

## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100054/2013

5 Held in Glasgow on 15, 19 to 21 June & 18 to 21 July 2017 & 29 September  
2017 (Deliberations).

10 Employment Judge: Frances Eccles  
Member: Mrs Paula McColl  
Member: Mr Peter Kelman

15 Mr J McDermott

Claimant  
in Person

20 Glasgow Centre for Inclusive Living

Respondent  
Represented by:  
Mr A Lord -  
Consultant

### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The **unanimous** Judgment of the Employment Tribunal is that (i) the claimant was  
not unfairly dismissed by the respondents; (ii) the respondents were not in breach of  
contract; (iii) the respondents did not discriminate against the claimant because of  
disability & (iv) the respondents did not fail to comply with the duty to make  
35 reasonable adjustments.

### REASONS

#### BACKGROUND

40 1. The claim was presented on 31 December 2012. The claim was for unfair  
dismissal and breach of contract (notice pay). In the paper apart to his ET1 the  
claimant disputed that the respondents had reasonable grounds upon which to  
conclude that he was guilty of gross misconduct. He claimed that the

respondents had failed to carry out a sufficiently thorough investigation, haXrJ preferred the hearsay evidence of a whistle-blower in circumstances where their client had been asked leading questions and was known to be an unreliable witness who gave inconsistent evidence. He claimed that the respondents lacked impartiality during the investigation and disciplinary process and that their assessment of the evidence lacked objectivity. He claimed that the respondents were unable to show that he was guilty of the alleged misconduct. The claimant identified delays on the part of the respondents. He challenged the fairness of the procedure and claimed that the respondents were influenced by a funder with whom he was previously employed. He referred to an *"agenda to exit him from the business"*. He referred to the respondents failing to provide him with the necessary support to do his job properly. He referred to a clinical psychologist's report dated 30 June 2010 which stated that he was operating close or at his maximum capacity to encode and retain information. He claimed that despite the terms of the above report and knowing that he would struggle with additional work, the respondents continued to give him more work and responsibilities. The claimant referred to his health having been adversely affected by the respondents' treatment of him and to his many of medical conditions.

2. In their response accepted on 1 February 2013 the respondents denied having unfairly dismissed the claimant. In the paper apart to their ET3 the respondents gave the reason for the claimant's dismissal as his falsification of invoices which he submitted to the Independent Living Fund ("ILF") on behalf of a client for services which she had not received amounting to gross misconduct. The respondents claimed to have followed a fair procedure and that they were entitled to conclude that the claimant was guilty of gross misconduct given the *"plethora of evidence"* against him. It was their position that the claimant had acted dishonestly. They referred to the claimant's experience as an Inclusive Living Adviser and disputed that memory dysfunction would affect his ability to recognise the acceptability of creating invoices whether legitimate or not. The respondents denied that the claimant did not receive the necessary support to do his job. The respondents denied

that any notice pay was due to the claimant on the grounds that they were entitled to dismiss him without notice.

3. The claim was listed for a Hearing on 23 to 29 April 2013. The Hearing was postponed as the claimant was unavailable due to a prior commitment about which he had informed the Tribunal. The claim was listed for a Hearing on 22 to 31 May 2013. The claimant sought leave to amend his claim on 6 March 2013. The application was opposed. Following a Preliminary Hearing held on 9 May 2013 and by Judgment dated 15 May 2013 the claimant was granted leave to amend his claim by adding a claim of direct disability discrimination in terms of Section 13 of the Equality Act 2010 and a claim of failure on the part of the respondents to make reasonable adjustments in terms of Section 20 of the Equality Act 2010.

4. In his amended claim, the claimant stated that he was disabled and described his medical conditions as follows;

*"The claimant is disabled - he has problems retaining information and suffers from a severe short term memory problem. He has problems getting dressed and following instructions. He has an IQ of 63 (extremely low). On an assessment of his ability to solve problems and plan, he scored 38 (impaired). He cannot go out on his own or he gets lost. He needs to be accompanied in supermarkets or he loses his bearings. He has a reading age of 8-10 years and takes a very long time to assimilate clearly presented information. He has a hearing impairment. He finds taking in verbal information difficult but has acquired techniques to mask his failings. He has suffered from his various impairments for many years - they go back to his childhood. He cannot carry out normal day to day activities without the help of third parties or his family".*

5. The claimant stated that the respondents were aware, from working with him, that he had severe learning disabilities because of which it took him a very long time to acquire new skills and/or understand what was being said to him. He claimed that the respondents were aware of his limited IT skills and knew

or ought to have known that he took a long time to assimilate and understand written information which on occasions would have to be explained to him. He referred to a Clinical Psychologist's report which contained information about his medical conditions. He claimed that in the above circumstances the respondents had a duty to make allowances for his disability. The claimant stated that by failing to make such allowances, the respondents treated him less favourably than they would have treated others without a disability and that in their preparation and conduct of the investigation and disciplinary process they discriminated against him.

6. In his amended claim, the claimant stated that the respondents approached the investigatory meeting in the same way as they would have approached such a meeting with a person who was not disabled. He referred in particular to the lack of notice about the purpose of the meeting, the documents about which he would be questioned and the allegation made against him. He stated that the respondents accepted admissions from him to questions on points about which they ought to have known he had limited understanding. In relation to the disciplinary hearing, the claimant stated that he was treated less favourably by the respondents given their failure to explain the significance of each document provided to him in advance of the hearing and how each document related to the allegation made against him. He stated that the respondents had cross examined him aggressively and *"treated him not as an innocent person but as a person who - because of guilty knowledge - could answer their questions"*. The claimant stated that the letter confirming his dismissal was ambiguous and that he did not understand it. He stated that the respondents failed to explain to him what he was supposed to have done and why evidence of the service user had been discounted, which confused him and was unfair given his disability.

7. The claimant identified the way in which the respondents arranged and conducted the investigatory and disciplinary process as provisions which put him as a disabled person at a substantial disadvantage. He identified the reasonable adjustments which the respondents should have made as follows;

5            *“to take reasonable steps to make sure that the claimant was fully aware at all stages in the investigatory/disciplinary process of what was happening to him, of what accusations were being levelled against him, of all the evidence which was being used against him, that he understood the significance of each adminicle of evidence being used to build the case against him and that when he made statements in the course of the hearings which ought to have made it clear to the persons in charge of the hearings that he was not fully aware of what was going on around him, they ought to have permitted him such relief by way of explanation, adjournment, time to consider as was necessary in all the*  
10            *circumstances.*

15            *In confirming the guilt of the claimant of an offence which he had not been convicted of at the Discipline Hearing, the appeal panel exceeded their powers. They ought to have explained to the claimant the fact that the finding of the discipline hearing was not one of dishonesty but of negligence (with which he had not been charged) and, in not doing so, they took advantage of the fact that the claimant was mentally disabled and did not fully understand what was going on”.*

- 20            8. The Hearing listed for 22 to 31 May 2013 was postponed on the application of the respondents who sought an opportunity to respond to the amended claim. The respondents lodged a response to the amended claim on 28 June 2013. In their amended response, the respondents denied that their actions towards the claimant were discriminatory. They denied that the claimant or his representative had indicated at any time during the Disciplinary Hearing of any  
25            difficulty in understanding the process or the matters discussed and stated that the claimant played a full and active part in the Hearing. They questioned whether the claimant’s amendment identified a provision, criterion or practice universally applied by them that would have the effect of placing a disabled person at a disadvantage. In response to the claim that they had failed to  
30            make reasonable adjustments, the respondents stated -

*“The respondent took all reasonable steps to ensure that the claimant was fully aware of the allegations against him. They provided full details of the*

concerns and the documentation collected, allowed additional time for the claimant to confer and instruct a Representative and engaged in full discussions during the disciplinary process. Following the decision from the disciplinary hearing the claimant lodged an extensive letter of appeal clearly illustrating his understanding and comprehension as to what had occurred".

9. While acknowledging that "it is obvious that the situation has had a profound effect on the claimant as evidenced by his conduct and demeanour at the recent PHR", the respondents disputed that the position accurately reflects how the claimant presented during his employment. They stated that had the claimant presented in the way his condition manifests itself today he would not have been able to function in his role as an Adviser to their clients. The respondents referred to the demands and complexity of the claimant's role while in their employment. They claimed that not only did the claimant understand the process but he was also able to engage and instruct a trade union representative prior to the Disciplinary Hearing.

10. The claim was listed for a Hearing on 12 to 16 August 2013. The Hearing was postponed due to the non-availability of the claimant's representative for part of the Hearing due to court commitments.

11. At a Preliminary Hearing held on 29 August 2013 the respondents accepted that the claimant has the protected characteristic of disability. The claim was listed for a Hearing on 4 to 7 November 2013. The Hearing was postponed as the respondents' representative was on sick leave. The case was listed for a Hearing on 10 to 13 February 2014. The Hearing was postponed and the claim sisted pending criminal proceedings. On 17 August 2016, the claimant's representative informed the Tribunal that the criminal case had been deserted and would not proceed. The claimant's representative requested a date listing letter for a Hearing. The case was listed for a Hearing on 24 to 30 November 2016. The Hearing was postponed as the respondents' representative had not received notice of the Hearing dates from the Tribunal.

12. The case was listed for a Hearing on 21 to 27 February 2017. An application by the respondents for a postponement was refused. The case called for the

Hearing on 21 February 2017 before a Tribunal chaired by Employment Judge Robert Gall. The claimant was unrepresented. The claimant informed the Tribunal that he has Dysexecutive syndrome which is a degenerative brain condition, is doubly incontinent, has breathing issues, is unable to read and is affected by sleep apnoea, Chron's disease and diabetes. The claimant also informed the Tribunal that he is involved in the child abuse enquiries as a survivor, is on suicide watch by both the UK and Scottish Governments and requires to be accompanied at Tribunal Hearings. The procedure at a Tribunal Hearing was explained to the claimant including cross-examination of witnesses and the role of the Tribunal. The claimant informed the Tribunal that he had not had time to consider the witness statements produced by the respondents. The claimant's medical condition at the time of the disciplinary procedure was identified as a live issue between the parties. The claimant offered to sign mandates authorising the release of his medical records to the respondents. The claimant sought a postponement of the Hearing to allow him the opportunity to investigate the possibility of obtaining legal representation and to contact potential witnesses. Examples of organisations that might be able to provide legal advice were identified by the Tribunal. In response to information provided by the claimant about his medical conditions, the Tribunal enquired whether a scribe might assist the claimant at any subsequent Hearing. The claimant informed the Tribunal that he felt intimidated by some of the comments made by the respondents' representative, Mr P Warnes, Consultant. The Tribunal informed the claimant that intimidatory behaviour by a representative would be the subject of comment by the Tribunal and intervention to prevent such behaviour. The Tribunal noted that as far as it was concerned, Mr Warnes had been co-operative and helpful in his approach and that he had his own clients' interests to consider and represent. The Hearing was postponed.

13. On 17 May 2017, the respondents informed the Tribunal that they had not received any medical evidence from the claimant's General Practitioner. They questioned whether, without such evidence, the Tribunal would be able to make any findings of fact as to the extent of the claimant's disability. The claimant confirmed that all his medical records had been posted to the

respondents on 12 May 2017. The Tribunal directed the respondents to confirm whether they had received the claimant's medical records. The respondents acknowledged receipt of the claimant's medical records on 1 June 2017. The claimant expressed concern about whether the respondents were questioning his disability status in particular given their previous position before the Tribunal. The claimant wrote to the respondents on 13 June 2017 seeking clarification. The Tribunal directed the respondents to confirm their position by 15 June 2017.

14. The Hearing before a Tribunal chaired by Employment Judge Frances Eccles was held on 15, 19 to 21 June & 18 to 21 July 2017. At the start of the Hearing on 15 June 2017 the respondents confirmed that they were not challenging the claimant's disability status. They were challenging the extent to which the claimant's disability at the time of his dismissal prevented him from understanding the disciplinary process. The claimant was not represented at the Hearing. He had informed the Tribunal that he wanted the Hearing to proceed notwithstanding his inability to obtain representation. The claimant was accompanied by Ms Sandra Toyer, Crisis Support Worker as an observer on 15 and 19 June 2017. The claimant gave evidence to the Tribunal and called James Docherty, Counsellor to give evidence on his behalf. The respondents were represented by Mr A Lord, Consultant. For the respondents, the Tribunal heard evidence from Etienne D'Aboville, Chief Executive; Grant Carson, Director; Angela Mullen, SDS Coordinator; Marianne Scobie, Director & Clare Muir, Human Resources.

15. The parties provided the Tribunal with a Joint Bundle of Productions and a Bundle of medical records. The claimant provided the Tribunal with a Supplementary Bundle. The Tribunal sought to manage the proceedings in accordance with the overriding objective, to make adjustments where considered appropriate and have regard to the interests of both parties. The Tribunal arranged for a scribe to attend the Hearing. Parties were provided with copies of the scribe's notes of evidence. The notes were not verbatim. The parties exchanged and relied on witness statements as evidence in chief. The claimant informed the Tribunal that being in the same room as the



respondents' witness Angela Mullen would have a detrimental effect on his mental health. The claimant agreed to the Employment Judge asking Angela Mullen his questions in cross examination. The claimant was not in the Hearing room while Angela Mullen gave her evidence. Her evidence was noted by a scribe and provided to the claimant. There were regular breaks during the proceedings. The Hearing was adjourned on 21 June 2017 to allow the claimant an opportunity to consider notes of evidence. The Tribunal explained at regular intervals during the Hearing the issues it would have to determine and the procedure to be followed. On 21 June 2017, the respondents provided the claimant with a taxi to and from the Tribunal. The Tribunal was unable to provide the claimant with a taxi.

16. It was considered appropriate that the respondents provide their submissions in writing to the claimant in advance to allow him an opportunity to consider them before providing his own submissions to the Tribunal. Both parties provided written submissions to the Tribunal. The respondents lodged a counter Schedule of Loss in response to the claimant's written submissions with which the claimant took issue. The claimant expressed concerns about attending another Hearing as this would involve contact with Mr Warnes for the respondents. The Tribunal suggested that the claimant may wish to respond to the counter Schedule of loss in writing rather than attend another Hearing. In response to the above suggestion, the claimant expressed concerns about his mental health should he be required to attend another Hearing. He asked the Tribunal to reach a decision based on his Schedule of Loss.

17. The Tribunal met on 29 September 2017 for deliberations. The Tribunal informed the parties that it had reached a decision based on the evidence and submissions provided by them and that written reasons would be issued with its Judgment. No clarification was required by the Tribunal from either party on their written submissions.

18. Where considered appropriate the identity of service users and other persons not directly involved in these proceedings have been anonymised.

**FINDINGS IN FACT**

19. The Tribunal found the following material facts to be admitted or proved; the claimant was employed by the respondents as an Inclusive Living Adviser from 6 September 2006 to 4 October 2012 when he was dismissed. The claimant was based at the respondents' premises at Brook Street, Bridgeton, Glasgow. The respondents provide support and services that allow disabled people to take more control of their lives and to live more independently in the community. They provide advice to disabled people on funding, employment rights and housing. The claimant was responsible for providing individual service users with support and advice on arranging and maintaining a support plan for independent living. This involved the claimant providing advice on the Independent Living Fund ("ILF") and other sources of financial support to a significant number of service users, many of whom are vulnerable adults. He would regularly meet with service users in their own homes. He would assist service users with their applications to the ILF. He would also assist service users with funding reviews by the ILF which involved him submitting invoices and other vouching to support a service user's expenditure on care services, normally over the previous two years. The advice he provided to service users about funding was specialist and complex. At the date of his dismissal the claimant was aged 56. His normal take home pay was around £1,550 per month. He was a member of the respondents' pension scheme.

20. The claimant was previously employed by Glasgow City Council as Personal Assistance Adviser with Glasgow City Council until he accepted voluntary redundancy in 2006. At the time of applying for employment with the respondents in June 2006 (P66/345-354) the claimant had extensive experience of working with disabled people and advising on independent living and direct payments from various sources including the ILF. He had qualifications in employment and social welfare law. He was keen to develop training materials. He had experience of representing disabled people at Hearings and had good advocacy skills. In his application for employment with the respondents, the claimant referred to his *"personal experience of current disabilities such as hearing impairment, physical disability and heart condition*

(*hypertrophic cardiomyopathy*)". (P66/351) Following his appointment, the respondents arranged for the claimant to be provided with physical aids including a digital recorder, seat adjustments, adapted computer mouse and transport by taxi.

5 21. At a performance review with his Line Manager Maureen McPeak in July 2008 (P44/224-237), the claimant identified impairment issues as the reason for failing to keep his paperwork in order. No other concerns were identified in relation to his work. The claimant informed Maureen McPeak that he was undergoing a range of cognitive behavioural tests after which he hoped to receive a report recommending various coping mechanisms. Maureen McPeak noted that the claimant was confident that once he had "*worked out a system*" he would be able to manage his paperwork more effectively. It was noted that his Psychologist would contact Maureen McPeak to discuss how he could cope with work related tasks. In the meantime, the claimant was offered support with filing.

10 22. A Clinical Psychology report dated 30 June 2010 (Medical Documents 458-461) recommended that the claimant would appear to be "*operating close or at his maximum capacity to encode and retain information at the moment (whatever the cause). He thus might find taking in verbal information and making changes to his routines extremely difficult at present.*" The claimant provided the respondents with a copy of the report (Medical Documents 458-461). It was placed with his HR papers. No changes were made to the claimant's work.

25 23. The claimant was a valued employee. The respondents appreciated his extensive knowledge of the ILF on which he provided training to colleagues and outside agencies including social workers. The claimant showed commitment to service users and the principles of independent living. It therefore came as a shock to the respondents when Maureen McPeak was informed that a service user was accusing the claimant of falsifying invoices and sharing funds received from the ILF. Maureen McPeak was informed of the above accusation by an acquaintance of the service user on 25 July 2012. She met with the claimant later that day. Clare Muir from the respondents' HR

was in attendance. Maureen McPeak informed the claimant that a serious allegation had been made against him by a service user. She explained that the allegation concerned the falsification of invoices for funding purposes and sharing money. The service user was identified. The claimant replied that the service user had problems with her paperwork but was now on schedule. He referred to an e mail that he had received from the service user stating that she wished to move from an agency to personal assistants. He identified the agency used by the service user as Care Services Ltd. He explained that the service user withdrew cash from her bank account as her house was broken into and she preferred to use cash. The claimant was asked about an invoice from Care Services Ltd found with the service user's papers. (P20/97-98). Maureen McPeak asked the claimant where the care agency was based as the invoice (P20/97-98) contained no contact details. The invoice (P20/97-98) was said to have been issued on 3 June 2012 and paid on 28 May 2012. Maureen McPeak reminded the claimant that it was being alleged that he had falsified invoices. The claimant replied that the care agency was not on the list and that they could be sole traders. He stated that the service user gave him invoices and that he did not know how she recruited this care agency.

