



EMPLOYMENT TRIBUNALS

Claimant

Mrs. L Knowles

AND

Respondent

Surrey Police

HEARD AT: Reading Tribunal
(via CVP)

ON: 22, 23 & 24 February 2023

BEFORE: Employment Judge Douse (Sitting alone)

Representation:

For Claimant: In person

For Respondent: Counsel

RESERVED JUDGMENT

It is the Judgment of the Employment Tribunal that the claimant was not unfairly dismissed in breach of s94 Employment Rights Act 1996. Accordingly, proceedings are now dismissed.

REASONS

Claims and issues

1. The Claimant, by way of a claim form presented on 7 April 2021, brought a complaint of unfair dismissal.

2. The Claimant does not suggest dismissal was for a reason other than conduct, but asserts that the alleged conduct was wrongly categorised as gross misconduct and as such summary dismissal was unfair.
3. Additionally, she says that her dismissal was procedurally unfair.

Procedure, documents, and evidence heard

4. I was provided with an agreed bundle of 560 electronic pages and an essential reading list:
 - 4.1 ET1 – 7
 - 4.2 ET3 – 28
 - 4.3 Disciplinary procedure – 64
 - 4.4 IO report 3/7/20 – 94
 - 4.5 Assessment of conduct 21/7/20 – 120
 - 4.6 IO report 9/10/20 – 140
 - 4.7 Text messages Ms Child & Mr Bell – 173
 - 4.8 Text messages from Ms Child's phone – 231
 - 4.9 Ms Child's response to questions – 249
 - 4.10 Response to alleged breaches of standards – 260
 - 4.11 Personal statement of Ms Child – 266
 - 4.12 Final decision assessment of conduct – 273
 - 4.13 Gross misconduct hearing transcript – 303
 - 4.14 Gross misconduct hearing decision – 388
 - 4.15 Appeal hearing transcript – 435
 - 4.16 Appeal outcome – 479
5. The morning of the first day was set aside for me to read the statements and documents I was referred to.
6. I refer to the bundle in this judgment by reference to the relevant page number within []. Similarly, if quoting from a witness statement the initials of the witness, the prefix 'W/S' and a paragraph number will be in [].
7. In many of the documents, the Claimant is referred to as Miss Child, as many of the events happened before she got married and changed her name. In this

judgment I will refer to her either as the Claimant, or Mrs. Knowles, except where quoting directly from a document.

8. I was provided with witness statements from the Claimant, and the following Respondent witness:

DC Bispham – Investigating officer

DS Geldart – Adjudicating Officer

Mr Rutherford – Chair of appeal hearing

9. I was also provided with a witness statement from Ms Marshall, who had acted as the Claimant's union representative throughout the internal process. Ms Marshall was unable to attend to give oral evidence, and the Claimant did not want to adjourn the hearing for her to attend. The witness statement was not sworn in the usual way, but it mainly contained factual information regarding dates, and Ms Marshall's opinion on what had occurred. I explained to the Claimant that because Ms Marshall was not attending to give sworn evidence and be cross-examined, there was limited weight that I could attribute to the statement. The Claimant confirmed that she understood.

Findings of fact

10. I set out the following findings of fact, which were relevant to determining whether or not the claims and issues identified above have been established. I have not determined all of the points of dispute between the parties, merely those that I regard as relevant to determining the issues of this case as identified above. When determining certain findings of fact, where I consider this appropriate, I have set out why I have made these findings.
11. In assessing the evidence and making findings of fact, I placed particular reliance upon contemporaneous documents as an accurate version of events. I also place some emphasis (and drew appropriate inferences) on the absence of documents that I expected to see as a contemporaneous record of events and also on the absence of evidence which give an interpretation of what occurred. Witness statements are, of course, important. However, these stand as a version of events that was completed sometime after the events in question and are drafted through

the prism of either advancing or defending the claims in question. So, I regard them with a degree of circumspection as both memories fade and the accounts may reflect a degree of re-interpretation.

Background

12. The claimant was employed by the respondent, as a Force Control Room Operator, from 31 October 2016, until dismissal on 11 January 2021.
13. The Claimant was given permission to hold a charity cake sale at work in aid of Macmillan Cancer Support, which took place on 7 October 2018. She had applied for, and received, a fundraising pack from the charity.
14. A connected head shave took place that same month, organised a colleague David Bell. The Claimant was not involved in the organisation of this event, although her father attended and took part.

Claimant's personal circumstances in 2018/19

15. The Claimant had a number of health issues during this period, including a miscarriage in July 2019.
16. She was also supporting her father through chemotherapy – his diagnosis is what led her to undertake the Macmillan fundraising.
17. During this time, the Claimant's partner was also experiencing work-related issues, which she supported him with.
18. As a result, the Claimant had periods of sick leave, and a flexible working pattern/reduced hours was introduced.

19. On 29 August 2019 the Claimant was approached by her then line manager, Ms Botley, who told her that the Chief Inspector had sent an email about charity fundraising and the need for documentation about donations. Ms Botley asked the Claimant if she had received a certificate from Macmillan regarding the event in October 2018.
20. The supervisor log [194] shows:

“In light of the recent email from Ch Insp Mason reference charity fund raisers I asked Laura if she had ever received a certificate or letter of thanks from MacMillan for the fund raiser last year Laura advised that she did not receive anything from them, she will however chase them up and ask for proof of her donation. I said that if nothing else a bank statement showing the transfer would be useful.”

21. The Claimant says she *“was shocked and hurt at the intimation that I had stolen the money”* [LK W/S para 7].

22. Ms Botley emailed the Claimant on the same day [160], saying:

“Just to follow up, as per our chat if you can ask MacMillan for proof of donation or provide the bank statement (happy for the rest of your transactions to be blanked out) that would be great.”

23. Ms Botley’s witness statement of 8 November 2019, stated that on 29 August [158]:

“I asked Laura if she had ever received a certificate or letter of thanks form Macmillan. She stated she hadn’t received anything and would chase them for proof of donation. I suggested a bank statement would be useful. I followed this meeting up with an email.”

24. The Claimant says she says that she told Ms Botley that she *“couldn’t recall ever seeing one”*, not that she had not received one. I find that the notes made at the time are more likely to be accurate. In any event, whilst there is a difference between not recalling seeing a certificate and not receiving one, I find that both indicate that a payment had been paid. This is supported by the discussion of bank statements.

25. The Claimant put what she identifies as discrepancies in Ms Botley’s accounts to the Respondent witnesses. Whilst it was acknowledged that there may have been some differences, they did not accept that they were significant.

26. On 30 August 2019, the Claimant exchanged emails with her colleague Mr Bell [172] about the issue. In these she said: *“They want me to prove I haven’t pocketed the money basically. I’m really upset about it. I don’t recall getting a certificate or even how I paid it. I’ve had so much going on in between then and now. They want my bank statements...”*. Mr Bell suggested that she contact Macmillan as they would have the information – the Claimant replied: *“I’ll have to contact them and find it then.”*
27. On 2 September, Mr Bell messaged the Claimant [173] asking if she had contacted Macmillan – she confirmed she had not – and said that he had made some enquiries with them and would pass on any reply to her.
28. The Claimant was on pre-booked annual leave from 7 September 2019, due to return to work on 30 September. From 13 September she was out of the country on holiday. She was unsure whether or not her husband took the same annual leave dates before 13 September – he may have had meetings about his own work problems, even if not on shift. His Police Federation representative and welfare officer also came to the house to visit him.
29. The booked return flight was cancelled due to strike action, and the Claimant was rebooked on a flight for 28 September, returning on 29 September. On 23 September, the Claimant sent a text to Ms Botley advising that she would be unable to work as planned on 30 September due to the late arrival of her return flight.
30. The Claimant says that on 25 September, her parents notified her that her cat had been hit by a car and died. She later provided an invoice from the veterinary surgery, confirming this.
31. The Claimant says that on 29 September, she found out that a family friend had died.
32. The Claimant returned to work on 1 October 2019, attending a 2-day first aid course.
33. On 7 October 2019, the Claimant returned to her usual work. Ms Botley asked her again about the certificate.
34. Ms Botley emailed her managers that day [166], recording:

