EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Sherina Kimera	**v**	**Jewish Care**

Heard at: **Watford (by Cloud Video Platform)** **On: 20-22 June 2022 (3 days)**

Before: **Employment Judge French**

Appearances:

For the Claimant: **Mr D Panton, Solicitor**
For the Respondent: **Mr C McDevitt, Counsel**

JUDGMENT having been sent to the parties on 7 July, 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This is a claim brought by Ms Kimera by claim form dated 25 April 2019 for unfair dismissal and wrongful dismissal. In its response dated 17 April 2019 the respondent denies unfair dismissal stating it dismissed the claimant due to gross misconduct and as such they were entitled to summarily dismiss without notice pay.

Evidence

2. I had sight of an electronic bundle consisting 390 pages. For the sake of clarification this comprises of a hard copy bundle paginated to 365 pages and a supplemental bundle consisting of 7 pages. Where I have made references to page numbers in this Judgment they are to the hard copy pagination numbers. I also had written and oral evidence from the claimant herself and also from Mr Simon Perry for the respondent. I also heard closing submissions from both representatives.

Issues

3. I am grateful to the parties for agreeing a list of issues in advance of the hearing which appear at pages 44(J) and 44(K) of the bundle.

Fact finding

4. The claimant was employed as a chef in one of Jewish Care's residential care homes from 2012 until her dismissal on 26 November 2018. The respondent, is one of the largest providers of social care in London and the South East targeted at the Jewish community. It employs over 1400 people and has a designated in-house human resources department.

5. Following a number of allegations being made against the claimant a meeting took place on 27 July 2018 between the claimant and Ms Susan Rabin, Business Manager, in which the claimant was suspended with pay whilst an investigation was carried out.

6. In summary the allegations were that the claimant had spoken to her managers and colleagues in an aggressive manner, used a knife in an unsafe and aggressive manner, made antisemitic or racist comments concerning World War III, refused to carry out mangers instructions and inappropriately danced on learning of the death of a resident.

7. Following her suspension, an investigation meeting then took place with Ms Forrest, (Facilities Manager) acting as disciplinary investigator, on 15 August 2018. During that meeting the claimant provided a 'summary of events' which appears at page 159-164 of the bundle. Parts of this was treated and accepted as a formal grievance by the respondent and was investigated by Mr Moore, Service Manager separately. Other parts of that summary of events were identified as relevant to the disciplinary proceedings.

8. There is a dispute over whether or not there was an agreement over which parts of the summary of events were relevant to a grievance and which parts were relevant to the disciplinary proceedings. On the evidence before me I cannot see any evidence that the claimant agreed that only certain parts of that document were relevant to the disciplinary proceedings. It is clear to me that this document was prepared by the claimant as a result of the initial investigation concerning her conduct and the allegations made against her and was subsequently treated by the respondent as a grievance. It's primary purpose in the first instance however, was to address the allegations that she faced and give context to it.

9. I was taken by the respondent to the investigation report at page 256 where under the heading "Interview with SK" it makes reference to those notes and the relevant paragraphs in terms of what is relevant to the grievance and those that are relevant to the disciplinary proceedings, but that specific document does not confirm that those paragraphs were indeed agreed by the claimant as being the only ones that were relevant to the disciplinary process.

10. I was also taken in that regard to the letter at page 337, the grievance outcome letter in which it states that the claimant agreed that certain paragraphs related to her grievance. It may well be the case that she agreed that those related to the grievance and that the rest concerned only the disciplinary proceedings but that does not mean that the points raised in terms of the grievance were not separately relevant to the disciplinary process. Therefore, on the evidence before me I do not accept that the claimant agreed that there were only certain paragraphs in the summary of events that were relevant to her disciplinary proceedings.

11. As a result of that investigation meeting Ms Forrest determined that there was sufficient evidence to proceed to a disciplinary hearing and the claimant was invited to a meeting initially scheduled for 17 October 2018. She was sent an invitation to that meeting at pages 217 to 218 which sets the allegations out against her and I summarise these below.