24. Clare Muir informed the claimant that given the serious nature of the service user's accusation the respondents would have to suspend him on full pay. Clare Muir sought to reassure the claimant that his suspension was without prejudice and to allow the respondents to carry out an investigation. The claimant expressed concerns about the process being stressful. Clare Muir reminded him that employee counselling was available. The claimant was asked for his computer password and told not to log in remotely from home or to contact service users while suspended from work. The claimant logged out of his computer and left the respondents' premises. The respondents produced a record of the above meeting with the claimant (P4/41-42). Shortly after his return home, the claimant received a sympathetic text message from a colleague that suggested they were aware of his suspension.

25. By e mail dated 26 July 2012 (P68/361) the service user's acquaintance confirmed in writing his conversations with the service user during which she

had raised concerns about the claimant. The service user's concerns included the claimant creating invoices for a care agency which she did not use and proposing that they share payments from the ILF. The acquaintance reported concerns expressed by the service user that the claimant kept her paperwork and had access to her on-line account. She had reported wanting to "*do things properly now*". The acquaintance reported the service user describing the claimant visiting her home outside office hours to collect money. He reported the service user claiming that she was told to lie in bed during an ILF review as it would be "*over more quickly*". The acquaintance confirmed that he had seen the service user's bank account which recorded regular cash withdrawals. He observed that the service user's story had remained constant.

26. The respondents examined the claimant's work computer on which they discovered an e mail dated 10 April 2012 (P9/64) from the claimant's work to home e mail address. Attached to the e mail (P9/64) was an invoice dating from 2010 to a service user from Ailsa Care Ltd (P9/65) for £1,520. They also discovered an e mail dated 10 April 2012 (P10/66) from the claimant's work to home e mail address to which was attached an invoice for £1,520 with a very similar layout to that of the invoice from Alisa Care Ltd (P9/65) but in the name of Care Services Ltd (P10/67). The respondents were concerned that the invoice from Care Services Ltd (P10/67) was a template based on the invoice from Ailsa Care Ltd (P9/65). Both invoices (P9/65 & P10/67) contained the same font and typeface size; had the same layout; contained the same payment terms; referred to "*webroster*" and contained the same "*total amount payable*".

27. On further examination of the claimant's work computer the respondents discovered that the claimant was recorded as the author of the invoice from Care Services Ltd (P11/69) and as having modified the invoice on a number of occasions (P11/68). The respondents also discovered an e mail dated 13 April 2012 (P14/76) from the claimant's work e mail address to the ILF with documents including invoices from Care Services Ltd addressed to the service user for care costs from March 2011 to January 2012 (P17/84-93). In his email to the ILF (P14/76), the claimant informed the ILF of his understanding that

some of the payments made by the service user had to be in cash because she had been burgled and her chequebooks stolen. He referred to the service user being *"left traumatised by the incident, the stress and fear"* and *"which left her totally dependent on family to withdraw her funds"*.

- 5 28. The respondents were unable to find any contact details for Care Services Ltd. There were no contact details for Care Services Ltd on the invoices found on the claimant's computer (P17/84-93) and sent to the ILF.
- 10 29. The respondents reported the allegations made by the service user to the Police. As the service user is a vulnerable adult the respondents also reported the matter to Social Work. The respondents were advised by the Police to delay taking any further action to allow them an opportunity to investigate matters. The respondents heard nothing further from the Police and decided that it was necessary to contact the claimant and service user to complete their investigation. The respondents had not made contact with the service user before based on advice received from the Police. Given the passage of time and there being no further contact from the Police, the respondents decided that it was appropriate to interview the claimant and service user to complete their investigation.
- 15 30. Clare Muir wrote to the claimant by letter dated 21 August 2012 (P6/44-45) confirming his suspension from work *"to allow an investigation to take place following the allegation of misappropriation of Independent Living Funds"*. Clare Muir further informed the claimant that;
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25 *"As discussed during our meeting, you are instructed not to contact or to attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or client of GCL. I am duty bound to inform you that a failure to abide by this instruction would be treated as an act of misconduct. However, if there is anyone whom you feel could provide a witness statement which would help in investigating the allegations against you, then please contact me and I will arrange for them to be interviewed."*

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*Should the investigation indicate that there is some substance to the allegation you will be required to attend a disciplinary hearing. You will be provided with all relevant documentation prior to the hearing and you will be notified in writing of the time, date and venue."*

5 31. The claimant was asked to attend an investigation meeting on 24 August 2012 with Etienne d'Aboville, the respondents' Chief Executive. Maureen McPeak and Clare Muir were in attendance. Etienne d'Aboville informed the claimant that the allegation against him was of misappropriation of ILF funds by him and the service user. He asked the claimant about the support provided to the  
10 service user. He was asked for the name of the agency used by the service user. The claimant could not recall the name of the agency and could not recall producing anything for submission to ILF as part of the service user's review. Maureen McPeak asked the claimant what he knew about Care Services Ltd. The claimant denied any knowledge of the company. Maureen  
15 McPeak showed the claimant the invoices (P1 7/84-93) attached to his e mail to the ILF. The claimant referred to the service user providing him with invoices. The claimant could not explain why Care Services Ltd had been chosen as an agency for the service user.

20 32. Etienne d'Aboville informed the claimant of the allegation that he had created invoices. He informed the claimant of the emails sent to his home with invoices attached (P9/64 & P9/65). Clare Muir highlighted the similarities between the two invoices. The claimant said that he had "*no memory*" and was unable to provide an explanation. The claimant enquired whether he had been on holiday. Clare Muir provided the claimant with a copy of his annual  
25 leave sheet confirming that he had not been on holiday.

30 33. The claimant was questioned further about services provided to the service user. Etienne d'Aboville informed the claimant of the allegation that he was sharing money from ILF with the service user. The claimant denied that he had ever accepted money from the service user. He questioned why he would put 33 years of working to support people to live independently at risk. He said that he was not familiar with what he had been shown. He said that he was on medication. He referred to having a medical report from two years ago which

said that he was working at his maximum capacity. He said that he was ncW having to support more clients and that he had requested another performance review. Etienne d'Aboville informed the claimant that the investigation was not about capacity but serious accusations. The claimant stated that he was really struggling and that the situation was affecting him and his family. He referred to his medication and feelings of low confidence. He described being *imprisoned in his own home*" and that he was questioning whether he could come back to work given the effect on his status with colleagues. Etienne d'Aboville sought to reassure the claimant that his colleagues had not been told anything by the respondents.

34. The claimant confirmed that he understood why the invoices looked suspicious. He said that he would go home and check. Maureen McPeak advised the claimant that the respondents had been obliged, in terms of Adult Protection Regulations, to report the service user's accusations to the Police and Social Work. The claimant questioned why he had not been contacted by the Police. Etienne d'Aboville and Maureen McPeak were unable to confirm exact dates for the alleged falsification of invoices. Maureen McPeak requested that the claimant check his home emails. Etienne d'Aboville requested that the claimant think about the e mails that went to his home and which he described as *"very puzzling"*. The claimant was asked about how the service user managed her money. Etienne d'Aboville asked the claimant whether Care Services Ltd *"rang any alarm bells"*. He sought to reassure the claimant that he appreciated how stressful the situation must be and reminded him that he should not speak to colleagues.

35. The claimant enquired about the next stage in the process. Maureen McPeak advised him that they would be meeting with the service user and Social Work. Etienne D'Aboville sought to reassure the claimant that they would try to conclude the investigation as soon as possible. The claimant referred to the pressure he was under. In relation to sending e mails to his home he stated *"I can't remember these things"*. The claimant questioned what the service user sought to achieve. He referred to the help she had received from him.



36. The claimant produced a copy of the Clinical Psychologist's report dated 30 June 2010 (Medical Documents 458-461) He suggested that Etienne d'Aboville read it to gain an understanding of why he might be "*making mistakes*". Etienne d'Aboville questioned the relevancy of the report to the substance of the accusations made against him. The claimant referred to currently working with 90 people, that it was not uncommon for people to complain and of the toll that the amount of work was having on him. The claimant suggested that the e mails may have been sent to him in error. He commented on the phrase "*misappropriation of funds*" and pointed out that he did not receive any money from ILF. Maureen McPeak confirmed that the allegation concerned him sharing cash with the service user. The claimant questioned the timing of the allegation and why he would put his job, house and family at stake. Etienne d'Aboville confirmed that he and Maureen McPeak would do their best to get to the truth and that given the nature of the allegation it was not something that they could ignore. Etienne d'Aboville confirmed that given the allegation concerned financial abuse there were protection issues. The respondents produced a record of the investigatory meeting with the claimant (P7/46-51).

37. The claimant understood the allegations being made against him. He contacted Clare Muir by e mail on 24 August 2012 (P28/122) to confirm that he had looked at the emails dated 10 April 2012. He confirmed that he had no record of the two emails being received. He explained that he may have deleted them on realising that he had sent them to himself in error instead of filing them or forwarding them for payment. He referred to the invoices as being genuine invoices from Ailsa Care Services and that he was unable to explain or remember how the invoice dating from 2010 was partially completed.

38. Etienne d'Aboville, Maureen McPeak and Clare Muir met with the service user on 28 August 2012. The service user explained that the claimant helped her to apply to the ILF for funding. She confirmed that she had never used a care agency. She confirmed that her personal assistants did not require invoices as sole traders. The service user described having money in her bank account

from the ILF. She described discussing it with the claimant and whether R should be returned to the ILF. She described the claimant saying that if she sent the money back that she would lose the hours and that there *“were ways to get round if.”* She referred to the claimant describing it as *“just about buying care”* when she raised concerns about the legality of keeping ILF funds. The service user explained that she had made mistakes when setting up her account. She claimed never to have seen invoices. She had not heard of Care Services Ltd. She described the claimant showing her a *“bit of paper with amounts on it”* before ILF reviews. The service user confirmed that she did not e mail invoices to the claimant. When questioned about sharing money, the service user described the claimant taking money *“for the agency”*. The service user described her concerns about the amount of money taken by the claimant to *“pay the agency”* given that she had not been receiving any support for the past year and a half. In response to questions from Etienne d’Aboville, the service user confirmed that she had thought about telling someone about the situation quite a few times but it *“made her feel sick and the longer it went on the harder it got”*. She added that she did not know *“how to get out of it”*. When questioned by Etienne d’Aboville, the service user denied that there was any chance that she could have misunderstood what was happening. She confirmed that she realised the implications of her accusation. Etienne d’Aboville summarised the service user’s accusations as *“Jamie made the arrangements, he created invoices and you shared the cash”*.

39. Maureen McPeak questioned the service user about wanting an increased share of the money. The service user explained that this was her way of trying to *“get out of it.”* Etienne d’Aboville showed the service user a copy of the e mail (P68/361) received from her acquaintance. She agreed that it was a fair account of what had happened. She referred to the claimant telling her to say that she used agencies. She referred to the claimant telling her that the agency would not be pleased about the arrangement coming to an end and that the hours would be hard to cover. Maureen McPeak asked the service user whether she was afraid to challenge the claimant or found him intimidating. The service user replied that she was *“unsure of him sometimes”*

but was not scared of the claimant. When asked by Maureen McPeak what prompted her to contact her acquaintance she replied that she had wanted to do it for a while and that the ILF reviews in particular had been a "complete nightmare". When questioned about the claimant visiting her house she described the situation as "pretty weird" and "all too much". The respondents produced a record of their meeting with the service user (P8/52-63).

40. Etienne d'Aboville was satisfied that based on the information obtained during the investigation that the claimant should be required to attend a Disciplinary Hearing. Clare Muir wrote to the claimant on 17 September 2012 to confirm that he was required to attend a Disciplinary Hearing on 20 September 2010. In her letter (P30/125-127), Clare Muir identified the matters of concern to the respondents as follows;

*"Taking part in activities which cause the company to lose faith in your integrity namely, it is alleged that you conspired with a Service User to deceive the ILF and submit false invoices for services not provided in order to obtain funding, further particulars being:*

1. *The invoices submitted to the ILF were generated on your work computer by you on 10.04.2012 for a non-existent company (Care Services Ltd), and a template invoice forwarded to your personal email address (.....) the same day.*
2. *The monthly payments received by the SU from the ILF were then shared between you and the Service User. As such, they were not used for their intended purpose, namely the provision of personal care to the Service User.*
3. *These services were never actually provided and were therefore claimed for fraudulently".*

Clare Muir advised the claimant that if substantiated the allegations would be regarded as gross misconduct and that if he was unable to provide a satisfactory explanation his employment may be terminated without notice.

41. The claimant was provided with copies of the respondents' record of his suspension meeting on 25 July 2012 (P4/41-42); his investigation meeting on 24 August 2012 (P7/46-51) and the respondents' meeting with the service user on 28 August 2012 (P8/52-63). The claimant was also provided with the information obtained from his work computer including e mails and invoices (P9/64-65 & P10/66-67); document properties: copy of e mails to ILF from the claimant attaching invoices; extracts from calendars, Yell, The Phone Book and internet search; a copy of the claimants' e mail dated 24 August 2012 (P28/122) and a copy of his Clinical Psychologist's report dated June 2010 (Medical Documents 458-461).

42. The claimant was informed that the Disciplinary Hearing would be conducted by Grant Carson, Director and Angela Mullen, SDS Coordinator with Clare Muir in attendance as note taker. The claimant was informed of his right to be accompanied at the Disciplinary Hearing by a trade union representative or fellow employee. The claimant was advised that failure to attend the Disciplinary Hearing without giving advance notification or good reason would be treated as a separate issue of misconduct.

43. The claimant understood the purpose of the Disciplinary Hearing. He understood the charges he was being asked to answer. He requested additional documents from the respondents by e mail dated 18 September 2012. The documents were provided to the claimant and he was granted a postponement of the Disciplinary Hearing arranged for 20 September 2010 to allow him further time to review the documents which included his contract of employment; appraisals: complimentary letters from service users; email correspondence from the service user and the email received by the respondents from the service user's acquaintance (P68/361). The respondents also provided the claimant with copies of an invoice from Kelvin Care dated 20 July 2012 and an e mail with attachment from Kelvin Care which they wished to include with the documents for the Disciplinary Hearing together with the claimant's e mail requesting additional documents dated 18 September 2012.

44. The claimant was allowed a further six days to review the additional documents and prepare for the Disciplinary Hearing. The Disciplinary Hearing was re-scheduled for 27 September 2012. In a letter to the claimant dated 20 September 2012 (P31/128-130) Clare Muir sought to reassure the claimant that he had access to the same documents as the disciplinary panel and that nothing had been withheld from him. She apologised to the claimant if he felt that the tone of her previous letter (P30/125-127) had in some way conveyed guilt. She sought to reassure the claimant that the letter was intended to convey the serious nature of the situation. She sought to reassure the claimant that no decision would be made until the disciplinary panel had met and considered all of the information before them to which he also had access.

45. The claimant attended a Disciplinary Hearing on 27 September 2012. The claimant was accompanied by James Docherty at the Disciplinary Hearing. James Docherty was an Advice Worker with experience in representing individuals. He was not a fellow employee of the claimant. The respondents assumed that he was accompanying the claimant as a trade union representative. James Docherty had been asked at short notice by the claimant's Solicitor to accompany him at the Disciplinary Hearing. James Docherty did not meet the claimant until around 10 minutes before the Disciplinary Hearing. He had not been told about the reason for the Disciplinary Hearing. He had not seen any of the documents provided to the claimant by the respondents, He obtained very little information from the claimant before the start of the Disciplinary Hearing.

46. The Disciplinary Hearing was conducted by Grant Carson and Angela Mullen who were accompanied by Margaret Sanders from HR. Grant Carson and the claimant had a particularly good working relationship. Grant Carson was supportive of the claimant and respected his work and commitment to independent living. The claimant confirmed that he understood the purpose of the Hearing. Grant Carson repeated the allegations against the claimant as detailed in the letter sent to him on 17 September 2012 (P30/125-127). The claimant agreed that he had the same information pack as Grant Carson and

Angela Mullen. The claimant informed Grant Carson of concerns he had raised previously about how the allegation had come to the respondents' attention. He claimed to have been told that the allegation was made by the service user during a telephone call on the day of his suspension and not, as he had subsequently discovered, from a telephone call and e mail from her acquaintance. Grant Carson confirmed that the allegations had been made by the service user's acquaintance and that the service user was subsequently contacted and interviewed when she confirmed the allegations. The claimant expressed disappointment that what he considered to be important information including an e mail from the service user stating that she was happy with the support he had provided was not included in the information pack from the outset. Grant Carson reminded the claimant that documents identified by the claimant had been added to the information pack. The claimant agreed that the packs now contained all relevant information.

