



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. J Hamilton

**Respondent:** North East Lincolnshire Council

**Heard at:** Lincoln

**On:** Wednesday, 14<sup>th</sup> September 2022

**Before:** Employment Judge Heap  
**Members:** Mr. J Hill  
Mr. A Blomefield

## Representation

**Claimant:** In person  
**Respondent:** Ms. A Sparks - Solicitor

## JUDGMENT

1. The claim of unfair dismissal fails and is dismissed.
2. The complaint of a breach of the provisions of Section 92 Employment Rights Act 1996 fails and is dismissed.

## REASONS

### BACKGROUND & THE ISSUES

1. The Claimant presented his claim by way of a Claim Form received by the Tribunal on 2<sup>nd</sup> May 2022 following a period of early conciliation via ACAS which took place between 21<sup>st</sup> March 2022 and 12<sup>th</sup> April 2022.
2. The claim is one of unfair dismissal and of a failure to provide a written statement of reasons for dismissal contrary to Section 92 Employment Rights Act 1996.
3. The Respondent resists the claim in its entirety.
4. At the outset of the hearing, we clarified with the Claimant the basis upon which he contends that his dismissal was unfair. The Claimant confirmed that his position was that his dismissal fell outside the band of reasonable responses

open to a reasonable employer because the way in which the matter should have been dealt with was by imposing a lesser sanction and offering further training. He also says that he did not receive a letter of dismissal setting out the reasons why he had been dismissed and that he was not offered the right of appeal. Those are the only reasons relied upon by the Claimant for contending that the dismissal was unfair.

5. Insofar as the issue of a statement of written reasons for dismissal was concerned, the Respondent contended that a letter which appears at pages 165 to 167 of the hearing bundle was sent to the Claimant and that that letter set out the reasons for dismissal and also offered a right of appeal. The Claimant does not accept that that letter was sent to him and, in all events, he says that it was sent to an incorrect address and that he had previously notified the Respondent of his new address. Ms. Sparks also relies on the fact that the Claimant did not request a statement of written reasons for dismissal and so there has been no breach of Section 92 Employment Rights Act.
6. The Claimant also referred in his Claim Form to there having been numerous incidents of what he termed indirect discrimination. However, it transpired that he was referring to discrimination in a colloquial sense and not with reference to any particular protected characteristic under the Equality Act 2010. He therefore agreed with the Tribunal's assessment that there was no indirect discrimination complaint which we were required to determine and matters were limited only to unfair dismissal and a complaint of a breach of Section 92 Employment Rights Act.

### **THE HEARING**

7. The hearing of this matter took place over one day on 14<sup>th</sup> September 2022 with evidence and submissions being completed in the late afternoon. There was insufficient time for the Tribunal to fully deliberate and provide our judgment and reasons on the day and the decision was therefore Reserved. The Judge apologises for the delay in this decision being finalised which was the result of periods of leave taken and other judicial work being undertaken. The patience of the parties in awaiting our decision has been appreciated.
8. Before making our decision, we have taken into account all of the evidence contained within the hearing bundle as agreed between the parties, the witness evidence that we have heard and the submissions made. We do not rehearse all of those matters within this decision but the parties can be assured that we have taken into account all that they have told us.
9. In terms of witness evidence we heard firstly from Mrs. Lisa Logan, the Respondent's Strategic Lead for Environment who took the decision to dismiss the Claimant. On the Claimant's side we heard evidence from the Claimant himself.
10. The Claimant candidly accepted that he was not properly prepared for this hearing and, particularly, it did not appear that he had appreciated he would have to test Mrs. Logan's evidence under cross-examination. No application for an adjournment was made but of our own volition we offered the Claimant an

extended lunch break after we had read the bundle and witness statements so that he was able to prepare questions to deal with areas where he did not accept the account that Mrs. Logan gave in her witness statement. When he returned the Claimant was able to ask the questions that he wanted of Mrs. Logan in respect of the decision that she had taken to dismiss him. We were satisfied on that basis that we were able to conduct a fair hearing for the Claimant and, indeed, for both parties.

## THE LAW

11. Before turning to our findings of fact, it is necessary for us to set out a brief statement of the law which we shall in turn apply to those facts as we have found them to be.