“With regards to the charity money I did ask Laura if she had found her bank statement in relation to the charity donation or a certificate. Laura advised me that she is sure she paid the money in to her bank (Lloyds) and paid the charity but she advised me that her certificate seems to have gone missing. She has gone in to the bank but they can not give her the statements from the last 3 months. I have told her to try online see if she can get statements from a longer period. She has stated that if she cannot find it she will pay the charity (Macmillan) another £160 to ensure that it is paid. Eventually David Bell phoned Macmillan for her to see if they had a record of the payment but they could not provide the information.”¹

35. The Claimant says that she told Ms Botley that she hadn't had the time/energy to look. She denies saying it went missing.
36. The Claimant additionally denies mentioning the figure of £160 - she says that this was not the figure raised. Later, in her comments ahead of the disciplinary hearing in January 2021, she suggests that this figure was Ms Botley confusing the amount the Claimant had to pay the vet for her cat – the invoice for cremation has the cost as £159.
37. On 8 October, Mr Bell messaged the Claimant about his enquiries with Macmillan [174], informing her they had responded whilst she was away and that they had confirmed it would be on their system linked to her details. The Claimant replied the next day: *“I'll give them a call today.”*
38. On 9 October, Ms Botley emailed the Claimant [162] following up on various matters including the charity payment. She relayed information about accessing bank statements on the Lloyds app, and asked for information to be provided by 17 October. Ms Botley also said: *“If you forgot to pay Macmillan please be honest and let me know so we can rectify the matter, I know it was a stressful time for you at that time.”*
39. The supervisor log replicates the email [196].

¹ Reproduced as it appears in the bundle, including missing characters

40. Ms Botley's email also contained a number of other actions unrelated to the charity payment. I will not be referring to these in any detail but acknowledge that the Claimant had multiple things she had to deal with at the same time as resolving the issue of the Macmillan payment.
41. On 8 October, the Claimant says she emailed her union representative, Ms Marshall for assistance with this and other matters. A later email [265] on 10 October, shows Ms Marshall following up on an issue related to the Claimant's late return from holiday.
42. On 10 October the Claimant says that [LK W/S 13] spoke to Ms Marshall about everything she had going on, and that *"Ms Marshall attended the FCR where we spoke in private in the briefing room. She advised she was going to speak with the Duty Inspector, who on that occasion was Inspector Hugo Conway and would be advising him that the supervisors were putting me under too much pressure and that an intervention needed to take place so that I could prioritise more effectively before I became so overwhelmed that my mental health deteriorated again. Ms Marshall also advised she would be liaising with acting Chief Inspector Kimball Edey to ensure he was also on board and aware of my current circumstances."*
43. There is an entry in the supervisor log for 10 October, but it is redacted.
44. The Claimant says she took some shifts off between 10 and 22 October, but cannot recall exactly when. In her personal statement in September 2020, she says "I had a period of sickness towards the end of October due to stress and anxiety" and "in November, I took another period of leave due to stress and anxiety" [266].
45. On 18 October, the Claimant emailed Ms Botley:
- "David has kindly spoken to Macmillan and they have advised him that if I call and provide my details they will be able to confirm the payment. At this material time, I am not able to lay my hands on a certificate. I still have boxes in the spare room and the loft that have yet to be unpacked, it's possible it is in there. Once I make contact with Macmillan, I will ask if they can provide me with a copy of it. I will endeavour to get on to them as soon as I can. I'm currently trying to battle with a growing to do list and prioritise*

these things the best I can. Rest assured you will get it but I have a lot going on at the moment, please bear with me."

46. The respondent interprets this as suggesting that a payment had been made, and a certificate received. I agree, because Macmillan were going to be asked to confirm payment and provide a copy of the certificate.

47. On 22 October, Mr Bell messaged the Claimant asking if she'd got the information from Macmillan. She replied [175] *"I've sorted Macmillan just waiting on a certificate..."*

48. The Claimant says that by this she meant that it was parked or on hold, because Ms Marshall had intervened. Conversely, the respondent interprets this as indicating that the Claimant had resolved the matter subject to a certificate being received. I agree that the comments "sorted" and waiting for the certificate are more likely to indicate that some action had been taken by the Claimant.

49. On the same day, the Claimant was informed that her line manager would now be Ms. Bishop. They then met on 27 October.

50. The Claimant says that she raised the Macmillan certificate on 27 October, Ms Bishop told her not to worry about it. The notes of that meeting [197-199] do not include any reference to the charity payment.

51. Ms Bishop's witness statement of 23 November 2019 says they had not discussed the charity payment at all [177], and her later statement of 4 May 2020 addresses this in more detail:

"At that time I didn't feel I needed to reiterate to Laura about the missing charity money as it had already been addressed by Jeannette and she had already made it very clear verbally and by email what was expected of Laura. It was for Laura to produce the evidence required and I know that Jeannette had asked several times for the evidence and had been met with differing accounts as to where the money was."

52. Either way, the Claimant was not given any new actions about this.

53. She says that she then *"presumed this had been set aside for the time being following on from Ms Marshall's intervention and thought nothing more of it"* [W/S

16]. In cross-examination, she agreed that no one directly told her, prior to 27 October, that she no longer had to provide the information. I find that the email to Ms Botley on 18 October also supports that the Claimant knew the matter was still live, particularly as there is no reference to Ms Marshall's intervention earlier in the month.

54. On 11 November 2019, Inspector Nolan assessed the allegations and concluded [84]:

“8. My assessment of this case on the facts currently known is that this should be dealt with as Criminal and Gross Misconduct, under Regulation 12 3(A) An investigation to establish the facts is needed in regards to both the officer and staff member.

9. As DC Bispham has pointed out in her report there are significant concerns about the conduct of both parties with a potential breaches of the Standards of Professional in regards to Honesty and Integrity. I do not propose to list the evidence here as it is laid out in DC Bispham's report which I have read and considered the role of each person. This has allowed me to reach a conclusion on the potential culpability of each of them.

10. If this case is proven it is a breach of the standards of professional behaviour so serious that it would justify both of their dismissals from the service. This is because if proven the allegations would undermine the public's confidence in the service as a whole, damage the reputation of the service and show that we have failed to protect the public from a criminal act. The public would not expect those who are charged with serving them to act in this way.

11. It is entirely unacceptable for police officers and staff members, who are responsible for enforcing the law, to break it. Offences of dishonesty are included in the College of Policing's guidance on outcomes that if proven to a criminal standard are particularly serious and likely to terminate an officer's career. Such offending involves such a fundamental breach of the public's trust in police officers (and I would view staff) and inevitably brings the profession into disrepute. I think the fact that in this case it relates to money that was freely given to both parties in force for charity would impact on this damage to reputation even more.”

55. His assessment included a table which listed examples of Performance, Misconduct, and Gross Misconduct. The misconduct list was: Foolish;; Stupid Human frailty Bad day at the office. The gross misconduct list was: Deliberate; Can do it but wont; Persistent; Knew it was wrong but went ahead; Criminal

56. On 20 November 2019, a warrant was executed at the Claimant's address.

57. On that day the Claimant was served with a Notice of Investigation ("NOI") [90] which stated:

"The allegation against you is:

In 2018, you arranged a number of charity events to raise money for MacMillan Cancer Support, including a sponsored head shave at Surrey Police HQ and a cake sale in the Force Control Room.

When asked to account for the funds raised, you have failed to provide evidence of the donation. It is alleged that you failed to donate the funds raised through the charity events to MacMillan Cancer Support.

This falls below the level of behaviour expected because police staff are honest, act with integrity and do not compromise or abuse their position. (Honesty and Integrity)."

58. The Police Staff Disciplinary Action Procedure sets out [70] the following:

"Misconduct

Misconduct falls into two distinct categories (depending on the level of seriousness).

• Misconduct

Inappropriate conduct which falls below the Standards of Professional Behaviour such as:

- Inappropriate verbal or physical behaviour;*
- Insubordination;*
- Disregarding basic Health and Safety rules;*
- Breach of the dress code; • Unauthorised absence from work;*

- *Excessive use of Surrey Police telephones for personal calls;*
- *Excessive personal use of Surrey Police email or internet;*

- *Negligence in the performance of duties;*
- *Smoking in no-smoking areas;*
- *Covert recording of supervisors or colleagues;*
- *Minor breaches of Force procedures.*

This list is not exhaustive

- **Gross Misconduct**

Acts on or off duty resulting in a serious breach of contractual terms and deemed so serious that dismissal could be justified and include conduct which may amount to a breach of the Standards of Professional Behaviour, conduct which has the potential to affect public confidence and conduct which brings the good name of Surrey Police into disrepute. Any such behaviour may result in disciplinary action being taken.