47. The claimant confirmed that he had read the respondents' record of the meetings held on 25 July 2012 (P4/41-42) and 24 August 2012 (P7/46-51). He agreed they were a reasonable record of the meetings. Grant Carson explained to the claimant that he and Angela Mullen would ask him some questions and that he would be given an opportunity to add anything he felt had not been raised. The claimant described his work with the service user which included compliance with funding protocols. Angela Mullen asked the claimant to explain why the invoices submitted to ILF were of a similar nature and style to an invoice generated on his work computer on 10 April 2012 for a non-existent company and a template invoice forwarded to his home e mail address on the same day. The claimant referred to an earlier explanation provided to Clare Muir when he was first shown the invoices. The claimant stated that in his opinion the invoice from Ailsa Care Services dated 26 May 2010 (P9/65) was legitimate and that he maintained this position. He explained that it was normal practice for Kelvin Care to email un-headed invoices and post hard copies on headed paper. Grant Carson and Angela Mullen confirmed that they were happy to accept that the invoice from Ailsa Care Services (P9/65) was legitimate. Angela Mullen explained that the issue in question was the similarities between the invoice from Ailsa Care Services

(P9/65) and the invoice from Care Services Ltd (P10/67) which had been e mailed to his home address. She asked the claimant why he would have a template invoice on the system and then send it to his home address. The claimant replied that he was not aware that the invoice was there or sent to his home e mail. The claimant said that he had checked his home e mail and there was no sign of the invoices. The claimant said that he could have sent them but questioned why he would do this. Angela Mullen sought the claimant's views on the invoices and whether he thought they were identical apart from the different agency and whether the invoice from Care Services Ltd (P10/67) had been created from the invoice from Ailsa Care Services (P9/65). Grant Carson showed the claimant which parts of the invoice (P10/67) were of concern to them. He asked the claimant whether he was able to explain why the properties dialogue box showed the claimant - "Jamie" - was logged on to his work computer when the invoice from Care Services Ltd (P10/67) was created and sent by e mail. The claimant said that he had no recollection of sending the information and had found nothing in his home e mail account. The claimant confirmed that he was not disputing that the documents were found on his work computer but had looked and, as reported to Clare Muir, could find no trail of them on his home computer.

48. Grant Carson explained to the claimant that the concern was the invoice from Care Services Ltd (P10/67) seemed to have been created on the claimant's computer, had become a template for invoices submitted to the ILF as part of the service user's review and that the invoices were sent to the claimant's home e mail account. The claimant replied that the invoices used for the ILF review were those sent to him by the service user. Angela Mullen pointed out that the same invoice (P10/67) had been modified and was last saved by the claimant. She asked the claimant to explain why the invoice (P10/67) "*appears to be from no one*" and was found on his work computer. The claimant referred to standard procedure and that he may have tried to delete it but put it in the wrong place. He added that he "*did not understand why*". The claimant stated that he had tried to get the service user to comply with the ILF and was concerned that she was not providing his with enough information. Angela Mullen stated that she was struggling to understand why the invoice (P10/67)

was on the system and asked the claimant whether he had received it from the service user or service provider. The claimant said that he knew that he made mistakes and referred to not being very *"PC literate"*. He suggested that he might have *"sent stuff by accident"* or saved information in the wrong files. Angela Mullen questioned why the service user would submit an invoice with no contact details and asked the claimant whether he questioned it in his role as an Independent Living Adviser. The claimant referred to his heavy workload and that there was no indication from the ILF that anything was untoward. When questioned further the claimant replied that he could not remember and of only remembering because *"we tell him"*.

49. James Docherty questioned who could say that it was the claimant who sent the invoices. He questioned whether they were *"looking at a hidden agenda"*. He referred to court proceedings as a result of whistleblowing. Grant Carson explained that the e mail in the information pack showed that the user was logged on as the claimant and that a username and password were required to access the respondents' computer system. The claimant explained that he used the default password. When questioned about who else might know his password, the claimant confirmed that he had given it to Clare Muir. The claimant suggested that he may have been logged on and left the screen open. In response to Grant Carson questioning the likelihood of someone else accessing his e mails the claimant replied that he did not know and that he had a head injury and *"can't remember yesterday let alone months ago"*. The claimant stated that he was not questioning Grant Carson's judgment. Grant Carson explained that the computer properties clearly show that the invoice (P10/67) was created on the claimant's computer and sent to the claimant's home address. James Docherty stated that they could possibly go into more detail if they knew the identity of the whistle-blower. Grant Carson emphasised the importance of having to investigate the information found on the claimant's computer after concerns were raised by the service user.

50. The claimant stated that he had no recollection of the invoice (P10/67) or of sending it to his home email and had no record of the documents on his home e mail. Angela Carson asked the claimant to explain why he would send the



invoice from Ailsa Care Services (P9/67) to his home e mail for support provided two years previously. The claimant replied that he did not know - *"maybe that was when the office was closed"*. He said that he sent e mails to the wrong place and if sent to his home address in error he would delete and not keep them.

51. The claimant confirmed that he did recall sending the invoices to the ILF. The claimant, when questioned by Angela Mullen, stated that he was unable to recall why the invoices were from Care Services Ltd. Angela Mullen questioned the claimant about the invoice found on his computer which was said to have been issued by Care Services Ltd on 5 June 2012 (P20/97-98). The claimant stated that he had tried with difficulty to establish who Care Services Ltd were and had asked the service user to produce information for the ILF. He said that he looked at the telephone index to establish who there were. He stated that the service user had provided him with the invoice (P20/97-98). Angela Mullen pointed out that the invoice (P20/97-98) was paid in full on 28 May 2010. When asked whether this *"raised alarm bells"* the claimant replied that *"agencies are inept in providing invoices"* and that his priority was to ensure that the service user was receiving support and to submit information to the ILF. Angela Mullen questioned the claimant about correspondence found on his computer from another service agency. The claimant was unable to explain why all of the documents found by the respondents were on his computer. He stated that *"unlike his colleagues he was obsessed with ILF and wanted paperwork to be right"*. He said that *"apart from him deteriorating"* and taking a day off for a funeral in September 2011 he was committed to his work.

52. Grant Carson questioned the claimant about the allegation of sharing money with the service user and that the money was not used for its intended purpose. The claimant replied that any information submitted to the ILF had been provided to him by the service user. When asked again about sharing money he replied that it had never happened. Grant Carson and Angela Mullen questioned the claimant about why it had been necessary to meet with the service user at such frequent intervals. The claimant referred to work

related reasons for meeting the service user. Grant Carson asked the claimant whether in his role as an Independent Living Adviser he had ever had concerns about the agency services received by the service user as it did not appear from the available information to have been provided and was therefore claimed fraudulently. The claimant replied that it was not something about which he had really thought and that he had been focussing on his work. He referred to there being no indication from the ILF or Social Work of any issues. The claimant referred to having already explained that he tried to establish who Care Services Ltd were and that due to the volume of work and having to cope with other things he did not follow it up. The claimant confirmed to Grant Carson that he did have concerns about cash withdrawals from the service user's bank account. He confirmed to Angela Mullen that he had not mentioned his concerns to his line manager.

53. Grant Carson asked the claimant and James Docherty whether there was anything further they wished to add or ask. James Docherty enquired whether *"this person has a power of attorney"*. Grant Carson confirmed that he did not. The claimant said he was unhappy that the panel was not provided with all the information in the first place. He confirmed that he was happy that the Panel now had all the information. He referred to the situation going on for months and questioned why he was not told about the information from "the whistle-blower". Grant Carson confirmed that the information from "the whistle-blower" had been provided and was in the information pack. He referred to Clare Muir telling him that the statement was not relevant. He stated that if it had not come in he would *"not be here today"*. Grant Carson confirmed that the "whistle-blower statement" led the respondents to interview the service user who had raised the serious allegations. He confirmed that this was the reason for the investigation. The claimant confirmed that he understood this but still felt that there was a *"lack of honesty"*. He questioned whether the service user would be able to read the e mail from "the whistle-blower" (P68/361). He raised concerns that about the way in which the interview with the service user was conducted and the use of leading questions. The claimant stated that had he been a skilled criminal he would have deleted the information and covered his tracks. He referred to information provided by the service user as being

inaccurate and claimed that she had told lies. He denied having taken money. Grant Carson agreed with the claimant that there were some inconsistencies and inaccuracies in the record of the service user's interview (P8/52-63). The claimant referred to Etienne d'Aboville's summary of the service user's position during her interview. The claimant raised concerns about questions put to the service user when interviewed. The claimant questioned why the service user was asked by Etienne d'Aboville about him receiving money from other people and asked whether there was "*another agenda here?*" The claimant suggested that the service user was "*having words put in her mouth*". The claimant asked why the service user would have sent him an e mail thanking him for the service provided. Angela Mullen asked the claimant what the service user had to gain from making the allegation. The claimant replied that he did not know and "*never had any indication that she didn't like me. / really don't know what her agenda is*". The claimant suggested that the service user may have "*spoken to someone and they have told her stop*". James Docherty asked whether there were any witnesses and why the police were not involved. Grant Carson confirmed that the Police were involved but this was a separate investigation.

54. The claimant was questioned about the service user's position that she did not see invoices. The claimant stated that this was not the case and that following the earlier review he sent paperwork to the ILF. He stated that the ILF would not have allowed a client to go for years without submitting papers. The claimant said that he was concerned enough to mention sending money back if necessary. The claimant emphasised that he was a full time employee and questioned why he would jeopardise his work and family for the amounts involved. He sought to re-assure Grant Carson that he never visited the service user out of office hours and was not sharing money. He described the service user as "*a woman trying to convince you she knows what she is doing, taking on PAs, with not enough money*". He referred to giving the service user good advice. He referred to his workload and lack of time to do more research. He referred to his record keeping as being his downfall and accepted that he was not as good as it as others. He denied having told the service user not to return money to ILF. He stated that she did not have any to return. He denied

having assisted the service user with the recruitment of Personal Assistants or handling cash.

55. The claimant referred to concerns about his health, work and wife who was just out of hospital. He said that he wanted the matter concluded and asked about further procedure. Grant Carson informed the claimant that he and Angela Mullen would need to reflect on everything including his evidence and then come to a conclusion. He confirmed that this could take a week or two, possibly longer if they had to re-interview anyone. James Docherty referred to reserving the right to question any anonymous witnesses. Grant Carson questioned whether that would be possible and referred to the information in the pack to which the claimant had been asked to respond. Grant Carson confirmed that the claimant's Clinical Psychologist's report (Medical Documents 458-461) was included in the pack. The respondents produced a written record of the Disciplinary Hearing (P32/131-149).

56. Having considered the information before them including the evidence of the claimant at his Disciplinary Hearing Grant Carson and Angela Mullen concluded that the claimant had created invoices for a non-existent company which he submitted to the ILF in support of funding for services that had not been provided. They were not satisfied that there was sufficient evidence to show that the claimant had shared money from the ILF with the service user. They had serious concerns about the claimant's professional practice in relation to the invoices submitted to the ILF and his lack of knowledge generally about what services were received by a service user. They no longer trusted the claimant. They doubted his integrity. They had regard to the respondents' Disciplinary Procedure (P3/36-40). They were satisfied that the claimant's conduct amounted to gross misconduct for which he should be dismissed. Given the serious nature of the claimant's conduct, they were not persuaded that a sanction short of summary dismissal was appropriate.

57. Grant Carson was about to go on annual leave. He decided that as a matter of courtesy it would be appropriate to contact the claimant by telephone to advise him of the outcome of the Disciplinary Hearing and to answer any questions that the claimant may have about the disciplinary process. He also wrote to

the claimant on behalf of the disciplinary Panel on 4 October 2012 (P33/ISO-152) confirming their decision. In his letter (P33/150-152) Grant Carson summarised the explanations given by the claimant to the allegations against him as follows;

- 5 1. *That you may have sent these invoices to yourself in error or that someone else may have accessed your computer; creating the documents and then emailing them.*
2. *You denied taking any money from the service user.*
3. *You never had cause to suspect that the services were not being*  
10 *provided for.*

58. In his letter Grant Carson detailed why the claimant's explanations were found to be unsatisfactory as follows;

- 15 1. *You gave no satisfactory explanation for sending the invoices to yourself. The Panel asked why you would email a two year old invoice and then shortly later email what was in our opinion, an amended version of the same document which formed the basis of template invoices submitted to ILF. You were unable to give a satisfactory explanation saying you could not remember. During our meeting you made reference to your psychologist report which you had agreed to share with us. Again, we gave this much*  
20 *consideration but having reviewed it and taking into account that you may not remember why you did something the report does not say that your condition can affect your judgment of what you should and should not do. Both you and your union representative then*  
25 *suggested, as you used a default password, that someone else created the invoices and sent the emails to you. Given that your computer is in an open plan office where there is no need to desk share and given the fact that you also said you did not broadcast your passwords, we find it unlikely that these documents were*  
30 *created and sent by someone else to your home email address.*

*Therefore there is a reasonable belief that the invoices were created by you.*

2. *With respect to the second concern around your professional practice. It is expected that an advisor working closely with a service user to question dubious invoices and during the course of this support enquire about the services the service user was receiving.*

3. *The panel had great concerns around your professional practice. It is expected that an advisor working closely with a service user to question dubious invoices and during the course of this support enquire about the services the service user was receiving.*

The claimant was informed that he would be dismissed with immediate effect and was not entitled to notice or pay in lieu of notice.

59. The claimant's last day of employment with the respondents was 4 October 2012. He was paid his accrued holiday and wages to the date of his dismissal.

60. The claimant was informed of his right to appeal against the decision to dismiss him. The claimant understood the purpose of the Appeal Hearing. He understood why he had been dismissed. He confirmed in writing (P34/153) that he wanted to appeal the decision. Andy Leven, the respondents' Vice Chair was appointed to hear the claimant's Appeal along with Marianne Scobie a Director of the respondents. Andy Leven wrote the claimant by letter dated 15 October 2012 (P35/154-155) acknowledging receipt of this letter (P34/153) and confirming that the "*appeal will be conducted by way of a review of the original decision*". He requested that the claimant advise him in writing of the reasons why he believed that the decision was unfair. He reminded the claimant of the importance of bringing with him any paperwork or other evidence that he would like him to consider. The claimant was informed of his right to be accompanied by a trade union representative or fellow employee. The claimant was informed that the decision on appeal would be final and there was no further right of review.

61. The claimant submitted his grounds of appeal in writing (P36/156-163). He apologised for the delay and explained that he was very unwell and had the further complication of his wife having just left hospital following surgery.

62. The claimant set out his grounds of appeal (P36/156-163) as follows;

5           *"It is my opinion that the decision taken is far too severe and that it is also unfair because whilst I accept emails may have been sent to my old email address I genuinely have no recollection or record of me actually sending any work related Information, however unlike GCIL I have had no opportunity to reflect back to my GCIL records and with Acquired*  
10           *Brain Injury and Dysexecutive Syndrome my memory is extremely poor.*

*I have tried constantly to remember possibly why this may have occurred. Since I have had time to reflect I do recall one Agency submitting an Invoice which was well overdue and me quite rightly questioning why after such a long period of time this invoice was*  
15           *not paid by GCVS, without access to my email records and not being able to contact the person involved at GCVS {.....} I cannot fully explain this, GCIL may now want to examine this new information to see if it may support my case, this might be a possible explanation for me wanting to look and further examine*  
20           *an older invoice at a later date, also as previously explained due to excessive workload pressures and abysmal absence within the ILS team this may be another reason for me to try and work extra at home which was permitted by using our GCIL remote access, nonetheless its now pointed out that is a breach of my contractual*  
25           *terms which I was not aware and also to be frank I feel it's only fair to point out that I have never been given any type of notification about this not being allowed to happen. Clare Muir would say it's in your staff handbooks but Clare has failed to produce these handbooks to some of GCIL Staff and I had to specifically raise this point to her within the full GCIL team*  
30           *meeting. I therefore feel that the decision to dismiss me was an*







*extremely severe consequence not only to me but also to my wife and family.*

*GCIL have left me destitute, with no future career prospects and forced me into a world of benefits which means that when you are dismissed you do not get a penny from anywhere how am i expected to manage, in effect I have lost my job, will lose my home, and finally my sanity, my family and I will be homeless without any source of income so in respect of this appeal may I again reiterate that I believe the GCIL's decision is far too severe.*

*Clare Muir accused me of having documents on my PC that were in her opinion not legitimate. Furthermore, she said I had modified these particular invoices and she could prove this because the wording ROSTER was on the invoices which she had circled as an indication of my guilt, according to Clare, Agencies did not use these templates, when in actual fact these invoices were legitimate, and agencies do use these templates, this is later admitted and accepted in the GCIL records, so it seems Clare was inaccurate in her argument. I have yet to receive an apology for inaccuracy and the blame, hurt, caused which was totally unnecessary to inflict on an innocent person under extreme duress who was telling Clare the truth about these invoices at that time, but I was being told by Clare I was not telling the truth, I proved my case.*

*Suspended on full pay assumes I am innocent until proven guilty but to be honest from the point that I was first told the allegation was made I did not receive the truth from Clare, I was told (the service user) provided the information and also made the initial allegation that led to my suspension but in actual fact the truth is the allegation came via a phone call and at GCIL's request an email from (the acquaintance), I know this because Clare Muir made another mistake, when she was minute taking and she disclosed the name of the Whistleblower who incidentally stated in his evidence he is not making any allegations but merely reporting what he was told by (the service user).*

5 I was therefore effectively suspended by GCIL on untruths and hearsay and also furthermore there was a breach of confidentiality by Clare Muir for disclosing (the acquaintance) name. Surely the Chair of that meeting should have ensured such private and confidential information was checked on the minutes written by another employee prior to postage.

- 10 • I refer to the minute of the meeting with Etienne, Maureen, and (the service user) on the 28/08/2012 and despite the fact GCIL had written confirmation from (the service user) she was happy with my support they continued to lead (the service user), Clare Muir had attempted to keep vital information out of the investigation and disciplinary panels evidence packs along with other vital evidence from (the acquaintance). I had to insist on this information being produced.

15 Clare Muir stated (the acquaintance) information was not relevant I fail to understand how Clare made that conclusion as without the phone call from (the acquaintance) and his email GCIL had no evidence at that stage from (the service user) to suspend me.

That was not provided until nearly a full month later.

20 The phone call and that email from (the acquaintance) had significant relevance to me as it led to my suspension and finally to my employment at GCIL being terminated. Clare Muir also advised me that my psychology report was missing from my personnel file only to discover she had misplaced it.

25 Maureen and Etienne continually corrected (the service user) throughout that meeting which I was glad that happened however I am extremely offended, and angry at suggestion made to (the service user) at that meeting, for example Maureen asked leading questions such as was (the service user) afraid to challenge me or found me intimidating to which (the service user) replied "no, she wasn't scared of me". I take extreme exception to Maureen's  
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questioning as (the service user)'s track record is full of inaccurate and confused evidence.

If (the service user) had answered "yes" what might have been the consequence? Intimidation implies something very different from challenging.

Maureen also asks (the service user) did Jamie visit you when he was off sick, to my knowledge I had one day off last September to attend my brother funeral so if my memory is correct I was never off sick. Again that could and should have easily been checked by Clare Muir but was not.

