



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Miss Katrina Kevern

AND

**Respondent**

Cornwall Partnership NHS Trust

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Plymouth

**ON**

13 and 14 February 2023

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** In person

**For the Respondent:** Miss S David of Counsel

### JUDGMENT

**The judgment of the tribunal is that the claimant's claim for unfair dismissal is dismissed.**

### REASONS

1. In this case the claimant Miss Katrina Kevern claims that she has been unfairly dismissed. Her related claim of disability discrimination has already been dismissed. The respondent contends that the reason for the dismissal was gross misconduct, and that the dismissal was fair.
2. I have heard from the claimant. I have heard from Miss Ashley Simons, Mr Richard Dryer, Mrs Beth Ford and Mr Adrian Davis on behalf of the respondent.
3. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The Facts:
5. The respondent is an NHS Trust which provides a range of mental health and physical health services to children and adults across Cornwall and the Isles of Scilly. The claimant was employed by the respondent from 28 May 2001 until her summary dismissal for gross misconduct which took effect on 10 January 2022. At this time the claimant was employed as a Community Healthcare Assistant/Support Worker within the Mental Health Directorate of the respondent. Her duties involved providing support to those living with a mental health

- disability, including supporting them with basic day-to-day needs. The claimant was therefore in a position of trust when working with vulnerable adults.
6. The conduct which led to the claimant's dismissal relates to her relationship with a service user of the respondent, to whom we have agreed to refer as Patient A. Patient A is a vulnerable individual who has a diagnosis of personality disorder, PTSD, and is at risk of impulsive self-harm. Patient A had decided to sell her home, and the claimant introduced Patient A to an estate agent called Mr Tim Glasson. Mr Glasson had been convicted of 10 counts of fraud in 2014 and in January 2021 Mr Glasson had been under investigation by both the Police and Cornwall Council's Trading Standards Department, and he had been banned from working as an estate agent for life. During this investigation Trading Standards raised concerns with the respondent's Safeguarding Department to the effect that the claimant had put Patient A at risk by referring her to Mr Glasson.
  7. As might be expected of a respondent of this nature, the respondent has a number of written policies and procedures. These include a written Disciplinary Procedure; a Code of Conduct Policy; a Clinical Record Keeping Policy; and an Information Governance Policy. It also has a process of training staff in all of the relevant procedures, and it keeps records of the various training requirements and achievements of its various members of staff.
  8. The facts and background circumstances of this matter in more detail as follows.
  9. In January 2021 Cornwall Council Trading Standards Department first raised concerns with the respondent in connection with Mr Tim Glasson. He was a known and convicted fraudster, who sometimes use the name of Mr Tim Charles, and he had been banned from life from working as an Estate Agent. The allegation put to the respondent was that the claimant introduced Patient A to Mr Glasson for the purpose of selling her house. The enquiry was referred to Miss Ashley Simons, from whom I have heard, and she decided to commission a formal investigation under the respondent's disciplinary policy.
  10. Initially the respondent was concerned that there were nine separate allegations of potential gross misconduct, but during the course of the investigation a further three matters caused concern. Mr Richard Dryer, from whom I have heard, is employed by the respondent as an investigating officer. Miss Simons commissioned Mr Dryer to investigate the matter in detail, and to prepare an investigation report into these 12 allegations of potential gross misconduct. Mr Dryer's investigation included discussions with the Police and recordings which they had obtained of telephone conversations; and interviews with each of Ms Angove, a team manager for the respondent; Ms Sullivan a community practitioner nurse who was responsible for the coordination of the mental health care and support package for Patient A; Ms Nevin who is a social worker who had received the safeguarding referral regarding Patient A; Mrs Melanie Roberts the claimant's line manager; Ms Hall an advocate for Patient A; and the claimant herself.
  11. Mr Dryer also made a subject access request to the Police in connection with Patient A's property which showed Mr Charles alias Mr Glasson was listed as the occupier of the property with two contact numbers provided for the vendors, namely Patient A's number and the claimant's number. Mr Dryer also checked the respondent's RiO system under which case notes are electronically recorded in connection with vulnerable clients. He also obtained a local media report under which Mr Glasson had been reported as having previous convictions for stalking, harassment and fraud, for which he had received a suspended prison sentence. Mr Dryer also reviewed the respondent's various policies, and the claimant's training and supervision records which showed that the claimant had received all necessary training in the RiO procedures, in record keeping, and Safeguarding Adults. Her personnel records also indicated that the claimant had been given informal warnings about maintaining boundaries with vulnerable clients, and confidentiality.
  12. Mr Dryer prepared a detailed investigation report based on the above information which he supplied to Miss Simons. Miss Simons decided that there was a disciplinary case to answer and she commenced the formal disciplinary process. Mrs Beth Ford, from whom I have heard, was then the respondent's Associate Director of Operations for Community Mental Health and she was appointed to chair a Disciplinary Panel to hear the allegations involving the claimant. Mrs Ford was also accompanied on the Disciplinary Panel by Ms Rachel Craig, a Team Manager, and Ms Tracey Keen, an Employee Relations Manager.