Examples of such behaviour include:

- *Involvement in criminal activities, such as Theft or Fraud;*
- *Being arrested and/or charged with a criminal offence;*
- *Physical violence, bullying or offensive behaviour;*
- *Serious misuse of Surrey Police property;*
- *Improper access of police computer systems for non-policing purpose;*
- *Other serious breach of the standards of professional behaviour;*
- *Inappropriate use of social media;*
- *Improper behaviour whilst representing Surrey Police;*
- *Improper behaviour at or following a workplace social function;*
- *Any behaviour not considered compatible with that person's employment*

by Surrey Police.

This list is not exhaustive”

59. The Police Staff Disciplinary Action Procedure also sets out the expectations for honesty and integrity [65 & 66]:

“Police staff must:

- Be honest;*
- Act with integrity;*
- Not compromise or abuse their position;*
- Be open and truthful in their dealings with the public and their colleagues;*
- Not knowingly make any false, misleading or inaccurate oral or written statements or entries in any record or document kept or made in connection with police activity;*
- Neither solicit nor accept the offer of any gift, gratuity or hospitality that could compromise their impartiality. Police staff must always consider carefully the motivation behind such an offer and any risk of being seen or perceived to be improperly beholden to a person or an organisation;*
- During the course of their duties police staff may be offered light or inexpensive refreshments and this may be acceptable as part of their role. It is not anticipated that inexpensive or trivial gifts would compromise the integrity of police staff, such as those from conferences (e.g. promotional products) or discounts aimed at the entire police force (e.g. advertised discounts through police publications). All gifts, gratuities and hospitality other than those mentioned above must be declared in accordance with the Force Gifts Discounts Hospitality and Declarations of Interest Procedure where authority to accept may be required from a manager, a Chief Officer or local policing body. If a staff member is in any doubt over the propriety of any such offer, they should seek advice from their manager;*
- Never use their position identity pass to gain an unauthorised advantage (financial or otherwise) that could give rise to the impression that the staff member is abusing his or her position.”*

60. On the same day, the Claimant contacted Macmillan by telephone to confirm whether they had any record of payment - they had not.

61. On 27 November, the Claimant attended a criminal interview, led by DC Bispham. She had legal advice, provided a prepared statement and thereafter answered no

comment to all questions. The Claimant also signed an authority for access to her banking records.

62. In her prepared statement [239] the Claimant said:

"I changed the money into notes to make it easier to transport and pay into the bank and can recall putting in an envelope which went in my kitchen cupboard, I cannot recall what happened to that envelope after that.

The payment to Macmillan's was not at the forefront of my mind at the time, due to other more serious matters that were happening in my life at the time and subsequently thereafter."

"I was asked by my line manager to produce the certificate but was not advised of the immediacy of doing so. Again I had other more pressing matters in my life, which they were aware of, but I endeavoured to make enquiries and locate the evidence required of me.

I had a subsequent change of line manager and much of the administrative requires of me were handed over.

My new line manager sent me an email with a list of what was required of me, the Macmillan Certificate was not included and therefore I thought that this was less of a priority and therefore my enquiries could wait.

The next time this was mentioned to me was when PSD attended my house with a warrant."

63. In relation to the call with Macmillan, she said *"I was revised [sic] that the payment reminders would likely have been sent to my old address which the event was registered under, thus, not leading me to realise they had not received the donation."* She added *"I can confirm that after today I will be making a donation to the Macmillan of £250.00 (two hundred and fifty pounds) and will ensure that his money is finally paid."*

64. She now says: *"I could not be certain whether this was the case and there were possible other eventualities which I was advised not to disclose at the time."*

65. In relation to her personal circumstances she said:

“My partner and I have had a difficult almost 18 months, in October 2018 I began regularly attending chemo therapy sessions with my father.

In November, Carl and I attending Family Court in Essex in relation to child contact arrangements. In December 2018 we discovered that I was pregnant, in January 2019 I suffered a miscarriage I returned to work mid-February at the end of March I suffered an anatomical miscarriage, at the beginning of April the miscarriage had not naturally progressed and I had to have it medically managed. In May we moved house at the end of June I was victim of a verbal attack with threats of violence by Carl’s ex-wife, whilst returning the children following a contact weekend, this was reported and dealt with by Essex Police.

In July I was rushed in for an emergency surgery due to complications from my miscarriage in March, since then I have had to have numerous other procedures which has uncovered an underlying gynaecological issue. I am currently under a gynaecologist and am having regular appointments to monitor my condition.

In August, Carl was served gross misconduct regulations, at the end of September following a significant period of annual leave, I returned from holiday to the news that our beloved family cat had been killed by a car and the following day I was told that a close family friend had suddenly passed away.

In October Carl was served another two lots of gross misconduct regulations and we had to reinstate court proceedings regarding child contact due to breaches in the agreement.

I have shared this information to provide context as to why the payment to Macmillan had been subsequently overlooked. I had no intention of keeping the money for myself, I forgot to pay it and had mislaid the envelope of cash.”

66. On 29 November, the Claimant made a donation of £250 to Macmillan over the phone. No certificate was received as a result of this.

67. Macmillan later confirmed that:

“...donations are usually expected to be deposited with 3 or 4 months of the Coffee Morning taking place. I am also advised that a series of follow up letters, emails and

phone calls are used to contact registered Coffee Morning organisers in the weeks following the event in order to ensure donations are paid to Macmillan.

15. My colleagues in the WBCM inform me that if a fundraiser holds a Coffee Morning even in their home, they receive a 'Thank You' letter and accompanying 'Thank You' notelets, which they can distribute to supporters. Should the event take place at work. in a school or elsewhere in the community, fundraisers would be sent a 'Thank You' certificate and card."

68. As criminal investigation was ongoing, the internal disciplinary process was paused pending the outcome of this. There is nothing unusual about this, but unfortunately the criminal aspect took a long period of time in this instance.

69. On 5 June 2020, DC Bispham notified Ms Marshall that the CPS had decided not to pursue the criminal investigation [93], and that the conduct matter would now be reviewed.

70. On 3 July 2020, DC Bispham provided a report to the Appropriate Authority ("AA") [94 – 107] in which she recommended that only the allegation of failing to provide evidence of the donation and giving different accounts should proceed. Her view was that, if proven, that allegation would amount to gross misconduct [106]. In this document the allegations was expressed as:

"When Ms Child was asked to account for the funds raised in 2019, she has failed to provide evidence of the donation, giving numerous excuses as to why the funds had not been registered with the charity." [94]

71. In July 2020, Ms Marshall raised with D Bispham that the Claimant had not been given the chance to take part in a conduct interview. The Respondent's disciplinary policy/procedure says [75]:

"Where an interview is considered necessary, the investigating officer will arrange an interview date and provide the staff member concerned with written notification and (at least) 48 hours' notice. Where the investigating officer does not consider an interview is necessary but the member of staff concerned wishes to be interviewed, the investigating officer will arrange this and provide the same notification."

72. On 17 July, DC Bispham emailed Ms Marshall offering various options for the Claimant to take part in an interview: “1. Participate in a conduct interview (paper question and answer format); 2. provide a written conduct response; 3. Use her prepared statement / response that she gave in the criminal interview to be accepted as a conduct” [109].

73. On 20 July 2020, a further assessment of conduct was carried out by Superintendent Haddleton [120]:

“4.5 Now that the Investigation is concluded I assess:

- There is a case to answer for CE Child for the varying accounts and failing to produce proof of donation - gross misconduct. I view the allegation as so serious that dismissal could be justified if the case is proven or admitted. The culpability of her needs to be tested in a misconduct hearing. This will provide a fair opportunity for CE Child to make their case.*

- In relation to the theft allegation NFA'd by CPS I find no case to answer for CE Child...*

4.6 In relation to CE Child's conduct. I see this case as being at the gross misconduct section of the below table. It appears on the information provided to be a deliberate act where she knew that it was wrong but continued anyway and was persistent in her varying accounts.