Similar to this, Etienne suggested a number of points to (the service user) that were in my opinion manufactured towards the termination of my employment. For instance, where Etienne recaps to (the service user).

"So Jamie made the arrangements, Jamie created Invoices and you shared the cash"? (the service user) never gave an answer to that question according to the minutes.

I also don't know why Etienne could justify asking (the service user) if I got money from other clients when Maureen already had invaluable information there was no such evidence. This has really sickened me and made me very ill.

My legal representatives are treating this matter very seriously as this may amount to GCIL putting suggestions and words into (the service user)'s mouth.

(The service user) should have been asked questions and not prompted to give answers.

- Another factor that has upset me greatly is the fact that I was instructed not to contact any of my work colleagues from the start of the initial suspension and yet according to the ACAS guide I

5 had the right to have a work colleague support me at my hearings. GCIL disempowered me by denying me my human right to exercise my right for support and a fair hearing. This was further compounded by the fact that I received a text message on 25/07/2012 from a colleague within one hour of leaving the GCIL office on my last day at work stating "Can't believe we were just talking about suspension earlier - what happened?" how's that for confidentiality about my absence from work. I am also aware of colleagues who have attempted to contact me and I feel sorry that I am unable to contact them back to say I am aware and appreciate their support. I believe overall that GCIL have not been transparent or totally honest with me because I was told colleagues and service users were told I was off long term sick, yet another untruth and again I felt totally let down as the support I could have accessed was denied to me and without contact with colleagues I was indirectly denied support by GCIL.

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- Recently I received a Get-Well Card and a letter from a service user that was handed into GCIL and posted to my home address, I assume by a member of GCIL Staff. The message of support was invaluable to me. I supported up to 104 of my own service users and yet only 1 person had complained, coupled with the fact that all the staff who were regularly long term absent and staff who start at 8.00 am and finish every day at 4.00 pm this left the service 50% down daily after 4.00 pm, also regular flexi days for the select few. At times I had to have their service users work completed as well as my own, I think I should be praised rather than penalised, also supporting two Directors of the GCIL Board.

30 I also was instrumental with the development work completed at GCIL which opened up a business opportunity in terms of the Enhanced Payroll. This could have happened years ago but nobody listened to me.

So please do not question my commitment to GCIL, it was my life.

*And all I have ever done is the best for my clients and GCIL.*

*I was once told this is not a job to you Jamie, it's a vocation.*

*I feel deep sorrow that my career has been ruined by a single allegation from one of the people I fought so very hard to support, my clients were my life and if you want integrity speak to your fellow Directors who know me and had my ILS support (X, Y & Z). The latter two, I had a hand in bringing to the GCIL Board of Directors.*

- *I believe a fairer outcome could have been reached regarding the disciplinary panel that is based on the fact I gave six loyal years to GCIL.*

*During that period of employment there were no serious issues raised or proved against me in fact this is my second period of suspension the first on 27/11/2007 which I was solely victimised from within the ILS Team the fact no apology was ever given to me will not be forgotten by me and was also noted by my colleagues as to the disgraceful treatment I had to endure and was made to suffer. My health never recovered.*

*I am requesting all of that information from the first suspension is now provided to me as this is in my opinion was yet another charade to terminate my employment. Etienne and Maureen know I fought hard to protect (AB)'s ILF money from being financially abused by his mother. This proves I fought to save ILF funds being abused.*

*Glasgow City Council has attempted over a prolonged period of time to get my employment terminated at GCIL based on the fact I am prepared to defend each service user's case. One of service users at GCIL pointed out and highlighted that Etienne and his management team may be intimidated by Glasgow City Council, and somewhat bullied to comply or lose their contract to Council.*

5 / addressed this in an assertive manner, yet another reason to dismiss me for daring to challenge the 'Purse Holders' by fighting for my service users human right to an independent life. Remember CD a man who I supported and he was told he had no other option but to sell his house to finance his support. He died soon afterwards, Social Work tried to deny this but yet again I discovered within minutes from CD's meetings, it was agreed that was their plan was made up without CD's consent. So much for Self Directed Support.

10 That affected CD and also me personally.

Finally it has not been possible to highlight all my concerns and I will be happy to discuss this further at the scheduled meeting.

An example of other information is, when I was threatened at work and Violence to Staff that I reported was not followed up.

15 With respect I now ask you to review this appeal fairly.

- GCIL have made their decision to end my employment and I feel devastated not only about the allegation made against me but the way this investigation was improperly and unfairly conducted and how I was mistreated by GCIL. In view of the above information, my health has been adversely affected and GCIL have left me with no available option to return to work, had the disciplinary panel reached a lesser penalty in their outcome and decision".

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30 63. The claimant attended an Appeal Hearing on 23 October 2012. Andy Leven and Marianne Scobie were in attendance for the respondents. They were accompanied by Margaret Sanders from HR. The claimant was not accompanied at the Appeal Hearing. The claimant confirmed that the notes of the Disciplinary Hearing (P32/131-149) were accurate but felt that he should have had access to them straight after the Hearing. Marianne Scobie explained the purpose of the Appeal Hearing. Andy Leven stated that if the claimant felt at any point that the meeting was going to fast he should ask

them to slow down. The claimant confirmed that he was happy to proceed with the Hearing without a representative. Andy Leven advised the claimant that if at any point he felt that he wanted to have a representative at the meeting they could adjourn and reconvene. The claimant referred to having attended many meetings and of spending a lot of time doing representation.

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64. Referring to his grounds of Appeal the claimant stated he had "*racked his brain*" about the late invoice for another service user and was unsure if the respondents had managed to contact GCVS to follow this up. He described his grounds of appeal as straight forward. The procedure had been flawed; the respondents had breached the ACAS code of conduct; case law should have been looked at and that he had been told invoices were not legitimate and then that they were. In addition, the initial allegation was made by the acquaintance by telephone and then an email to Maureen McPeak but on the day of his suspension he was told it was made by the service user. The claimant stated that being suspended on hearsay was the first of "*many untruths*". The claimant said that he felt disempowered that the ACAS code of conduct was not followed. He stated that although at a Disciplinary Hearing you can have a work colleague as a representative, he was told at the time of his suspension not to contact work colleagues. The claimant stated that he had tried to outline why it may have been possible to make a mistake. If he did make mistake, it may have been due to absence from work by others and that work still needed to be done.

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65. Marianne Scobie asked the claimant to explain the relevance of his level of work to the allegations made against him. The claimant replied that he probably was extremely overworked, but that it was partly his own fault. People came into the office and he would be happy to go out and assist them. He referred to access issues requiring him to do home visits and that after a previous suspension he felt victimised to a certain extent. In response to a request from Andy Leven that he provide more of an explanation, the claimant stated that he had to submit his taxi invoices with his flexi sheets and that he was never very good at doing flexi sheets. He felt picked on. He said that some colleagues were ruthless with their comments and that his taxi invoices

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were always right. Marianne Scobie asked the claimant to explain how the pressure of work might mitigate his suspension or dismissal. The claimant stated that he felt he was given a bit more responsibility. He referred to the possibility of his workload causing him to make mistakes and drew attention to his mental health and memory. Marianne Scobie asked the claimant to confirm whether the pressure of work was his mitigation for making mistakes or for the severity of his "punishment". The claimant replied both. The claimant stated that if he made a mistake he had no recollection of it. The claimant explained that he had done some work at home. He said that he was unaware that this was not acceptable. Marianne Scobie asked the claimant whether there was another example of working from home other than the invoices. The claimant replied that two invoices went to his home email address and that he had no record of them on his home computer. He said that if he had, he would have deleted them. He enquired whether anything ever came back from his home email address.

66. The claimant stated that another reason why he felt the respondents disempowered him was by refusing to give him all the evidence relating to the allegation. He identified an email from the service user which came in the week he was suspended, saying she was happy with the service. The claimant confirmed that the email was only provided to the Disciplinary Panel after he had requested it. The claimant agreed that the Disciplinary Panel received all of the information but added that he felt that there were questions about timing. He referred to Clare Muir describing the email from the service user's acquaintance (P68/361) as irrelevant. The claimant expressed concerns about the length of time taken to see the service user and obtain information. The claimant stated that he did not feel natural justice could be done, if the panel had not seen the email in favour of him. The claimant referred the Appeal panel to case law - Linfood Cash & Carry v Thomson 1989 IRLR 235 EAT and Article 6 of the ECHR. He stated that as an employee he had the right to witness statements/evidence.

67. Andy Leven asked the claimant to give examples of where the process was flawed. The claimant replied that he should have had the right at some point to

cross exam the witnesses. Marianne Scobie questioned whether such a procedure was appropriate at Disciplinary Hearings and asked the claimant what questions he would have asked the service user. The claimant replied that he had insisted the email from the service user's acquaintance (P68/361) be included in the information pack otherwise the Disciplinary Panel would not have known about it. Marianne Scobie replied that the Disciplinary Panel would have known it was a whistle blower. The claimant referred to criminal proceedings in which the police investigators are provided with all the information. Andy Leven reminded the claimant that the second allegation concerned with sharing money had been withdrawn and that any paperwork concerned with that allegation would be disregarded. The claimant accepted that the allegation of sharing money had been dropped.

68. The claimant stated that at the Disciplinary Hearing there were a number of issues that he was denied the opportunity to raise. He stated that most of the Hearing was concerned with his practice. He referred to Glasgow City Council influencing the outcome. He referred to the use of leading questions in particular by Etienne d'Aboville.

69. Andy Leven reminded the claimant that the Appeal Panel was concerned with the allegation concerning invoices being fabricated by him and submitted to the ILF. The claimant asked how the Disciplinary Panel had concluded that the invoices were not legitimate. Marianne Scobie referred to the Panel being provided with two invoices only one of which was legitimate and of the allegation that the claimant sent a legitimate invoice to his personal email address and fabricated another invoice which was not legitimate. Marianne Scobie referred to there being evidence to show that this happened on the claimant's work computer. The claimant replied that evidence indicated invoices came from his work computer and were modified at his computer. He stated however that he did not recall doing this. He said that he is not as PC literate as some of his team members. The claimant stated; *7 can't disagree, if its there, but I don't have any recollection of this. I certainly would not be putting my family through this. I have a track record with returning money to*

*ILF. I have intervened when a client was dipping the ILF funds and I wrote to Etienne and Maureen to say that this is not acceptable.'*

70. The claimant stated that questioning by Etienne d'Aboville and Maureen McPeak was misleading and he was hurt and offended that they asked the service user whether she was scared or intimidated by him. He referred to Maureen McPeak asking the service user if he had ever visited her while he was off sick. The claimant stated that he only had one day off for his brother's funeral. The claimant referred to Etienne d'Aboville stating that he *"made the arrangements, he created the invoices and you shared the cash"*. He referred to the service user not answering the question. Marianne reminded the claimant that this was a separate issue from his Appeal. It had been disregarded by the Disciplinary Panel and was not relevant to his Appeal.

71. When asked by Andy Leven, the claimant stated that he did not think that he had been provided with enough time to prepare for the Disciplinary Hearing. The claimant stated that he had to get a representative but did manage to get some notes written. He stated that there was a list of points that he didn't get through. He stated that the Disciplinary Panel had the information but in an inappropriate fashion and the timescale was a disadvantage at the Hearing. Marianne Scobie observed that the Disciplinary Hearing had lasted two hours and that there was no record that he had more to say. She asked the claimant what he was unable to say. The claimant replied that he almost got the impression at the start of the meeting that he would not be listened to. He said that he did leave and come back after the meeting finished and said something, which he described as no longer relevant. The claimant said that he did not feel that he got a fair hearing or that the Panel was honest with him. He did not understand why they would leave out information relevant to the investigation. He felt that the disciplinary procedure was flawed.

72. The claimant confirmed that he was told in writing not to contact his colleagues. He confirmed that he understood this to mean that he could not have a colleague as a representative. Marianne Scobie referred the claimant to correspondence informing him that he was entitled to be accompanied by a fellow employee. The claimant replied that there was a difference; had he

wanted a colleague he would do that himself and not have HR approach them for him. The claimant was asked whether he felt that this was inappropriate. The claimant referred to being contacted by a colleague within an hour of his suspension. He referred to there being a breach of his confidentiality. He was unwilling to identify the colleague concerned. Marianne Scobie informed the claimant that the issue was not relevant to the Appeal but it was something that they would look into it as a separate issue. The claimant referred to his attempts from the outset to explain that the invoices were legitimate and of being told that there were not. He referred to disclosure of the identity of the service user's acquaintance as a breach of confidentiality.

73. The claimant referred to there being lots of unprofessional conduct. He stated that he felt that he had highlighted where the investigation was flawed and commented on the severity of the penalty imposed and its impact on him in terms of obtaining future employment. Andy Leven referred to the claimant's grounds of Appeal (P36/1 56-1 63) and in particular where he referred to the Hearing being conducted unfairly. He asked the claimant to articulate as best he could anything else he would like to say in support of his Appeal. The claimant read from a prepared statement. He concluded that *"no reasonable employer would reach the conclusion that (he) was guilty of gross misconduct and therefore dismissal is unfair"*.

74. Following a ten minute break Andy Leven asked if there was anything else the claimant would like to add. The claimant replied that *\*7 thought of something there, but it's gone from me'*. Andy Leven explained that the respondents would get the minutes typed up as soon as possible and he and Marianne Scobie would meet and look at all the points raised. The claimant enquired whether they were aware that he was dismissed over the phone. Marianne Scobie confirmed that they were not aware of this and asked the claimant to describe the circumstances of what had happened. The claimant stated that he received a telephone call to tell him that he was dismissed and that he would receive a letter. Grant Carson made the call. He stated that he was not notified at that point about the right to appeal, he received another telephone call that same day informing of his right to appeal. The claimant could not

remember the date of the call. He referred to the letter of dismissal dated 4 October 2012 (P33/150-152).

75. The claimant commented that in terms of his character and role as an Inclusive Living Adviser the Panel should keep in mind that he was supporting approximately 114 clients, he wasn't receiving regular supervision and that his last performance review was in 2008. He referred to his Clinical Psychologist's report (Medical Documents 458-461) which stated that he was working at his capacity and that he has since deteriorated. He referred to having 35 clients in 2006 and at that time was noted to be having some difficulty. He also asked that it be taken into account that he was working with a group of clients some of whom are complainers. Marianne Scobie asked the claimant if he had brought up the lack of regular supervision with anyone. The claimant replied that this was not a criticism of Maureen McPeak as she was busy as well and that in the main he was respected enough to do the work. Marianne Scobie questioned the claimant further about not getting regular supervision. The claimant referred to a card from a client to him being delivered to the respondents' office. He said that he had very few complaints against him. Marianne Scobie asked the claimant again about a lack of supervision. The claimant replied, *'I'm not here to attack anyone'*. The claimant confirmed that he had raised issues with Maureen McPeak and Etienne d'Aboville about his capability and of making some mistakes. Andy Leven asked if he felt, as a hard working member of the team, that he was able to make it known that he felt under stress. The claimant replied that he felt anxious if he raised an issue as it may result in him losing his job as he knows *"he is getting worse"*. Marianne Scobie asked the claimant whether he had received any of the further assessments referred to in the Clinical Psychologist's report (Medical Documents 458-461). The claimant replied that he had received brain scans, was receiving additional support from Renfrewshire Council and was awaiting further assessments. Marianne Scobie questioned whether the respondents had received an up to date assessment from the claimant on which to base their support for the claimant. The claimant stated that his situation had deteriorated and that he knew he was having some difficulty.

76. The claimant stated; *I've got the notion in my head that Glasgow City Council are trying to persecute me. I'm not sure if it was GCIL that made the decision and that the Council made Etienne get rid of me*'. Marianne Scobie sought to reassure the claimant that the decision was made by the Disciplinary Panel.

5 The claimant said that he did not think that they could change the decision. He referred to a *"long standing thing with Glasgow City Council"* which he *"needs to bury"* and that there was *"enough going on"*. He said that Maureen McPeak could tell them more.

77. The claimant stated that his work was consistent and asked about further  
10 procedure. Andy Leven confirmed that they would seek to look at the matter urgently and to a timescale. They would look at all the points that had been raised. He confirmed that minutes would be typed up. Marianne asked if the claimant had anything further to say. The claimant enquired about his P45 and whether he would get a reference in the future. Marianne Scobie asked if the  
15 claimant was happy with the information provided to the Panel. The claimant replied; *I think so, I'm just sorry that this has happened. I didn't see my career ending like this, seen myself retiring from (the respondents). I've never been in trouble, I've led a clean life. I loved my job and did the best I could. I've told the truth*".

20 78. The claimant expressed the hope that at the Disciplinary Hearing, Grant Carson and Angela Mullen felt that he was transparent and had not tried to avoid answering their questions and that likewise the Appeal Panel felt that he had tried to answer their questions as best as he could *"with little memory"*. Andy Leven concluded the meeting and said that there may be a holding letter  
25 if they needed to clarify some issues. The claimant pointed out that his medication had been increased indefinitely due to stress. The Panel confirmed that all procedural points would be raised and taken forward and thanked the claimant for being so honest.

79. The claimant's appeal was unsuccessful. Andy Leven and Marianne Scobie  
30 were not persuaded that the decision to dismiss the claimant was either procedurally or substantively unfair. Having considered all of the information before them and having made enquiries about issues raised by the claimant

during the Appeal Hearing, including reference to an old e mail address and his receipt of the invoice dating from 2010 (P9/65) they were not persuaded that the claimant's grounds of appeal were well founded or that he had been able to show that Grant Carson and Angela Mullen had been wrong to conclude that he was guilty of the gross misconduct for which he was dismissed. They were not persuaded that the claimant had been able to identify any material flaws in the respondents' investigation or that he had been able to provide a satisfactory explanation for the existence of invoices from Care Services Ltd that were found on his computer. They were satisfied that given the serious nature of his misconduct that Grant Carson and Angela Mullen were left with no other option than to dismiss the claimant. Andy Leven wrote the claimant on 8 November 2012 to confirm the outcome of his Appeal. In his letter (P39/182-195) he advised the claimant as follows;

*"During the hearing we discussed and confirmed the grounds for your appeal were as follows:*

1. *You state that the invoices were legitimate and had been accepted as legitimate. You also refer to circumstances in which you were investigating a 'well overdue' invoice that may have been sent to your home email address either in error or to enable you to work at home.*
2. *You state that you were instructed not to contact colleagues thus denying you the right to be supported by a work colleague at your hearings.*
3. *You state that the decision taken was too severe.*

*Following points made in your letter and during the appeal hearing further investigations have now been carried out which include:*

- *Further examination of emails regarding invoices relating to GG*

Having presented the panel with your grounds for appeal on 22 October, you presented no further information or documentation for the panel to consider and agreed that both you and the panels have had access to all requested information.

