my attention the part of the transcript which referred to him denying that he gained financially from the tenant cultivating cannabis from his property [171]. He also brought to my attention the part that concerned the Judge in the criminal proceedings not knowing about his role, which the Claimant believed to be incorrect because the Judge had said he had read all of the documents which included character references which referred to the Claimant's role [171-172]. Mr White accepted in his witness statement that these points were raised by the Claimant.
55. It was also brought to my attention that the transcript recorded the Claimant explaining why he did not bring the arrest to the Respondent's attention when he started to feel better. In this regard the Claimant explained that the Respondent had a reputation of "just standing people down". He said: "They could be stand me down for months. I mean, it's been 10 months for me... You know, you're sent home, you're told not to contact people, people told not to contact you. You're left to rot... And I felt that if I opened up that can of worms

again, not only might it send me back there, but police [aren't going 0:39:25] get back in contact with me again. That was what I was advised by my barrister, it's a really common occurrence. So what would have been the point, I could have been stood down for years" [173].

56. The representations from Mr Monkman were also brought to my attention [182]. He stated: "Having a member of staff within our service who has knowingly been involved in cultivating an illegal substance is an absolute no-no... We have got at the moment a serious issue in a number of children's homes where children are being criminally exploited by organised gangs. And they're being criminally exploited and are being used as drug mules to actually sell cannabis. If we take one step back. If we hadn't known about Peter's illegal activities, some of that cannabis could have possibly originated from his illegal activities. So he has been involved in the chain of criminal exploitation of our children. On the issue that Peter was suffering with depression and stress, that to me is completely irrelevant to any argument within this case. He has broken the law. And he hasn't just broken a law, he's broken a law which he knows destroys children and young people's life and also families who we work with". Additionally: "Any member of staff who works in the service should immediately report any convictions regarding... it doesn't matter how serious the conviction is. Any conviction would need to be disclosed to their line manager and a risk assessment if an [historic 1:25:37] conviction would be undertaken. And we would have to... if it's a recent conviction, we would have to refer that through the LADO process. There is an absolutely 100 per cent expectation that any member of staff would disclose their conviction" [186-87].
57. The Claimant believed that Mr Monkman considered him to be a risk to children and asked Mr White whether that formed part of his decision making. Mr White's evidence was that he did not remember Mr Monkman saying that in that way. Specifically: "I remembered Mark saying you can see the links between someone arrested charged with a link to cultivation of illegal drugs and vulnerable children in a residential home. Anyone linked to that serious issue. How vulnerable. I don't remember him saying he thought you were pushing drugs on children". Mr White accepted that Mr Monkman's viewpoint formed a factor in his decision making.
58. Mr White's evidence was that Ms Roberts had told him during the disciplinary hearing that if an applicant for a Residential Practitioner role had failed to disclose a conviction on an application form, it would be dealt with seriously. Ms Roberts also told him that she felt, on concluding the investigation, that the evidence suggested that the mutual trust and confidence between the parties may have been broken by his failure to report the matter. She explained to him that she believed that the Claimant had plenty of opportunities to report the matter. Ms Roberts also considered it significant that once the Respondent had become aware of the criminal investigation and asked the Claimant about it, he had told her that he was not involved.
59. Mr White's evidence was also that Mr Monkman had told him that when the Claimant was given the opportunity to explain the situation to Ms Roberts on 11 and 12 June 2020, he had failed to give an accurate explanation and instead

gave a misleading account, undermining the trust that the Respondent had in him.