4.7 Consideration to breaches of the following standards apply:

Honesty and Integrity Authority,

Respect and Courtesy

Discreditable Conduct

Duties and Responsibilities”

74. On 20 July, DC Bispham emailed Ms Marshall [111], stating:

“The two areas of concern that are being investigated as gross misconduct:

- 1. In 2018 Ms Child was involved in charity fundraising events which were organised to raise funds for Macmillan cancer support,*

including a charity head shave and a cake sale at Surrey Police H and a cake sale for Reigate and Banstead NPT.

It is alleged that Ms Child failed to donate the funds raised through the charity events to MacMillan Cancer Support.

2. When Ms Child was asked to account for the funds raised in 2019, she has failed to provide evidence of the donation, giving numerous excuses as to why the funds had not been registered with the charity.

Although the theft has been investigated criminally and CPS have advised NFA it is still subject to a conduct Investigation."

75. The final comment, and the inclusion of the first allegation, was incorrect - it contradicts what was in DC Bispham's report of 3 July when she recommended that only the second allegation proceed.

76. On 21 July 2020, Superintendent Haddleton – the AA – determined [123]:

"There is a case to answer for CE Child for the varying accounts and failing to produce proof of donation - gross misconduct. I view the allegation as so serious that dismissal could be justified if the case is proven or admitted. The culpability of her needs to be tested in a misconduct hearing. This will provide a fair opportunity for CE Child to make their case."

77. On 21 July 2020 DC Bispham emailed Ms Marshall [114] clarifying that the allegation that the Claimant had failed to donate the funds was not being pursued either as a criminal or conduct matter, and attached a formal notice of withdrawal [119]. Dc Bispham further stated:

"We are however still investigating Lauras conduct relating to the second element of the allegation. This is regarding the failure to provide proof of this donation and the manner in which she has given varying reasons as to why she could not provide this proof.

You will see my interview questions are in relation to this aspect.”

78. The Claimant asserts that DC Bispham’s email of 20 July contains “an alternative allegation” [W/S 25]. Whilst the information within allegation 1 is different to that in the original NOI, the substance is the same, and the second allegation – the only one proceeding – is the same as in the original NOI and the report sent to the AA. The allegation is clearly a failure to provide evidence of the donation when asked to, and “*giving numerous excuses as to why the funds had not been registered with the charity.*”

79. She additionally asks me to find that the mistakes about the failure to donate proceeding show a lack of care and attention on the part of DC Bispham. I do not do so. It appears to be a genuine mistake, and one that was quickly rectified. I acknowledge that there may have been some confusion on 20 July, and this may have caused upset to the Claimant, but by the very next day the position had been clarified.

80. The Claimant and Ms Marshall chose the paper questionnaire, and were provided with the list of questions [243] by DC Bispham on 21 July [113]. In relation to the allegation, this document stated:

“The Professional Standards Department was made aware of information leading to the suspicion that money raised through charity events held in October 2018 had not been passed to Macmillan cancer support and had been kept intentionally by Ms Laura Child.

As a result of this in August 2019 and on further occasions you were asked to provide evidence of this donation and failed to do so, giving numerous reasons as to why the funds had not been registered with the charity.”

81. On 3 August 2020, Ms Marshall asked DC Bispham for clarification of the use of the word 'manner' in relation to the varying reasons given by the Claimant. DC Bispham replied [126]:

For clarification the allegation is as follows:

As a result of this in August 2019 and on further occasions you were asked to provide evidence of this donation and failed to do so, giving numerous excuses as to why the funds had not been registered with the charity.

Please use this as the basis for all. One word is different to what is on the Q & A document and that is excuses/reasons.

In my email I was purely surmising the allegation and it was not the set wording as per the above."

82. On 4 August 2020, DC Bispham sent an update NOI to Ms Marshall [127]. The Claimant asserts that she received a further NOI via email from Ms Marshall on 2 September 2020. I have not been provided with that email.

83. I find it is more likely than not that the NOI in question was the one sent by DC Bispham on 4 August, although I accept that the Claimant may only have received it from Ms Marshall on the date she gives. That NOI stated:

"The allegation against you is as follows:

The Professional Standards Department was made aware of information leading to the suspicion that money raised through charity events held in October 2018 had not been passed to Macmillan cancer support and had been kept by you.

As a result of this in August 2019 and on further occasions you were asked to provide evidence of this donation and failed to do so, giving numerous excuses as to why the funds had not been registered with the charity.

This falls below the level of behaviour expected as follows:

Honesty and Integrity - *Police staff must be honest, act with integrity, not compromise or abuse their position and be open and truthful in their dealings with the public and their colleagues.*

Authority, Respect and Courtesy - *Police staff act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy. Police staff do not abuse their powers or authority and respect the rights of all individuals whilst exercising their duties.*

Discreditable Conduct - *Police staff must not behave in a manner which discredits the police service or undermines public confidence, whether on or off duty.*

Duties and Responsibilities - *Police staff are diligent in the exercise of their duties and responsibilities. Police staff exercise reasonable care to prevent loss of life or loss or damage to the property of others (including police property) whilst carrying out their duties.”*

84. The Claimant says the “notice stated the new allegations as well as the alleged breaches” [W/S 27], and she highlights the words/phrases “been kept by you” and “giving numerous excuses as to why the funds had not been registered with the charity.”
85. In cross examination, Ms Bispham clarified that the information at point 1 was only included by way of background. This makes sense to me as the second paragraph makes little sense without that context.
86. On 3 September 2020, the Claimant responded to DC Bispham’s questions [249 – 259] and to the alleged breach of professional standards [260 – 261].

87. The Claimant denied telling Ms Botley that £160 had been raised. She says that very few people knew the amount, and appears to me she is intimating that at that point any reference to any amount being mentioned in that meeting has been fabricated by Ms Botley. She also said *“I did not advise Jeannette that the certificate had gone missing. Itold her that I had, thus far, been unsuccessful in finding a certificate but that I had had a lot on my plate since going on annual leave.”*

88. The Claimant’s answers included the following additional explanations for what had happened:

88.1 “After reviewing all of the questions, and trying to recall what actually happened, I can only assume that I must have forgot to pay it and subsequently mislaid the cash.”

88.2 2Alternatively, I may have paid it in to the Macmillan centre at East Surrey Hospital, where I routinely attended with my Father during his chemotherapy sessions.”

88.3 “It was taken from my home by an unknown person

Despite any of these eventualities, it is evident /forgot about the money, but where it went remains unknown to me. I've said it went into an envelope and that I recall putting it in the kitchen cupboard. I don't recall what happened afterwards. I'm unable to recall whether I paid the money in or not but in the absence of any giro ships or bank statements indicating I did the only conclusion I can arrive at is that I didn't and that I forgot to pay it in and this is what I said in the statement.

89. In relation to the call with Macmillan, she said [257] *“having made enquiries with Macmillan I have confirmed that the donation was not received. I was advised that any payment reminders would likely have been sent to my old address after we had vacated the property, which the event was registered under, thus not leading me to realise they had not received the donation.”*

90. On 16 October 2020, Superintendent Haddleton carried out a further conduct assessment [270]:

“Now that the Investigation is concluded I assess:

• *There is a case to answer for CE Child for the varying accounts and failing to produce proof of donation - gross misconduct. I view the allegation as so serious that dismissal could be justified if the case is proven or admitted. The culpability of her needs to be tested in a misconduct hearing. This will provide a fair opportunity for CE Child to make their case.*

4.6 In relation to CE Child's conduct. I see this case as being at the gross misconduct section of the below table. It appears on the information provided to be a deliberate act where she knew that it was wrong but continued anyway and was persistent in her varying accounts.

4.7 Consideration to breaches of the following standards apply:

Honesty and Integrity Authority,

Respect and Courtesy

Discreditable Conduct"

91. When cross-examining the Respondent witnesses, the Claimant suggested that a different AA should have been used as Superintendent Haddleton had already assessed the conduct as gross misconduct and would have been influenced by the previous decision. This was not accepted.

92. On 20 October 2020, the Claimant was sent a notice of referral to a gross misconduct hearing [128]. This stated:

"The investigation into your conduct has been completed and a decision has been made that you are to attend a Gross Misconduct Hearing to consider the allegation which is:

1. *The Professional Standards Department was made aware of information leading to the suspicion that money raised through charity events held in October 2018 had not been passed to*

Macmillan cancer support and had been kept intentionally by Ms Laura Child.