5 Having given the matter full consideration, I am now writing to confirm that the original decision taken by Grant Carson and Angela Mullen stands for the following reasons:

10 During the appeal hearing and in your letter of appeal you raised a number of points. During the meeting we concentrated on those pertinent to your appeal, which I have listed below. I will address the other points separately in an addendum to this letter.

For ease of reference I will refer to each point in turn.

1. With regards to the invoices emailed to your home email address:

15 1.1 Contrary to your letter of appeal we do not consider the Care Services Ltd invoices to be legitimate and demonstrated to you during the meeting the many similarities between Ailsa Care Services Ltd invoices and Care Services Ltd invoices. The template for these was emailed to your personal email address and subsequent dated copies of the invoices were submitted to  
20 the ILF.

1.2 You make reference in your letter that the personal email address was an old one but this is the email address that you have used to contact GCIL as recently as 22/10/12.

25 1.3 In your letter you recall an agency submitting a 'well overdue' invoice and you may have, during the course of your work emailed the invoice to your personal email address to enable you to carry on working at home. One email was received regarding GG but this was not received by you until 26<sup>th</sup> April



2012. The invoices in question were sent to your personal email address on the 10<sup>th</sup> April 2012.

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2. You state that you were instructed not to contact colleagues thus denying you the right to be supported by a work colleague at your hearings.

2.1 Although this point was not raised during the initial disciplinary hearing at which you were accompanied by your union representative, it is fundamental that we address this issue.

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2.2 In the letter dated 21<sup>st</sup> August 2012, you were instructed not to contact colleagues or clients. This was a reiteration of what was said during the meeting with the Support Services Manager and the HR and Office Manager during which you were suspended on contractual pay. This is common practice during suspension. In the letter from the HR and Office Manager asking you to attend a disciplinary hearing, dated 17<sup>th</sup> September 2012 it states 'you are entitled, if you so wish, to be accompanied by a trade union representative or fellow employee. Should you wish to bring a colleague, please let me know and I will approach them initially on your behalf. Again, this is standard practice. You requested a postponement and additional information and in the letter to you dated 20 September 2012 further clarification was made around your right to be accompanied. You were informed that Article 6 of the Convention of Human Rights was not applicable in this instance and that GCIL follows ACAS's principles and 'to this end you are entitled to be accompanied by either a trade union representative or a colleague'. This same phrase is repeated in my letter to you dated 15<sup>th</sup> October 2012.

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- 2.3 Both Marianne and I have reviewed the documentation sent to you and do not uphold your claim that you have been denied the right to be supported by a work colleague.

3. *Having reviewed the information presented to us and in line with GCIL's Disciplinary Procedure we believe the severity of sanction is appropriate.*

5 *Both Marianne and I believe that GCIL has acted as any reasonable employer would and given the nature GCIL's business has been left with only one option; dismissal on the grounds of gross misconduct. You have now exercised your right of appeal under our procedures and this decision is therefore final".*

10 80. Attached to his letter (P39/182-185), Andy Leven provided the claimant with a detailed response to points made by him during the Appeal Hearing (P39/186-195).

15 81. The ILF informed the claimant's Solicitor in July 2013 (C12) that the respondents did not report a fraud to them involving the claimant. They advised the claimant's Solicitor that they could not "*at this point confirm if there was a fraud or not as legal action has not been taken*".

82. The claimant has not worked since his dismissal. He has been in receipt of benefits including Disability Living Allowance, Employment & Support Allowance and Personal Independence Payment. The claimant's health has deteriorated since his dismissal.

20 83. Criminal proceedings were brought against the claimant. When the case called at Glasgow Sheriff Court on 28 June 2016 it was deserted by the Sheriff.

## **SUBMISSIONS**

### **RESPONDENTS' SUBMISSIONS**

25 84. The respondents provided the Tribunal with their written submissions on 7 August 2017. They were copied to the claimant. What follows is a summary of the above submissions. They included proposed findings in fact based on which the respondents asked the Tribunal to conclude that the claimant was

not unfairly dismissed and that they did not discriminate against him because of his disability or by failing to make reasonable adjustments.

### **UNFAIR DISMISSAL**

5 85. Mr Lord responded to the specific challenges made by the claimant to the respondents' evidence. He invited the Tribunal to accept the evidence of the respondents' witnesses. He submitted that the respondents followed a thorough and fair procedure. Any delay in discussing matters with the service user was because of the respondents following Police advice. The respondents were entitled to examine the claimant's work computer. They  
10 were also entitled, submitted Mr Lord, having received no further contact from the Police to contact the service user. This was not unreasonable in circumstances where they wished to complete their investigation. The respondents' internal processes submitted Mr Lord were not dependent on authority from the Police to proceed or otherwise. The respondents were not  
15 obliged to wait until the conclusion of any criminal procedure before undertaking their own investigation and disciplinary proceedings. The respondents had no obligation, submitted Mr Lord to report the allegation of fraud to the ILF. The respondents complied with their obligations to report concerns to Glasgow City Council and Adult Safeguarding. The claimant is  
20 wrong, submitted Mr Lord, to suggest that the ILF made no finding of fraud. The ILF in terms of the information before the Tribunal made it clear that they cannot confirm whether there had been a fraud. They also make it clear, submitted Mr Lord, that they have not carried out an investigation (C12).

25 86. In all the circumstances submitted Mr Lord the respondents had a reasonable belief based on a reasonable investigation that the claimant was guilty of the alleged misconduct and that given the serious and deliberate nature of that misconduct summary dismissal was the correct sanction to impose. The claimant's dismissal was in all the circumstances fair.

### **DIRECT DISCRIMINATION**

30 87. Mr Lord did not dispute that in relation to a claim of direct disability discrimination an act of dismissal cannot be considered anything other than

less favourable treatment if the cause of the treatment was "because of" the claimant's disability. It was however the claimant's evidence, submitted Mr Lord, that the e-mail (PX) from the service user's acquaintance was the root cause of his dismissal. While the respondents accept that it was the e-mail (PX) that started the process it is their position, submitted Mr Lord, that it was the overwhelming evidence found thereafter which led to the claimant's dismissal. Either way, submitted Mr Lord, the decision to dismiss the claimant was not because of his disability. There was not a single reference to the claimant's disability in the e-mail and the decision to dismiss was because the respondents reasonably believed, following its detailed investigation, that the claimant was guilty of creating and submitting fraudulent invoices to ILF. The claimant's disability submitted Mr Lord formed no part of that decision.

88. While the respondents accept that the claimant has memory issues as a consequence of his disability, submitted Mr Lord, that cannot excuse fraudulent actions by an individual. The claim was not brought under Section 15 of the Equality Act 2010. The claimant is unable to show anything more than that he was disabled and was dismissed. The claimant has fundamentally failed to show there is "something more" as required by the test in **Madarassy v Nomura International pic 2007 ICR 867**, submitted Mr Lord. He has shown no causative link and this head of claim should be dismissed.

## REASONABLE ADJUSTMENTS

89. In relation to the claim of failure to make reasonable adjustments it is not overly clear, submitted Mr Lord, what the claimant suggests the respondents should have done. In any event, submitted Mr Lord, the respondents have done everything that could reasonably be expected of them in terms of making adjustments for the claimant. The claimant was informed at all stages of the respondents' concerns regarding his conduct; he was provided with copies of the documents within a reasonable period of time to prepare answers to the allegations; he had the benefit of legal assistance at that stage; he was offered breaks during the disciplinary meeting; he was guided by Grant Carson to relevant sections of documents during the Disciplinary Hearing and had the outcome explained to him by telephone and then in writing.

90. Mr Lord reminded the Tribunal that the claimant continued to state throughout the Tribunal Hearing that he did not understand what he is said to have done. The issues came about in 2012, five years ago, during which time, submitted Mr Lord the claimant has had the benefit of legal advice from two Solicitors, the assistance of a trauma counsellor, trade union representative and the Tribunal. The respondents, submitted Mr Lord, do not believe that the claimant does not understand what he is said to have done. On his case, even if the respondents had allowed him five years to get to grips with the allegations and documents, he would still not have understood them. This expectation would be neither workable nor reasonable, submitted Mr Lord.

91. It is the respondents' position, submitted Mr Lord, in particular with regards to the evidence of Clare Muir, that the manner in which the claimant presented throughout the course of the Tribunal process was no reflection of how he presented while employed by them. Mr Lord invited the Tribunal to accept this evidence. He reminded the Tribunal that the claimant's job was not simple. He required a detailed, if not expert, understanding of the ILF subject matter and he worked closely with other vulnerable adults to provide advice and training on ILF. Had the claimant, while employed by the respondents, presented in the manner he has throughout the Tribunal proceedings he would simply not have been able to do his job.

92. The claimant, submitted Mr Lord, was put to no more disadvantage than a non-disabled employee facing an investigation and disciplinary process. He was provided with the same information as would have been provided to a non-disabled employee. The requirement is to alleviate a disadvantage and not put the claimant at an advantage submitted Mr Lord. The respondents had no knowledge of the alleged substantial disadvantage said to have been caused to the claimant, submitted Mr Lord. The claimant had never displayed any real issues with the handling or processing of information. The respondents, submitted Mr Lord, had provided the claimant with an advanced form of dictaphone which he opted not to use during any part of the process. To the best of the respondents' knowledge, submitted Mr Lord, the claimant was able to participate in the disciplinary process. He could answer all

questions put to him, even if that answer was simply that he could not remember.

## REMEDY

- 5 93. On the issue of remedy, Mr Lord invited the Tribunal to make no award of compensation. The claimant had stated that he did not seek compensation and in any event has been unfit to work since December 2012. There is no evidence to suggest that his inability to work was caused by the respondents and on the contrary, the Tribunal has heard evidence that the claimant's condition was already deteriorating by the time the issues leading to his dismissal came about. Mr Lord further submitted that in the event of any award being made to the claimant, it should be reduced by 50% having regard to the principles in **Polkey v AE Dayton Services Ltd 1988 ICR 142** and by 100% on account of contributory fault. On the issue of contributory fault, Mr Lord referred the Tribunal to the four questions in the case of **Steen v ASP Packaging Limited UKEAT/0023/13**. In support of his submission that the award should be reduced by 100%, Mr Lord referred the Tribunal to the case of **Lemonilous v Church Commissioners 2013 UKEAT/0253/12**. As regards any award for injury to feelings, Mr Lord submitted that taking account of inflation and the **Simmons v Castle** uplift it should not exceed £5,000.
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- 20 94. The respondents confirmed that they had no comments to make on the claimant's written submissions. They provided the Tribunal with a counter Schedule of Loss which they had omitted from their written submissions.

## CLAIMANT'S SUBMISSIONS

- 25 95. The claimant provided the Tribunal with his written submissions on 22 August 2017. He responded to points made by the respondents. The claimant's submissions were copied to the respondents. What follows is a summary of the above submissions.

## UNFAIR DISMISSAL

- 5 96. The claimant submitted that the information provided by the service user's acquaintance was hearsay. He was merely reporting what he had been told by the service user. It should also be noted, submitted the claimant, that the respondents had already met with the service user's acquaintance and started their own internal investigation before summoning him to his suspension meeting. Maureen McPeak and Clare Muir had already started their file search, withdrawn files from a number of service users and extracted invoicing that the claimant later claimed was authentic but the respondents were claiming he had manufactured. The claimant referred the Tribunal to invoices from Ailsa Care and Kelvincare which, he submitted, the respondents had eventually accepted were authentic.
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- 15 97. The claimant complained about the unfairness of the suspension meeting. He had been unaware of the allegations, had no opportunity to have anyone to support him and had no idea why the allegations were made. The claimant referred to an e-mail from the person who was reported as making the allegation which he submitted came from the service user and not her acquaintance. The claimant submitted that he was in a state of shock and could not understand the allegations. The claimant submitted that he was not given a fair hearing at the suspension meeting, investigation meeting, Disciplinary Hearing or Appeal Hearing. The claimant submitted that every hearing was flawed, dealt with unfairly and in a discriminatory way in relation to his disability.
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- 25 98. The claimant submitted that no reasonable adjustments were made that took full account of his disability, cognitive impairment and support requirements with memory. The claimant submitted that from the outset the respondents were more concerned with protecting a *"self-confessed fraudster"* and a man who was *"merely working outwith his contract of employment"* with Renfrewshire Council by doing work in Glasgow City Council with one of the respondents' service users. The claimant submitted that no duty of care was shown to him by the respondents as an employee who was chronically sick
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and disabled with an acquired brain injury and who was being treated under the Mental Health Act, Scotland.

- 5 99. Referring to evidence before the Tribunal, the claimant submitted that there was no proof that his conduct was the reason for dismissal. Based on the respondents' evidence he was a "guru", "expert" and brilliant at his job, in other words it would appear from their evidence, submitted the claimant, that his conduct was nothing other than exemplary during his employment with them.
- io 100. Referring to the suspension meeting, the claimant submitted that the respondents' own procedures were not in line with employment law. The respondents did not fully explain or give him the full details of their already commenced investigation. The claimant was not fully appraised of the allegations. He was not aware of the service user's acquaintance. The respondents had commenced their investigation before he was even  
15 suspended. The claimant questioned why he had not been informed that his computer system was accessed by another person without his consent and why it was stated that he had sent e-mails to his home e-mail address and back to the respondents' computer when there was no evidence to support such an assertion.
- 20 101. The claimant challenged the conclusions reached by the respondents on their examination of the computer system and his e-mails. He relied upon the authenticity of invoices referred to by the respondents. There was no evidence before the Tribunal, submitted the claimant, to support the respondents' position that an e-mail arrived in his private e mail and was returned to his  
25 work e mail. The respondents cannot prove this, submitted the claimant, for the simple reason that it never happened. The claimant submitted that he cannot understand why the respondents were concerned about an apparent template invoice being of "*uncanny similarity*" to the genuine invoice forwarded to him given the similarity of invoices generally and that bills are usually for the  
30 same amount of care. The claimant submitted that he cannot and will not state who Care Services Ltd are because he does not know if they exist or not. The



claimant submitted that he did not create a template for fraudulent purposes. He referred to evidence before the Tribunal that no fraud was ever reported.

5 102. The claimant submitted that he may have been recorded as the author of the invoice but evidence was led that others went on his computer before and after his suspension. The claimant questioned the number of adapted documents referred to by the respondents. He submitted that he scanned all the documentation presented to him by the service user to ILF and that this should have been retained in accordance with the respondents' procedure for database. The claimant questioned why a criminal would highlight fraudulent activity on his computer. It is no wonder, submitted the claimant, that he was unable to give an explanation. There was no evidence or proof to explain, then or now.

10 15 103. The claimant challenged the fairness of the investigation meeting. He was not provided with any evidence, proof, or documentation prior to the meeting. There was no agenda, nobody to support him, take notes or explain and no protocol was followed. The claimant submitted that random evidence was presented by the respondents which they claimed was forged but later accepted was authentic. The evidence provided, submitted the claimant, did not even relate to the service user. The claimant submitted that he gave the respondents a perfect and honest explanation for the invoices. Clare Muir, submitted the claimant, actively overstepped her power by asking questions and prompting the two investigators to ask questions during the meeting when she was there as a minute taker. The claimant submitted that he has no memory of manufactured invoices on his computer.

20 25 104. The meeting with the service user, submitted the claimant, took place five weeks after his suspension, a period of great distress. The claimant submitted that the service user is a liar. Her evidence to the respondents was inaccurate. This is apparent, submitted the claimant from her having to be corrected at the meeting with regards to matters such as who got her ILF and how he applied the ILF regulations. The service user's response to questions from the respondents' investigators, submitted the claimant, were an attempt to deflect blame from herself; she was led during her meeting and there are no

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answers recorded in the respondents' note of their meeting to points put to the service user. The question about whether she was frightened of him could have been misinterpreted as him being an abuser, submitted the claimant. They only evidence of abuse, submitted the claimant, was of his of abuse at work about which the respondents had been aware since 2010 and done nothing. The claimant described the respondents' behaviour as bizarre because no answer was provided by the service user to their questions.

105. The claimant submitted that his lack of explanation is understandable. He had charges put before him in respect of which he was not allowed access of the same evidence that was available to the respondents.

106. As regards the Disciplinary Hearing, the claimant submitted that he requested an adjournment because his wife was just out of hospital. The claimant submitted that he still did not fully understand the charges. The claimant submitted that the respondents did not allow for his distressed state and mental health at that time. The claimant submitted that he was put under pressure by being told that he would be disciplined if he did not make the revised date for the Hearing. The claimant submitted that he took umbrage because he was being denied access to all the information he was entitled to receive at each meeting. The claimant submitted that to get a fair hearing all of the evidence must be shared and that by refusing him documents the respondents put him at a disadvantage in order to "*exit him*" from the business amounting to discrimination of a disabled man.

107. Challenging the conclusions reached by the respondents, the claimant submitted that someone else could have used his computer to create the documents; the witnesses did not observe him creating the invoices; the witnesses created a complex set of theories that could not be proved and the witnesses did not report a fraud to ILF. The ILF, submitted the claimant, have never reported any confirmation of fraud to the Police, ILF, Social Work or the respondents, nor has the service user. The claimant referred to his evidence that he took the service user's invoices and scanned them to ILF and that the invoices that were originally submitted to the claimant as fraudulent were authentic.

108. The claimant submitted that he was "*exited from the business*". Had the respondents followed the correct employment laws and procedures, submitted the claimant, they would have found no fraud and no reported fraud and no money sharing, which would have delivered a different outcome. The respondents could not prove that he was the author of an invoice that was possibly manufactured. There was no explanation submitted the claimant as to why he would manufacture a fraudulent invoice that cannot be linked to him directly. The respondents are only able to assume that it was him, submitted the claimant, like the non-existent money sharing that was dropped. The respondents' assumption that he sat and forged 13 invoices over a period of approximately 3 hours in an open plan office without being noticed is preposterous, submitted the claimant. On the balance of probabilities submitted the claimant the respondents cannot prove that he was guilty of the conduct for which he was dismissed.