60. Additionally, Mr White's evidence was that the Claimant had informed him that he had struggled to deal with the situation and locked himself into his room after he had found out about the drugs in his home. The Claimant had told him that he was off sick and on medication at the time, having tried to commit suicide on two occasions.
61. Following the disciplinary hearing, Mr White checked the Claimant's sickness records and concluded that the Respondent had not been made aware of the suicide attempts. The Claimant put to him that this information might not have been recorded on his file, to which Mr White agreed. He noted that the Claimant had been off work from 26 November 2018 to 28 January 2019 for low mood. In evidence the Claimant said that doctors tend to write "low mood" rather than "depression" and that he had a medical diagnosis of depression at the time because he was taking anti-depressants and had made two suicide attempts.
62. Mr White said that he had asked the Claimant why he did not report the incident when he returned to work in January 2019 following which the Claimant said that he felt it would bring back trauma about his depression. As he had been advised by his legal representative that the police do not always come back to people that have been investigated, he had presumed that the matter would not be taken any further by the police. He told Mr White that he thought the Respondent had a history of "standing people down" in these circumstances and that he would not receive support from the Respondent. In cross examination, the Claimant accepted that he had stopped taking anti-depressants in mid 2019.
63. Following the disciplinary hearing, Mr White concluded that the Claimant's failure to inform the Respondent that he had been arrested and subsequently charged with drugs related offences amounted to a fundamental breach of trust.
64. Mr White considered this to be particularly serious considering the Claimant's position as a Residential Practitioner entrusted with the care of vulnerable people. He found that the Claimant's conduct was entirely incompatible with this role and amounted to gross misconduct. Mr White's evidence was that he considered a range of other sanctions however he concluded that given that the trust and confidence in him had been destroyed, no sanction other than dismissal would have been appropriate. Consequently, the Respondent decided to dismiss the Claimant without notice with effect from 30 April 2021. The decision was confirmed to the Claimant in a letter of the same date in which the Claimant was offered a right of appeal.
65. An aggravating factor for Mr White was that he believed that the Claimant had the opportunity to bring the matter to its attention prior to June 2020 and, when the Claimant was questioned about it by Ms Roberts on 11 and 12 June 2020, he did not provide an open and honest account of what had happened.

66. The Claimant challenged Mr White during the hearing about his conclusions regarding the Claimant's failure to report the matter. He referred to the earlier mentioned email from the LADO and put to Mr White that he was not obliged to report the arrest. Mr White said there was no policy specifically requiring the Claimant to report the arrest but equally there was no policy saying that it didn't have to be reported. He said there was a broader point about openness and transparency which needed to be looked at in the context of the role performed.
67. The Claimant also challenged Mr White during this hearing about decisions that he had made in other disciplinary matters. Mr White confirmed that he had chaired four or five other disciplinary meetings concerning drugs and alcohol issues. He explained that in two of these cases the employee was not dismissed. One case involved an employee who failed to maintain a good level of attendance due to alcohol who then entered alcohol rehabilitation. The other case involved an employee who had a problem with alcohol resulting in them sleeping in the office. Mr White said that the central difference between these cases and the Claimant's was the context of their role and the fact that he believed the Claimant had consciously chosen not to report the matter.
68. The Claimant attempted to question Mr White about other comparator cases including cases for which there were vague references in his witness statement. Mr White had no knowledge of one employee, who has been referred to in this Judgment as JE, who the Claimant said was caught with cannabis but not disciplined. No documentary evidence regarding JE's case was presented to me. In respect to the other comparator cases, the Claimant did not know the names of the individuals involved and similarly no documentary evidence regarding their cases was presented to me. The Claimant further accepted that no specific pleadings were submitted regarding these comparators nor was any specific disclosure request made regarding them.
69. During cross examination at this hearing, the Claimant accepted that it was reasonable for the Respondent to take into account the impact that his conduct had on the relationship of trust between them. He also conceded that he could understand why people within the Respondent would come to the conclusion that his conduct was dishonest. However, he stated that he had worked for the Respondent for 18 months after the arrest and there had been no questions raised about his working practices or his trustworthiness which was relevant to the Respondent's charge.

