



# EMPLOYMENT TRIBUNALS

## Claimant

Mrs Ruth Oyewole

## Respondent

v

(1) Protea Care Homes Limited  
(dissolved);  
(2) Protea Care Homes Kent Limited;  
and  
(3) Protea Care Homes Limited  
(11208342)

**Heard at:** Norwich (by CVP)

**On:** 30, 31 August 2022; and  
1, 2 September 2022

**Before:** Employment Judge Postle

**Members:** Miss J Nicholas and Mr C Davie

## Appearances

**For the Claimants:** In person

**For the Second and Third Respondents:** Mr Munro, Peninsula Consultant

## JUDGMENT

The unanimous decision of the Tribunal is,

1. The Claimant was unfairly dismissed.
2. The Claimant's claim under the Equality Act 2010 for the protected characteristic of race is not well founded.
3. The Claimant's claim for unlawful deduction of wages is not well founded.
4. The Claimant's claim for holiday pay is not well founded.
5. The Respondents are ordered to pay compensation totalling **£9,111.12**

## REASONS

1. This claim has had a chequered history, the claim originally being filed on 5 April 2021 following Early Conciliation with ACAS on 5 February 2019 and concluding on 5 March 2019. If one looks at the claim form, the Claimant was employed from 9 December 2015 to 9 November 2018 as a Support Worker and those dates of employment are not disputed by the Respondents. At paragraph 8 of the claim form, the Claimant has clearly ticked "I was unfairly dismissed" and has ticked the box dealing with discrimination for race. The particulars of claim attached to the claim form set out a claim for ordinary unfair dismissal under the Employment Rights Act 1996 ("ERA1996") as it is headed "Grounds of Unfair Dismissal Claim".
2. The Tribunal reminds itself the Tribunal must follow the pleaded claim. Those grounds also include the other grounds of discrimination and unlawful deduction of wages. To summarise, it is clear from paragraph 12, the Claimant's claim did include a claim for ordinary unfair dismissal.
3. That fact was acknowledged by the Response filed on behalf of the Respondents which clearly responded to a claim for ordinary unfair dismissal as well as claims for race discrimination, unlawful deduction from wages, holiday pay and notice pay.
4. The matter came before Employment Judge Lewis as a Case Management Hearing on 29 January 2020. Rather oddly, noted at paragraph 60,  
  

*"while no formal Order is necessary, it is understood that the Claimant's dismissal was brought under the Equality Act 2010 and not the Employment Rights Act 1996."*
5. That clearly must be an error when one looks at the original claim form.
6. More importantly, at the outset of this Hearing, the Judge requested the List of Issues and that was provided by Mr Munro on behalf of the Respondents, which amongst other things set out clearly an unfair dismissal claim (s.98 ERA 1996).
7. The Claimant also confirmed her claim was a claim for ordinary unfair dismissal.
8. The Tribunal also had to deal with, following further Case Management Hearing by Judge Lewis on 24 January 2022, the issue of who was the Claimant's correct employer. The Hearing in January was to be the Full Merits Hearing listed for four days; it was converted to a telephone conference given the fact that the First Respondent was now a dissolved company therefore the Tribunal had no jurisdiction.

9. The Claimant has now submitted that her employer may be one of two other companies, namely: Protea Care Homes Kent Limited or Protea Care Limited (11208342).
10. At the above Hearing there were further directions made and an Order that the above two additional companies be joined as Respondents, re-service be dispensed with and that the existing Response of the First Respondent stands as the Response.
11. Further, by 25 February 2022, the Claimant was to send to the Respondents her pleaded case on the identity of the Respondent and / or on jurisdiction and then by 18 March 2022, the Respondent to reply setting out the nature of their case on identity of the Respondent and / or jurisdiction.
12. Regrettably, neither the Claimant nor the Respondent have bothered to comply with that direction.
13. There was a further direction that an audio recording of a disciplinary meeting on 9 November 2018 would be transcribed and added to the Bundle. Regrettably, that Order has not been complied with and therefore there is no transcript available to the Tribunal, although the parties at today's Hearing, have asked that the Tribunal listen to the audio recording which is approximately one and a half hours.
14. Dealing with the matter of jurisdiction, the Tribunal noted that the Claimant's P45, at page 158 of the Bundle, referred to the Claimant's employer as Protea Care Homes (Kent) Limited. Furthermore, the Respondent's letter of 24 October 2018 inviting the Claimant to a disciplinary hearing referred to Protea Care Homes (Kent) Limited and at the bottom of that letter, indeed the letter of 9 November 2018 (page 128) the Respondents dismissing the Claimant, gave reference to Protea Care Homes (Kent) Limited.
15. Taking all those matters at their best, the Tribunal concluded that the Claimant's correct employer was therefore the Second Respondent Protea Care Homes (Kent) Limited.
16. In this Tribunal, the Tribunal have had the benefit of a witness statement from the Claimant. There is also a witness statement on behalf of the Respondents from Mr George Tefani, rather oddly, who took no part in dismissing the Claimant, or investigating any of the allegations or the Appeal.
17. The Tribunal commented at the outset that it was slightly odd that the persons that took the decision to dismiss, Liza Ward of HR and Beverley Farmer an Operations Manager, were not giving evidence before this Tribunal. Mr Munro on behalf of the Respondents, indicated that the Respondents were relying on the audio recording.