### Complaints of unfair dismissal

12. Section 94 Employment Rights Act 1996 (“ERA 1996”) creates the right not to be unfairly dismissed.
13. Section 98 deals with the general provisions with regard to fairness and provides that one of the potentially fair reasons for dismissing an employee is on the grounds of that employee’s conduct. If it is disputed then the burden is upon the employer to satisfy the Tribunal on that question and they must be satisfied that the reason advanced by the employer for dismissal is the reason asserted by them; that it is a potentially fair reason for dismissal falling under either Section 98(1) or 98(2) ERA 1996 and, further, that it was capable of justifying the dismissal of the employee. A reason for dismissal should be viewed in the context of the set of facts known to the employer or the beliefs held by him, which cause him to dismiss the employee (**Abernethy v Mott, Hay & Anderson 1974 ICR 323, CA**).
14. It is therefore for the employer to satisfy the Tribunal as to the reason for dismissal. If they are not able to do so, then a finding of unfair dismissal will follow.
15. If an Employment Tribunal is satisfied that there was a potentially fair reason for dismissal and that that is the reason advanced by the employer, then it will go on to consider whether the employer acted fairly and reasonably in treating that reason as a sufficient reason to dismiss.
16. The all-important question of fairness is contained with Section 98(4) ERA 1996 which provides as follows:

*“(4) Where the employer has fulfilled the requirements of subsection (1), (in this case that they have shown that the reason for dismissal was redundancy) the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*

*(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the*

*employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

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

17. The burden is no longer upon the employer alone to establish that the requirements of Section 98(4) are fulfilled in respect of the dismissal. That is now a neutral burden.
18. In conduct cases, a Tribunal is required to look at whether the employer carried out a reasonable investigation from which they were able to form a reasonable belief, on reasonable grounds, as to the employee's guilt in the misconduct complained of (**British Home Stores v Burchell [1980] ICR, 303 EAT**).
19. An Employment Tribunal hearing a case of this nature is not permitted to substitute its judgment for that of the employer. It judges the employer's processes and decision making by the yardstick of the reasonable employer and can only say that a dismissal was unfair if either falls outside the range of reasonable responses open to the reasonable employer.
20. Many employees will be able to point to something the employer could have done differently, or indeed better, but that is not the test. The question for the Tribunal is whether the employer acted within the range of reasonable responses open to it or, turning that question around, could it be said that no reasonable employer would have done as this employer did?
21. Relevant to the fairness of a dismissal is also whether the employer followed the ACAS Code of Practice on Grievance and Disciplinary Procedures (“The ACAS Code”).

#### Complaints of a breach of Section 92 ERA 1996

22. Section 92 ERA 1996 deals with when an employer is obliged to provide an employee with a statement of written reasons for dismissal and reads as follows:

***“Right to written statement of reasons for dismissal.***

- (1) *An employee is entitled to be provided by his employer with a written statement giving particulars of the reasons for the employee's dismissal—*
  - (a) *if the employee is given by the employer notice of termination of his contract of employment,*
  - (b) *if the employee's contract of employment is terminated by the employer without notice, or*
  - (c) *if the employee is employed under a limited-term contract and the contract terminates by virtue of the limiting event without being renewed under the*

same contract.

- (2) *Subject to subsections (4) and (4A), an employee is entitled to a written statement under this section only if he makes a request for one; and a statement shall be provided within fourteen days of such a request.*
- (3) *Subject to subsections (4) and (4A), an employee is not entitled to a written statement under this section unless on the effective date of termination he has been, or will have been, continuously employed for a period of not less than [two years] ending with that date.*
- (4) *An employee is entitled to a written statement under this section without having to request it and irrespective of whether she has been continuously employed for any period if she is dismissed—*
  - (a) *at any time while she is pregnant, or*
  - (b) *after childbirth in circumstances in which her ordinary or additional maternity leave period ends by reason of the dismissal.*
- (4A) *An employee who is dismissed while absent from work during an ordinary or additional adoption leave period is entitled to a written statement under this section without having to request it and irrespective of whether he has been continuously employed for any period if he is dismissed in circumstances in which that period ends by reason of the dismissal.*
- (5) *A written statement under this section is admissible in evidence in any proceedings.*
- (6) *Subject to subsection (7), in this section “the effective date of termination”—*
  - (a) *in relation to an employee whose contract of employment is terminated by notice, means the date on which the notice expires,*
  - (b) *in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and*
  - (c) *in relation to an employee who is employed under a limited-term contract which terminates by virtue of the limiting event without being renewed under the same contract, means the date on which the termination takes effect.*

- (7) *Where—*
- (a) *the contract of employment is terminated by the employer, and*
  - (b) *the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (6)),*
- the later date is the effective date of termination.*
- (8) *In subsection (7)(b) “the material date” means—*
- (a) *the date when notice of termination was given by the employer, or*
  - (b) *where no notice was given, the date when the contract of employment was terminated by the employer.”*

23. Unless the employee who has been dismissed is either pregnant or has been dismissed while absent from work during ordinary or adoption leave or ordinary or additional maternity leave, an employee has to make a request for a statement of reasons for dismissal. Only then does that trigger the right to be provided with such a statement.