As a result of this in August 2019 and on further occasions you were asked to provide evidence of this donation and failed to do so,

giving numerous excuses as to why the funds had not been registered with the charity.”

93. The text of the allegation in the hearing notice is the same as the text in the NOI from August 2020. It also specified that three standards had been breached: honesty and integrity, authority respect and courtesy, and discreditable conduct. Duties and responsibilities was not included.

94. On 10 November 2020, the Claimant was sent a further hearing notice, which stated:

“The investigation into your conduct has been completed and a decision has been made that you are to attend a Gross Misconduct Hearing to consider the allegation(s) which is are:

1. In 2018 Ms Child was involved in charity fundraising events h we organised to raise funds for Macmillan cancer support, including a charity hea shave d a c ke sale at Surrey Police HQ and a cake sale for Reigate and Banstead NPT

When Ms Child was asked in 2019 to account f r the funds ised, she has failed to provide evidence of the donation, giving numerous easons as to why the funds had not been registered with the charity

*- **Gross Misconduct***

Consideration to breaches of the following standards a ply:

- Honesty and Integrity

- Authority, Respect and Courtesy

- Discreditable Conduct”²

95. The Claimant was provided with a copy of the bundle to be used at the disciplinary hearing, which was then redacted at her/Ms Marshall's request. She provided a document with comments on the pack [293], and Ms Marshall provided a written submission ahead of the hearing [297].

96. These submissions included:

² Reproduced as it appears in the bundle, including missing characters

“She has admitted that she realises she failed to make that donation and has given her account of what she thinks may have happened.

It’s accepted that this may not be entirely satisfactory but it is no more sinister than human error. There is no malice here and no intention to hide what has happened. There is genuine confusion, misinformation and lack of clear recollection of the events and conversations surrounding this matter-and this is not just on Laura’s part.

Laura has summarised what she believes the options are around the missing original donation.

“1) I paid the money to Macmillan as was expected of me and due to an administrative error, the money has not registered to ‘Laura Child – 6 The Hemsleys Pease Pottage’

2) The money was forgotten about and subsequently lost in the transition between addresses””

97. They also included a suggestion that the £160 Ms Botley referred to on 7 October 2019 was a confusion with the amount of money the Claimant had spent cremating her cat. This acknowledges that £160 may have been discussed at that meeting, albeit in relation to a different matter.

98. The Claimant attended the hearing on 11 January 2021 with Ms Marshall and her welfare officer. The hearing was chaired by Detective Superintendent Geldart – the Adjudicating Officer (AO). After the introductions, DS Geldart set out the allegation as [306]:

“In 2018 Miss Child was involved in a charity fundraising event or events which were organised to raise funds for Macmillan Cancer Support including a charity head shave and a cake sale at Surrey Police HQ and a cake sale for Reigate and Banstead NPT. When Miss Child was asked in 2019 to account for the funds raised she has failed to provide evidence of the donation giving numerous reasons as to why the funds have not been registered with the charity.”

99. DS Geldart also stated: *“if proven this could amount to gross misconduct and could render you liable to a number of sanctions including summary dismissal.”*

100. The Claimant confirmed that she had been notified of that allegation, that she understood it, and also understood the sanctions available to the AO.

101. DC Bispham presented the case on behalf of PSD, and Ms Marshall read out her submission.

102. DS Geldart then asked the Claimant a number of questions. Referring to the written submissions, she asked:

“Could you clarify for me Miss Child which is it? Is it that you’ve admitted that you realise you failed to make the donation or is it that you think the donation could have been made but for an administrative error on the part of Macmillan not being added to your account because it’s not entirely clear to me those two things seem to be, they seem to be at odds with each other.”

103. The Claimant’s response was:

“So the first account I gave on the 27th November 2019 I admitted that I effectively come to the conclusion that was the most likely. It was only upon seeing the disclosure from Macmillan that I came to consider that actually maybe that wasn’t necessarily the case so whilst I previously admitted that I must that, that’s the conclusion that I’d drawn at the time now having seen the full disclosure I believe there’s one of two possibilities.”

104. DS Geldart clarified:

“Ok. So originally you admitted that you failed to make the donation based on what you knew at the time?” and “But now having seen the disclosure pack you wonder if perhaps there was an alternative explanation that you had paid the money but it was an administrative error at Macmillan?”

105. The Claimant confirmed that these were accurate statements.

106. DS Geldart gave the Claimant some time in the hearing day to check her banking app for access to historic statements, after which she confirmed that she could access those statements. She maintained that this was not possible at the she had been asked to by Ms Botley.

107. In relation to the text exchange with David Bell, the Claimant accepted she could have been clearer in what she said, and said that she had wanted to reassure him.

108. The Claimant was permitted to give an oral closing submission to the hearing.

109. DS Geldart confirmed to the Claimant:

"You talked about a representation that this allegation should not be heard as gross misconduct and I confirm that I have checked with PSD at this time the Appropriate Authority has determined that the case amounts to gross misconduct but it will be part of my determination to consider whether a sanction of gross misconduct is appropriate or any in fact any other lesser sanction. So I just wanted to confirm that I will consider that in the round."

110. DS Geldart issued her decision orally later in the day on 11 January, and this was confirmed in writing [388 – 393] and sent to the Claimant on 13 January.

That decision concluded [392 – 393]:

"I have fully considered all the evidence presented to me and I have detailed my decision below:

This is a complex case and one where there is undeniably a context of personal difficulties for you and your family, for which I have great sympathy.

I am satisfied that there is no evidence that you set out on your fundraising endeavours with the intention of not paying the funds to the charity.

I also accept that the mitigating factors above provide an explanation as to why it may have 'slipped your mind' as to whether the funds had been paid to MacMillan, prior to the request having been made to you by your line manager on 29th August 2019.

I do not believe that the amount of the funds raised is relevant to the central allegation made. The issue pertains to the payment of charitable funds, whatever the amount that was raised.

In deciding this case, I consider that my adjudication turns on the issue of, having been made aware on 29th August 2019 that you were required to provide evidence of the charity donation, did you behave in a manner consistent with the standards of professional behaviour required of police staff in resolving this matter.

I find that you have provided inconsistent and contradictory accounts to the PSD investigation and to this hearing today, in that;

Your final closing statement appears to concede and admit to having made a genuine mistake in not forwarding the donation on to MacMillan. However, during the hearing you propose an alternative hypothesis, that the funds were properly paid and have been incorrectly administered by the charity. This tends to negate your apology for a mistake made.

You have maintained that you were unable to obtain bank statements or check the banking app to ascertain easily whether funds were paid (accepting that you also now state funds could have been paid via other means). However today you have confirmed that you are able to use the banking app to check historical transactions.

The evidence shows that between 29th August and 20th November 2019, you were engaged in several exchanges (meetings, texts, emails) regarding the need to prove the donation was made. However, you did not take reasonable, timely action to resolve this matter.

Your text message to David Bell on 22nd October is, I find, providing reassurances that you knew you were not in a position to give. You have today explained you sought to reassure David, to put his mind at rest, to not worry about it. However

you had no basis to provide that reassurance. As such, it was a false reassurance and lacked in openness and transparency.

Whilst there were (and, indeed, are) clearly some difficult personal circumstances, your response was not to say that you couldn't deal with the matter (due to the circumstances), but instead it appears that you have tried to delay the resolution.

My decision therefore as follows:

• *Honesty and Integrity*

I find on the balance of probabilities that the case is made out.

Once it was made clear to you on 29th August 2019 that proof was required of the charitable donation having been paid on to MacMillan, you had a duty to ensure that it was. However, you have not done so until the PSD investigation was made known to you. You have provided false reassurances to a colleague that the matter was 'sorted' when you knew it not to be. You have continued to provide contradictory accounts as to whether or not you accept that the funds were not paid. I find this to be dishonest.

• *Discreditable Conduct*

The issue of whether or not this matter has been put into the public domain does not, in my view, mitigate against considerations of whether it amounts to discreditable conduct. I believe that if this matter had been brought to the public domain it would indeed have discredited the police service or undermined public confidence. The public would expect that, having had the issue pointed out to you on 29th August 2019, you would have expedited all reasonable enquiries to resolve this matter. Instead, you waited until a PSD investigation was made known to you before you took action to resolve the case; despite having provided false reassurances to colleagues that you were trying to resolve it.