18. The Tribunal made no Order or direction that Liza Ward or Beverley Farmer provide a witness statement or give evidence. In any event, when the Respondent's Representative Mr Munro was questioned by the Employment Judge as to why no one from the Respondents was giving evidence in relation to the decision to dismiss, the Tribunal were informed Liza Ward could not be found and had left the Respondent's. No reason was offered why Beverley Farmer was not giving evidence, other than the fact that the Respondents wished to rely on the Audio recording.
19. The Tribunal also had the benefit of a Bundle of documents consisting of 196 pages.
20. The first part of the Hearing was therefore left for the Tribunal to read the witness statements and listen to the audio recording; which was of poor quality and not helped by the fact there was no transcript.
21. What was noted from the audio recording was right at the outset it is mentioned that notes of that meeting were being taken by HR, again no notes were available for the Tribunal at today's Hearing. It was also indicated by either Liza Ward or Beverley Farmer,

*"there would be no conclusion from the meeting"*

presumably at the end of that day. There then proceeds a number of allegations which appeared to be no more than a fishing expedition. In particular, that the Claimant had:

- been cleaning without appropriate footwear;
  - been sleeping in the lounge with no clothes on;
  - car tyres for the Claimant's personal use being delivered to the Care Home;
  - been constantly on the telephone to her family;
  - an allegation of an invasion of privacy of a service user going into her bag to look for the office key;
  - a suggestion that the Claimant had asked a service user on occasion to pick up her children from school; and
  - doing personal shopping whilst on duty.
22. These specific allegations had not been previously set out to the Claimant.
  23. All of which were either denied by the Claimant, or an adequate explanation was given.
  24. In particular, the Claimant denied that she had ever slept in the lounge without her clothes on, she denied she had her own car or, that car tyres had been delivered to the Respondent's premises while she was on duty, she denied she was on the telephone constantly to her family. The fact she had taken her trainers off and put her slippers on whilst cleaning which

the Respondents seemed to suggest was some sort of invasion of privacy to service users.

25. The Respondent further suggesting that she may have abused her power in the work place without actually knowing.
26. In relation to the two serious allegations, one that the Claimant without permission of a service user searched her bag to look for the office key which the service user was believed to have taken. The office key contained the medication cabinet key and no doubt files of each service user. The Claimant's explanation for this was quite simply if the service user was asked, she would not allow her bag to be searched and they needed the office key; but more importantly a Manager known only as Mandy had given specific authorisation for all the staff to search the service users property in appropriate circumstances. This being a fact that Liza Ward or Beverley Farmer sought to check out by way of further investigation.
27. In relation to the allegation that the Claimant had asked a service user to pick up her children, the Claimant confirmed that on one occasion she did ask a service user to pick up her children, but that was because she had received a call from Paul and Marina at the Respondents asking her if she could cover a shift as the Care Home was not adequately staffed and needed to have another Support Worker in the home and the Respondents were about to have a visit from Social Services. If found to be failing in the number of Support Workers on shift in the Home, the Respondents could well have lost the contract. As a result of that, the Claimant agreed to do the shift but needed someone to pick up her children if she was to cover the shift for the Respondents in those circumstances and only in those circumstances, on one occasion asked a service user to pick up her children.
28. During the course of this audio there was a lot of talk about breaching policy, but the Tribunal and indeed the Claimant at the time of the meeting, was never shown the specific policy the Claimant was supposed to have breached. Nor has the Tribunal been directed to such a policy.
29. Indeed, there was talk about training under the Mental Capacity Act and depriving of liberty which covered aspects of the service user's life and interaction with the Support Workers in the Home, but the Claimant confirmed she had not had this training.
30. There was also talk of video evidence of the Claimant touching service users possessions. Again, no such video evidence was shown to the Claimant, nor was it shown to the Tribunal during the course of this Hearing.