### *Appeal*

70. On 30 April 2021, the Claimant requested an appeal against his dismissal on the grounds of "a complete lack of understanding and empathy towards my mental health at the time of the offence". In this regard the Claimant complained that Mr Monkman had stated that his depression and two suicide attempts were irrelevant [158]. The appeal was acknowledged on 5 May 2021 [159]. On 23 June 2021, the Respondent invited the Claimant to an appeal hearing arranged for 20 July 2021. The Claimant was informed that the hearing would be chaired by John Woolmer (Chief Officer Environmental Services, Communities, Housing and Environment).

71. In a statement that the Claimant prepared for the appeal meeting, the Claimant raised the following particular concerns:
- a. Ms Roberts had previously informed him that she would support him through the disciplinary process and “fight his corner” but he believed that she did the opposite;
  - b. He was aggrieved by Mr Monkman’s insinuation that the cannabis grown in his property could have found itself in the hands of the young people in the Respondent’s care. He believed that Mr Monkman was attempting to “besmirch [his] name the best he could” [204];
  - c. He was also aggrieved that Mr Monkman had said that his depression was irrelevant which he considered to be reckless; and
  - d. He made some vague comparisons of his treatment compared to more lenient treatment of other colleagues and stated, “These incidents along with several others that I’m not prepared to discuss at this stage before the tribunal, will be fully unpicked in the event I am continued to be treated unfairly. I have been legally advised not to disclose all the information I intended to discuss”.

#### *Appeal hearing*

72. The appeal hearing took place on 19 July 2021. The Claimant chose to attend without a companion. The hearing was recorded and a transcript was provided [page 210]. As with the disciplinary hearing, the parties were informed at the outset that I would not read the entire document and instead the relevant parts should be brought to my attention. The parties agreed to this.
73. Mr Woolmer’s evidence was that his role was to review the reasonableness of Mr White’s decision and the options available to him where to uphold the appeal, dismiss the appeal or substitute a lesser penalty.
74. During the appeal hearing, the Claimant referred to the initial conversations that he had with Ms Roberts on 11 and 12 June 2020. He said that when he told Ms Roberts that he did not know anything about the court hearing, this was because he had not received the post. The letter had been sent to his home address but he hadn’t seen it at that point.
75. The outcome of the appeal was that Mr Woolmer agreed with Mr White’s decision and, in regard to sanction, concluded that dismissal was appropriate notwithstanding the Claimant’s length of service and previous good conduct.
76. On 20 July 2021, the Respondent wrote to the Claimant to confirm the outcome. It was noted that the Claimant had been absent from work for a period of seven weeks following which he had a period of 18 months to disclose his arrest and involvement with the police but chose not to do so [208]. In this regard it noted that the Claimant had not provided any additional evidence, such as medical

evidence, to support his assertions that his mental health conditions during this period were significant enough to justify why he did not bring the arrest to the attention of the Respondent. The Respondent also concluded that the Claimant had made a conscious decision to not report the arrest to his managers because he had been advised by his representative at the time that he would not end up in Court. It stated: "Your reference to other staff being stood down demonstrates a clear understanding why it is so important staff working with vulnerable children disclose such issues so that proper process is followed for the protection of all parties concerned". Finally, the Respondent acknowledged that Mr Monkman's reference to the Claimant's mental health being irrelevant was not presented in the most sensitive way during the hearing and apologised for the upset caused; but concluded that this did not have any effect on the outcome of the disciplinary proceedings.