• *Authority, Respect and Courtesy*

I do not find that this allegation is made out, based on the narrow definition as provided in the Police Staff Disciplinary Action procedure documentation.

Honesty and integrity are a fundamental requirement for any member of police staff. Integrity is non-negotiable and dishonesty tarnishes the reputation of the force and undermines public, including colleagues', confidence. I therefore find that the breach of the Honesty and Integrity standard is so serious as to warrant the Gross Misconduct category.

My finding is therefore that, on the balance of probabilities, the allegation of Gross Misconduct against Ms Child is made out."

111. The Claimant was summarily dismissed on 11 January 2021. She was advised of her right to appeal, and did so on 14 January. She made written submissions, and provide additional evidence in appendices, [397] that:

111.1 **The finding and severity of the sanction is unfair**

Citing cases where police officers and staff had been found guilty of Gross Misconduct, dismissed and then reinstated on appeal

"not all the facts were investigated or presented to the AA which subsequently meant they were not able to be considered by the AO. Other key areas of explanation and clarity have seemingly been ignored by the AO and are not mentioned in their consideration. The assessment of the alleged misconduct, I believe is unreasonable and unfair."

"it was not made clear how my private text messages, some of which were sent whilst off duty, could have brought the police service into disrepute."

"There was no evidence of any deliberate dishonesty on my part and yet this breach was considered upheld."

"It is my belief that similarly to the above, insufficient weight was given to the following factors regarding my case:

- ii. I have shown insight and remorse, acknowledging that I may have made a mistake by not paying the money in at the time of the event;*
- iii. My previous good character, good work and reputation evidenced by numerous colleagues;*
- iv. This was an uncharacteristic and isolated mistake, in that I seemingly did not pay the money immediately and ensure I obtained a receipt.*
- v. That public confidence can be maintained by a proportionate response meaning dismissal is not the only appropriate outcome, considering the charity did receive donations and any possible mistake or oversight was rectified beyond doubt;*
- vi. My colleagues were, and continue to be, supportive of me and maintain faith in my innocence of any wrongdoing. Numerous persons have vouched for my good character and continue to support me through the appeal process.*
- vii. I was suffering significantly from difficulties with my mental health, which had an effect on my consequential thinking and behaviour.*
- ix. The punitive financial effect of dismissal upon the appellant by reference to her pension.”*

111.2 **New evidence has come to light**

This primarily focuses on additional messages – text and via Facebook – which the Claimant says gives context to the message exchange on 22 October. Additionally, she says they demonstrate that there was a friendship with Mr Bell, which he had denied, and therefore the reliability of the rest of his evidence should be questioned.

111.3 **Procedural Irregularity**

The Claimant submissions included:

111.3.1 The investigation was only launched when the decision of no case to answer in the criminal matter was made;

111.3.2 PSD tried to have a hearing without giving the Claimant a chance to be interviewed;

111.3.3 The allegation wording changed throughout the investigation;

111.3.4 The reports provided relied on old evidence from the criminal investigation, which should have been excluded/redacted;

111.3.5 Parts of messages were left out

111.3.6 *"During the adjournments, the AO was never the first to leave. My representatives and I would leave with PSD and the AO remaining. It gave me cause for concern that additional documentation or 'off the record' conversations were had."*

112. The appeal hearing took place on 11 February 2021, chaired by Mr. Rutherford - Director of People Services for Surrey and Sussex Police. The Claimant attended along with Ms Marshall.

113. The Claimant had not received a copy of the original hearing transcript, but was happy to go ahead with the appeal.

114. The Claimant was given the opportunity to expand on her written grounds of appeal.

115. Mr Rutherford delivered his decision in writing [480] in relation to the ground raised:

"Summary and Findings

1) There has been an abuse of process and that the disciplinary procedures were not used correctly.

...

Despite the evidence you provided regarding the changing nature of the allegations, I am very clear that you were under no illusions of the allegation that you were facing under this procedure. This was stated very clearly in the letter to you dated 10th November 2020 and you confirmed during the appeal hearing and at the start of the original hearing (page 4 of the hearing transcript) that you

understood the allegation against you. I therefore do not find any breach of process in this respect.

With regard to evidence that the Police as ‘the Police’ and the Police as the employer can submit in internal matters is always a matter of conjuncture. The benchmark I need to consider is whether following the criminal investigation there was a reasonable investigation into the misconduct matters. On this subject I believe that there was and that the evidence presented did not solely rely upon evidence that only the Police in a criminal investigation would be able to obtain. Therefore I can find no evidence of procedural breach.

Through my own investigation with the original hearing chair, D/Supt Geldart, I can confirm that the content of the envelope submitted to her was as stated – your Centurion record and your character references – there was nothing else within the envelope. I can also confirm that during the adjournment people left the room in stages in order to comply with Covid restrictions and I can find no evidence that any conversations took place outside of the formal hearing. This was confirmed by D/Supt Alex GELDART.

As such I do not uphold your appeal in this area.

2) That the finding or severity of penalty is unfair

...

In determining the evidence that you put forward in this part of your appeal I have to consider whether D/Supt Alex GELDART in the original hearing was reasonable in finding the allegation proven and then whether the sanction of dismissal is appropriate given the finding.

I do not find the evidence you provide in this area to be compelling as they are all Police Officer cases and are therefore not comparable as they are subject to different misconduct regulations. I also believe that D/Supt Alex GELDART has made a considered decision in her finding of gross misconduct and given the finding regarding honesty and integrity and the standard that the Police Service requires, her decision to dismiss was also a reasonable outcome.

As such I do not uphold your appeal in this area.

3) *New evidence has come to light which was not previously considered*

...

I have to consider whether any of the new evidence produced by you would have an impact on the finding and sanction made by D/Supt Alex Geldart. In relation to the bank app there is no new evidence – it is an assumption you have made. Again with the issue of the context of the text between you and David BELL on the 22nd October 2019 – where you tell him the Macmillan issue is ‘sorted’ – you have not provided any new evidence but you have repeated your evidence regarding the context that you presented at your original hearing – as such this is not new evidence and has already been considered.

In relation to the further evidence you have produced regarding your friendship with David Bell, this does put some question over some of the evidence in his statement and in particular the line ‘There would be the occasional text or call outside of work but I don’t tend to socialise and contact colleagues too much outside of work as I like to try and separate my work and private life’. The further evidence you provided indicates that there was evidence of contact and socialising outside of work. The issue I need to consider is whether this fundamentally changes the reliability of his evidence and to what extent does this impact on the original decision.

The critical evidence is here is the text between yourself and David BELL on 22nd October 2019 and the existence of this text is not disputed – what is disputed is the context and meaning of the text of which D/Supt Alex GELDART has made a finding. The new evidence regarding David BELL does not in my opinion cast doubt over that finding. I also do not believe that this piece of evidence is critical in her findings – as her rationale sets out there are many examples and pieces of evidence that has led her to make her conclusions. Therefore I believe that had this evidence been discounted by the hearing chair, which I do not believe it needed to, it would, in my opinion, not have made a difference to the outcome of the hearing.

In relation to the new evidence produced of further texts between you and David Bell in November 2019 which you state provide evidence that you were being straight with him over the situation and which you believe supports your arguments regarding the meaning of the October 'sorted' text – I do not support this view. The key difference between the contact of the texts in October and November is that the texts in November follow the intervention of PSD (turning up at your door as you state) where it is very clear that you have not sorted the issue and therefore unable to give any kind of reassurance.

As such I do not uphold your appeal in this area.”

116. In her claim to the Employment Tribunal, the Claimant stated:

“The grounds for me bringing this matter to Employment Tribunal are as follows:- The overall investigation into this matter was unfair throughout and disproportionate methods were used to obtain material they would not otherwise be entitled to. For example:

- *They secured and executed a section 8 PACE search warrant for a low-level theft allegation pertaining to what they believed to be £160 raised 13 months previously whilst I was residing at a different address. This disproportionate and intrusive use of search powers is something which neither my husband (a serving constable of over 10 years) or I have ever experienced happening before and believe it was done solely because I was a member of police staff.*
- *They misused their powers under digital forensics to obtain vast amounts of sensitive personal data from my devices and went well outside what could be deemed as permitted parameters in order to secure anything they could use to their advantage.*
- *They used PACE seized material from said warrant and retained it for use in a non-criminal misconduct matter. This goes against CPIA which states material should only be retained for use during an investigation and use at trial. Otherwise they MUST not be retained and MUST be destroyed appropriately.*
- *The allegation itself was dismissed by the CPS and the AA with the matter being NFA'd. However a secondary investigation was unjustifiably and*

unlawfully launched in its place based on the same allegation and unlawfully using the same material.