### **FINDINGS OF FACT**

24. The Claimant commenced employment with the Respondent as a Crematorium Technician on 28<sup>th</sup> October 2019. That was a change from the industry in which the Claimant had previously been employed in which, by and large, related to hospitality and catering. The Claimant was based within Bereavement Services at Grimsby Crematorium.
25. On 18<sup>th</sup> February 2021, the Claimant completed an expression of interest form in relation to a promotion for two more senior roles. These were the roles of Technical Team Leader and Operations Team Leader. Although the Claimant was ultimately unsuccessful in relation to those promotion opportunities, his applications set out his experience and skills and, particularly, that he was skilled in the comprehensive and efficient operations of the two cremator machines which he had to use as part of his role in cremating human remains (see page 70 of the hearing bundle).
26. Before being permitted to undertake cremations of human remains, there has to be, quite understandably, a significant period of training. That essentially involves supervised cremation of over 100 human bodies. Once the Claimant had completed that training he was issued with a qualification from the Institute of Cemetery and Crematorium Management. He received that qualification in April 2020.

Pet cremations

27. Approximately two months later the Respondent determined that it would also start to carry out the cremation of pets and installed a pet cremator in order to do so. We understand this to be a relatively niche area and so one of the senior cremators travelled to Barnsley, which has its own pet cremation facility, to view the set up and understand the process. That knowledge was then filtered back down to other members of the team, including the Claimant.
28. We do not accept that the position in relation to the cremation of pets is materially different from that which is used to cremate human bodies nor do we find that the Claimant had any particular difficulties or communicated any difficulties or any asserted lack of knowledge of the process to the Respondent as he asserted in his evidence. We are satisfied that the Claimant understood the pet cremation process and what was required of him and that it was not materially different to the work that he did dealing with human cremations.
29. Part of the work to be done in relation to any cremation, whether pet or human, is the “de-ashing” of the remains. That is not only so that the cremator is clear for use in the next cremation so as to avoid cross contamination of remains but also so that the remains can be returned to the family or owner concerned. In terms of cross contamination, the de-ashing process is important so that users of the crematorium services can be assured that it is only the remains of their loved one or pet which they have received.
30. We accept that it is a serious matter if de-ashing of the cremators is not attended to properly and that it has the capability to cause reputational damage to the Respondent and the potential loss of a licence to undertake cremations if that does not take place and set cleaning and checking procedures are not followed.

The Claimant’s suspension

31. On 22<sup>nd</sup> December 2021, the Claimant’s manager and another colleague were loading a pet into the pet cremator. It became clear to them that there was a problem in that the cremator still had remains from the last cremation that had taken place and as such the cremator had not been properly de-ashed.
32. The last pet cremation that had taken place had been undertaken by the Claimant and what was viewed on that occasion was that remains had been pushed to the back of the cremator and that appeared to be deliberate to try and conceal them.
33. The manager concerned determined that the Claimant needed to be suspended pending disciplinary action being taken as a result of what he had seen in the pet cremator.

34. A suspension risk assessment was carried out before that decision was taken (see pages 72 to 75 of the hearing bundle). That suspension risk assessment set out the basis of the issue that had caused suspension to be considered and, in this respect, said as follows:

*“On 22<sup>nd</sup> December 2021, Myself and Colleague, [MA<sup>1</sup>], began to load a pet into the pet cremator. As we opened the door it became apparent that the machine had not been ‘de-ashed’. The cremator contained a large amount of ashes which had been pushed to the rear of the chamber.*

*Removing the ash showed that it contained several bone fragments and was clearly from an animal that we had cremated.*

*The cremation log showed that Jack [the Claimant] had signed to undertake the last three cremations we had booked with us, the latest one being two weeks prior. The accompanying paperwork (daily and weekly machine checks, and cleaning schedule) was not completed on any of the 3 occasions.*

*Members of the team familiar with the operation of the pet cremator, but who were not using it, inferred that the ashes had been left in the machine from the first cremation Jack [the Claimant] undertook at the beginning of December.”*

35. The Claimant was duly suspended and was handed a letter dated 6<sup>th</sup> January 2022 confirming the position. That was hand delivered to him at work but it clearly showed the address which he tells us was now was his previous address.

36. The suspension letter set out the following allegations for which the Claimant was to be investigated:

- *“Failure to follow correct procedures with regards the de’ashing of the pet cremator. The cremator was found to have a large amount of ashes and bone fragments pushed to the rear of the cremator. The potential consequences being significant risk of reputational damage for the Council.*
- *Breach of Health & Safety procedures e.g. failing to undertake daily and weekly machine checks, which has the potential to result in risk to H&S of self and others.*
- *Failure to undertake the completion of cremation log documentation as required, being the daily and weekly machine checks and cleaning schedules. The failure to complete cleaning schedule documentation is a breach of the AHPA License and can result in the pet crematorium being closed down.”*

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<sup>1</sup> As this Judgment will be published online we have anonymised the names of individuals concerned where it is not necessary to specifically refer to their identities.