*Matters arising during the Tribunal hearing*

77. The Respondent's representative put to the Claimant that it was important for the Claimant to have brought the arrest to its attention at the time so that it could undertake a risk assessment. The Claimant accepted this, noting that the Respondent undertakes risk assessments for a range of what he considered to be trivial matters, including taking a dog into work. He said that the Respondent would undertake risk assessments to ensure that it was "covered legally". It was put to him that had the Respondent known about the Claimant's arrest a risk assessment would have taken place at the time to which the Claimant confirmed that he had "no doubts that it would have been risk assessed".
78. The Respondent's representative referred the Claimant to the Personal Supervision Records ("**PSR**") which start at page 223. The following extracts were noted specifically:
- a. The PSR dated 30 May 2019 acknowledged that the Claimant was "getting back to his old self being more positive and getting together with all the paperwork";
  - b. The PSR dated 30 July 2019 acknowledged that the Claimant was happier because he was staying at St Cath's (it had been a worrying time because the Claimant had been chosen to move to a different home but did not need to do so);
  - c. The PSR dated 27 January 2020 acknowledged that the only thing worrying the Claimant was the negative attitude of some of his colleagues; and
  - d. The PSR dated 7 May 2020 acknowledged that the main thing the Claimant wanted to discuss was his disappointment with the lack of motivation of some staff members and he wanted management to take action.
79. The Claimant said that the completion of the PSRs was a mere box ticking exercise on the part of management. He said some did not take place and of



those that did take place, they didn't go into any real depth. He said they were supposed to last an hour but often they only lasted between 10-15 minutes and often took place on the shop floor or over the telephone. He said on some occasions the Respondent would email him saying that his supervision form had been completed without a meeting having taken place. He said that he did disclose the issues he had with his mental health throughout the time but his manager did not write this down because they prefer to exclude negative points. The Respondent's representative referred the Claimant to PSRs that contained negative points which the Claimant acknowledged. The Claimant accepted that he had not disputed them in his witness statement and was doing so for the first time during his cross examination. The Claimant then accepted that the PSRs happened monthly and the only break was between August and November 2019. He also accepted that in some of the PSRs reference was made to his good mental health at the time. There were no other notes of the PSRs before me, including the Claimant's own notes.

80. Having reviewed the PSRs and heard the Claimant's evidence I have found that the Claimant did not refer to his mental health difficulties during the vast majority of the supervisions that took place between his return from ill health absence and the June 2020. Had he done so, reference to these would have been included in the PSRs. I do not accept the Claimant's evidence that the Respondent only wished to include positive comments on these documents. Such evidence is contradicted by the numerous references to negative points in the Claimant's own PSRs.

### The Law

81. The relevant parts of s.98 Employment Rights Act 1996 (**ERA**) state:

- (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...*
  - 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) *(b) relates to the conduct of the employee;*
- (3) ...
- (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.*

82. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in ***Burchell 1978 IRLR 379*** and ***Post Office v Foley 2000 IRLR 827***. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (***Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23, and London Ambulance Service NHS Trust v Small 2009 IRLR 563***).
83. In ***Hadjoannous v Coral Casinos [1981] I.R.L.R. 352*** it was held that the treatment of other employees in similar circumstances was relevant (1) if there is evidence that the dismissed employee was led to believe he would not be dismissed for such conduct; (2) where the other cases give rise to an inference that the employer's stated reason for dismissal is not genuine; or (3) if, in truly parallel circumstances, an employer's decision can be said to be unreasonable in a particular case having regard to decisions in previous cases. It held that arguments based on disparity should be scrutinised carefully and would rarely be properly accepted.
84. In ***Polkey v AE Dayton Services Ltd 1988 ICR 142, HL***, the House of Lords ruled that employers could not argue that a procedurally improper dismissal was nevertheless fair because it would have made no difference if the employer had followed a fair procedure. Their Lordships held that an employer's actions in dispensing with a fair procedure were highly relevant to the question of whether an employer acted reasonably in dismissing, and that tribunals were not entitled to take into account, when determining the fairness or otherwise of a dismissal, whether a proper procedure would have made any difference to the employer's decision to dismiss. However, the HL stated: *'It is quite a different matter if the tribunal is able to conclude that the employer himself, at the time of dismissal, acted reasonably in taking the view that, in the exceptional circumstances of the particular case, the procedural steps normally appropriate would have been futile, could not have altered the decision to dismiss and therefore could be dispensed with. In such a case the test of reasonableness under section 57(3) may be satisfied'*. Therefore, only in wholly exceptional cases, where it could be shown that carrying out a proper procedure would have been 'utterly useless' or 'futile', would procedural failures be overlooked when considering reasonableness for the purposes of S.98(4) ERA.