13. By letter dated 16 November 2020 Mrs Ford invited the claimant to a formal disciplinary hearing. The claimant was notified of the 12 allegations which she had to face and that if proven these allegations were likely to constitute gross misconduct for which dismissal was the potential sanction. The claimant was provided with the investigation report and all supporting documentary evidence and procedures, and the claimant was advised of her right to be accompanied by a trade union representative or colleague. The disciplinary hearing was due to take place on 2 December 2021, but Mrs Ford agreed with the claimant's request to postpone it in order that she could prepare more fully. There was then a formal disciplinary hearing on 6 January 2022 at which the claimant did not choose to be represented and confirmed that she wished to continue with the hearing without representation.
14. Miss Simons presented the respondent's case and Mr Dryer, Mrs Roberts and Ms Hall were called as witnesses for the respondent. The claimant was able to ask questions of these various witnesses and the claimant was able to state her case in detail against the 12 allegations.
15. Of these 12 allegations, Allegation 11 was that the claimant had taken or received personal items belonging to Patient A, but the Disciplinary Panel decided that there was insufficient evidence to make out this allegation which accordingly was not upheld. Otherwise, the Disciplinary Panel unanimously determined that Allegations 1 to 10 inclusive and Allegation 12 were all made out on the balance of probabilities and that there was clear evidence that the claimant had committed gross misconduct. It was the genuine belief of the Disciplinary Panel that the claimant had committed numerous acts of gross misconduct. The claimant did not challenge Mrs Ford's evidence to the effect that this was the genuine belief of the whole Disciplinary Panel.
16. The Disciplinary Panel then considered the various sanctions which were available. They bore in mind the claimant's length of service and her clean disciplinary record but determined it was evident that the claimant had failed to identify a serious risk to Patient A relating to her association with Mr Glasson and also the serious risk relating to her general health well-being and living environment. Patient A is a vulnerable adult in the care of the respondent, and the claimant's action had breached the trust and confidence which the respondent had in the claimant to assist in the safe delivery of the services which the respondent offers to support and protect vulnerable patients. The Disciplinary Panel concluded that there had been wilful and repeated breaches of professional boundaries and the impact of the psychological harm caused to Patient A was so significant that there was a fundamental breach in the contractual relationship between the parties. The Disciplinary Panel was unanimous to the effect that the claimant's conduct was so serious that it amounted to gross misconduct and that summary dismissal without notice was the appropriate sanction.
17. My findings with regard to each of the allegations which were upheld are as follows.
18. Allegation 1 was to the effect that the claimant had been deliberately working outside of the remit of her role as a Community Health Care Assistant. The claimant was unable to describe the limitations and key requirements of her role and demonstrated that her actions relating to the care of Patient A fell outside that which had been properly required. Given the claimant's comments in reply to this allegation it was reasonable for the respondent to reach that belief.
19. Allegation 2 was that the claimant had introduced Mr Glasson the convicted fraudster to Patient A. It was clear from the witness evidence and relevant documents that the claimant knew of Mr Glasson's fraudulent criminal activity and conviction in August 2020. The claimant repeatedly claimed that she did not know Mr Glasson and/or that Mr Glasson already knew Patient A but the claimant's diary entry for 20 August 2020 demonstrated the exact opposite, and that she planned a joint visit with Mr Glasson to Patient A's home. Equally seriously, the Disciplinary Panel decided that Patient A had clearly been misled to believe that Mr Glasson was providing support to her in the potential sale of her home as part of the support she was receiving from the respondent. Given the witness evidence, the relevant documents and the claimant's comments, I find it was reasonable for the respondent to reach that belief.

20. Allegation 3 was that the claimant (whilst on annual leave) had provided Patient A's personal mobile phone number to a surveyor who also had the claimant's mobile number listed as the relevant contact details in relation to the sale of Patient A's home. Patient A had not consented to her personal information being shared with a third party. In the circumstances it was reasonable for the respondent to reach the belief that the claimant had been in wilful breach of the relevant confidentiality provisions in supplying this information.
21. Allegation 4 was that the claimant had saved patient contact details onto her personal mobile phone despite being issued with a work mobile phone (although the claimant disputes ever having been issued with a new mobile phone). In addition, although the claimant knew that she been instructed to delete all patient contact details from her personal phone she failed to do so. This is clearly evidenced by the telephone call to the surveyor and further text message to Mrs Roberts, and the claimant submissions during the disciplinary hearing. It was reasonable for the respondent to hold the belief that the claimant was wilfully in breach of reasonable instructions and the respondent's policies to the effect that she was required to delete personal details of patients.
22. Allegation 5 relates to the repeated and wilful breach of further reasonable instructions and in particular with regard to adhering to professional boundaries, record keeping and documentation. The claimant had repeatedly acted outside of the remit of her role and Patient A's care plan, for instance by attending her home without prior consent for numerous unplanned and undocumented visits. The claimant admitted there were aspects of Patient A's care and interactions with her that she deliberately chose not to document and that she was selective in the omission of certain details relating to her overall health and well-being. The respondent was reasonable to conclude in these circumstances that the claimant's loss of objectivity and professionalism not only breached their professional boundaries but actually placed Patient A at considerable risk of harm.
23. Allegation 6 was to the effect that Patient A was exposed to significant risk of financial abuse by Mr Glasson, and that despite concluding that Patient A had become significantly underweight, could not make a hot drink, had no heating or hot water, and lived in a damp home, had not escalated any of these matters nor signposted these concerns for onward care and support and safeguarding. The claimant had not updated the RiO electronic records for Patient A, which in any event did not tally up with her diary entries. In these circumstances it was reasonable for the respondent to conclude that the claimant had failed to identify significant risks to Patient A, and that she was acting outside the remit of the relevant care plan.
24. Allegation 7 is effectively a repeat of the first six allegations to the effect that the claimant had failed to demonstrate her responsibilities and had breached the respondent's Code of Conduct, Clinical Record Keeping Policy, and their Information Governance Policy. Having checked the relevant training records, it was reasonable of the respondent to conclude that the claimant was in deliberate breach of these various policies.
25. Allegation 8 was that the claimant had attended Patient A's home on an unplanned visit and for reasons outside of her recorded care plan. The unplanned visit was initiated as a result of Mr Glasson informing the claimant that Patient A no longer wanted him to be involved in the sale of her home. The claimant then placed undue pressure on Patient A to proceed with the sale of her house against the clear advice of both the Police and Trading Standards. This caused Patient A distress and further potential harm both financially and mentally. Against this background it was entirely reasonable for the respondent to conclude that the claimant had committed gross misconduct in this respect because of the information presented to it and the claimant's own admission as to the background circumstances.
26. Allegation 9 is linked to Allegation 8, and it was to the effect that Patient A been advised by the Police and Trading Standards to cease the sale of her home and no longer to be associated with Mr Glasson but on receiving this information the claimant made an unplanned visit to Patient A. The claimant then made a telephone call to a surveyor in which she posed as Patient A with the intention of obtaining an appointment to expedite the sale of her home. The claimant failed to disclose to the surveyor that she was not

- Patient A. Given the relevant documents before the respondent, which included transcripts of the telephone conversations, it was entirely reasonable of the respondent to conclude that these actions demonstrated the claimant's wilful abuse of her position, breach of professional boundaries, and had placed Patient A at significant risk of harm.
27. Allegation 10 is effectively a repeat of the allegation that the claimant had repeatedly placed Patient A at risk of significant harm by wilfully failing to adhere to the relevant professional boundaries. This included the unlawful disclosure of Patient A's confidential information.
  28. Allegation 11 to the effect that the claimant had removed personal items belonging to Patient A was not upheld, which in itself demonstrates that the respondent's process was not a mere "rubber-stamping" of the earlier investigation report, and that the Disciplinary Panel had considered each of the allegations on its merits.
  29. Finally, Allegation 12 was to the effect that significant harm was as a matter of fact felt by Patient A. The claimant had repeatedly breached Patient A's trust and confidence in the respondent and the services which it offers to support and protect the community, including Patient A. Given Patient A's own evidence as to her serious upset and sense of betrayal by the claimant, it was reasonable of the respondent to reach this belief.
  30. Having considered all of the above, Mrs Ford communicated the Disciplinary Panel's decision to dismiss the claimant by telephone on 13 January 2022, which was followed up by her detailed letter on the same day. The claimant was afforded the right of appeal and she submitted an appeal by letter dated 31 January 2022.
  31. Mr Adrian Davis, from whom I have heard, is a Non-Executive Director of the respondent. He was appointed to chair an Appeal Panel which also consisted of Mr Newnes, Director of Mental Health Services, and Ms Bartlett the Associate Director of Mental Health and Learning Disabilities Nursing; and they were assisted by Ms Underwood an Employee Relations Manager.
  32. An appeal hearing was originally arranged for late March 2022 and the claimant was again advised of her right to be accompanied by a trade union representative or fellow employee. She requested more time to prepare for her appeal and accordingly it was rescheduled to be heard on 22 April 2022. At the appointed time the claimant attended the wrong venue, and after discussion by telephone the Appeal Panel did not wish to delay the hearing that day such that the claimant might try to rush to the hearing by car, but rather they gave her two options. The first was to proceed with her appeal in her absence based on the papers, and the other option was to reschedule the hearing again to be heard with the claimant in attendance. The claimant confirmed she wished the appeal hearing to go ahead in her absence based on the information before the Appeal Panel, and that was how the matter proceeded.
  33. The claimant had raised three specific grounds of appeal. The first was a general objection that the Disciplinary Panel had made a determination based on the balance of probabilities only, particularly with regard to Allegation 2. The second was that a letter which had been provided by Patient A to support the claimant had not been taken into consideration (this was a letter alleged to have been written by Patient A on or about 30 January 2021 and was complimentary of the claimant and all that she had done for her). The third ground of appeal was that the claimant objected to the respondent having made a referral to the Disclosure and Barring Service ("DBS") because she had not been convicted of any crime and should not have been subjected to any such referral.
  34. With regard to the first ground of appeal, the Appeal Panel determined that it had already been explained in detail to the claimant that the relevant burden of proof to be adopted was on the balance of probabilities, and that the various allegations did not have to be proven beyond reasonable doubt. With regard to Allegation 2 specifically there was a significant amount of evidence to the effect that the claimant had introduced Patient A to Mr Glasson and that the claimant was aware of the previous fraudulent acts of Mr Glasson. In particular, the Appeal Panel noted that one of the claimant's diary entries from August 2020 demonstrated that she had planned a joint visit with Mr Glasson to meet with Patient A. In addition, Patient A had confirmed to Ms Hall that the claimant had introduced her to Mr Glasson, and that they had both coached her in what to say in relation to how they had all met each other.

35. The second ground of appeal related to the letter from Patient A, and the claimant's complaint that it had not been considered, but the Appeal Panel concluded that it had been considered in detail by the Disciplinary Panel. The letter had been written in January or February 2021, and it was clear that Patient A had changed her mind about the relationship when talking with Ms Hall in March 2021. On reflection Patient A was unable to explain some of the claimant's actions and confirmed that she believed the claimant had wrongly taken advantage of her trust. The Appeal Panel was satisfied that the evidence relied upon by the claimant had been taken into account by the Disciplinary Panel despite its finding on that point.
36. The third ground of appeal related to the DBS referral. The respondent's Disciplinary Policy recommends that a referral to DBS should be made where it is appropriate. Mrs Ford had confirmed to the claimant that it was appropriate to raise a DBS referral because the allegations which had been upheld by the Disciplinary Panel were so serious that a DBS referral was required. The Appeal Panel formed the same view namely that no court appearance or conviction was necessary to make a DBS referral and that this referral was appropriate in these circumstances because of the seriousness of the allegations against the claimant, which had been upheld. This third ground of appeal was also dismissed.
37. The appeal hearing took place as a detailed review in reply to the grounds of appeal specifically raised by the claimant. It was not a full hearing on appeal. Nonetheless the Appeal Panel were unanimous in finding that the claimant had committed gross misconduct. They noted that the Disciplinary Panel had considered alternative sanctions, but also agreed that summary dismissal for gross misconduct was the appropriate sanction in this case. Mr Davis confirmed that the Appeal Panel all genuinely believed that the claimant had committed gross misconduct, and this was not challenged by the claimant. The Appeal Panel unanimously determined to dismiss the claimant's appeal.
38. The claimant then commenced the Early Conciliation process with ACAS on 19 March 2022, and the Early Conciliation Certificate was issued by ACAS on 29 April 2022. The claimant presented these proceedings on 27 May 2022. The proceedings initially claimed unfair dismissal and disability discrimination, but the disability discrimination case was dismissed for want of sufficient particulars as to both the claimant's alleged disability and the various discrimination claims, and the claimant did not oppose that decision at that time. There was then a case management order on 9 November 2022 at which the claimant confirmed that her grounds for alleging that her dismissal were unfair were that the respondent did not have a genuine belief in her gross misconduct, and that any such belief could not have been reasonable simply because Mrs Roberts her line manager had never liked her and had persuaded the relevant decision makers to find against the claimant.
39. As for that last point concerning Mrs Roberts, this is not something which the claimant raised during the disciplinary process, and it was not an allegation which was put to either Mrs Ford or Mr Davis at this hearing. In any event it is clear from the evidence of both Mrs Ford and Mr Davis that both the Disciplinary Panel and the Appeal Panel respectively took their decisions without any input or improper influence from Mrs Roberts.
40. Having established the above facts, I now apply the law.
41. The Law:
42. The reason for the dismissal was conduct which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 ("the Act").
43. I have considered section 98 (4) of the Act which provides "... 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".
44. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").

45. I have considered the cases of Post Office v Foley, HSBC Bank Plc (formerly Midland Bank plc) v Madden [2000] IRLR 827 CA; British Home Stores Limited v Burchell [1980] ICR 303 EAT; Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT; Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR; Wilson v Racher [1974] ICR 428; Neary v Dean of Westminster [1999] IRLR 288; Abernethy v Mott, Hay and Anderson [1974] ICR 323 CA; Gilham & Ors v Kent County Council (No 2) [1985] ICR 233 CA; Alidair Ltd v Taylor [1978] ICR 445 CA; Robinson v Combat Stress EAT 0310/14; London Ambulance Service NHS Trust v Small [2009] IRLR 563 CA ; Taylor v OCS Group Ltd [2006] ICR 1602 CA; and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. The tribunal directs itself in the light of these cases as follows.
46. Applying Iceland Frozen Foods Limited v Jones, the starting point should always be the words of section 98(4) themselves. In applying the section, the tribunal must consider the reasonableness of the employer's conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band, it is unfair.
47. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. Applying British Home Stores Limited v Burchell, a helpful approach in most cases of conduct dismissal is to identify three elements (as to the first of which the burden is on the employer; as to the second and third, the burden is neutral): (i) that the employer did believe the employee to have been guilty of misconduct; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. Applying Sainsbury's Supermarkets Ltd v Hitt, the band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.
48. In order to find gross misconduct, the tribunal must be satisfied on the balance of probabilities that there has been wilful conduct by the employee that amounts to a repudiatory breach of the employment contract, permitting the employer to accept that breach and to dismiss the employee summarily, see Wilson v Racher and the decision of Lord Jauncey in Neary v Dean of Westminster.
49. When considering the fairness of a dismissal, the Tribunal must consider the process as a whole Taylor v OCS Group Ltd.
50. Judgment:
51. In the first place it is clear, and I so find, that the respondent genuinely believed that the claimant had committed gross misconduct. This was the belief of both the Disciplinary Panel, and the Appeal Panel, and the evidence of Mrs Ford and Mr Davis respectively was not challenged by the claimant in this respect.
52. Secondly, I find that for the detailed reasons set out in my findings of fact above, the respondent had reasonable grounds for reaching that genuine belief. There was clearly sufficient evidence for both the Disciplinary Panel and (within its more limited ambit) the Appeal Panel to determine on the balance of probabilities that the claimant had committed the gross misconduct which had been alleged, and in my judgment their belief to the effect that she had committed gross misconduct was entirely reasonable in the circumstances, and clearly based on reasonable grounds.
53. As for the specific allegation of unfairness raised by the claimant to the effect that Mrs Roberts had an undue influence on the decision-making process because she did not like the claimant, I have already found that it is clear from the evidence of both Mrs Ford and Mr Davis that both the Disciplinary Panel and the Appeal Panel respectively took their

- decisions without any input or improper influence from Mrs Roberts. I reject that specific allegation of unfairness
54. Thirdly, I find that there was a full fair and reasonable investigation and that at the time these decisions were made the respondent had carried out a thorough and extensive investigation, and that it had done more than complete an investigation which was merely reasonable in the circumstances. The claimant has been unable to point to any evidence either personal or documentary which she was precluded from presenting to the respondent, or which they did not consider in the course of the decision-making process. I am satisfied that the respondent had all the relevant information before making its decision.
  55. In judging the reasonableness of the dismissal, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band, it is unfair.
  56. The respondent has significant responsibilities to its service users and vulnerable patients, and the claimant was employed to deliver that service. She had been sufficiently trained in the relevant procedures such that it was evident that she had failed to identify serious risk to Patient A, not only in connection with her finances and her association with the convicted fraudster Mr Glasson, but also in connection with her general health, well-being and living environment. It was clear that the claimant's actions had involved wilful and repeated breaches of reasonable instructions and the crossing of professional boundaries, and that it had caused psychological harm to a vulnerable patient in the respondent's care. There was a clear breach of trust involving a vulnerable adult Patient A, who during this process made a complaint to the respondent about her sense of betrayal. At no stage did the claimant accept that she had been in significant breach of the respondent's various policies or had been at least partly responsible for the harm caused to Patient A. She showed no contrition for her actions. In these circumstances it was no surprise that the respondent concluded that the trust and confidence between them had been destroyed. I find that dismissal was clearly within the band of reasonable responses open to the respondent when faced with these facts.
  57. Accordingly, I find that even bearing in mind the size and administrative resources of this employer the claimant's dismissal was fair and reasonable in all the circumstances of the case, and I therefore dismiss the claimant's unfair dismissal case.
  58. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 39; a concise identification of the relevant law is at paragraphs 41 to 49; how that law has been applied to those findings in order to decide the issues is at paragraphs 50 to 57.

Employment Judge N J Roper  
Dated 14 February 2023

Judgment sent to Parties on 01 March 2023