109. The claimant described Grant Carson contacting him by telephone as an "*unnatural way*" to dismiss an employee and which caused a lot of distress. He submitted that the disciplinary panel were not interested in his explanation and that it is "*impossible to explain this farce*". There was no evidence before the Tribunal, submitted the claimant, about his professional practice apart from the non-existent invoice fraud and no evidence of poor professional practice.

110. The claimant submitted that he did nothing wrong either negligently or deliberately. It has never been disputed, submitted the claimant, that he scanned the documents to ILF. The respondents have failed to establish that he manufactured the invoices or any motive he might have had. It is accepted, submitted the claimant, that it could not be proved that he was sharing money. It is also accepted, submitted the claimant, that he has told the truth from the outset. The invoices and forms that were authentic were proved to be authentic. They were authentic forms which the respondents repeatedly told the claimant were manufactured and fraudulent. In addition, submitted the claimant, records show that the service user had no saving of funds. The claimant submitted that in the above circumstances the respondents have acted beyond their powers by criminalising him, slandering his reputation and

"causing his grounds to Employment Tribunal". His dismissal was unfair and the respondents breached the Equality Act and his Human Rights.

- 5 111. The claimant submitted that he was scared to report the behaviour of Angela Mullen at the Disciplinary Hearing for fear of prejudicing his Appeal. He referred the Tribunal to the evidence of James Docherty in support of his position. He questioned the respondents' representation of Marianne Scobie's evidence. The claimant submitted that the Appeal was purely a "*propaganda exercise*" as can be seen from the respondents' decision. The claimant submitted that Marianne Scobie did not look at the full investigation but only at the disciplinary decision. The claimant submitted the Appeal Hearing was flawed as the whole case needed to be reviewed. It was unfair to only look at the Disciplinary Hearing and by doing so the respondents continued to act outwith their control by abusing him and denying him his right to a fair hearing. The Appeal should have been upheld in his favour.
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- 15 112. The claimant submitted that the respondents' process was flawed, unfair and discriminatory. The claimant submitted that he was denied all of the evidence that the respondents had before them in advance of being suspended; the respondents lied by stating that the allegation was made by the service user and not her acquaintance; the respondents told him that he was sharing money, which was never proved; he was told and not asked that he had manufactured fraudulent invoices when there was no evidence that it was actually him and he was denied information about the internal investigation that had already started. The claimant submitted that the respondents examined his computer and e-mails without his consent and despite being instructed by Police Scotland to leave the investigation and IT equipment alone at the time. They failed to follow Police Scotland guidance. The claimant was denied the opportunity to examine evidence that he had the right to access and challenge for his defence. The respondents met with the service user who was inconsistent in her evidence and was corrected by the respondents on several occasions. The claimant submitted that the respondents should have interrogated a "*so called self-confessed fraudster*" but failed to do so in case the service user incriminated herself. The claimant
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submitted that the respondents should have investigated the allegation of why a woman would have asked for her care service invoices if no company existed and no care was provided.

5 113. The claimant submitted that the same procedural errors were made throughout the disciplinary procedure. The claimant submitted that the respondents failed to provide him with all of the information and details of the allegations, until forced to do so six days before the disciplinary meeting. The claimant submitted that while the respondents postponed the first Disciplinary Hearing, at the same time they issued him with a warning and threat that 10 further disciplinary action would be held against him. The claimant submitted that the respondents were obliged from the outset to provide him with further documents and only followed due process when forced to do so. While he was offered assistance at the Disciplinary Hearing, the claimant submitted that it was refused because he felt criminalised by the respondents conceding 15 everyone in the organisation was aware of his suspension. The written communication of dismissal did not contain full reasons behind the decision to dismiss. The claimant submitted that the Appeal was more of a "*paper exercise*" than an Appeal and the outcome was not delivered in great detail.

20 114. The Employment Tribunal must question, submitted the claimant, whether there was any actual crime committed. The claimant questioned whether a crime was reported and if so, there must have been a crime scene and criminal evidence. The claimant submitted that if there was a crime, the respondents have admitted tampering with the potential crime scene and its forensic evidence. The claimant questioned whether anyone was charged 25 and whether "*conspirators*" were involved. Such questions need to be answered, submitted the claimant. The claimant questioned whether he was the only person pursued for the alleged crime. Why has the person who claimed from the ILF and admitted guilt not been reported? Why did the respondents only pursue the claimant? The claimant submitted that the 30 respondents should have considered all of the above questions to protect an innocent person from being criminalised. He claimed that the respondents failed miserably opting to condone the service user's "*self-confessed*

*fraudulent activity*". The claimant submitted that the respondents preferred to pursue an innocent person to enable the respondents to "*exit him*" from their employment.

115. The claimant submitted that the respondents failed to present the Tribunal with evidence of any attempts to contact the Police. It is ludicrous, submitted the claimant, to suggest that Police Scotland are not following up reported crimes. The claimant questioned delays in contacting the Police and the respondents' priorities. The claimant rejected the respondents' suggestion that he would have preferred to wait four years until conclusion of the criminal proceedings. The claimant submitted that he did not commence criminal proceedings. The claimant submitted that he had no control over the criminal case calling on seventeen occasions, only two of which were attended by the respondents. The claimant submitted that he was made ill as a result and was considered so unfit he could not plead due to damage to his health by the respondents. The claimant submitted that the case was deserted by the Court and the Procurator Fiscal. The claimant submitted that a four-year suspension would have been a negligent act by the respondents to enable them to win the case over "*a dying man*".

116. The claimant submitted that the respondents had a duty to report criminal activity to the ILF as did the service user. Neither reported the activity to ILF. The claimant submitted that the respondents had a duty to report the service user in particular as she had "*self-confessed to fraud*" of ILF funds. The claimant referred to funding of the respondents by Glasgow City Council to supply ILF support and to a tripartite agreement with the ILF. The respondents, submitted the claimant, are bound by the ILF trustee protocols to report misuse of ILF funding. The claimant submitted that ILF cannot confirm there was a fraud. ILF have made no attempt to question documents submitted by the service user as being fraudulent. ILF paid the invoices without question. They never questioned them. The ILF have never investigated the matter, submitted the claimant, even after his Solicitor raised the matter with them. The claimant submitted that a fraud has never been investigated because it has never been reported by the respondents, the

service user, Police Scotland or the Social Work Services. The matter, submitted the claimant has been effectively hidden or covered up by the respondents. The claimant submitted that ILF can confirm that he was more focused on preventing misuse of care funds than abusing them.

- 5 117. In conclusion, the claimant submitted that he was not guilty of misconduct. He submitted that if the respondents had carried out due process and conducted a proper investigation their findings in fact would have been totally different. The claimant submitted that in order for him to have had a reasonable chance to defend himself all the evidence, including allegations should be factual and  
10 truthful. The claimant submitted that no reasonable person or employer could have determined this outcome of guilt and misconduct. Given the treatment he had received and its effect on him, submitted the claimant, his dismissal was unfair, discriminatory and a breach of the Equality Act. The decision to dismiss him was not fair in the slightest.

#### 15 **DIRECT DISCRIMINATION**

118. In relation to the claim of direct discrimination the claimant submitted that the treatment he received during his employment, the disciplinary process and the Employment Tribunal process was abusive, slanderous and made him suicidal. The claimant referred to a flawed investigation process by the  
20 respondents. He referred to his statement and submitted that he was denied the right to evidence and a fair hearing because he was treated as "an *imbecile*". The claimant submitted that hearsay evidence was relied upon from a man who should be "*sacked for working beyond his jurisdiction*". The investigation was not based on a complaint or allegation from the service user and that to be told this at his suspension was a "*downright lie*".  
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119. The claimant submitted that despite the respondents' decision being based on hearsay, they did not contact the service user for five weeks. The claimant submitted that during this period the respondents built their case against the claimant for the use of so called alleged invoices that were later accepted as  
30 authentic. The claimant submitted there was no overwhelming evidence. There was no record or report of an alleged fraud being made to the ILF. The

invoices, submitted the claimant, were accepted by ILF and ILF paid the funds to the service user and no issues have ever been raised or actioned by ILF over the past five years. There has been no overwhelming evidence produced by the respondents to the Employment Tribunal to support their decision. The  
5 only thing the respondents have brought forward, submitted the claimant, is the suggestion that the invoices may have been adapted and in their opinion, it could only have been by him. The mere suggestion, submitted the claimant, that he would commit fraud and then save the so called fraudulent invoices on the respondents' database was "*absolute nonsense*".

io 120. The claimant referred to the service user's acquaintance as an ex Director of the respondents. He described him as naive for engaging with the service user. The claimant submitted that the service user's acquaintance and his wife, a former good friend and mentor, knew that he was disabled and of his impairment. The service user's acquaintance, submitted the claimant, only  
15 reported what he had been told. He had never accused the claimant of anything. The claimant submitted that he is not guilty of any crime. The respondents continue to over-exercise their power of criminalising him when no fraud exists.

121. The claimant submitted that his application for leave to amend dated 6 March  
20 2013 included a claim of disability related discrimination in terms of Section 15 of the Equality Act. The claimant submitted he has a copy of this from HMCTS.

122. The claimant submitted that he is an innocent man until proven guilty. He submitted that as a disabled person he was subjected to an horrendous time  
25 by the respondents' representatives during the Employment Tribunal process. The claimant submitted that by not following up their request that he obtain his medical records and a further psychological assessment, they acted in a discriminatory manner and caused damage to his overall health and emotions and by failing to accept his disability and by being subjected to continuing  
30 abuse from Mr Lord about money sharing, fiddling etc. The claimant submitted that such behaviour by the respondents' representatives would not have been allowed by Employment Judge Gall. The claimant submitted that



he was discriminated against because of his disability and had his rights abused under the Equality Act and the Human Rights Act. This head of claim must stand, submitted the claimant.

## REASONABLE ADJUSTMENTS

- 5 123. As regards the respondents' failure to make reasonable adjustments, the claimant referred the Tribunal to the grounds stipulated by his Solicitors at previous Hearings and in evidence produced to the Tribunal. The claimant submitted the respondents should have ensured that he was fully aware of the charges being made against him; the respondents knew of the claimant's  
10 cognitive impairment and that he required explanations and support to fully understand the situation; the respondents knew the claimant had no way of recalling the alleged allegations and they should have given him notice of their concerns to allow him to build his defence for the next meeting. He referred to the above situation continuing until six days before his disciplinary.
- 15 124. The claimant submitted that he knew nothing of charges against him and had no access to the information or evidence held by the respondents. The claimant referred to the evidence led by his witness James Docherty. The respondents, submitted the claimant, had declared itself judge and jury by criminalising him even before his disciplinary. By doing so, submitted the  
20 claimant, the respondents were over-exercising their power and authority. The claimant submitted that it was irrelevant whether he was allowed breaks by the respondents when it had been established that they should have been provided. The claimant referred to the evidence of Grant Carson that the service user's allegations had inconsistencies and inaccuracies. The claimant  
25 was advised of the outcome by telephone and then in writing but as previously indicated, this had a distressing effect on him.
- 30 125. The Employment Tribunal, submitted the claimant, should base their judgment on the facts of the case and not on assumed allegations and flawed assumptions by the respondents of his guilt. The Tribunal, submitted the claimant, should weigh the thoughts of the respondents against the facts of

the case to ensure that his situation is not further compounded by guilt for a crime that does not exist.

126. The claimant submitted that he is very different now to when he was an employee. The claimant submitted that he will not return to his former level and that all indications suggest deterioration was triggered by his treatment from the respondents. The Tribunal, submitted the claimant must exercise its judgment as prescribed and not based on instructions from the respondents.

127. The claimant submitted that his job was extremely complicated and that he had mastered the system with decades of experience and from repetition of the work on a daily basis. The claimant submitted that this is common with individuals with acquired brain injury and Dysexecutive Syndrome -often referred to as the "Rainman Syndrome". The claimant described preferred comfort zones where disabled people can flourish beyond expectation and whose lives can be consumed with a specific subject matter, in his case the ILF. The claimant submitted that while he has deteriorated, hopefully the Tribunal can see that he is not the "*imbecile*" that the respondents are trying to portray. The claimant submitted that the Tribunal should uphold this part of his claim.

#### REMEDY

128. On remedy, the claimant denied that he is not seeking compensation for the damage caused to him by the respondents. If justice is served, submitted the claimant, he will be entitled to compensation as stipulated by Employment laws. If he is proved innocent, submitted the claimant, it is just and equitable to award him compensation. The claimant submitted that since his dismissal he has gone from being a perfect employee to being totally incapacitated. The claimant rejected the respondents' submission that he was deteriorating and could no longer work. He referred the Tribunal to evidence produced about Employment Support Allowance. The claimant submitted that under his contract of employment he should have been paid six months' full pay and six months' half pay while off sick. He stated the respondents were talking

nonsense about Statutory Sick Pay and submitted the Tribunal should be mindful that he was a highly-experienced Welfare Rights Officer.

129. The claimant submitted that any award made in his favour should not be reduced under the **Polkey** principles or for contribution. Referring to earlier points made and detailed above, the claimant disputed that his conduct was blameworthy. There was no proof of any fraud and no conscious action by him that was deliberate or wilful. The claimant submitted the respondents cannot have it both ways. The respondents cannot attach blame to him if no fraud is reported or proved.

130. The claimant informed the Tribunal that he was not familiar with the case of **Steen** (*supra*) referred to by the respondents and required support on the points of law relied upon by the respondents.

#### CLOSING SUBMISSION

131. The claimant submitted that his discrimination has been nothing short of disgraceful. He referred the Tribunal to his experience from February 2016 and the disgraceful conduct of Mr Warnes for the respondents. He submitted that Mr Warnes had called him a convicted criminal and questioned his disability. The claimant submitted that Mr Warnes thought he could *"call my bluff by threatening to put me through the grinder to prove I was not Disabled"*. The claimant submitted that the respondents' representatives had treated him with a lack of respect but found that he was not *"the imbecile they had portrayed to them by the respondents"*.

132. The claimant submitted that as a Survivor of Abuse and a Roman Catholic he has no bitterness to the respondents but does want justice. He does not seek to punish or damage the respondents but is merely acting out his right to be treated as an equal citizen.

133. The claimant described Mr Lord's *"self pouting"* as leading to the *"greatest howler of all time"*. He had been able to prove that despite suggesting otherwise, Mr Lord had not *"done his homework"* by reading the full documentation. Mr. Lord attempted to do his best to undermine him,

submitted the claimant, but was forced to accept that he had been "*round the circuit*". The claimant submitted that he had been subjected to three days of abuse by being told repeatedly that he was jointly sharing money and fiddling the ILF with the service user, something that was not the case as it was  
5 accepted that it could not be proved. Such conduct, submitted the claimant, would not have been permitted by Employment Judge Gall who had stated from outset that the Employment Tribunal was a separate matter from the criminal court decision to desert the case.

134. The claimant submitted that the Tribunal should have regard to his medical  
10 condition. He referred the Tribunal to the evidence of Clare Muir to show that he was denied the right to all of the evidence and charges against him; provided with full evidence of the case only 6 days before the Disciplinary Hearing and that the respondents had known for years about his cognitive impairment while admitting that they had not read his Psychological report in  
15 detail until years later. The respondents should have known, submitted the claimant, that he would need assistance at these types of meetings.

135. The claimant submitted that the respondents were negligent in their failure to understand the full extent of his cognitive impairment. They failed to be honest and lied about the allegation coming from the service user and not from her  
20 acquaintance. They failed to accept his honesty regarding the authenticity of invoices and ILF documentation. They failed to protect him from threats of violence by service users and their relatives and from persecution by colleagues from bullying and harassment which continued throughout the disciplinary and Tribunal process.

25 136. The claimant submitted that the Tribunal should have regard to the full Tribunal process from start to end. He submitted that no crime had been committed and there was no criminal conviction. The case was based on a fictitious allegation of a fraudulent invoice. There had been no fraud. The respondents' evidence was "pure fiction". He had told the truth throughout.

30 137. The claimant informed the Tribunal that he did not understand the respondents' reference in their submissions to Tribunal fees. The respondents

subsequently confirmed to the Tribunal that they did not seek to rely upon the above submissions as Tribunal fees did not apply to the claimant's case.

138. The claimant referred to a witness who the respondents did not call. Her witness statement was disregarded by the Tribunal. The claimant submitted that in his opinion the witness had been bullied at work and compromised by giving a statement to Mr. Warnes.

## ISSUES

139. The issues to be determined by the Tribunal were as follows;

1. What was the reason for the claimant's dismissal?

2. If the claimant was dismissed for gross misconduct, did the respondents believe that the claimant was guilty of that misconduct and did they have reasonable grounds for their belief having carried out as much investigation into the matter as was reasonable?

3. If the claimant was not dismissed for gross misconduct was the reason some other potentially fair reason and which the respondents were entitled to treat as a sufficient reason for dismissing him?

4. If the claimant was dismissed for gross misconduct or some other potentially fair reason, did the respondents follow a fair procedure including compliance with the relevant ACAS Code of Practice when disciplining and dismissing the claimant?

5. If the claimant was dismissed for gross misconduct or some other potentially fair reason did the respondents, having regard to equity and the substantial merits of the case, act reasonably in treating the claimant's misconduct as a sufficient reason to dismiss him?

6. If the claimant was not dismissed for gross misconduct or some other potentially fair reason, was he dismissed because of his disability?

7. Did a provision, criterion or practice of the respondents put the claimant as a disabled person at a substantial disadvantage when compared with a person who is not disabled?
8. If the claimant was put at a substantial disadvantage as referred to above, did the respondents take reasonable steps to avoid the disadvantage? &
9. If the claims are well founded what compensation is the claimant entitled to be awarded by the Tribunal having regard to losses sustained by him and damages including injury to feelings?

#### NOTES ON EVIDENCE

- io 140. The claimant presented to the Tribunal as an intelligent and articulate individual. He is an effective communicator and was able to speak up for himself during the Tribunal proceedings, challenging the respondents' presentation of their case and on occasions the role of the Tribunal. Possibly as a result of his experience of representing individuals, the claimant presented as having a good understanding of the legal process including legal concepts such as cross examination and hearsay evidence. He had a good understanding of his case. He was able to locate documents from a large Bundle and presented his evidence with clarity and in a logical and sequential manner. He read from documents and took notes during the Hearing. He was able to put his case to the respondents' witnesses in cross examination in a lucid and robust manner both in person and through the Tribunal. He was unaccompanied for most of the Hearing. The claimant repeatedly advised the Tribunal that he was at risk of suicide. He confirmed to the Tribunal that he wished to proceed and referred to assistance and legal support that he was receiving from others outside the Tribunal.
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141. It is not in dispute that the claimant is disabled and the Tribunal does not doubt that he has strategies which enabled him to cope and function so effectively at the Hearing. It is however difficult to reconcile this with his position that at the time of his dismissal he was unable to understand what was going on and that his cognitive impairment has deteriorated since then. It was also difficult to reconcile his appearance before the Tribunal with the
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Clinical Psychologist's report (Medical Documents 458-461) to which the claimant attached much weight and which recorded in 2010 that tests suggested a significant decline in verbal functioning, a very low IQ (63) and a reading age of around 8 - 10 years. It was not in dispute that at the time of his dismissal the claimant was successfully undertaking a complex job. While filing and paperwork were not his strong points, his expertise in ILF funding was not in dispute. Many of the arguments he advanced during the disciplinary proceedings and before the Tribunal were technical in nature such as reliance by the respondents on hearsay evidence and onus of proof. In presenting his case, the claimant also relied heavily on the abandonment of criminal proceedings relating to allegations made against him by the service user to support his position that he was not guilty of gross misconduct. The Tribunal had limited information about the criminal proceedings. They took place sometime after the claimant's dismissal. They were of limited relevance to the issues before the Tribunal. The Tribunal did not doubt that they would have been a source of stress and anxiety to the claimant. The Tribunal explained to the claimant that the issues before it differed from those considered by a criminal court. The claimant disagreed and continued to refer to the absence of any criminal conviction as evidence of unfair treatment by the respondents.

142. Both during the disciplinary process and before the Tribunal, the claimant avoided addressing the central issue of the case against him of invoices discovered on his computer from a non-existent company for services which had not been received by the service user and which he submitted to the ILF. The claimant expressed discomfort and anxiety when questioned about his honesty. His inability to understand questions and the proceedings generally became more acute when his version of events was challenged and issues were raised which reflected poorly on his case.

143. While recognising that the claimant has coping strategies, his presentation at the Tribunal was not of a person who would have been unable to understand the allegations made against him during the disciplinary proceedings and in response to which the respondents sought an explanation from him. The Tribunal was not persuaded that the claimant's memory and cognitive abilities

at the time of his dismissal prevented or made it sufficiently difficult for him to participate in the disciplinary process and understand the allegations made against him. Evidence of his work such as e mails dating from the time of the disciplinary proceedings (P14/75-79 & P28/1 22) and the fact that he was an effective employee providing technical advice to service users was inconsistent with his position that he could not understand what the respondents were asking him to explain. It was not in dispute that his cognitive impairment has deteriorated since his dismissal. Despite this, the claimant presented to the Tribunal as capable of understanding, recalling and analysing in detail points that arose before the Tribunal. Specific examples include his interpretation of an Employment report (P40/1 96-210) to which he was referred by the respondent's representative which stated that he was involved in helping clients *"complete application forms to access IL funds"*. The claimant was skilled at presenting his interpretation of the Employment report (P40/1 96-210) and to recall the procedure for obtaining authorisation. On another occasion, the claimant recalled with impressive accuracy a remark made earlier in the Hearing by the respondents' representative about having read all of the documents for the Tribunal and which the claimant was able to show was not the case. While not necessarily pertinent to the facts of the case, the above observations are provided as specific examples of the claimant's level of intelligence, accurate recollection of events and analytical abilities.

144. James Docherty gave evidence on behalf of the claimant. He attended the Disciplinary Hearing at the request of the claimant's Solicitor. The claimant provided a witness statement from Mr Docherty which, although undated, was taken to have been obtained around the time of the claimant presenting his claim. Mr Docherty's evidence in terms of his witness statement was, in general terms, very supportive of the claimant's position that he did not understand what was taking place at the Disciplinary Hearing, was questioned aggressively and that the respondents who pre-judged his culpability. While the Tribunal did not doubt that Mr Docherty felt the claimant had been denied a fair hearing at the Disciplinary Hearing, his evidence was successfully challenged by the respondents when he was asked to explain why his version



of events contradicted contemporaneous notes of the Disciplinary Hearing which recorded the claimant answering questions that disclosed an understanding of the allegations made against him and did not record unreasonable or abrupt questioning by Angela Mullen.

5 145. The Tribunal did not doubt Mr Docherty's credibility as regards the lack of  
information provided to him by the claimant about matters to be discussed at  
the Disciplinary Hearing. The Tribunal was not persuaded however that the  
lack of information provided to him in advance or Mr Docherty's inability to  
prepare fully for the Hearing was something for which the respondents were  
10 responsible or could be criticised. It was not in dispute that the claimant's legal  
representative had arranged for the claimant to meet Mr Docherty. This was  
not something about which the respondents were informed in advance of the  
Disciplinary Hearing and the Tribunal was satisfied that, if requested,  
additional time would have been afforded to the claimant to discuss matters  
15 with Mr Docherty before the start of the Hearing.

146. It was Mr Docherty's position that the respondents had pre-judged the charge  
against the claimant but again, when challenged, he was unable to identify  
any specific examples to support his position. The Tribunal was persuaded  
that had the Hearing been as described by Mr Docherty, that he would have  
20 intervened on behalf of the claimant given his experience of representing  
individuals. He was unable to explain why he did not challenge the  
respondents' behaviour if it was as aggressive and unreasonable as described  
by the claimant.

147. Overall the Tribunal found the evidence of the respondents' witnesses to be  
25 highly persuasive. Etienne d'Aboville was a particularly impressive witness. He  
gave his evidence in clear and measured terms. He accepted that the  
dismissal had taken place some time ago and that this might adversely affect  
his recollection of events. Having said that he could clearly recall the material  
aspects of the investigation in which he was involved and described spending  
30 "*ages agonising over this*" in an attempt to find an explanation favourable to  
the claimant. Mr d'Aboville gave thoughtful answers in response to the  
claimant's detailed cross examination. He did not hesitate to correct himself

where appropriate and in particular as regards his involvement in the subsequent decision making process. He was not asked directly by the claimant, and gave no evidence of having concerns, about the claimant not understanding the nature of the allegations or the purpose of their meeting.

5 148. Mr d'Aboville's evidence was particularly persuasive in relation to the concerns he had about not only evidence from the service user and her acquaintance but also the documents found on the claimant's computer which included a template and invoices in almost identical terms for a non-existent company which were submitted to the ILF to vouch for funding. Mr d'Aboville's evidence  
10 was clear that without this information, the case against the claimant would have been far less compelling and might not have led to disciplinary action. The Tribunal could find nothing in Mr d'Aboville's evidence to suggest that he was motivated in any way to have the claimant disciplined other than the fact that he was presented with information suggesting that the claimant had  
15 created false invoices for ILF funding which a service user had accused him of sharing. The Tribunal was not persuaded that he felt under any pressure from Glasgow City Council to dismiss the claimant. The Tribunal, while recognising that he had authority to question such decisions as Chief Executive of the respondents' organisation, was satisfied that Mr d'Aboville was not involved in  
20 the decision made to dismiss the claimant.

149. The Tribunal was not persuaded that questions put to the service user by Mr d'Aboville sought to encourage the service user to give answers that were detrimental to the claimant. The Tribunal was satisfied that Mr d'Aboville summarised the service user's position. *"Jamie made the arrangements, he  
25 created invoices and you shared the cash"* was not a question as submitted by the claimant. It was a summary and not, as argued by the claimant, put to the service user as a leading question. The Tribunal was satisfied that Mr d'Aboville interviewed the service user with an open mind and not as submitted by the claimant with a view to incriminating him.

30 150. The claimant did not challenge Grant Carson's honesty. They had been close work colleagues and there was no motive identified by the claimant as to why Mr Carson would seek to bring about his dismissal or ignore any evidence that

might have assisted the claimant to avoid dismissal. In his evidence, Mr Carson was clear that there was insufficient evidence to support the allegation that the claimant had shared funds with the service user but was satisfied that the remaining allegations were established and sufficiently serious to justify dismissal.

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151. Mr Carson gave a credible account of the claimant's appearance and behaviour during the Disciplinary Hearing. He accepted that the claimant had not been himself to the extent that he was nervous and not his usual confident self. The Tribunal accepted Mr Carson's explanation that he put this down to the serious nature of the allegations being made against the claimant. He was satisfied that the claimant understood the disciplinary process. He gave a clear explanation as to how he had assisted the claimant during the Disciplinary Hearing to identify those parts of documents on which he was being asked to comment. Mr Carson was clear in his evidence that he did not think that the claimant was confused. He referred to taking time to explain the process to the claimant and giving him *"ample time to answer or provide an explanation for his actions"*. The Tribunal accepted Mr Carson's evidence that had the claimant appeared confused that he would have adjourned the meeting.

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20 152. The Tribunal was satisfied that the claimant's dismissal was the joint decision of Grant Carson and Angela Mullen. The Tribunal found Angela Mullen to be a credible witness. She gave full answers and persuaded the Tribunal that she considered all relevant evidence before making the decision to dismiss the claimant. The Tribunal accepted her evidence that she had not behaved in an aggressive manner towards the claimant. While her questions were thorough and no doubt left the claimant feeling uncomfortable and nervous, the Tribunal did not conclude from her evidence and that of Grant Carson, who was with her throughout the Disciplinary Hearing, that her behaviour had been inappropriate or oppressive as suggested by the claimant. The Tribunal was not persuaded that the claimant did not raise his concerns about Ms Mullen's alleged behaviour at the Appeal Hearing for fear of prejudicing his case. The claimant raised issues at the Appeal Hearing about the manner in which

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Etienne d'Aboville had questioned the service user and showed no apparent concerns about criticising the Chief Executive of the organisation. His evidence lacked credibility that he felt unable to raise concerns about Ms Mullen's alleged behaviour towards him as part of his Appeal.

5 153. Marianne Scobie was also a very impressive witness. She gave her evidence in a clear and measured manner. Ms Scobie persuaded the Tribunal that along with Andy Leven, she had considered in detail the claimant's grounds of appeal and all of the information available to the Appeal Panel. She had sought an explanation for the invoices found on the claimant's work computer  
10 but no new evidence was produced. She was clear that the claimant was asked and agreed that he understood the purpose of the meeting and was satisfied with the process. The Tribunal was satisfied from her evidence that had Ms Scobie had any concerns about the claimant's ability to present his Appeal effectively that the Hearing would have been adjourned. She  
15 appeared genuinely taken aback by the suggestion that the claimant would have struggled to read documents provided to him during the disciplinary process. She did not accept that claimant was unable to understand the allegations against him. The Tribunal accepted her evidence.

20 154. The Tribunal also found Clare Muir to be a credible witness. Ms Muir was present in the Hearing room to instruct Mr Lord when the Tribunal heard the evidence of the claimant and the other witnesses in the case. The Tribunal took this into account when considering the weight to be attached to her evidence. Ms Muir was involved in an HR capacity in the disciplinary process. The Tribunal was not persuaded that Ms Muir's questions to the claimant were  
25 inappropriate or went beyond her role. She did not play any part in the decision to dismiss the claimant. Ms Muir was cross examined at length by the claimant. Her answers were detailed. Throughout cross examination she maintained her position that she was "*shocked by this whole situation*" but recognised, given the serious nature of the allegations coming from the  
30 service user that an investigation was necessary. The claimant sought to show that Ms Muir supported his position that the respondents had acted unreasonably in concluding that he was guilty of submitting fraudulent invoices

to the ILF. The Tribunal did not agree with the claimant's interpretation of Ms Muir's evidence. Her expression of disbelief that the claimant was capable of the alleged misconduct supported the respondents' position that they had not pre-judged his guilt and had an open mind to any explanation that he might offer.

155. Ms Muir was present at the suspension and investigation meetings. She gave credible evidence about the claimant's appearance at both meetings. She rejected any suggestion that the claimant appeared not to understand what was happening in terms of the serious nature of the allegations made against him and the process generally. Ms Muir's evidence was also persuasive as regards whether the respondents would have allowed the claimant to be bullied or otherwise treated less favourably because of his disability. She gave persuasive evidence of steps taken by the respondents to make adjustments for the claimant and the high respect in which the claimant was held prior to the allegations being made against him by the service user and the discovery of the fabricated invoices on his work computer.

## DISCUSSION & DELIBERATIONS

156. The claims before the Tribunal were for unfair dismissal, breach of contract, direct disability discrimination and failure to make reasonable adjustments. There was no claim of discrimination arising from disability. There was no free-standing claim under Article 6 of the ECHR against the respondents.

157. The Tribunal began by considering the claim for unfair dismissal. In terms of Section 94 of the Employment Rights Act 1996 (ERA 1996) the claimant had the right not to be unfairly dismissed. Section 98 of ERA 1996 requires the respondents to show the reason (or, if more than one, the principal reason) for the claimant's dismissal. It was the respondents' position that the reason for the claimant's dismissal related to his conduct, more particularly that he had fabricated and submitted invoices to the Independent Living Fund (ILF) to vouch for services that had not been received by a service user. The claimant referred to the respondents wanting to "exit him" from their employment. He

referred to the respondents being under pressure from Glasgow City Council to dismiss him. It was the claimant's position that from the moment allegations of wrongdoing came to the respondents' attention that he had no prospect of remaining in their employment. He referred to the respondents seeking to protect the service user from prosecution. He became the focus of their investigation and the person, from the outset, who was held fully responsible for any wrongdoing. He claimed to have been charged with negligence.

158. From the evidence before it, the Tribunal was satisfied that the reason for the claimant's dismissal related to his conduct. The Tribunal was satisfied that the respondents decided to dismiss the claimant because they believed that he had fabricated invoices to vouch for funds obtained from the ILF for which the service user had not received services. This was a conduct related matter. The Tribunal was satisfied that although the respondents had referred to the alleged conduct reflecting badly on the claimant's professional practice, that capability was not the reason, and certainly not the principal reason, for the claimant's dismissal.

159. It was not in dispute that the respondents focused on the role of the claimant in the alleged wrongdoing. He was their employee and they not unreasonably felt obliged to investigate the allegations given their serious nature. The Tribunal was not persuaded that lack of evidence as to whether steps were taken to report the service user's involvement in the misappropriation of funds from the ILF was grounds to doubt the reason for the claimant's dismissal.

160. The Tribunal concluded that the principal reason for the claimant's dismissal related to his conduct. Conduct is a potentially fair reason for dismissal in terms of Section 98(2B) of the ERA 1996.

161. On determining whether the claimant's dismissal was fair or unfair for a reason relating to his conduct, the Tribunal had regard to Section 98(4) of ERA 1996 and whether in the circumstances (including the size and the administrative resources of the respondent's undertaking) the respondents acted reasonably or unreasonable in treating the claimant's conduct as a sufficient reason for

dismissing him. This must be determined in accordance with equity and the substantial merits of the case.

162. The reason for dismissal being conduct related, the Tribunal had regard to the threefold test set out in the case of **Burchell v British Home Stores Limited** 5 **1980 ICR 303** in terms of which the respondents must show that it believed the employee was guilty of misconduct; it had in mind reasonable grounds upon which to sustain that belief and at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

10 163. From the evidence before it, the Tribunal was satisfied that both Grant Carson and Angela Mullen believed that the claimant was guilty of the misconduct for which he was dismissed. The Tribunal was satisfied that they had reasonable grounds upon which to sustain their belief based upon the information before them at the time of reaching their decision which included invoices found on 15 the claimant's work computer during the respondents' investigation; the claimant's interview with Etienne d'Aboville and the evidence of the claimant at the Disciplinary Hearing.

164. The fairness of the respondents' investigation was challenged by the claimant. The Tribunal considered the manner in which the respondents undertook their 20 investigation and obtained information relied upon to justify the claimant's dismissal. Given the serious nature of the misconduct reported to them - fraudulent misappropriation of ILF funding - it was not unreasonable to suspend the claimant at an early stage to permit the respondents to undertake an investigation. The Tribunal was not persuaded that the respondents were 25 obliged to wait until they had spoken to the service user before suspending the claimant. It was not in dispute that the claimant was suspended and the investigation started in response to hearsay evidence from the service user's acquaintance. In circumstances where the service user, as a vulnerable adult, was said to be alleging misconduct of a serious nature it was not 30 unreasonable for the respondents to act on the information and suspend the claimant pending the outcome of their investigation. Likewise, it is not unreasonable for the respondents to access the claimant's work computer

given the nature of the allegation and that it involved misuse of funds from the ILF. There was no evidence that the respondents sought to gain access to any private content or e-mails that were not concerned with work related matters.

5 165. The claimant complained of lack of confidentiality. He complained about receiving a text message from a work colleague shortly after his suspension. The Tribunal was not persuaded that the respondents had disclosed the reason for his suspension to the claimant's work colleagues. While it was not in dispute that being suspended is a stressful experience, there was no  
10 evidence that one or more of the claimant's work colleagues being aware of his suspension was prejudicial to him. The claimant also submitted that he was disadvantaged because he was denied access to his work colleagues during the disciplinary process. This was an issue that he raised at Appeal and which was considered by the Appeal Panel in detail. The Tribunal was not  
15 persuaded that the respondents acted unreasonably by requiring that the claimant avoid contact with work colleagues during the disciplinary process and in particular their investigation. The Tribunal was not persuaded that it resulted in any material prejudice to the claimant or prevented him from being represented during the disciplinary process.

20 166. While the Tribunal was not persuaded that the respondents were obliged to inform the claimant at the stage of suspending him about the precise nature of the allegations, the Tribunal was satisfied the claimant was provided with reasonably detailed information about why it was considered necessary to suspend him and that they were entitled to proceed on the basis that he  
25 understood the nature of the allegations. There was no suggestion that it was not a stressful experience for the claimant. It was however reasonable for the respondents to conclude that suspension pending an investigation was necessary. The Tribunal was not persuaded that the respondents acted unreasonably by relying upon the information provided to them by the service  
30 user's acquaintance when deciding to suspend the claimant. While it was not in dispute that the evidence of the service user's acquaintance was hearsay



evidence, the Tribunal was satisfied that it was sufficient to entitle the respondents to suspend the claimant and start their investigation.

167. It was not in dispute that there was some delay before the respondents arranged to interview the service user. This was not unreasonable given the circumstances explained by the respondents that the Police had advised them not to make contact with the service user pending their own enquiries. Any delay on the part of the respondents in contacting the service user was justified on the grounds that they were following advice from the Police. The respondents also had an obligation to the claimant to complete their investigation. The claimant had been suspended for some time and the respondents, not unreasonably, were unwilling to conclude their investigation based on the evidence of the service user's acquaintance as opposed to the service user herself. The Tribunal did not agree with the claimant that the same delay should have applied to the respondents examining his work computer. There was no evidence before the Tribunal of any advice issued by the Police to prevent the respondents from examining the claimant's work computer or that when it was examined by the respondents that it had been identified as a "crime scene".

168. When interviewed, the service user's version of events was sufficiently consistent with that reported by her acquaintance to satisfy the respondents that along with the information found on his work computer there was evidence that obliged them to take disciplinary action against the claimant. This was not an unreasonable decision on the part of the respondents. They based their decision to hold disciplinary proceedings on all the evidence before them, not only that of the service user. The claimant sought to show that the respondents attached too much weight to the evidence of the service user. He described her as a liar and unreliable. Grant Carson, while not agreeing with the claimant's description of the service user, accepted that there were some inconsistencies in her evidence and that based on the evidence before him he could not be satisfied that the claimant was guilty of sharing money. It was also the respondents' position that the outcome of their investigation may have been different and not resulted in disciplinary action

had they not discovered the invoices on the claimant's computer for which he was unable to provide a satisfactory explanation. In these circumstances, the Tribunal did not accept the claimant's position that the weight attached by the respondents to the evidence of the service user was unreasonable.

5 169. The claimant argued that the respondents did not report the alleged fraud to the ILF and that the ILF did not make a finding of fraudulent misappropriation of funds or similar wrongdoing. The claimant sought to show that the lack of any finding that he was guilty through the Sheriff Court proceedings should necessarily throw doubt on the respondents' findings that he was guilty of  
10 wrongdoing sufficient to justify his dismissal. It was not in dispute that the claimant had not been convicted of fraud. He was not found guilty by the respondents of sharing funds. He was however, on the balance of probabilities, found to have fabricated invoices on behalf of a service user which he submitted to the ILF to vouch for services which she did not receive.

15 170. Based on the information before Grant Carson and Angela Mullen at the time of reaching their decision to dismiss the claimant, which included an e mail to the claimant's private address sent on 10 April 2012 of an invoice in the name of Care Services Ltd (a non-existent company) (P10/67); was evidence that the claimant was the author of the invoice (P10/67); evidence of the invoice  
20 (P10/67) having been created and modified by the claimant (P11/68); evidence of the invoice having similar content to that of an invoice from a care agency (P9/65) which the claimant has also sent by e mail to his home e mail address and evidence of invoices from Care Services Ltd (a non-existent company) sent by the claimant to the ILF (P17/84-93), the Tribunal was  
25 satisfied that they were entitled to reach the above conclusion. They believed that the claimant was guilty of fabricating invoices based on reasonable grounds and after the respondents had carried out a thorough investigation.

171. There was no persuasive evidence before the Tribunal that the respondents  
30 Ignored relevant evidence that would have explained the allegations made by the service user and the invoices found on the claimant's computer. The claimant challenged the fairness of the disciplinary procedure on the grounds that the respondents did not provide him with all relevant information, in

particular the e mail received from the service user's acquaintance (P68/361-362), when calling him to a Disciplinary Hearing. The claimant identified the additional information that he sought from the respondents and it was not in dispute that that it was provided by the respondents in advance of the Disciplinary Hearing. The Disciplinary Hearing was postponed to allow the claimant an opportunity to consider the additional information and to prepare for the Hearing. At the Disciplinary Hearing he agreed that all relevant information had been provided. In these circumstances, the Tribunal did not agree with the claimant that he was prejudiced or that the respondents had acted unreasonably.

172. The Tribunal was satisfied that the respondents were entitled to proceed in the basis that the claimant understood the allegations being made against him. He was informed of the nature of the allegations at each stage of the disciplinary process. He did not display behaviour during the disciplinary process to suggest that he did not understand the allegations. At the suspension meeting the claimant was made aware that the allegations against him were of falsifying invoices and sharing money. The service user was identified. He identified the agency used by the service user as Care Services Ltd. At the investigation meeting it was explained to the claimant that the issue for the respondents was how invoices appeared to have been created from a template for Care Services Ltd, a non-existent company, which were submitted to ILF. The claimant was unable to provide a satisfactory explanation. This remained the position during the Disciplinary and Appeal Hearing. The claimant sought to rely on his explanation that the invoices from Ailsa Care were authentic. This however is not the issue before the respondents. The explanations advanced by the claimant which included the service user having provided him with the invoices or of someone else having accessed his computer and fabricated the invoices were considered and not unreasonably rejected by the respondents. If the claimant had, as claimed, scanned documents into his work computer, this did not explain why invoices for a non-existent company and emails sending them to his home and the ILF were found on his work computer.

173. In terms of procedure generally, the Tribunal was satisfied the respondents had complied with the ACAS Code of Practice (Disciplinary & Grievance Procedures). They carried out an investigation of the potential disciplinary matters without unreasonable delay to establish the facts of the case. This included holding an investigatory meeting with the claimant before proceeding to any disciplinary hearing. The Tribunal was not persuaded that the claimant was prejudiced by the respondents not arranging for him to be accompanied or represented at the suspension meeting. He understood the purpose of the meeting and was informed that the suspension was without prejudice and pending an investigation. Different people carried out the investigation and disciplinary hearing. As referred to above the Tribunal was satisfied that while there was a delay in interviewing the service user, in the circumstances of the respondents following advice from the Police this was not found to be unreasonable. Similarly, the ACAS Code of Practice refers to the period of suspension with pay being as brief as possible, and for the reasons given above the Tribunal did not consider in all the circumstances that in this case the time in which the claimant was suspended from work was unreasonable.

174. Referring to the ACAS Code of Practice, the claimant was notified of the disciplinary case to answer in writing (P30/125-127). The Tribunal was satisfied the notification contained sufficient information about the alleged misconduct to enable the claimant to prepare to answer the case at a disciplinary meeting. He was provided with information and as referred to above the Tribunal was satisfied that while he requested some additional documentation, this was supplied to him in reasonable time before the Disciplinary Hearing. The claimant was given details of the time and venue of the disciplinary meeting and was advised of his right to be accompanied at the meeting.

175. The Disciplinary Hearing was held without unreasonable delay and the claimant was allowed a reasonable opportunity to prepare his case. At the Disciplinary Hearing, the respondents explained the complaint against the claimant and went through the evidence that had been gathered. The claimant was allowed the opportunity to set out his case and to answer any

allegations that had been made. The claimant was given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. He was given an opportunity to raise points about any information provided by the service user. The claimant was accompanied by James Docherty at the Disciplinary Hearing.

176. After the Disciplinary Hearing, the claimant was informed of his dismissal in writing (P33/150-152). The Tribunal did not agree with the claimant that the reasons given by Grant Carson in his letter (P33/150-152) lacked clarity and were ambiguous. It was not in dispute that Grant Carson and Angela Mullen had authority to dismiss the claimant. The claimant was informed as soon as possible of the reasons for his dismissal, when his contract would end and his right of appeal. The claimant was given the right to appeal against the decision. The Appeal was dealt with impartially and by members of management who were not previously involved in the case. They considered each of his grounds of Appeal. The claimant was given the right to be accompanied at the Appeal hearing. The claimant was informed in writing of the results of the appeal hearing as soon as possible when taking into account the detail with which the respondents addressed the points raised by the claimant.

177. The respondents having reasonably concluded that the claimant was guilty of misconduct and having followed a fair procedure, the Tribunal went on to consider the sanction of dismissal. In the case of **Iceland Frozen Foods Ltd v Jones 1983 ICR 17**, Justice Brian Wilkinson stated that it was the function of the Tribunal to determine whether an employer's decision to dismiss the employee falls within the band of reasonable responses. It was not in dispute that the misconduct with which the claimant was charged was sufficiently serious to justify dismissal. The respondents found that on balance the claimant was guilty of fabricating invoices which he submitted to the ILF vouching for services which had not been received by a service user. This was a very serious matter. It not unreasonably led the respondents to doubt the claimant's integrity and trustworthiness. The Tribunal was satisfied that in these circumstances the decision to dismiss fell within the band of reasonable

responses and that respondents, having regard to equity and the substantial merits of the case, acted reasonably in treating the claimant's misconduct as a sufficient reason to dismiss him. The claimant was not unfairly dismissed.

### **CONTRACT CLAIM (NOTICE PAY)**

5 178. In his original ET1 the claimant complained of breach of contract and sought to recover notice pay from the respondents. As the respondents established before the Tribunal that the reason for the claimant's dismissal was gross misconduct, the Tribunal was satisfied that they were entitled to dismiss the claimant without notice. The contract claim was not well founded.

### **10 DIRECT DISCRIMINATION- SECTION 13**

15 179. In terms of Section 13 of the Equality Act 2010 (EA 2010) a person (A) discriminates against another (B) if, because of a protected characteristic - in this case disability - A treats B less favourably than A treats or would treat others. The Tribunal identified the treatment about which the claimant  
15 complained as the disciplinary action taken against him including the investigation and his dismissal. As referred to above, during the Tribunal Hearing and in his submissions the claimant referred to being abused by colleagues while employed by the respondents. He claimed to have been  
20 called an "*imbecile*". This was a serious allegation. It did not form part of his original claim and there was no reference to such treatment in his amended claim. Such conduct was denied by the respondents' witnesses. They had no record of any complaints being made by the claimant of such treatment. The claimant did not provide any details of who called him an "*imbecile*" and when the abuse was said to have occurred. In all the circumstances, the Tribunal  
25 did not find that the claimant had been mistreated by the respondents and that such an allegation was not only unfounded but made with intention of strengthening his case.

30 180. It was not in dispute that an investigation, disciplinary action and dismissal can amount to less favourable treatment in terms of Section 13 of the EA 2010. It was necessary however for the Tribunal to be satisfied that such treatment in the case of the claimant was because of his disability. This involved the

Tribunal considering how the respondents would have treated a person without the claimant's disability in the same or nearly the same circumstances. In terms of Section 23 of EA 2010, for a comparison of cases for the purposes of Section 13 there must be no material difference between the circumstances relating to each case. In terms of Section 23(2) of EA 2010, the circumstances relating to a case include a person's abilities if on a comparison for the purposes of Section 13 the protected characteristic is disability.

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181. The claimant did not identify a specific comparator. The Tribunal considered his submissions about the service user and in particular that there was no evidence of the respondents having reported her to the Police or of similar action being taken against her. The Tribunal however was not persuaded that the circumstances of the service user and the claimant were sufficiently similar to establish less favourable treatment for the purposes of Section 13 of EA 2010. The service user was not an employee of the respondents. She had reported the alleged wrongdoing to the respondents. She was not someone who the respondents could discipline. She was a person to whom the respondents and in particular the claimant were responsible for providing services including support with funding from the ILF. The Tribunal did not have evidence sufficient to establish whether the service user's involvement had been reported to the Police. It was the claimant's position that the respondents' failure to report alleged fraud to the ILF was something from which the Tribunal should conclude that he was innocent as opposed to evidence of less favourable treatment because of his disability. In these circumstances, the Tribunal was not persuaded that the service user was a relevant comparator for the purposes of determining whether the claimant was treated less favourably for the purposes of Section 13 of the EA 2010.

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182. The Tribunal considered how a hypothetical comparator would have been treated by the respondents in the same circumstances. As referred to above, the Tribunal was satisfied the respondents carried out their investigation, disciplined the claimant and dismissed him following their receipt of serious allegations involving misappropriation of funds from the ILF. The Tribunal was satisfied that had the same allegations been made against a non-disabled

employee that the respondents would have taken the same action. They would have suspended the employee, undertaken an investigation and based on their findings from the investigation they would have disciplined the non-disabled employee if that employee had failed to provide an adequate explanation for the invoices found on his or her computer. They would have dismissed the employee in the same manner as they did the claimant.

183. In terms of the claimant's abilities, it was not in dispute that while employed by the respondents the claimant was good at his job. He had an extensive knowledge of the ILF and showed commitment to the service users and the aims of the respondents' organisation. His work was technical in nature and involved the claimant advising service users on their rights and funding for services. While there were issues about the claimant's ability to keep on top of paperwork and he raised concerns during the disciplinary proceedings about his volume of work, such concerns did not explain why there was evidence of him having fabricated invoices which were submitted to the ILF. Likewise, while the claimant sought to show that he did not understand the allegations made against him throughout the process, a position which he failed to prove before the Tribunal, any deterioration in his abilities during the disciplinary process could not explain the evidence on his computer from a period when he was employed by the respondents and undertaking duties which did not include the fabrication of invoices.

184. In all the circumstances and based on the evidence before it, the Tribunal was not persuaded the claimant was treated less favourably because of his disability. The treatment was neither caused or influenced by the claimant's disability. The investigation was in response to the allegations which included misuse of ILF funding by the claimant. The disciplinary action was in response to the outcome of the investigation which included evidence of the claimant having fabricated invoices. The claimant's dismissal was in response to the information before the respondents including the investigation and the claimant's failure to provide them with a satisfactory explanation for the invoices found on his computer. The Tribunal was unable to conclude from the above that the treatment to the claimant was because of his disability.



## REASONABLE ADJUSTMENTS

185. In terms of Section 20 of EA 2010 the respondents had a duty to make reasonable adjustments where a provision, criterion or practice put the claimant at a substantial disadvantage in relation to a matter in comparison with persons who were not disabled. Failure to comply with the duty to make reasonable adjustments amounts to discrimination in terms of Section 21 of EA 2010.

186. The provision, criterion or practice about which the claimant complained was identified as the requirement that he attend the suspension, investigation and disciplinary meetings without steps being taken to ensure that he understood the allegations being made against him and without allowing him adequate opportunity to present his case. The substantial disadvantage to which the above requirement was said to have put the claimant was identified as his inability to understand the allegations being made against him and to provide an explanation sufficient to satisfy the respondents of his innocence and avoid dismissal.

187. From the evidence before it the Tribunal was not satisfied the respondents required the claimant to attend the suspension, investigation and disciplinary meetings without understanding the allegations being made against him. From the evidence before it the Tribunal was satisfied that the claimant was informed at each stage of the disciplinary proceedings of the allegations being made against him and that based on the evidence before the Tribunal that the claimant did understand at each stage the allegations and the disciplinary process. The Tribunal was also satisfied that if, at any stage, there had been in any doubt about whether the claimant understood the allegations being made against him or the disciplinary process that the respondents would have taken steps to clarify matters to him before proceeding further. The Tribunal was not persuaded by the claimant's submission that his reference only to invoices whose authenticity was not in dispute showed that he could not have understood the nature of the allegations being made against him. The Tribunal did not find that the above response by the claimant showed confusion or misunderstanding but was obfuscation on his part.

188. The claimant was allowed the opportunity to be represented at the Disciplinary and Appeal Hearings. The arrangement that James Docherty meet with the claimant only shortly before the Disciplinary Hearing was not the responsibility of the respondents. Nothing was said to the respondents at the start of or during the Disciplinary Hearing to suggest that it should be delayed to allow the claimant a further opportunity to discuss matters with Mr. Docherty or to better understand the allegations being made against him. Mr. Docherty contributed to the Disciplinary Hearing and spoke up for the claimant. The respondents had displayed a willingness to delay the Disciplinary Hearing to allow the claimant time to consider additional documents. The Tribunal was not persuaded that because the claimant was warned that it was necessary for him to attend the Hearing to avoid additional disciplinary action that he was prevented from seeking a further adjournment. The claimant chose not to be represented at the Appeal Hearing. This was in part due to confidence in his own abilities based on previous experience of representing individuals. From the evidence before it the Tribunal was satisfied the respondents did not fail to provide the claimant with sufficient information to understand the allegations being made against him or allow him insufficient opportunity to provide an explanation for the information found on his computer.

189. The Tribunal was not in any event persuaded that had the claimant been given more time to understand the allegations being made against him and present his case that he would have been able to provide an adequate explanation for the information found on his work computer to avoid dismissal. Since he was first informed of the allegations made against him the claimant has not provided a satisfactory explanation for the information found on his computer. The Tribunal Hearing took place almost 5 years after his dismissal. He was provided with the paperwork relevant to his case at the start of the Disciplinary Hearing. During the Tribunal Hearing he referred to having the assistance of legal experts including Queen's Counsel. The Tribunal was not satisfied that in all the circumstances the claimant was placed at a substantial disadvantage by the respondents requiring him to participate in a disciplinary process. They did not require him to attend any stage of the process without steps being taken to ensure that he understood the allegations made against him and at

every stage of the process he was allowed an opportunity to respond to the allegations and present his case. In these circumstances, there were no grounds for the claim that the respondents were in breach of their duty to make reasonable adjustments.

5 **CONCLUDING REMARKS**

190. The claimant has made remarks in his submissions about the respondents' representatives on which it would be inappropriate for the Tribunal not to comment. Mr. Warnes did not appear before this Tribunal. Employment Judge Gall described Mr. Warnes' conduct at an earlier Hearing as being cooperative and helpful. Mr. Lord, who represented the respondents at the Hearing before this Tribunal, was courteous and professional throughout the proceedings. He was berated and criticised by the claimant at regular intervals. On occasions, the claimant recognised that his behaviour towards Mr. Lord was unwarranted and merited an apology. Mr. Lord responded to the claimant's unjustified hostility towards the claimant with considerable patience and courtesy.

Employment Judge: Frances Eccles  
Date of Judgment: 24 October 2017  
Entered in register: 24 October 2017  
and copied to parties