37. The additional matters had come to light after the Respondent had become aware of the de-ashing issues as it had been discovered that the Claimant had not been completing cleaning and machine checks with the inference that he had not been undertaking the checks either. Those additional matters were therefore added to the scope of the investigation into the Claimant's conduct.
38. The letter reserved the right to add additional allegations should any potential further misconduct come to light. The Claimant was informed of the process in that he would next be invited to an investigatory meeting and he was given the contact details for the Respondent's Employee Assistance Programme which could provide him with confidential support.

#### Investigation into the Claimant's conduct

39. The Claimant was subsequently invited to an investigatory interview by letter dated 10<sup>th</sup> January 2022. Again, that was addressed to what we now understand to be the Claimant's previous address. The interview was to take place with the Deputy Bereavement Services Manager and was scheduled for 13<sup>th</sup> January 2022. The minutes of that meeting are at pages 80 - 89 of the hearing bundle. The Claimant tells us that in that meeting he made the manager in question aware that he had changed his address. That is not reflected within the minutes themselves but if that position was relayed, then we are satisfied that it was simply an error that correspondence continued to be addressed to the Claimant's old address. There was no reason that the Respondent would have continued to use an old address without updating it. The Claimant at no point after the investigatory meeting raised any issue with the Respondent to point out that they were writing to an incorrect address.
40. Interviews were also conducted with the colleague who had viewed the inside of the pet cremator on 22<sup>nd</sup> December 2021 and also the other cremation technicians employed by the Respondent at the Grimsby site.
41. On 17<sup>th</sup> January 2022, the Claimant was sent the notes of the investigatory meeting, which were again addressed to his former residence. The Claimant did, however, receive those and acknowledge the same two days later (see page 106 of the hearing bundle). The Claimant was invited to and duly attended a further investigatory meeting to provide additional detail on 19<sup>th</sup> January 2022 (see pages 111 - 123 of the hearing bundle).
42. As to the allegation concerning de-ashing the cremator the Claimant denied that he had not undertaken the correct procedure and that he would have removed the remains of the two pets that he had cremated on the last day that he had used the cremator when the process was complete. He set out that at the latest that would have been done the following day if he had authorisation to allow the remains to cool overnight. He denied pushing any remains to the rear of the cremulator or knowing how that could have happened.

43. During the course of the investigation, additional issues had come to light. Many of those were things that the Claimant had been previously informed about by managers and they included his timekeeping, failure to follow instructions and failure to wear PPE and corporate uniform.
44. A note of the incidents which the Claimant had previously been informed about appears in the hearing bundle at page 124. The Claimant's evidence before us was that he did not dispute that those particular incidents had occurred as they were recorded within the note nor that he had been spoken to about them previously.
45. As to the issue of timekeeping, that related not only to the Claimant arriving late and leaving early – which had caused complaint to be made about the crematorium not being open when it should be – but also because on a number of his time sheets the Claimant had put hours to suggest that he had not been late/left early and so had been claiming overtime payments that he was not entitled to. The Claimant accepted during the course of the investigation that that had happened on occasions.
46. Other more recent matters had also been discovered by the Respondent which were also viewed as serious matters. One of those was that a cap/locking screw had been found on the floor rather than affixed to the cremulator itself. When asked if the cremulator would be safe to use without the cap the Claimant replied “no way” and that he “wouldn't chance it”. The person using the cremulator before the defect had been noticed was the Claimant.
47. A further issue was that a spent drum of factivate (a chemical reactant used in cremations) had been found under the cremulator which the Claimant had been responsible for and that represented a fire hazard because it should have been replaced.
48. The Claimant denied that responsibility for those matters although at the close of his evidence in connection with questions asked by the Tribunal he accepted the allegation concerning a breach of health and safety procedures, which included the issue with the factivate drum and the failure to replace the cremulator locking nut.
49. On 20<sup>th</sup> January 2022, an investigatory report was concluded recommending disciplinary action against the Claimant. The Claimant accepted at the hearing before us that the investigation had been thorough and detailed and it is clear that the investigation report itself is also similarly detailed.
50. The report set out that during the course of the investigation other concerns had been raised that warranted further investigation and which led to the number of allegations increasing. That had arisen as a result of a team leader being asked for an overview of whether there had been earlier instances of the Claimant not having previously adhered to procedures or followed instructions. By the time that the investigation concluded the number of allegations totalled six.