### Submissions

85. Both parties provided oral submissions. The Respondent also provided written submissions. They are not set out in detail in these reasons but both parties can

be assured that I have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

86. The Claimant asked me to draw inferences from Ms Roberts' failure to attend the hearing on either date. The Respondent's representative submitted that to draw such inference would be inappropriate. He informed me that his instructions were that Ms Roberts had anxiety about giving evidence at the hearing and, considering this and the fact that it was felt that the contemporaneous documents dealt with the disputed issues, a decision was taken not to call her to give evidence.

### Conclusions

#### *What was the reason for the Claimant's dismissal?*

87. The principal reason for the Claimant's dismissal was his conscious failure to inform the Respondent that he had been arrested and subsequently charged with drugs related offences despite having opportunities to do so and notwithstanding the relevance of such charge to his role as a Residential Practitioner. From the Respondent's perspective, this amounted to a fundamental breach of trust.

88. Although the Claimant conceded that this was the reason for his dismissal and he did not believe the Respondent had an ulterior motive, he suggested during the course of the evidence and in submissions that he believed the Respondent dismissed him because the Respondent considered him to be a risk to children and/or because he had cultivated cannabis himself, considering in particular the statement provided by Mr Monkman.

89. I do not conclude this was the case. Mr White repeated in evidence, on several occasions, that what he referred to as the 'aggravating factor' leading to the Claimant's dismissal was his failure to report the arrest, and provide an honest account of the situation when he spoke to Ms Roberts in June 2020, causing a breakdown of trust. This was then echoed by Mr Woolmer as part of the appeal decision.

#### *Was that a potentially fair reason for dismissal?*

90. Yes.

91. It was both:

- a. related to the Claimant's conduct which is a potentially fair reason for dismissal pursuant to section 98(2)(b) of the ERA; and
- b. some other substantial reason of a kind such as to justify the dismissal of the Claimant holding the position which the Claimant held, pursuant to section 98(1)(b) of the ERA.

92. The relationship of trust and confidence is paramount to an employment relationship. If an employee's conduct destroys that trust, either by action or omission, it is difficult to imagine a situation where the employer will not be able to rely upon either or both of the above mentioned fair reasons for dismissal.
93. It was particularly relevant to the Respondent that it believed the Claimant had had ample opportunity to bring the matter to its attention and, in particular, when he was asked about it by Ms Roberts on 11 and 12 June 2020, the Respondent believed that the Claimant had provided a misleading version of events.
94. The Claimant emphasised that he was not contractually obliged to report the arrest to the Respondent and, therefore, by not reporting it, he had not committed misconduct. However, these submissions were inconsistent with the Claimant's other evidence, namely that he ought to have reported it sooner, regretted not doing so and believed he should have been issued with a final written warning instead.
95. It was reasonable for the Respondent to expect the Claimant to report it considering in particular:
- a. the Claimant's role, which involved caring for children aged between 11-18 years old, some of whom had criminal convictions or difficulties with substance abuse;
  - b. the Claimant's own concessions that the Respondent would need to assess any risks arising from the arrest and his failure to report the arrest prevented the Respondent from being able to do so; and
  - c. the contents of the contractual and policy documents referred to earlier, including the Code of Conduct and the job description the latter of which the Claimant conceded would be equally applicable to him as a current employee.
96. Although the Claimant was absent due to ill health at the time of the arrest, he returned to work swiftly afterwards and the PSRs referred to earlier suggest he would have been well enough to determine whether he ought to disclose this or not. The Respondent believed that the Claimant made a conscious decision not to disclose this. Whether that belief was based on reasonable grounds is considered later in these Reasons.