12. Allegation 1 was that she had refused to carry out a reasonable instruction from her manager which included an allegation that she had refused to make a tuna mayonnaise sandwich filling and that she had refused to prepare a mackerel supper.

13. Allegation 2 was that she had failed to provide a resident with a special meal on two occasions, namely 19 and 24 July 2018.

14. Allegation 3 was that she had made political comments in the workplace which amounted to racism.

15. Allegation 4 was that she had displayed unsafe and aggressive use of a chopping knife on 26 July 2018.

16. Allegation 5 was that she had demonstrated inappropriate conduct regarding the death of a resident on 24 June 2018.

17. Allegation 6 was that she had demonstrated bullying behaviour towards staff and a disrespectful attitude towards her managers.

18. The disciplinary hearing did not take place as scheduled on 17 October 2018 due to the respondent's commitments and was re-arranged to 24 October 2018.

19. On 19 October 2018 the claimant was provided with a disciplinary pack which consisted of 106 pages and as a result of that her solicitors requested that the hearing schedule for 24 October be postponed to allow her more time to prepare. I have also seen reference to the fact that the claimant's child may have also had an appointment on that day which she needed to attend. That meeting was therefore rescheduled to 31 October 2018.

20. On the evidence before me it is clear that the claimant then struggled to find a suitable companion to attend on that occasion. She had advanced several names in advance of the hearing on 24 October for which the respondent had made contact as demonstrated by the letters at pages 305-307 of the bundle and they had all refused.

21. At page 291 of the bundle the claimant then gave via email a further two names for potential companions and as evidenced at pages 312 and 313 they also both refused to attend. Having received that news by email on 29 October, on 30 October the claimant then advanced Ms Judith Young as an alternative potential companion. The respondent replied to this nomination email two hours later confirming that Ms Young had agreed to be her companion. By this time it was 2pm the day before the scheduled hearing.

22. The claimant's evidence on this next point was inconsistent. Her witness

statement states that she did not receive the email at page 288 with Ms Young's contact details. Her oral evidence during cross-examination was that she did receive that email and indeed did call Ms Young but indicated that a telephone call was not sufficient to allow her to prepare for the hearing. In re-examination she then stated that she was confused about the emails and that she did not in fact receive the one on 30 October at page 288 and instead had received one with Ms Young's details on it dated 25 November at page 348 regarding the outcome meeting. She also stated, however, that she received the email of 30 October that night, namely the night of 30 October, which again differs to her witness statement.

23. Whilst I do appreciate the passage of time since this incident, I do not find the claimant credible on this point. However, I take the view that even had the claimant seen the email with Ms Young's details on it dated 30 October and called her, by that time it was 2pm and I do not consider that this would have given her sufficient time to prepare for the hearing the next day.

24. It was suggested that the lack of preparation time was at the blame of the claimant and that she failed to nominate Ms Young until late in the proceedings. However, it is clear that this was due to several other alternatives having refused to assist.

25. It was also suggested that the claimant could have met Ms Young earlier on the day of the hearing than she did and I understand that in that regard records show that she attended the venue at 9.27am with the meeting due to start at 9.30. In that regard however the claimant explained that she was required to drop her son at school and her childcare commitments therefore prevented her from attending any earlier and I accept that explanation. I therefore do not accept the assertion that the claimant was to blame with regards to lack of preparation time.

26. On 31 October the claimant therefore asked for the disciplinary hearing to be postponed to allow more time to prepare. The respondent's case is that they offered her an additional 20 minutes of time to brief her companion, but the claimant refused this and left the meeting. Indeed, it is accepted that the claimant did leave the meeting at that time.

27. Mr Perry, Assistant Director and dismissing officer, subsequently sought advice of HR who advised that he could proceed with the hearing in her absence and indeed she had been warned in the invitation letter that this could take place in her absence. The disciplinary hearing did therefore proceed on that occasion in the absence of the claimant with Mr Cloete, the claimants line manger, and Mr O'Malley, senior line manager giving evidence.