51. In addition to the three that the Claimant had been notified of in the suspension letter, the following had now been added:

- “4) **Negligence in the performance of duties:** *spilling cremated remains and leaving them on the floor, (4.2) failure to complete housekeeping duties, failure to complete scattering of ashes, (4.3) failure to wear corporate uniform.*
- 5) **Failure to follow reasonable management instructions:** *failure to place funeral flowers as requested, (5.2) failure to clean memorial bench, (5.3) challenging the removal of floral tributes.*
- 6) **Falsifying Timesheets:** *Persistent poor time keeping and falsifying timesheets when lone working.”*

52. The investigation report recommended disciplinary action in relation to each of the six allegations against the Claimant. It is not necessary for us to set out all of the findings in the investigation report on the basis that the Claimant has no dispute over the findings reached and which were relied upon in the subsequent disciplinary proceedings with regard to allegation 2, 3 or 6. Those allegations were as follows:

- a. A breach of health and safety procedures regarding failing to undertake daily and weekly machine checks, failure to wear the correct PPE, failure to dispose of the spent factivate drum and failure to replace the locking nut on the cremulator;
- b. Negligence in the performance of duties being the failure to undertake completion of cremation log documentation in respect of the daily and weekly machine checks and cleaning schedules which could result in a loss of the Respondents Animal & Plant Health Agency (“AHPA”) licence and the closure of the pet cremation service; and
- c. Falsifying timesheets when lone working and having poor timekeeping.

53. The only ones in dispute are allegations 1, 4 and 5, the findings in respect of which were as follows:

“Allegation 1

*Ashes and bone fragments were found in the pet cremator. The previous three cremations that had taken place in the machine had all be (sic) conducted by the same operator, Jack Hamilton.*

*A robust records system has evidenced that no other cremations had taken place in this time frame, and no other operator had assumed responsibility for a cremation in this period.*

*Jack was assisted on his last cremation by DS<sup>2</sup> and his witness statement suggests that he questioned Jack on why ‘cardboard ashes’*

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<sup>2</sup> Again, we have anonymised the identity of this individual.

*where (sic) found in the cremator indicating that ashes were in the machine at this point.*

*The contents of the cremator as shown in the photographs show that the bone fragments had purposefully been pushed to the rear of the cremator chamber. This is described in the witness statement provided by MA.*

*The blood stained box was cremated in accordance with the DEFRA guidelines as it is an animal by product, but should have been cremated with the animal. This has undoubtedly been mixed with the remains of another animal would result in catastrophic reputational damage to the Council should this become public knowledge, as its (sic) shows a failure to honour our commitment to cremate the animal individually.*

*The incident is a breach of the employee code of conduct: act in a manner which would not result in an action against the Council for Negligence.*

*I have come to the conclusion that there is a case to be answered due to the evidence being the remains left in the cremator and a witness statement claiming that there were ashes of some description being in the cremator during prior use. There have been no other uses of the machine between the occasions when Jack was operating it until the remains were found”.*

#### “Allegation 4

*I find that there is a case to answer on this allegation.*

*Cremated remains were found on the floor after Jack used the machine. The description Jack gave in his witness statement of how to load the pet cremulator is not the set procedure for loading and likely to cause the remains to spill.*

*Jack acknowledged in his statement that there were no components missing from the cremulator when he used it, but it was found missing after he had used it.*

*Jack failed to complete any housekeeping duties and scattering of ashes during his week cremating. This was logged by AP<sup>3</sup> who challenged Jack on it at the time.*

*Jack has admitted in his witness statement he failed to wear corporate uniform because it was too cold in the cremator room. Despite raising concerns about working with the heat.”*

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<sup>3</sup> Again, we have anonymised the identity of this individual.

“Allegation 5

*“I find there is a case to be answered for this allegation.*

*Jack has admitted that he did not comply with an instruction to place flowers on the garden and later disposed of them.*

*Jack admitted he did not comply with a request to clean a memorial bench when asked by his line manager on 3 occasions.*

*Jack could not remember the incident around challenging AP regarding the removal of floral tributes from the gardens but claims it may have been in banter.”*

54. The investigation report went on to deal in detail with the evidence that had been gathered and which in the investigator’s belief supported the allegations against the Claimant and made it a disciplinary case to answer. All evidence was attached to the investigation report itself and so the Claimant had advanced notice of what had been collated during the investigation in order to be able to make his case at the disciplinary hearing.