*Was the Respondent's belief (which the Claimant accepted was reasonably held and followed a reasonable investigation) based on reasonable grounds?*

97. Yes.
98. At the outset of the hearing, the Claimant confirmed he had two challenges to this which I have considered in turn.
99. Firstly, that the Respondent did not request a DBS check and therefore this meant that it did not have reasonable grounds for believing in the above

mentioned misconduct. In submissions the Claimant explained that, if he was genuinely seen as a danger to children, the Respondent ought to have conducted this check.

100. I have concluded that in the circumstances the Respondent did not need to request a DBS check in order to satisfy itself that the above mentioned act of misconduct had occurred. The Claimant accepted himself that he had been arrested and subsequently charged with drugs related offences and that he had not brought this to the Respondent's attention. The provision of a DBS check would not have altered this. In this regard, the Claimant was not dismissed because he was considered to be a risk to children.
101. Secondly, it had been confirmed that the Respondent did not need to report the matter to the LADO and the Respondent failed to give this sufficient consideration. Furthermore, in the email exchange containing LADO's advice, there was reference to situations whereby it might be expected for an employee to report an arrest which the Claimant believed the Respondent was unfairly influenced by.
102. The Respondent's evidence was unclear whether the managers involved in the disciplinary and appeal proceedings had seen this email. If they had not, it could not form a relevant part of their decision making. In any event, however, the processes undertaken by the LADO are different to those taken by the Respondent pursuant to its disciplinary procedures. Just because LADO did not see the matter as being serious enough for them to investigate does not mean that the Claimant's conduct was not serious enough to destroy the relationship of trust between him and the Respondent. The two issues are wholly separable. The Claimant was not dismissed because he was considered to be a risk to children (in which situation LADO's perspective may have been more useful) but because he had consciously decided to not bring the arrest to the Respondent's attention, despite having ample opportunity to do so.
103. Although the Claimant did not raise this at the outset of the hearing, it is clear from my deliberations that two other points relevant to this legal issue are:
- a. was it reasonable for the Respondent to conclude that the Claimant made a conscious decision to not report the arrest?; and
  - b. was it reasonable for the Respondent to conclude that the Claimant had misled Ms Roberts during the telephone calls on 11 and 12 June 2020?
104. The Respondent has addressed these points in its evidence and therefore I have concluded there is no prejudice to the Respondent in me drawing conclusions regarding them. As the Claimant was a litigant in person, it was compliant with the overriding objective for me to consider these points, to ensure a fair hearing. The overriding objective requires me to approach cases with flexibility, proportionately and ensuring parties are on an equal footing.
105. In respect to the first point, I conclude it was reasonable for the Respondent to form this belief. The Claimant said, on a number of occasions,

that he was afraid that, if he brought the matter to the Respondent's attention he would be suspended. He felt this would not be worthwhile considering the fact that he had been advised that the criminal charges would not be progressed further. He balanced these considerations against the impact informing the Respondent would have on his mental health, which was improving. He felt that, had he reported the matter to the Respondent, he would have been suspended, potentially for a lengthy period of time. He felt that this could be more damaging to his mental health.

106. I sympathise with the position the Claimant found himself in, bearing in mind in particular the evidence he gave about his mental health at the time, the suicide attempts he had made and his focus on wanting to improve his mental health and avoid a decline in the same. However, the Claimant's thought process as summarised above demonstrates that the Claimant made a conscious decision to not disclose his arrest for these reasons. Additionally, as of April 2020 (or potentially before, depending upon when he saw the notice of hearing), the Claimant was aware that the charges had not been dropped and indeed he was proceeding to a criminal trial. This is inconsistent with some of the reasons given by the Claimant for not informing the Respondent about the process at the time. This conscious decision could have been damaging for the Respondent. The Claimant himself conceded that the matter would have needed to have been risk assessed. The Claimant's failure to notify the Respondent prevented it from being able to do so.