The culmination of all these oversights, errors and distinct refusal to adhere to policy and legislation has resulted in my dismissal which has in turn impacted my ability to develop my career in law enforcement. I strongly believe that had the organisation conducted this investigation correctly and in accordance with their own policy and legislation, there would have been no grounds for misconduct, let alone gross misconduct resulting in my dismissal.”

The law

117. The relevant applicable law for the claims considered is as follows.

Unfair dismissal

118. The claimant claims that she was unfairly dismissed, in contravention of section 94 Employment Rights Act 1996 (“ERA”).

119. Section 98 ERA sets out how the Employment Tribunal should approach the question of whether a dismissal is fair.

120. First, the employer must show the reason for the dismissal and that this reason was one of the potentially fair reasons set out in s98(1) and s98(2) ERA. Conduct is a potentially fair reason.

121. If the employer is successful at that first stage, the Tribunal must then determine whether the dismissal was fair under s98(4):

“Where the employer has fulfilled the requirements of subsection (1), the determination of the question of 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.”

122. The s98(4) test can be broken down to two key questions:

122.1 Did the employer utilise a fair procedure?

122.2 Did the employer’s decision to dismiss fall within the range of reasonable responses open to a reasonable employer?

123. The respondent said that it dismissed the claimant for a conduct-related reason, pursuant to s98(2)(b) ERA. Although the claimant denied the misconduct in question, there was no dispute between the parties that allegations of failing to attend work when specifically instructed to do so and misleading the employer about the reason for absence were conduct-related matters. For misconduct dismissals, the employer needs to show:

123.1 an honest belief that the employee was guilty of the offence;

123.2 that there were reasonable grounds for holding that belief; and

123.3 that these came from a reasonable investigation of the incident.

These principles were laid down in *British Home Stores v Burchell [1980] ICR 303*. The principles were initially developed to deal with dismissals involving alleged dishonesty. However, the Burchell principles are so relevant that they have been extended to provide for all conduct-related dismissals. Conclusive proof of guilt is not necessary, what is necessary is an honest belief based upon a reasonable investigatory process.

124. Accordingly, the emphasis of the case at the hearing was whether the Tribunal could be satisfied that, in all the circumstances, the respondent was justified in dismissing the claimant for the reasons given, i.e. in relation to his purported misconduct.

125. ACAS has issued a Code of Practice under s199 Trade Union and Labour Relations (Consolidation) Act 1992. Although the Code of Practice is not legally

binding in itself, Employment Tribunals will adhere closely to the relevant Code when determining whether any disciplinary or dismissal procedure was fair. The ACAS Code of Practice represents a common-sense approach to dealing with disciplinary matters and incorporates principles of natural justice. In operating any disciplinary procedure or process, the employer will be required to:

- Deal with the issues promptly and consistently;
- Make sure the employee was informed clearly of the allegation;
- Ensure that the nature and extent of the investigation reflect the seriousness of the matter, i.e. the more serious the matter then the more thorough the investigation should be;
- Allow the employee to be accompanied to any disciplinary interview or hearing and to state their case;
- Keep an open mind and look for evidence which supports the employee's case as well as evidence against;
- Established the facts before taking action;
- Make sure that the disciplinary action is appropriate to the misconduct alleged;
- Provide the employee with an opportunity to appeal the decision.

126. In *West Midlands Cooperative Society Limited v Tipton [1986] ICR 192* the House of Lords determined that the appeals procedure was an integral part of deciding the question of a fair process. Indeed, a properly conducted appeal can appropriately reinstate an unfairly dismissed employee or remedy some procedural deficiencies in the original hearing.

127. In judging the reasonableness of the employer's decision to dismiss an Employment Tribunal must be careful to avoid substituting its decision as to what was the right course of action for the employer to adopt for that which the employer did, in fact, chose. Consequently, the question for the Tribunal to determine is whether the respondent's decision to dismiss the claimant fell within the band or range of reasonable responses open to a reasonable employer: see *Foley v Post Office; HSBC Bank plc v Madden 2000 ICR 1283*. The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure

by which that decision was reached: J Sainsbury plc v Hitt 2003 ICR 111 CA and Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 669 CA.

128. Unfair dismissal proceeding must be commenced within 3-months from the effective date of dismissal under s111 ERA. S18A Employment Tribunals Act 1996 allows for a further period of up to 1-month (or in exceptional circumstances 1-month and 2- weeks) for ACAS Early Conciliation. There is some discretion to extend this time limit if it was not reasonably practical to issue proceeding within time and the complaint was issued proceeding within a reasonable time thereafter. There is no dispute that the unfair dismissal claim was brought in time.

Submissions

129. Both parties made oral submissions to me. They are not repeated here in their entirety, but I will include a summary.

Respondent

130. I was taken through the Burchell test and how the Respondent says each of these elements is satisfied:

130.1 There was a genuine belief that the alleged conduct had occurred, and that this breached the relevant standards, in particular being honest, acting with integrity, being open and truthful in their dealings with the public and their colleagues [65 &66]; and not behaving in a manner which discredits the police service or undermines public confidence, whether on or off duty [68]. The rationale for this is set out in the disciplinary hearing outcome letter [388 - 391].

130.2 There were reasonable grounds for the belief that:

130.2.1 The Claimant gave varying accounts – as each avenue closed she gave a different account, including during the hearing itself

130.2.2 The Claimant had breached honesty principles –

differences over time with Ms Botley, and misled Mr Bell without a basis for this

130.2.3 The Claimant had breached the discreditable conduct principles – the Adjudicating Officer clearly decided the Claimant lacked self-reflection, and given the scrutiny the Respondent faces this situation could affect public confidence

130.3 There was a reasonable investigation by the Investigating Officer:

130.3.1 the Claimant's main concern seems to be that lines of enquiry weren't followed, especially regarding bank statements, but the statements for November 2018 – February 2019 were available at the hearing and there was no suggestion that the Claimant had made payment after that date

130.3.2 The Claimant was given a number of opportunities to respond before decisions were made

130.3.4 the Respondent did all it could

130.4 Dismissal was in the range of reasonable responses:

130.4.1 The conduct alone was very serious

130.4.2 It was made more serious because the Claimant lacked awareness and reflection, and there was an inability to admit shortcomings, which meant she not address the matter as promptly as she could or should

130.4.3 The Claimant demonstrated indifference to the seriousness of issue, which indicated no prospect of changing behaviour

130.4.4 It was clear that DS Geldart did not take decision lightly, but given the circumstances, it was the only appropriate outcome

Claimant

131. The Claimant had 6 headline submissions as to why her dismissal was unfair:

131.1 The allegations – DC Bispham said it was "*actions in relation to failing to provide the evidence of donation when requested was dishonest*"; DS Geldart referred to giving

contradictory accounts and false assurances to Mr Bell with no basis for this in her evidence, and did not ask the Claimant to clarify the basis; the Claimant did not clarify the basis of her reassurance herself as she had not appreciated how pertinent Mr Bell was to the situation; Mr Bell had not been asked his opinion on whether the Claimant had lied; it was unfair to say she had lied.

131.2 Inconsistencies in evidence – there are inconsistencies within Ms Botley’s records and statements that have been downplayed or justified, when the differences in the accounts the Claimant have been deemed to be gross misconduct; the Claimant had a poor working relationship with Ms Botley and believes she had a vendetta against her;

131.3 Ideas, hypotheses and assurances – the Claimant put forward proposed explanations, not contradictory accounts; she believed any were possible and none were more likely than others; her default position was that she had forgotten

131.4 The standards – the outcome acknowledges that the Claimant made a mistake, which is not a deliberate act so cannot be gross misconduct; “can do but won’t” is relevant to the Claimant’s ability to access bank statement as she was unable to do it; additional enquiries were not the Claimant’s to make; no details were made known to Macmillan or the public so cannot be discreditable conduct;

131.5 Disproportionate/inappropriate sanction – there cannot be a *dishonest* mistake; the Claimant’s 4 page mitigation was reduced to 6 bullet points; the BTP report criticises aspects of the investigation including that the potential consequences should have been pointed out; it was a work-related duty which the Claimant should have been given time to resolve during her shift

131.6 PSD motto – identify mistake and learn from them, which was not followed in relation to the Claimant; retrospective payment and proof of this should have been enough.