Disciplinary hearing and decision to dismiss

55. The Claimant was sent a letter inviting him to a disciplinary hearing to take place on 3<sup>rd</sup> February 2022. All six of the allegations set out in the investigation report were also set out in the invitation letter. That letter was again addressed to the Claimant’s former residence, but he attended the disciplinary hearing.
56. The invitation letter set out that the allegations against the Claimant may be considered as gross misconduct and may lead to his dismissal without notice. The Claimant was reminded of his right of accompaniment to the meeting and again given details of the Employee Assistance Programme.
57. The Claimant attended the disciplinary hearing on 3<sup>rd</sup> February 2022 as scheduled. That hearing was chaired by Lisa Logan and she had support from Human Resources (“HR”). Mrs. Logan went through each of the allegations in turn with the Claimant and we are satisfied that she listened to all that he had to say about each matter.
58. At the conclusion of the hearing and following a period of adjournment, Mrs. Logan conveyed to the Claimant her decision to dismiss him, albeit with notice. She explained in summary her reasons for taking that decision and also told the Claimant of his right of appeal (see page 164 of the hearing bundle).
59. The Claimant was upset and distressed at the decision to dismiss him and he said as much at the hearing. He referred in his evidence before us to being very keen to appeal the decision because he wanted to continue in employment with the Respondent. However, as we shall come to below, he did not in fact exercise his right of appeal.

60. Mrs. Logan set out her decision to dismiss the Claimant in a letter dated 7<sup>th</sup> February 2022. That was again addressed to the Claimant's former address. His position is that he did not receive that letter, but we have no doubt and accept the evidence of Mrs. Logan that she was aware from speaking to HR that it had been prepared. Whilst she cannot say definitively that it was sent because she did not post it personally, we can see no reason why that would not have taken place and it was standard practice for post to be sent from the Respondent's post room.
61. The Claimant was sent a subsequent letter asking him to return his identification badge and Company property, albeit he has not done so. That was also posted to him but he says that that was sent to his new address and it was received. We have not seen a copy of that letter because the Claimant did not disclose it and it was not included within the hearing bundle so we cannot say definitively what address it was sent to. The dismissal letter is the only letter which the Claimant appears not to have received but, as we have already observed above, we accept that it was prepared by the Respondent and set out the reasons for the Claimant's dismissal.
62. The dismissal letter set out in detail the reasons why Mrs. Logan had decided to dismiss the Claimant, which were as follows:

*"It was the conclusion of the chair that your actions constituted misconduct and gross misconduct under the terms of the Council's Disciplinary Procedure.*

*I therefore write to confirm the decision to dismiss you from your post. This decision was taken in view of the serious nature of the allegations listed above. In making the decision, the following points were considered, on the balance of probabilities:*

*Based on the evidence, you were shown to be the only person to operate the machinery within the given timeframes, and there was sufficient evidence to show that remains were left within the machine, which likely resulted in the remains of multiple cremations being mixed. Although you did note that there may have been residual debris in the cremator, had the correct procedures been followed these would not have been present in such large quantities. This was determined to be a serious breach of the APHA licence as well as an action which could have had significant reputational implications for the service and the Council.*

*It was acknowledged that there were clear logs showing operation of machinery where the mandatory checks and cleaning processes had not been completed or logged on a number of occasions, which is also a breach of the APHA licence as well as a serious health and safety risk. There was also sufficient evidence to show that the spent activate drum was not handled in line with the established procedures, causing a serious fire hazard within the crematorium. Furthermore, there was evidence to show that you left the cremulator with a component missing, presenting a significant health and safety risk to your colleagues. There were also numerous instances of you failing to wear the provided PPE at*

*work, despite you confirming that you knew the associated risks.*

*It was also clear that there had been a number of incidents over the past months which have been raised both informally and formally with you by management of the service regarding your performance and failure to follow management instructions. As you noted during the investigation, this service is especially sensitive and although you have admitted responsibility for a number of these incidents, it was concerning that there was evidence of persistent negligence in undertaking these duties. Although the majority of the evidence suggested that these incidents took place, there was an acknowledgement that some of these issues were rectified at a later date.*

*Finally, there was evidence to suggest that you had incorrectly claimed overtime on a number of occasions. Although you did admit to claiming incorrect hours, you explained that this was not deliberate, and there was no evidence to show your reasoning for these issues. However, there was sufficient evidence to show that there were a number of incorrect claims made when you were lone working.*

*After the discussions at the hearing, the decision was made on the basis that there were no significant mitigating circumstances presented by anyone as part of this lengthy and thorough investigation.*

*In most circumstances, as some of your actions were found to constitute gross misconduct, this dismissal would have been made summarily without notice. However, due to your personal circumstances, as well as an acknowledgement that up until this point in your career there have been no issues with your conduct, the decision was made to grant dismissal with notice."*

63. The Claimant was provided with one month's notice and his employment with the Respondent terminated with effect from 4<sup>th</sup> March 2021. The Claimant was not required to work his notice period and instead he received a payment in lieu. The letter set out the Claimant's right of appeal and how that should be exercised.
64. The Claimant did not exercise his right of appeal nor did he contact the Respondent to indicate that he had not received a dismissal letter and/or did not know how to appeal against his dismissal. We find that a strange situation because the Claimant's evidence was that he was expecting a dismissal letter and that he was desperate to appeal because he wanted to get his job back. He had already been told about his right of appeal and if he had not received a dismissal letter telling him how to go about that it is difficult to understand why he would not have contacted either Mrs. Logan or HR, whose details he had, to chase matters up. Had he done so, we have no doubt that a further copy of the dismissal letter would have been provided to him.
65. Following his dismissal the Claimant issued these proceedings which are now before us for determination.

**CONCLUSIONS**

66. We now turn to our conclusions in relation to the complaints before us.

**Breach of Section 92 ERA 1996**

67. We can deal with the complaint of a breach of Section 92 ERA 1996 in very short order. In this regard, in accordance with Section 92(3) in order to bring a complaint under this section in circumstances where none of the exceptions which we have set out above apply, the Claimant would have to have made a request for a written statement giving particulars of dismissal. It is common ground that he did not make any such request and the Claimant accepted that in his evidence.

68. As the duty to provide that written statement is in these circumstances only triggered if the Claimant made a request for one, it follows that this part of the claim fails and is dismissed.

**Unfair dismissal**

69. We turn then to the complaint of unfair dismissal. No issue is taken as to there being a potentially fair reason to dismiss the Claimant and that that reason was conduct. We should say that if any issue had been taken in that regard then we were entirely satisfied that the reason operating on the mind of Mrs. Logan was indeed conduct.

70. However, we then need to consider whether the Respondent acted fairly and reasonably in treating conduct as a sufficient reason to dismiss. The Claimant takes no issue with the sufficiency of the investigation and indeed we are equally satisfied that that was thorough, balanced and fair. There was also sufficient evidence within the investigation from which the Respondent could reasonably conclude that the Claimant was guilty of the misconduct which was alleged against him.

71. We remind ourselves in this regard that the Respondent only needs to have sufficient information to form a reasonable belief on reasonable grounds of the Claimant's guilt. They did not need to prove beyond all reasonable doubt that the Claimant was guilty of what was alleged and it is not sufficient for him simply to disagree with the conclusions which had been reached, provided that those had been reached on reasonable grounds and after sufficient investigation.

72. We do not need to concern ourselves with the allegations which the Claimant admits to and concentrate only on those which he disputes. The first of those is in relation to leaving ashes of other deceased pets in the pet cremulator. The Respondent had more than sufficient information to enable them to form a reasonable belief that the Claimant was guilty of this aspect of the allegation. The Respondent's records showed that the Claimant had been the last person to use the cremulator on the last three occasions where there had been a pet cremation and two members of staff had witnessed remains having been left inside the cremulator and pushed to the back as if to obscure them from view.



73. The Claimant had also failed to complete the necessary checking and cleaning forms which tended to suggest that he had not taken steps to remove remains from the cremulator. Whilst the Claimant may have denied leaving the remains there, there was more than sufficient from the evidence within the investigation to determine that he had been responsible and that it had been done deliberately.
74. The Claimant also disputes the fourth allegation but, again, we are satisfied that there was sufficient information from the investigation to form a reasonable belief that the Claimant had done as was alleged. In this regard, the investigation had established that the Claimant was the last person to use the cremulator before the missing cap/locking screw was located on the floor. Whilst the Claimant denied that allegation, there was nothing to say that someone had either used the machine or tampered with it since its use by the Claimant and the logical conclusion was that he had been responsible for that matter.
75. Turning then to the fifth allegation, whilst the Claimant disputed in his evidence before us that he had done what he was accused of in that regard he had admitted the majority of those issues within the investigation meetings. That was with the exception of one part of the allegation regarding the removal of floral tributes which he could not recall or indicated that it may have been “banter”. Having regard to the Claimant’s admissions about those matters, the Respondent clearly had sufficient to form a reasonable belief in his guilt.
76. Having therefore determined that the Respondent had carried out sufficient investigation to form a reasonable belief in the Claimant’s guilt in all of the allegations, including those which he denied, we turn then to whether the sanction of dismissal fell within the band of reasonable responses open to a reasonable employer. We remind ourselves in this regard that we only need to be satisfied that dismissal was an option open to a reasonable employer and not that every employer would have dismissed the Claimant for the allegations which have been found to be borne out.
77. We are entirely satisfied in the circumstances that dismissal was within the band of reasonable responses. Whilst there were some more minor or trivial issues which formed part of the allegations, the core matters of concern were ones for which there could have been serious reputational damage to the Respondent and may have seen it lose its licence for undertaking pet cremations altogether.
78. The Respondent had reasonably concluded that the Claimant had not disposed of pet remains as he should have with the result that cross contamination was likely. That could, for the obvious reasons that we have already set out above, have caused significant reputational damage to the Respondent. In addition to that, the Claimant had not completed the cleaning and check paperwork that was required under the Respondent’s license to undertake cremations. His actions could have led to the loss of that licence with the result that the Respondent would no longer be able to carry out pet cremations.

79. Moreover, the Respondent had also reasonably concluded that the Claimant had been responsible for not leaving the cremulator in satisfactory working order because of the discarded cap/locking screw and the Claimant himself accepted that the unit could not be safely used in that state and that he “would not risk it”. That posed a potential danger to the safety of the next member of staff who used the cremulator. The Respondent had also reasonably concluded that the Claimant had been responsible for not changing the empty container of factivate which again posed a health and safety risk because of the possibility of a fire being caused.
80. Finally, the Claimant had admitted on more than one occasion having either arrived late and/finished work early when he was lone working and when he was claiming overtime. His overtime sheets did not correctly reflect the hours that he was in fact working and claiming overtime for and he had in effect fraudulently claimed payment for times when he was not in fact at work.
81. All of those were very serious matters which the Respondent was entitled individually to view as amounting to gross misconduct. It was within the band of reasonable responses to therefore dismiss for those singular instances but, when viewed cumulatively, dismissal fell squarely within that band.
82. Whilst the Claimant contends that the Respondent should have put in place further training such as coaching, more exposure to pet cremations and visiting Barnsley himself, that misses the point that the position for the Respondent was that the Claimant had chosen not to do these things rather than being the case that he could not do them. Whilst he may have undertaken fewer pet cremations than other members of staff, although we have no statistics on that, the Claimant had had the same training as everyone else and we are satisfied he knew what it was that he had to do and how to do it. Indeed, we accept that pet cremations are not materially different to human cremations which the Claimant was proficient on as he had himself set out in his applications for promotion. The Respondent’s reasonably held view was that it was not a case that the Claimant could not do something but that he had deliberately chosen not to. Additional training would not therefore have assisted and not taking that route does not make the dismissal outside the band of reasonable responses.
83. We are therefore satisfied that because of the serious implications that the Claimant’s actions could have had on the Respondent, it fell firmly within the band of reasonable responses to have dismissed him.
84. We are also satisfied that the dismissal was procedurally fair. The Claimant relies upon not receiving a dismissal letter and not being offered a right of appeal in connection with what he alleges were procedural failings.
85. We accept that the Claimant was sent a letter of dismissal, albeit that was sent to an incorrect address. However, the Claimant had not at any stage queried the address on previous correspondence or formally notified the Respondent of a change of address as would normally be the case. If it was mentioned at the first investigatory interview – and there is no record of that – then when he continued to receive correspondence with an incorrect address it would make logical sense for him to have reminded the Respondent again in case something

had been overlooked. Had he done that, then the outcome letter would undoubtedly gone to the correct address and he would have received it.

86. In all events, the Claimant knew that he was going to receive a dismissal letter because he had been told that at the conclusion of the disciplinary hearing. When he did not receive one, the logical course would have been to contact the Respondent to advise them about that in case, for example, it had been lost in the post and at that stage he would have received a further copy.
87. However, the Claimant was already aware of the reasons for his dismissal because he had been told about that by Lisa Logan at the conclusion of the disciplinary hearing after she gave him her decision to terminate his employment. He was told that he was being dismissed with notice and his termination date and he was told about his right of appeal. The Respondent had therefore complied with the requirements of paragraph 22 of the ACAS Code.
88. The final issue which the Claimant contends created unfairness was not being offered the right of appeal. He was, however, expressly offered the right of appeal at the conclusion of the disciplinary hearing and he was aware of the contact details of the HR officers who were dealing with the matter and, if he was unsure about how to appeal if he had not received the dismissal letter then he could have contacted the Respondent to enquire how to go about that. It is common ground that he did not do so. Given his evidence was that appealing against his dismissal was a matter of huge importance to him, it is surprising that he did not do so. The Respondent therefore provided the Claimant with an opportunity to appeal and so there was no breach of the relevant part of the ACAS Code in that regard.
89. For all of those reasons we are satisfied that the Respondent acted fairly and reasonably in treating the Claimant's conduct as a fair reason for his dismissal and both the complaints before us fail and are dismissed.

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Employment Judge Heap

Date: 22<sup>nd</sup> November 2022

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