107. In respect to the second point, I conclude it was reasonable for the Respondent to form this belief. It may have been the case that the Claimant did not know about the June 2020 hearing when he spoke with Ms Roberts on 11 and 12 June 2020. However, he ought reasonably to have been aware that another hearing would be listed soon after the April 2020 hearing was postponed. If the Claimant was acting honestly, he could have disclosed the purpose of the April 2020 hearing at this point and perhaps apologised for not bringing the matter to the Respondent's attention sooner. Furthermore, whilst I recognise the Claimant was adamant that he did not deny the allegations during these conversations, he did give Ms Roberts the false impression that the charges would not be pursued further. Based on the evidence presented to me, there was no reasonable basis for the Claimant to form this conclusion. I draw no inferences from Ms Roberts' failure to attend this hearing. It is not uncommon for investigation officers to not give evidence in unfair dismissal claims given that the key decision makers, relevant to the legal test, are the disciplinary and appeal meeting officers. There is clear contemporaneous documentation about Ms Roberts' decision making and the conclusions she reached and the Claimant had an opportunity to challenge those during the internal proceedings.

*Did the Respondent act in all the circumstances reasonably in treating its reason as sufficient reason to dismiss the Claimant?*

108. At the outset of the hearing, the Claimant confirmed he had three challenges to this which I have considered in turn.

109. Firstly, the Claimant stated that he was provided with insufficient support from the Respondent during his suspension. I agree that the Respondent could have provided more support to the Claimant during this time. Apart from referring the Claimant to the Respondent's helpline, there is no evidence of any support being provided during what was a significant and unusually long period of suspension.
110. Secondly, the Claimant complained that the period of suspension was unreasonably long. The Respondent conceded that there was a significant delay. I agree and conclude that the delay was unreasonable.
111. Although the Respondent had justification for the delay from around November 2020 onwards (namely the Government imposed lockdowns arising from COVID-19 pandemic and the Claimant's insistence upon the disciplinary hearing taking place in person), there was no reason for the delay between July and October 2020. In this regard, the Respondent offered no evidence.
112. I have therefore had to determine whether these procedural errors rendered the Respondent's actions as unreasonable in all of the circumstances. I do not conclude that they did.
113. Apart from these two procedural errors, the Respondent conducted a fair investigation, disciplinary and appeal process. The Claimant was aware of the allegations being considered against him at all times and was given an opportunity to present his case at both the disciplinary hearing and the appeal hearing. Both of these hearings were conducted by experienced, senior and independent managers. He was offered a right to be accompanied and took up that right at the disciplinary hearing. The decisions were clearly explained to him in both letters. His points of appeal were thoroughly considered and I note in this regard that the Claimant had no complaints about the conduct of the appeal process.
114. Although I recognise that the delay to the disciplinary process would have caused the Claimant stress, which is unfortunate and could and, in my judgment, should have been avoided, the outcome of both the disciplinary and appeal hearings would have almost certainly been the same had the disciplinary hearing taken place earlier, at some point between July and October 2020. This is because the investigation was completed promptly after the LADO report was received. There was no risk of the investigation being compromised as a result of the delay. Furthermore, the Claimant did not assert that the outcome may have differed in some way had the hearings been conducted sooner. He also accepted that he received full pay throughout.
115. Finally, the Claimant stated that the hearing should have been fully in person, noting that some of the attendees attended over a video platform. Whilst it was the Claimant's preference for all individuals to have attended in person, he did not adduce any evidence of the video platform prejudicing the process. He was able to see and hear what the attendees said and put forward his representations. The decision maker, the Claimant himself and his companion all attended in person. In April 2020 it was common for many employees to work

from home, either because they were self-isolating or because they had concerns about travelling to or attending the workplace. It was also reasonable for employers to consider whether its facilities could support social distancing, which is what the Respondent did in this case. I do not find that the Respondent acted unreasonably in this regard.