28. Following that hearing Mr Perry wrote a number of questions to the claimant to assist him with is enquiry and his decision and her response to those questions appears at page 326. Within that response she makes reference to her grievance or otherwise titled 'summary of events' and asks that these are taken into account in reading her answers. Mr Perry confirmed in his evidence that he did not take this into account because he was advised by HR that the two processes were running separately.

29. I do note that the table of contents at page 308 relating to the disciplinary

pack confirms that the summary of events is included but indicates it is only the paragraphs identified by Ms Forest as relevant and not the whole document. For the reasons already outlined I do not consider that the claimant had previously limited the relevant information to those specific paragraphs listed. In any event, even if she had previously limited the relevant information, at this stage, namely in giving her responses to Mr Perry, she was inviting him to consider her whole grievance. That was in response to his questions and his evidence was that he did not do so.

30. Following that procedure Mr Perry then reached the decision that all of the allegations against the claimant had been proved, that that amounted to gross misconduct and he went on to summarily dismiss her, the effective date of termination being 26 November 2018.

31. The claimant did not appeal this outcome and her account in that regard was that she had lost the trust and confidence in the respondent and had no confidence in how they would handle any appeal. In that regard my attention was drawn to the fact that during the proceedings and without asking the claimant for her side of events she was notified that she would be suspended without pay for allegedly having contacted members of staff in breach of the terms of her suspension. Whilst it is accepted that her pay was never actually withdrawn, I accept the claimant's account that this contributed to her loss of trust in the respondent as a result, namely that they had taken that action against her without seeking her version of events.

The Law

32. I am grateful to Mr McDevitt for drawing my attention to the IDS brief Volume 12 Chapter 3 and also to Mr Panton for his written closing submissions which identifies relevant case law.

Unfair dismissal

33. Section 94 of the Employment Rights Act confers on employees the right not to be unfairly dismissed and enforcement of that right is by way of complaint to the Tribunal under s.111. The employee must show that she or he was dismissed by the respondent under s.95 but in this case the respondent admits that it dismissed the claimant.

34. S.98 of the Act deals with fairness of dismissals. There are two stages within s.98, the first is that the employer must show it had a potentially fair reason for the dismissal and second if the respondent shows that it had a potentially fair reason for the dismissal the Tribunal must consider without there being any burden of proof on either party whether the respondent acted fairly or unfairly in dismissing for that reason.

35. In this case the respondent states that it dismissed the claimant because it believed that she was guilty of misconduct. Misconduct is a potentially fair reason for dismissal under s.98(2).

36. S.98(4) then deals with fairness generally and provides that determination of the question whether the dismissal was fair or unfair having regard to the reasons shown by the employer shall depend on whether, in the

circumstances including the size and administrative resources of the employer, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

37. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in British Homes Stores Ltd v Burchell 1978 IRLR 379 and Post Office v Foley 2000 IRLR 827. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23, and London Ambulance Service NHS Trust v Small 2009 IRLR 563).

Polkey & Contributory fault

38. I also had to consider, if the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed, in accordance with the principles in Polkey v AE Dayton Services Ltd [1987] UKHL 8. The respondent said that the claimant would have been dismissed in any event, therefore any award should be reduced by 100%. The claimant contended that she would not have been dismissed.

39. Further, the Tribunal may reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the Employment Rights Act 1996.

40. Section 122(2) provides as follows:

"Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly."

41. Section 123(6) then provides that:

"Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

Wrongful dismissal

42. The claimant was dismissed without notice. She brings a breach of contract claim in respect of her entitlement to notice under clause 14.2 of her contract at page 58 of the bundle. The respondent says that it was entitled to dismiss her without notice for her gross misconduct. I must decide if the claimant committed an act of gross misconduct entitling it to dismiss without notice. In distinction to the claimant's claim of unfair dismissal, where the focus was on the reasonableness of management's decisions, and it is immaterial what decision I would myself have made about the claimant's conduct, I must decide for myself whether the claimant was guilty of conduct serious enough to entitle the respondent to terminate the employment without notice.

Conclusions

43. I find that the respondent did have a genuine belief that the claimant was guilty of misconduct. On the evidence before me a lengthy initial investigation had been carried out by Ms Forrest with her interviewing a number of witnesses. In that regard I accept that this was potentially one sided in that witnesses suggested by the claimant were not interviewed and I address that in relation to overall fairness later on.

44. However, for the purposes of Mr Perry's genuine belief, I am satisfied that on the evidence before him within the disciplinary pack and obtained from the disciplinary hearing itself he had a genuine belief that the claimant was guilty of misconduct. This is also supported by the fact that the claimant had made partial admissions with regards to doing a 'jig' and in response to his questions on page 331 at paragraph 19, admitted singing and dancing when a resident passed away. Although it was suggested, this was not in earshot of any residents, this behaviour could have clearly caused and indeed did case upset with her colleagues and Mr Perry had witness testimony to that effect. I do note that this incident is alleged to have occurred on 24 June and no immediate action was taken against the claimant but that does not detract from the conduct that has been admitted by her.

45. The claimant also admitted that she had made comments about World War III starting, albeit I accept that she does not accept this allegation in the context that the respondent puts it and strongly denies that she made any comment that this would wipe out Jewish people or that there was any racist intent. I found Mr Perry to be a very credible witness and his view on this was that to make any comment about a war within a Jewish care setting given the history of the same could cause offence. I am therefore satisfied that he had a genuine belief that she was guilty of misconduct based on the account that he gave.

46. I am also satisfied with regards to the respondent's policies, specifically dignity at work policy at page 49-50, the discipline policy at 70-79 and the code of conduct at 80 and 85 as well as the respondent's core values for which the claimant was taken to at length and advised that she was aware of them, that the conduct which she herself admits to is not in line with those policies or values.

47. I am also satisfied that this belief was held on reasonable grounds. As I have said, the claimant has made partial, albeit limited, admissions which when looking at the disciplinary policy could amount to misconduct. Mr Cloete and Mr O'Malley both gave initial statements, were subsequently interviewed by Ms Forrest and then gave evidence to Mr Perry at the disciplinary hearing. Their accounts were largely consistent in terms of all of the accounts provided and they were corroborated by the other witnesses.

48. In particular, I note the account of Sarah Sunwar at page 129. She supports the incident concerning the failure to make a meal in which she says the claimant was loud and shouting and that Jason Cloete was calm and that the claimant had blamed nursing staff regarding the meal.

49. I also note the statement of Comfort Gyamfua at page 133 supporting that the claimant did a dance and sang regarding the death of a resident and that she continued to do so despite being told to stop.

50. I also note the account of Marius Popper at 134 who supports that she hit a knife on the table, that when she did so that she was angry and that she then went on to laugh and shout as she left the kitchen.

51. I also note at page 144 of Mary Asar's interview, when asked specifically about the knife incident she says that the claimant was aggressive and rude, that she was hitting the knife up and down and shouting at George O'Malley.

52. Regarding the meal incident, namely the failure to provide a resident with a meal, I am not satisfied with the claimant's account regarding her timesheets. Her explanation to the Tribunal were that these must have been doctored but I do not accept that account as plausible. Overall, I have not found her to be a credible witness given her inconsistencies. She initially stated that she had started at 8am as per her rota and later went on to accept that she had started at 10am having misread the shift. She therefore admits that she started at 10am. I therefore consider that it was reasonable for Mr Perry to rely on those timesheets in reaching his decision, to support the fact that she was on shift at the required time as he did so.

53. As to the investigation by Ms Forrest I note that she did speak to a number of witnesses and I am taken to eight separate accounts in total. I also note that she had a three-hour meeting with the claimant. This is not a criminal or full judicial enquiry but in this particular case it was clear that there were large areas of dispute between the claimant and the respondent's accounts.

54. I find that it therefore would have been in the band of reasonable responses to have made attempts to speak to the witnesses that the claimant had advanced in order to assist with resolving those areas of dispute. This is particularly so given the fact that she was suspended and the terms of her suspension meant that she was unable to contact those witnesses herself, therefore in terms of the fairness of Ms Forrest's investigation I do find that this was flawed.

55. As to the procedure itself, the claimant made a request to adjourn the disciplinary meeting on 31 October and I considered that this request was a reasonable one. For the reasons already outlined I do not accept that she

was to blame with regards to the delay in briefing Ms Young and even had the claimant called her at 2pm on the afternoon of 30 October I do not consider that this would have assisted her in allowing sufficient time to prepare. Mr Perry on his own evidence said that it took him half a day to read the material. That is without any further discussion or consultation. Ms Young may have been able to prepare or complete that reading on 30 October but that would have assumed that she had no prior commitments and that the bundle could be provided to her. I see no evidence before me that the respondent sent it in electronic format directly to Ms Young

56. Even had the bundle been provided that afternoon, this would still have only allowed the morning for discussions and as already said, I accept the claimant's evidence that she had childcare commitments meaning that she was unable to attend to meet with her prior than the time that she did. Whilst it is correct that the claimant is not entitled to be represented by Ms Young, the ACAS Code does state that she can put questions on her behalf and sum up the claimant's account, as indeed does the respondent's own disciplinary policy. It is therefore not correct that she was simply there to accompany her as was suggested by HR at the outset of the meeting. Her role was wider than that and the time afforded by the respondent of 20 minutes was not sufficient to prepare for that role. I therefore find that the refusal to adjourn the hearing was outside the band of reasonable responses.

57. This is also relevant to the issues of witnesses and the claimant's mechanism to call them. I accept the explanation from the claimant that she had lost trust and confidence in the respondent and the reason for that. The claimant therefore wished for Ms Young to call those witnesses on her behalf. The lack of time afforded to her, also meant that she was not able to pursue those witness enquiries.

58. Whilst it is accepted that the claimant was aware that that disciplinary hearing could take place in her absence and indeed that is what happened, for the reasons that I have stated I consider that it was unfair to refuse the adjournment request.

59. Further, having been asked a number of questions by Mr Perry, in response to which the claimant asked him to look at her 'summary of events/grievance', he did not do so. The claimant's grievance was initially filed as the summary of events regarding the investigation in the first step in the disciplinary proceedings and its contents were a relevant consideration for Mr Perry. Even had it been the view that the two processes were to take place separately as Mr Perry indicated HR advice was to him, the claimant specifically asked him to look into this and he failed to do so. I consider it within the band of reasonable responses for him to have followed up on this request particularly given the claimant had not been present at the hearing itself.

60. In addition, and prior to giving those responses, the claimant requested a copy of the disciplinary meeting notes. She was not present during that meeting. The ACAS guidance is that she is entitled to know what witnesses have said and she was not provided with those meeting notes. In cross-examination there was criticism of why she had not mentioned certain things in her responses but at that time she was not aware what the witnesses would

have said in the meeting in order to respond to.

61. Further there is evidence that Mr Perry was not as fully appraised with the case as one would expect the dismissing officer to be. The HR advisor in the hearing indicated that the claimant had made a number of admissions which she had not done and Mr Perry did not seek to correct her. As the dismissing officer I would have expected him to know this information. Further he states that in the outcome letter that he finds the claimant guilty of a racist comment made on 26 June 2018 but accepts in his evidence that there was no evidence at all before him of such an allegation.

62. I also consider in terms of band of reasonable responses that it was open to Mr Perry to speak to the witnesses that had been advanced by the Claimant to Ms Forrest and that Ms Forrest had failed to speak to. The investigation is not limited simply to that carried out by Ms Forrest and includes the process as a whole.

63. In making my decision I have considered the size of the respondents undertaking. This is a large sized employer with a designated HR department and well-drafted policies. A formal disciplinary process was followed, although it was flawed. Within the range of reasonable responses there is unfairness in the procedure in this case.

64. I therefore find that the claimant was unfairly dismissed by the respondent within section 98 of the Employment Rights Act 1996.

65. In terms of the wrongful dismissal claim I have already given lengthy reasons in relation to the unfair dismissal which are equally relevant, in particular in terms of the conduct of the claimant. I do not consider that she was innocent of the allegations made against her. On her own admission she danced and sang on the death of a resident. This is admitted in her response to questions at page 331 of the bundle and at paragraph 79 of her witness statement.

66. Her reason for this was because of the abuse she had experienced at the hands of this resident and her daughter, however I find that to act in such a manner within the environment of a care home is not appropriate behaviour and would amount to conduct entitling the respondent to dismiss without notice.

67. Further whilst I accept the claimant's assertion that the comment about World War III was not targeted at 'you people' or advanced as a racist comment, she accepts that she made a comment about World War III and whilst I acknowledge her Christian beliefs in that regard, the comment was made in the context of a heated moment between her and a manager. I do consider that in a heated moment, to make such a comment within a care home targeted at the care of the Jewish Community, would amount to conduct entitling the respondent to dismiss without notice.

68. Further, I note the witness testimony in relation the claimant's loud and abusive behaviour as detailed in paragraphs 48 to 51 above. Several witnesses support the fact that the claimant acted aggressively towards management and this would also amount to conduct entitling the respondent to dismiss without notice.

69. In making that decision I also have regard to the respondent's disciplinary policy and code of conduct at pages 70 to 85 of the bundle.

70. The disciplinary policy at page 77 of the bundle outlines examples of what the respondent may find to be gross misconduct and includes the following:

    A) Conduct likely to injure the image and standing of Jewish Care
    B) Failure to follow/adopt proper professional standards appropriate to the trade or profession
    C) Any other act or omission whether in the course of employment or otherwise which undermines the mutual trust and confidence in the employment relationship.

71. I also have regard to clause 1 of the Code of Conduct at page 81 of the bundle.

72. I therefore find that the claimant was guilty of conduct entitling the respondent to dismiss without notice and that the claimant therefore was not entitled to notice pay. Her complaint of breach of contract fails and is dismissed.

73. In terms of Polkey and whether or not the claimant would have been dismissed in any event, but for the procedural unfairness I find that there is a 75% chance that she would have been dismissed in any event. Her witnesses were not spoken to and we do not know what they would have said, however there are eight witness accounts which in various different aspects support the different allegations against the claimant. We have her own admissions and I do consider that there was significant evidence against her, even had she called her own witnesses and had the 'grievance/summary of events notes' considered.

74. In undertaking this exercise, I am not assessing what I would have done; I am assessing what this employer would or might have done. I must assess the actions of the employer before me, on the assumption that the employer would this time have acted fairly though it did not do so beforehand: Hill v Governing Body of Great Tey Primary School [2013] IRLR 274 at para 24. I do consider that Mr Perry did take into account her length of service in looking at the sanction that he imposed and on the evidence before the respondent, I therefore make a finding that there would have been a 75% chance of dismissal even had a fair procedure been followed.

75. My reasons are very similar in relation to contributory fault. When considering a deduction to the basic or compensatory award: first, I look to identify the conduct which is said to give rise to possible contributory fault; second, I decide whether that conduct is blameworthy; third, under section 123(6), I ask myself whether the blameworthy conduct caused or contributed to the dismissal to any extent; and fourth, I decide to what extent it is just and equitable for the award should be reduced.

76. The claimant makes admissions to misconduct as per my findings at paragraphs 65 to 72. I do find that to be blameworthy conduct. It breaches the respondent's disciplinary policy and code of conduct. The behaviour took place before the dismissal and was the reason for it. I find the behaviour such

as to merit an adjustment to both the basic and compensatory award. I take into account the background to the behaviour, the claimant's 6 years of service with no disciplinary record and I find that the basic and compensatory awards should be reduced by 75% to reflect the claimant's culpability.

77. I would not be minded to impose an ACAS uplift in terms of the claimant's failure to follow the appeal process because, as I have already stated, I accept that she had lost trust and confidence in the respondent by that time.

78. A remedy hearing was subsequently scheduled in this matter to be heard on 25 July 2022. This was resolved by way of Judgment by Consent dated 25/7/22 and sent to the parties on 5/8/22.

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Employment Judge French

Date: 22 September 2022

Judgment sent to the parties on

23 September 2022

For the Tribunal office