31. The upshot of the meeting was, almost out of the blue,

*“Coming to a conclusion, you abused your power in the work place and your position of trust with the clients. There are better ways of managing the situation. You should have called your Manager with the key issues... There are a number of examples where you demonstrate capability cannot be trusted as a Support Worker. You have not demonstrated confidence in areas of professional boundaries. You are asserting too much power.”*

32. This the Claimant denied. At that point the Claimant is told she is dismissed for gross misconduct with immediate effect with the words,

*“You can appeal if you wish.”*

33. During the course of the meeting it was also said that Beverley Farmer or Liza Ward would go to the Claimant’s school to check how many times the children had been picked up by a service user. That clearly did not happen.

34. The meeting was prompted by an unsigned, undated, statement from what are apparently two of the Claimant’s co-employees, to be found at pages 122 – 126. It is not clear how those statements came into being, who they were sent to and whether they had been unsolicited. What is clear is that there was no further investigation into those statements by either Beverley Farmer or Liza Ward. They appear to have taken them at face value.

35. Following on from those statements, Liza Ward writes to the Claimant (page 127) on 24 October 2018,

*“Further to recent events, we would like to invite you to attend an formal Hearing at Protea Care Homes Head Office to discuss allegations made toward you committing numerous acts of insubordination and bullying and harassment and how this reflects on your employee conduct with the impact on clients and colleagues.*

*Please confirm you will be in attendance at Head Office, date 9 November, time 10 o’clock. The meeting will last no more than one hour.*

*Please note that due to the level of risk in the allegations you have been suspended from your duties as a Support Worker at Protea Care Homes with immediate effect. I ask that you do not visit the Amberley Road service until the disciplinary hearings have been completed.*

*The company disciplinary policy is attached for further information. Please advise if you wish for a representative to attend the hearing.*

*Please do not hesitate to let me know if you have any further questions and / or require any adjustments to accommodate your comfort at the hearing. Should you need to reschedule for any reason please contact me on the telephone number below to arrange.”*

36. It is noted there is absolutely no detail of numerous acts of insubordination, bullying and harassment. The statements received from two co-employees were not attached to that letter.
37. It is noted that the company’s disciplinary policy at page 107, headed “Investigation”,

*“The purpose of an investigation is a fact finding exercise. It is an opportunity for the company to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses and / or reviewing relevant documents...”*

*Before any formal disciplinary action is taken, the relevant person will carry out a full investigation to establish the facts. The investigation will normally include a meeting with you. Investigation meetings are not disciplinary meetings, you will not necessarily be offered the right to be accompanied.*

*Even in the most serious allegations of gross misconduct, (see below) full investigation will be held. In any alleged case of gross misconduct you are likely to be suspended pending the outcome of the investigation.*

*Before any disciplinary meeting, you will be:-*

- *told in writing of the allegations and / or complaints against you and the basis of those allegations;*
- *given a reasonable opportunity to consider your response to that information;*
- *offered the opportunity to be accompanied by a work colleague or Trade Union Representative; and*
- *you must take all reasonable steps to attend the meeting and at the meeting you will be given a full opportunity to comment on the allegations to put forward any defence or arguments which you want and to comment on what disciplinary sanction, if any, is appropriate.”*

38. The Policy then goes on to talk about informal warnings and suspensions and then deals with the formal disciplinary process and the right to be accompanied; in particular, the procedure at the disciplinary Hearing. States (page 108) that:-

- *“the Hearing will be Chaired by a Manager of the appropriate seniority;*
- *a note taker will also be present and this person will be confirmed to you prior to the Hearing date;*
- *the Disciplinary Hearing will go through the allegations against you and the evidence that has been gathered;*
- *you will be able to respond and present any evidence;*
- *you may ask for any relevant witnesses to appear at the Hearing;*
- *we may adjourn the Disciplinary Hearing if they need to carry out further investigation such as re-interviewing witnesses in the light of any points raised at the Hearing;*
- *we will then inform the employee in writing of our decision and reasons for it, usually within one week of the Disciplinary Hearing.”*

39. The Policy then goes on to talk about the various warnings stages and dismissal without notice, at page 109. At page 110 there are also suggestions relating to alternatives to dismissal.

40. Finally, the Policy deals with the individual's right of appeal which should be made within five working days of receiving a written request for an appeal. Furthermore, any appeal must set out the grounds on which the employee is making the appeal.

41. The Claimant's dismissal was confirmed by letter of 9 November 2018, i.e. the same day as the meeting (page 128), it stated,

*“It has been brought to our attention that you have recently been involved in several incidences of misconduct. We have discussed several of these concerns and confirm that you have demonstrated a lack of ability to openly communicate in power and consider the impact of your actions on our client.*

*It was apparent throughout the Hearing that you are non-compliant with Protea Care Homes quality and Quality Assurance Policy procedures as you do not:*

- *adhere to organisational values and behaviours that promote a care conscious culture that drives quality;*
- *execute suitable behaviours in keeping with service users' care plans;*
- *in today's disciplinary hearing (9 November) you admitted that you had committed a Policy breach:*



- *deprivation of liberty - retrieving keys from the Claimant's hand bag without consent on two occasions; and*
  - *dignity and respect - continued failure to recognise the importance of professional boundaries.*
- *these acts are an abuse of trust as stated in Section 5.1 of the Protea Care Home Safeguarding Policy and Procedure,*
    - *"where the person who is alleged to have caused the abuse (or neglect) has a relationship of trust with the adult at risk because they are a member of staff, paid employee, a paid carer, a volunteer or a manager, Protea Care Homes (Kent) Limited should invoke disciplinary procedures for employed staff as well as taking action in line with this policy."*

*Please accept this letter as notice of your dismissal as of 9 November you have been dismissed from employment at Protea Care Homes, your final payslip is enclosed within this letter.*

*Liza Ward "*

42. Clearly that letter is incorrect. There was no admission to retrieving keys on two occasions, or continued failure to recognise professional boundaries; that is simply not correct.
43. The Claimant's then Solicitors on 29 November 2018 (page 129) wrote to the Respondent asking for a copy of the Investigation Report, the Investigation statements / witness statements, disciplinary allegations, records, minutes of the disciplinary hearing on 9 November 2018 and the employer's Disciplinary Policy and Procedure.
44. The Claimant says that the first time she ever saw the witness statements of the two co-employees was when disclosure / the Bundle was produced at this Hearing. That is relevant because at page 130 of the Bundle there purports to be an undated letter from Mr Tafani, a Director which supplies those documents, clearly that document / letter was never sent and is not even on headed notepaper which is strange and undated.

## **The Law**

### Employment Rights Act 1996 ("ERA")

45. The reason for dismissal that appears to be advanced by the Respondents is conduct.
46. That is a potentially fair reason to dismiss under s.98(1) ERA 1996, but of course that is not the end of the matter.

47. The Tribunal then has to consider s.98(4) ERA 1996, which states that the determination of the question of whether the dismissal is fair or unfair (having regard to the reasons shown by the employer):-
- a. depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
  - b. shall be determined in accordance with equity and the substantial merits of the case.
48. S.98(4) ERA 1996 makes it clear it is not enough that the employer has a reason that is capable of justifying dismissal. The Tribunal must be satisfied that, in all the circumstances, the employer was actually justified in dismissing for that reason. In this regard there is no burden of proof on either party and the issue of whether the dismissal was reasonable is a neutral one for the Tribunal to decide.
49. In conduct dismissal, there are guidelines laid out in the well trodden case of British Home Stores v Burchell which states that:-
- a. did the Respondent carry out reasonable investigation into the Claimant's alleged gross misconduct;
  - b. did the Respondent have reasonable grounds for its belief that the Claimant had allegedly committed gross misconduct; and
  - c. was dismissal within the band of reasonable responses that was available to the Respondent?
50. Was the dismissal in all the circumstances fair?
51. The Tribunal reminds itself it should not substitute its own view as to what they would have done on the facts.
52. Therefore, in deciding the band of a reasonable response, employers have at their disposal a range of reasonable responses to matters such as misconduct or capability on an employee. They may span from summary dismissal down to an informal warning. It is therefore inevitable that different employers would choose different options. In recognition of this fact and in order to provide a standard of reasonableness that Tribunals can apply, the band of reasonable responses approach was formulated. This requires the Tribunal to ask, did the employer's action fall within the band (or range) of reasonable responses open to an employer?
53. This approach was approved by the Court of Appeal in British Leyland (UK) Limited v Swift [1981] IRLR91 CA, Lord Denning MR states,
- "The correct test is, was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might*

*reasonably have dismissed him then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness within which one employer might reasonably take one view and another quite reasonably take a different view."*

Direct Race Discrimination – s.13 Equality Act 2010 ("EqA")

54. The Claimant is black African.
55. S.13 states,
  - (1) A person (A) discriminates against another (B) if, because of a protected characteristic A treats B less favourably than he treats or would treat others.
56. In this case, in deciding whether there has been less favourable treatment, the Claimant has to advance a real comparator or a hypothetical comparator where there must be no material difference between the circumstances of the case.
57. S.13 EqA 2010 focuses on whether an individual has been treated less favourably because of a protected characteristic, in this case race. The question that naturally follows is: treated less favourably than whom? It would appear that the Claimant's comparator in respect of the incident on 19 September 2018, when the Claimant discovered that the Respondent had selected and appointed Jennifer to the position of Team Leader, whereas the Claimant says she was not offered or selected for the appointment. The position was neither advertised in accordance with the Respondent's procedures and the way the appointment was conducted, lacked complete transparency showing a lack of insight by Liza Ward the Human Resources Manager. However, the person appointed to the role was in fact a black African and it appears in the course of these proceedings that the Claimant says what she is really complaining about is the fact she was away at the time on holiday when the appointment was made, and should have been contacted. It would appear in the course of the Claimant's cross examination she is not pursuing this as a claim of direct race discrimination.
58. The other area that is being claimed is the actual dismissal itself. We will deal with this point briefly. The Tribunal is entirely satisfied that although the manner in which the dismissal was conducted and carried out, was completely inept, it was not done on the grounds of the Claimant's race and national origin or colour.
59. It is clear that a hypothetical comparator, a white person faced with the same incompetence of Liza Ward and Beverley Farmer, would have been treated in exactly the same way.
60. Turning back to the recruitment of Jennifer, the Respondents need to tighten up their procedure before they recruit staff, the manner in which it

was dealt with could lead to abuse and it would appear that Jennifer was simply voted in as the most popular employee at the time. That is not a transparent process and could lead to discrimination, consciously or unconsciously. The Respondents need to follow their own procedures on recruitment and be clear as to how and why an individual is recruited.

## Conclusions

### Unlawful Deduction of Wages

61. The Claimant is claiming that since November 2017, the Respondent has reduced the Claimant's contractual hours from 37.5 to 16 hours only. She asserts that as a result of this she has suffered unlawful deduction of wages until her dismissal.
62. It would appear that when the Claimant commenced her employment, she commenced part time as a Bank Worker, then around 10 August 2016 became full time on 37.5 hours or thereabouts, it does appear around 15 August 2018, the Claimant requested to go back on the Bank to her original hours and given the lack of any further concrete evidence, the Tribunal are unable to conclude there has been an unlawful deduction of wages.

### Holiday Pay

63. Again, the Claimant was asked by the Tribunal how her holiday pay claim was advanced and what she said was outstanding at the termination of her employment. Unfortunately, the Claimant was unable to tell the Tribunal how her holiday pay claim was advanced and what was outstanding, if anything.
64. For those reasons, that claim is not well founded.

### Ordinary Unfair Dismissal – Employment Rights Act 1996

65. It would appear that the reason advanced for the dismissal is conduct.
66. It is clear that the Respondents failed to carry out any reasonable investigation into the Claimant's alleged gross misconduct. Not only did they fail, but they failed to follow their own procedure which sets out clearly the process to be followed for a disciplinary hearing to take place.
67. Moreover did the Respondents have reasonable grounds to form its belief that the Claimant had committed gross misconduct, it is difficult to conclude given frankly the lack of evidence and supporting witnesses in this Tribunal, what was the real reason, if any, for the Claimant's dismissal? The Claimant was clearly ambushed at the disciplinary hearing at which she was told at the outset no decisions would be reached, which of course is entirely in accordance with the Respondent's Policy. Notwithstanding that, Liza Ward concluded rather abruptly at the end of

the Hearing that the Claimant had committed gross misconduct, at least on rather vague, woolly and unsubstantiated allegations. Where the Claimant did concede that she had searched a service user's bag to try and find the office key in circumstances where she said she had been, as other Support Workers had, authorised by the Manager to do so. That was never re-investigated to see whether that was in fact correct. In relation to the video that supported the Respondent's contention that the Claimant had been either entering service users rooms or touching their possessions, that was never produced.

68. In relation to the Claimant using service users to collect her children, the Claimant explained quite clearly on one occasion why that happened in order to assist the Respondent in the Claimant doing a shift at the Respondents in circumstances where the Respondents were short of staff.
69. Therefore, it is somewhat difficult to conclude as there was no investigation, no warning setting out exactly what the allegations were in the letter inviting the Claimant to the disciplinary hearing, that the decision to dismiss was fair and reasonable given what had transpired.
70. The Respondents clearly need to look into their process and policy to ensure that (a) they are followed and (b) that the process followed is fair and reasonable rather than an ambush almost equivalent to a kangaroo court.
71. Further concerns for the Tribunal were when did the two statements arrive, when were they sent, were they unsolicited? It is noted that they are undated and unsigned. Clearly no further investigations were embarked upon by either Liza Ward or Beverley Farmer of these people. Certainly there is no notes or any evidence to support that there were further investigations.
72. Clearly Liza Ward was still employed by the Respondent and we note that Beverley Farmer is, she certainly needs some further training in how to conduct disciplinary hearings and also in the process to be followed leading up to and including disciplinary Hearings.
73. What is of concern to the Tribunal, it is said in the dismissal letter that the allegations were of so much concern to the Respondents and the manner in which the Claimant behaved, it is therefore surprising it was never entered into the Respondent's 'log' and no matter was referred to the local authority or any other agency for further investigation. It seems to support the Tribunal's view that these were at best matters of training.

### **Remedy**

74. At the end of the oral Judgment, the Tribunal then went on to decide a Remedy.

75. Mr Munro for the Respondents accepted that the Claimant had mitigated her loss by finding alternative employment by 13 May 2019.
76. The Claimant confirmed that the income from her new employment was greater than the sums she received at the Respondent and therefore her loss ended on 13 May 2019.
77. The period of time we are looking at is 26 weeks. Taking the average net pay from the pay slips in the Bundle which consists of May, June, July, August, September and October. The total is £6,512.15 giving an average per month of £1,085.35. That equates to a net sum of £250.46 per week. The period the Claimant was unemployed was from 9 November 2018 which includes notice pay, to 13 May 2019 which is 26 weeks times the net sum of £250.46, gives a compensatory award of £6,511.96.
78. The Claimant is entitled to a basic award, she was aged 33 years at the time of dismissal with two years' complete service, two weeks' gross salary, the gross being £289.82 which gives a basic award of £579.64.
79. The Claimant is also entitled to loss of statutory rights in the sum of £500.00.
80. The Claimant also confirmed during the period she was unemployed she received no state benefits.
81. The total award therefore is, **£7,592.60**
82. The Tribunal then indicated, giving our findings of fact and the manner in which the process leading up to and including dismissal was conducted, that the Claimant should be entitled to an uplift for the failure to follow ACAS Guidelines and Code of Practice.
83. Mr Munro made submissions that there should be no uplift, that there was contribution towards her dismissal which the Tribunal should consider and that had a fair procedure been followed the Claimant would have been dismissed.
84. The Tribunal therefore adjourned to consider and took the view that given the shambolic process conducted by the Respondents in the lead up to and including dismissal, the Claimant was entitled to a 20% uplift which equates to £1,518.32. Giving a total compensatory award of **£9,111.12**.
85. The Tribunal then considered whether there was any culpable or blameworthy conduct and the Tribunal did not conclude on the facts that the Claimant in some way contributed to her own dismissal.
86. In relation to consideration as to whether there should be a Polkey reduction on the grounds that had a fair procedure been followed, the Claimant would have been dismissed. Again, given the facts of this case,

the Tribunal were of the unanimous view that had a fair procedure been followed, the Claimant would not have been dismissed by a fair minded and reasonable employer.

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Employment Judge Postle

Date:27/10/2022

Sent to the parties on: 3 November 2022

Naren Gotecha  
For the Tribunal Office.