*Was dismissal within the band of reasonable responses of a reasonable employer?*

116. As explained earlier, this was the crux of the Claimant's claim.
117. I have been conscious throughout my deliberations that the Claimant had a significant period of unblemished service with the Respondent and was seen as being a good worker with opportunities for progression. This together with the fact that the Claimant did not himself cultivate the cannabis personally has weighed heavily on my decision making.
118. However, the case law cited above reminds me that it is immaterial what decision the Tribunal would have reached had it heard the disciplinary or appeal proceedings. I am reminded that the Tribunal must not substitute its view for that of the reasonable employer. Instead, the Tribunal must decide whether the employer acted within the range of reasonable responses open to an employer in the circumstances.
119. For the following reasons, I find that it did.
120. Mr White was emphatic in his evidence that the aggravating factor that led to the Claimant's dismissal was his failure to inform the Respondent about the arrest, charging or conviction. As I concluded earlier, this was the principal reason for the Claimant's dismissal.
121. I concluded earlier that the Claimant had an opportunity to raise this matter prior to June 2020 but made a conscious decision not to do so. He did this because he was afraid of the consequences and believed that the matter would be dropped by the police. Irrespective of his motivations, this conscious decision calls into question the extent to which the Respondent can reasonably be expected to trust the Claimant.
122. I have also concluded earlier that the Claimant misled Ms Roberts during his conversations on 11 and 12 June 2020. The Claimant had an opportunity to come forward during these conversation but again chose not to do so. Again, this conscious decision calls into question the extent to which the Respondent can reasonably be expected to trust the Claimant.
123. Considering these factors, I conclude that it was within the range of reasonable responses for the Respondent to determine that it could no longer trust the Claimant. If it could no longer trust the Claimant, it is reasonable to conclude that alternatives to dismissal, such as redeployment and/or a final written warning, would not have been appropriate.



124. The Claimant said that, in the 18 months between the arrest and June 2020, he had proved to the Respondent that he could be trusted. However, this misses the Respondent's point. Irrespective of his conduct and performance in that 18 month period, which was acknowledged to be good, it was his failure to bring the arrest and charge to the Respondent's attention which destroyed the trust. The Respondent only learned that the relationship of trust might be being damaged when the arrest was first brought to its attention.
125. One of the mitigating factors raised by the Claimant was the impact of his mental health at the time. I am satisfied that this was considered by both Mr White and Mr Woomber before they reached their respective decisions. This is referred to in their decision documents and they confirmed this in their live evidence at the hearing which the Claimant had an opportunity to challenge.
126. Although the Claimant's unchallenged evidence was that his mental health was extremely poor at the time of the arrest in late 2018, I have concluded based on the contents of the PSRs in particular, and the fact that the Claimant was able to continue working for the Respondent for around 18 months after he returned to work from ill-health, that it was reasonable for the Respondent to have decided that the Claimant's health should not have reasonably prevented him from reporting the matter at some point prior to June 2020.
127. The Claimant relied heavily on the comments from the Judge at the criminal proceedings. I am satisfied that these comments were considered by both Mr White and Mr Woomber before they reached their respective decisions. Again, reference is made to these comments in the documents and evidence was given regarding these considerations during this hearing. Whilst these may have been the views expressed by the Judge conducting the criminal trial, the Respondent had no obligation to make any decisions regarding the Claimant's continued employment based on them. That Judge's role was to conduct the criminal proceedings, applying the relevant law to make a decision regarding the Claimant's charges. He had no responsibility within the Respondent for making people management decisions.
128. The Claimant made some vague references to employees who he believed he was treated more harshly than. However, save as for one employee, the Claimant did not name the comparators. He expressly refused to name them during the appeal process. No documents regarding these individuals have been provided and no specific disclosure application was made. Therefore, there is insufficient evidence before me upon which I can draw meaningful conclusions regarding whether the Claimant was treated inconsistently. Nevertheless, considering the examples given by the Claimant, they did not appear to be even close to the truly parallel circumstances envisioned by the **Coral Casinos** case referred to earlier.
129. Accordingly, the Claimant's dismissal was not unfair and his claim is dismissed.

Employment Judge McAvoy Newns

**Case Number: 1803453/2021**

**25 February 2022**