132. In relation to the Claimant’s submissions on the BTP report, the Respondent corrected that the reference to DC Bispham’ report being assumptive and biased, was in relation to the Claimant’s husband and not her. I was urged to read the whole report if relying on it, with the critical part being the overall assessment.

Conclusions

Applying the facts found to the law, I make the following conclusions:

Gross misconduct

133. The claimant was dismissed for a conduct related reason, pursuant to s98(2)(b) ERA.
134. The list of gross misconduct offences, and AA conduct table was not an exhaustive list, but the allegation against the claimant clearly fitted into a serious breach of professional standards, which falls under gross misconduct.
135. Despite the Claimant's submission that the severity of the situation should have been emphasised, she was clearly aware of the potential seriousness of the matter from the outset. Her initial reaction to Ms Botley's approach on 29 August 2019 was that it was an intimation that she had stolen the charity funds. She must have known that this would be considered gross misconduct.
136. In relation to the AA assessments, the Respondent acknowledged that the initial failure to pay the monies was a mistake, and as such this did not move forward to the hearing. However, it still remained clear from subsequent assessments and notifications, that the remaining behaviour was still considered to fall within the remit of gross misconduct. Whether the Claimant agreed with that or not, she will have been aware that any finding of gross misconduct may lead to dismissal.
137. The Respondent was entitled to determine that although the Claimant's initial failure to pay was not intentional, her actions thereafter - in relation to her responses to the requests for proof of donation - were deliberate acts and as such fall under gross misconduct. On the face of it, the Claimant appeared to be giving different accounts, and changing versions of what may have happened. Although this may be explained by the Claimant genuinely not knowing what had happened, her failure to enquire adequately or promptly equally suggested an attempt to avoid the matter. This cannot have been driven by not wanting to interfere with any police/conduct investigation, when her immediate reaction to following the warrant being executed was to contact Macmillan.

138. That call was not made during a shift, so I further reject the suggestion that the only time the Claimant could, or should have been expected to, make enquiries was during her normal shifts. It was therefore reasonable for the Respondent to expect the Claimant to deal with this in a timely manner, including outside of working hours. The Respondent made sufficient allowances for the Claimant's personal circumstances in the time given for her to act before the matter proceeded.
139. The Respondent was entitled to conclude that this failure, combined with additional versions about what had happened to the funds – including during/just before the disciplinary hearing itself – amounted to a lack of transparency. Calling these hypotheses/proposed explanations as the Claimant submits, is a linguistic stretch. Plainly another interpretation of an explanation is an account. Whilst the Claimant submits that her default position was that she had forgotten, she later put forward that it may have been paid and Macmillan made an error in registering/recording it, which is a transfer of responsibility.
140. The Respondent's assessment that the Claimant's acts/omissions amounted to dishonesty was reasonable in the circumstances.
141. That misconduct was sufficiently serious that I regard the offence as one that falls within the range of reasonable responses by an employer to be regarded as such.
142. I am satisfied that the claimant was accused of a gross misconduct offence in accordance with the disciplinary policy.

The investigation

143. I do not accept the Claimant's assertions that the investigation was flawed because the nature of the allegations changed during the process.
144. The Claimant clearly understood the allegation she was replying to in her written responses to DC Bispham, and confirmed she understood the nature of the allegation at her disciplinary and appeal hearings. Additionally, she refers

repeatedly to the fact that no action was taken in relation to the allegation of keeping as supporting her position that her conduct cannot have been considered serious enough for gross misconduct.

145. In any event, if she was in any doubt, I would expect her representative to have allayed any concerns as DC Bispham had been explicit in her communications with Ms Marshall.

146. Whilst the investigation took longer than is ideal, this was not a fault of the Respondent. DC Bispham acted promptly once the criminal aspect, which had paused the conduct investigation, was over.

147. In relation to the use of evidence obtained in the criminal enquiry, even a non-police employer may use information from third parties – including the police - in their internal processes. The Respondent in this case is of course in a unique position, but they are not prevented from using the information. Additionally, the disciplinary hearing bundle was redacted as requested.

148. Although it initially appeared that the Claimant was not going to be interviewed, this was immediately rectified.

149. I do not agree that DC Bispham was required to look into all avenues proposed by the Claimant when these continued to change. The initial and primary position suggested that payment had been made, but proof not received/retained, and the outcomes of those investigations was included in the documents that went forward to hearing.

The disciplinary hearing and outcome

150. The Claimant was able to participate fully in this hearing, both in writing in advance and orally at the hearing. Her representative did the same.

151. It is clear that DS Geldart considered all points raised by the Claimant, including whether the conduct amounted to gross misconduct.

152. Having determined that it was gross misconduct, and that dismissal was appropriate, she was not required to provide a rationale as to why other outcomes were not considered.

153. I am not persuaded by the claimant's argument that action short of dismissal should have been considered. The claimant was summarily dismissed for gross misconduct. Whilst the allegation was not of intentional keeping, it involved accounting for financial matters. The role of police staff requires absolute trust and integrity and if this had been found to have been compromised by the Claimant's actions then, in the circumstances of this case, dismissal was clearly the appropriate sanction. Nevertheless, DS Geldart considered the mitigation provided, but she concluded that the only option available to her was dismissal.
154. DS Geldart was entitled to reach the decisions that she made, having considered all of the evidence before her. This was not solely based Ms Botley, whose evidence the Claimant has significant issues with, but also Mr Bell. Additionally, having identified further accounts within the hearing and written representations provided, she was able to support her views.
155. I note that whilst DS Geldart found two standards had been breached, she emphasised that dismissal was appropriate for honesty and integrity even in isolation. I have no doubt that this was made out in the circumstances.
156. Furthermore, I find that as DS Geldart found that the third standard was not breached, she had clearly given full consideration of the facts applied to the relevant standards.
157. I am in no doubt that DS Geldart found this a difficult decision, but she came to a conclusion and provided the justification set out above.

The appeal hearing

158. Although the Claimant previously raised issues with the way the appeal was conducted, particularly a concern that, Mr Rutherford had determined the appeal with DS Geldart, having seen and heard his evidence she seemed satisfied with this explanation. That Mr Rutherford checked the specific assertions of who remained in the room, and that the character references were in the brown envelope, with DS Geldart shows how thoroughly he investigated the Claimant's appeal points.

159. The Claimant put forward no other areas of dissatisfaction with the appeal hearing, and did not address anything specifically related to the appeal in her submissions.

160. I am satisfied that this part of the process was conducted properly by Mr. Rutherford, and that this involved a detailed analysis of the investigation and disciplinary hearing stages, addressing the concerns the Claimant raised with these aspects. It was not simply a rubber stamping exercise.

161. Like DS Geldart, Mr Rutherford clearly also saw the consequences of this difficult decision.

162. I find that the employer utilised a fair process and this was in line with the ACAS guidelines as set out above.

The Burchell test

163. So far as the Burchell test is concerned, I am satisfied that: the respondent had a genuine belief that the Claimant was guilty of misconduct; there were reasonable grounds for holding that belief; and this had come from a reasonable investigation.

164. The Burchell test applies primarily to DS Geldart as the dismissing officer, but also to the appeal officer, Mr Rutherford. The decision was a little easier for Mr Rutherford as he dealt with an appeal from someone who had already been dismissed, but was still dealt with carefully.

165. I conclude that both dismissal and appeal officers had a genuine and honest belief in the claimant's guilt. The decisions are detailed and sufficiently well-reasoned. The investigation was reasonable and addressed all of the relevant issues raised by the claimant.

166. I determine that both the respondent's decision to dismiss the claimant and the process by which this decision was reached were within the range of reasonable responses.

Summary

167. The Claimant was fairly dismissed.
168. For the reasons set out above, the Claimant's claim for unfair dismissal fails and is dismissed.
169. The provisional remedy hearing listed for 2 June 2023 is cancelled.

Employment Judge Douse

Date: 26 May 2023

Sent to the parties on:

30 May 2023

For the Tribunal: