EMPLOYMENT TRIBUNALS

Claimant: Mrs A Beavis

Respondent: POhWER

Heard at: Watford (by CVP) **On:** 16, 17, 18, 19 & 20 October 2023

Before: Employment Judge Maxwell

Appearances
For the claimant: Mr Allan, friend of the Claimant
For the respondent: Ms Bewley, Counsel

RESERVED JUDGMENT

The Claimant's claim of unfair dismissal is not well-founded and is dismissed.

REASONS

Claim

1. By a claim form presented on 13 January 2022, the Claimant brought a complaint of unfair dismissal. Although the Claimant said she was a disabled person at the material time, she did not bring a discrimination claim.

Procedural Matters

2. The Claimant's claim had initially been listed for a 2-day final hearing, as if often appropriate for misconduct dismissal cases. A party application for this to be increased to 5 days was refused and instead the existing listing was extended by 1 day. When, however, the matter was before EJ Laidler, given a bundle of circa 1,000 pages and 6 witnesses, she decided to relist for 8 days.

3. Unfortunately, due to a lack of judicial resources, it was not possible to start the hearing on the first of the relisted dates. Rather than postponing this case yet again, it was rolled-over in the hope a judge would become available to hear the

case on the basis of a reduced listing. When the case started on 16 October 2023, only 5 days were available.

4. The following timetable was agreed:

   4.1 Day 1: reading (morning); Respondent's evidence (afternoon);

   4.2 Day 2: Respondent's evidence;

   4.3 Day 3: Claimant's evidence;

   4.4 Day 4: submissions (30 minutes each) and deliberation

   4.5 Day 5 deliberation, judgment and remedy (if appropriate).

5. Whilst this timetable provided the parties with a shorter amount of time for cross-examination than they might have anticipated. It was necessary to limit the proceedings in this way so as to finish the hearing within the time available. I indicated that no adverse inference would be drawn from a party failing to put their case in all respects. It was in the interests of justice to proceed in this way, rather than relist the case yet again (likely late 2024 early 2025 The factual dispute relates to events in 2021 and another postponement, in addition to delaying justice, will tend to reduce the quality of witness evidence. Nor is it desirable to hear evidence and then take submissions or begin deliberating only after a lengthy gap.

6. The Respondent applied to have part of the Claimant's witness statement redacted. It said a particular paragraph contained irrelevant personal information about Ms Moulinos. I declined to deal with this as a preliminary issue, as it was disproportionate to use our limited time in this way. I would consider the relevance of this and all other evidence when making a decision at the end of the case. In the event of an application from a member of the public to see the Claimant's witness statement, then I would determine this point before providing a copy.

7. With the parties agreement, the hearing took place by Cloud Video Platform. The case could not otherwise be heard and it was in the interest of justice to proceed in this way. Mrs Jones was permitted to give evidence by CVP from the USA. The Respondent had applied for Mrs McArthur-Worbey to give evidence from Spain by CVP. This was refused because Spain has not given permission and she gave her evidence from the UK.

Evidence

8. I was provided with:

   8.1 a bundle of documents running to 1077 pages;

   8.2 an agreement with Nottinghamshire County Council and others for the provision of advocacy;

   8.3 the Respondent's opening note;

8.4 the Claimant's written closing submissions.

9. I received witness statements and heard evidence from the following witnesses:

Claimant's Witnesses

9.1 Alette Beavis, the Claimant;

9.2 Gill Wingfield, former employee;

9.3 Jonathan Wheeler, former Executive Director and CEO;

9.4 Robert Allan, Trade Union Representative;

Respondent's Witnesses

9.5 Jackie Kinsey, Non-Executive Board Member;

9.6 Elyzabeth Hawkes, Deputy Chief Executive;

9.7 Fiona McArthur-Worbey, Director of Fundraising and Engagement;

9.8 Heather Jones, External HR;

9.9 Toby Cotton, former Trustee.

10. I was also provided with a witness statement for Helen Moulinos, the Chief Executive. She did not attend to give evidence. Given the Claimant was unable to cross-examine Ms Moulinos and to that extent her evidence was untested, I attached little weight to it. Much of what she said was, however, supported by contemporaneous documentary evidence.

11. Although audio recordings were referred to, I was not provided with copies and none were played during the hearing. On day 3 when a reference was made to what could be heard on the audio, I stated I had not heard this, lest there be any confusion on the point. As is my usual practice, at the beginning of the hearing I identified the material I had received, which comprised paper documents only (albeit in digital form). Neither party applied to put in the audio.

Facts

Background

12. The Respondent provides information, advice and advocacy services to people with disabilities or who are otherwise vulnerable, assisting them to enforce their rights within care homes, hospitals, prisons, courts and the like.

13. The Claimant was employed by the Respondent from 19 July 2011 to 5 October 2021, most recently as a Regional Manager ("RM"). The Claimant was responsible for 8 Community Managers ("CM"), each of whom had a team of Advocates. The Claimant's area of operation comprised "Secure settings". These are units in which vulnerable people are often detained against their will. The individuals who benefit from the Respondent's services are known as beneficiaries. Those within the Claimant's area are especially vulnerable, not just

as a result of their detention but also because of factors such as poor mental health or learning difficulties.

14. The Claimant was a member of the Respondent's Senior Management Team ("SMT"). Her job description included:

> **Complying with policies and procedures**
>
> **Knowledge and understanding of the legislation that governs POhWER's work. Knowledge and understanding of POhWER's policies and procedures. Monitor and take appropriate action in the event of non-compliance**

15. In May 2020, a new CEO was appointed, Ms Moulinos. One of the first measures she implemented was a review of the Respondent's policy and practice with respect to safeguarding. Whilst the focus of this hearing has been the approach to safeguarding reporting and in particular, the Respondent's legal duty under the Care Act 2014 to make reports to the relevant Local Authority, Ms Moulinos concerns were broader and included matters such as the Respondent's employees being aware that may have to report their own actions or those of colleagues, in addition what was or was not done by third parties.

16. By an email of 14 July 2020 to the SMT, Ms Moulinos distributed links to guidance materials relating to Serious Incident Reporting, Charity Commission changes and board escalation. She required confirmation in writing that this had been read and understood. The email also invited recipients to raise any historical incidents about which they were unsure (i.e. if you think you may have got it wrong in the past, tell us now). The Claimant replied to this on 20 July 2020, with the required confirmation and stated a zoom meeting had been arranged with her CMs to go through the material with them. She did not disclose any doubt about prior practice in her area.

Safeguarding Policy

17. As at August 2020, the Respondent's Safeguarding (Adults) Policy included:

> **All staff have a duty of care to all service users, to recognise the signs of abuse and to take action where it is reported. Staff will receive training on what abuse is, how to recognise abuse and report it. Our policy and procedures commit staff to responding promptly to all allegations or suspicions or abuse, including where these are alleged or suspected of being perpetrated by anyone involved with POhWER.**
>
> **POhWER's designated safeguarding lead (DSL) will ensure that our Safeguarding Policy and Procedures are implemented consistently across the organisation.**
>
> **The current DSL is Elyzabeth Hawkes, Deputy Chief Executive, who has responsibility for recording all instances of alleged or reported abuse. Staff and/or managers should approach the DSL for guidance with instances of abuse, where there is a question about whether these should be reported to the local authority, and whether escalation to the Serious Incident Group**
>
> **(SIG) should take place. The SIG comprises the Chief Executive, Deputy Chief Executive, Chief Finance Officer (as Company Secretary) and Head of**

> **Training Quality and Risk. The DSL will be responsible for convening the SIG. Records must be kept that explain why safeguarding concerns have not been raised with local authorities, authorised by [CM/RM/SIG?] so as to provide an audit trail.**
>
> **The SIG will escalate any potentially reportable incidents to the Chair and Deputy Chair (and any other trustees designated by the Chair), to ensure the Board's reporting responsibilities to the Charity Commission (and any other regulators or oversight bodies) can be discharged promptly.**
>
> **Managers in POhWERwill:**
>
> **• Alert the commissioning authority's safeguarding lead and/or the police to cases of abuse,**
>
> **• Document all actions, conversations and reasons for decisions made,**
>
> **• Pass documentation of abuse related events to the DSL,**
>
> **• Ensure that all staff are familiar with the local Commissioning**
>
> **Authority's Safeguarding Policy, Procedures and Guidelines.**

18. It was not disputed this policy required instances of suspected abuse or neglect to be reported by the Respondent directly to the relevant Local Authority, which has a statutory duty to investigate. During the hearing before me, this practice was referred to "external reporting". Separately from the report made by the Respondent to the local authority, a report may also need to be made into the Secure setting housing the individual so that immediate steps could be taken to address any risk of harm and / or to other regulatory bodies, such as the Care Quality Commission ("CQC"). The Respondent has discrete and concurrent legal duties in this regard.

19. In the subsequent disciplinary investigation, the Claimant said there was a different or additional policy in her area of operation, whereby suspected abuse or neglect would instead be reported to the Secure setting, which would then in turn be expected to report the matter to the Local Authority itself. Only if the measures taken by the Setting in response to the initial report were deemed inadequate would a report then be made directly by the Respondent to the local authority. As a shorthand, the parties referred to this as "internal reporting".

20. Whilst the Claimant did not provide an earlier version of the Respondent's policy containing this different process, she sought to rely upon other documents as evidencing it, including those created as part of the tendering process for new advocacy contracts. At the appeal stage, the Claimant also provided a letter from Jonathan Wheeler, former Operations Director for the Respondent and Interim CEO until August 2016, saying that a different policy was followed in Secure services:

> **[…] it was accepted that the process for raising safeguarding concerns in Secure services followed a different route, in that any alerts, if appropriate, were raised with the Secure service provider. This reflected the different culture and environment of providers of Secure services. Any high-risk alerts would be made directly to the Emergency Services or Local Authority**

> **Safeguarding Teams. Any Safeguarding alerts through Secure services would still be subject to multi-agency guidelines. All alerts to Secure service providers were followed up by a POhWER Manager and if they had not been dealt with swiftly by the provider, then the alert would be escalated by the POHWER Manager to the relevant Local Authority.**

21. Mr Wheeler attended as a witness for the Claimant in the Tribunal. He acknowledged there was a risk in allowing the secure settings to "mark their own homework" and unless the Respondent was copied into a relevant email letter, it would not know whether or if so in what terms, the Setting had reported suspected abuse to the relevant Local Authority. His explanation for this practice, set against the Respondent's legal duties and objective to provide independent advocacy, was that it had been insisted upon by the secure settings, which he described as akin to "fiefdoms". He could, of course, only speak to the position up to 2016.

22. The Respondent's witnesses at the Tribunal denied knowing of this separate practice in Secure settings until the Claimant's disclosures in May 2021, following which she was suspended.

Action Plan

23. In September 2020, so as to address Ms Moulinos' concerns about inadequacies in the Respondent's existing approach to safeguarding, a Safeguarding Action Plan was drawn-up. This included:

Safeguarding Policy to be strengthened in the interim to address escalation and reporting issues	**September 2020**
[…]	
Review Training offer	
All staff refresh training (e-lfh)	
Set up account	**By 04.09.20**
Registration of staff	**By 11.09.20**
1st refresh completion target	**By 31.10.20**
(Level 1 support staff	
Level 2 operational staff)	
Set up safeguarding round table at SMT for peer reviews/support and standardisation (monthly thereafter)	**08.09.20**

24. The Claimant completed the safeguarding adults and children level 1 training on 9 October 2020, taking 50 minutes and 26 minutes respectively on the two modules. She did not complete the level 2 training, whether by 31 October 2020 or at all. When asked about this subsequently, the Claimant explained the omission by pressure of work. Although she did raise concerns about workload with her manager, she did not say that she had been unable to complete the required safeguarding training.

Safeguarding Roundtables

25. A meeting of the SMT took place on 8 September 2020, to address the Respondent's current safeguarding policy and processes. The minutes included:

> **Recent events have highlighted the need to identify where further developments and improvements are needed to ensure best practice and compliance to all statutory and regulatory oversight bodies in relation to**
>
> **• Evidenced robust safeguarding processes are in place within the Charity**
>
> **• Escalation processes are robust and well understood**
>
> **• Robust monitoring and reporting measures are in place**
>
> **• Development of standard reports to Board monthly on safeguarding activity**
>
> **• Robust escalation process to Board of Trustees**
>
> **• Embed learning cycle throughout the organisation.**
>
> **[…]**
>
> **POhWER's current safeguarding policy, process and system is underpinned by**
>
> **• The Care Act 2014 which sets out a clear legal framework for how local authorities and other parts of the system should protect adults at risk of abuse or neglect.**
>
> **[…]**
>
> **POhWER also have a duty to chAllange on behalf of the client the outcome or measures placed upon a person if there is cause to believe the measures are not proportionate of least restrictive.**
>
> **POhWER also has a responsibility to meet the requirements of its own safeguarding duty to make independent alerts when it is aware of or has observed abuse or neglect of person.**

26. A series of SMT meetings took place to discuss safeguarding practice. These became known as "Roundtable" meetings. They ran from September 2020 into 2021. At such a meeting on 29 September 2020, the Claimant gave an example of a matter that had been reported by her team to the CQC. In the subsequent minutes, a link was provided to relevant materials, accompanied by the following:

> **The following in the link below is distressing but needs to be read as it robustly highlights the need for our advocates to be completely independent of all providers / commissioners and to escalate all concerns and raise them to the appropriate body.**
>
> **And just as importantly it clearly demonstrates the importance of our culture inside POhWER to support concerns to be raised/ whistle blowing without fear of consequences - The right to Feel Safe**

Safeguarding Review

27. Ms Moulinos commissioned a review of the Respondent's safeguarding policy, to be undertaken by external provider, Safer Edge. A report in this regard was issued in November 2020. A significant deficit in the Respondent's existing approach to safeguarding was identified:

> **• Safeguarding is missing from the daily working lives of people in POhWER. This substantially increases the risk of individuals being harmed.**
>
> **• A pervading sense that safeguarding harms could not happen in POhWER puts staff and the organisation's beneficiaries/clients at unnecessary levels of risk.**
>
> **• POhWER's policies and procedures cover certain areas but adult and child safeguarding policies require substantial changes. There are significant gaps in wellbeing provisions, digital security, incident reporting -and in particular 3 rd party due diligence.**
>
> **• Policy and procedural gaps and changes can be addressed but must be accompanied by a significant training effort if the organisation is to reduce the potential risk of harm to POhWER staff, volunteers and the vulnerable individuals it supports.**
>
> **• Staff in POhWER typically have a strong sense of loyalty to the organisation and its goals. Integrating safeguarding more visibly into staff roles, POhWER's values and organisational strategy will also help address the gap between policy and reality.**

28. Safer Edge included at Appendix 1, safeguarding requirements from the Charity Commission and these included:

> **2. Policies, procedures and practices you need to have**
> **The organisation is to have appropriate safeguarding policies and procedures in place which are: put into practice, responsive to change, reviewed at least once a year, available to the public, known by all trustees, staff, volunteers and beneficiaries**
> **Policy is to be clear on: protecting people from harm, making sure people can raise safeguarding concerns, handling allegations or incidents, reporting to the relevant authorities**
> **[…]**
> **8. Handle and report incidents and allegations.**
> **The organisation's safeguarding policy, procedure and practice must be able to:**
> **[…]**
> **• report it to all relevant agencies and regulators in full**
> **[…]**
> **• Reporting to the police if the incident or concern involves criminal behaviour (and safe to do so)**
> **• Referring to social services, regulators or other agencies where appropriate**
> **• Sending a serious incident report to the Charity Commission**

29. The safeguarding policies reviewed by Safer Edge were the versions created as at August 2020 They did not have sight of any material relating to a separate practice within the Claimant's area of operation.

2021

30. In January 2021, Mrs Hawkes made a presentation of the Safeguarding Review to the SMT. This was in addition to the continuing SMT Roundtables to discuss safeguarding. The purpose of these sessions was to strengthen and embed knowledge about the Respondent's procedures and legal duties, along with looking at how that may apply to different situations that could arise. The Claimant did not at any of these meeting raise the different practice she followed or any concern it might fall short of discharging the Respondent's duty to make independent reports to the Local Authority on behalf beneficiaries.

31. In March 2021, invitations were sent out for all staff and volunteers to attend briefing sessions in connection with the results of the Safeguarding Review. The slides included the Charity Commission's 10 key areas, one of which was "checking your charity's policies, procedures and practice". This presentation also highlighted red findings (i.e. urgent) around "increased training and awareness on safeguarding reporting and how reports are managed to build trust and confidence in the system".

32. The safeguarding (adults) policy was further updated and the March 2021 iteration included:

> **Managers in POhWER will:**
> **• Alert the commissioning authority's safeguarding lead and/or the police to cases of abuse**
> **• Document all actions, conversations and reasons for decisions made**
> **• Pass documentation of abuse related events to the DSL**
> **• Ensure that all staff are familiar with the local Commissioning Authority's Safeguarding Policy, Procedures and Guidelines.**

33. By an email of 12 April 2021, Ms Moulinos scheduled a series of one-to-one sessions with members of the SMT to discuss various matters, including "serious incidents – which were not escalated in reasonable timeframe where we have to take legal advice or action to mitigate the charities position". The invitation included:

> My intention with these sessions is not to embarrass anyone or point fingers - it is to strengthen and update your knowledge on what to do should any of the above scenarios come up. We are seeing patterns which indicate that potentially some of the SMT's knowledge is not up to date. Unless the cases in the discussion involve you specifically, this will be done anonymously to protect individuals involved.

Eldertree Lodge

34. On or about 29 April 2021, the Claimant learned that one of the Secure settings in her area of operations, Eldertree Lodge, had been or was about to be subject to an intervention by the CQC. A meeting was arranged for Ms Moulinos to speak to the Claimant and relevant CM about this matter. In the event, Mrs

Hawkes and Sandra Black (Quality and Risk Manager) attended this instead of the CEO and the meeting took place on 5 May 2021. Given the CQC may have found wide-ranging problems at the unit, Mrs Hawkes and Mrs Black were keen to explore whether the Respondent had done all it should, looking at what the advocates had seen and any external reports to the Local Authority. During this meeting the Claimant made a comment to the effect that the Respondent could not raise everything externally as otherwise they would only be dealing with safeguarding.

35. Mrs Hawkes was surprised by this comment and considered it inappropriate. The Claimant denied the comment but I accept Mrs Hawkes evidence, she was a clear and credible witness who gave direct answers to questions. Furthermore, the remark would appear to fit with the practice the Claimant was following at the time of making internal rather than external reports.

7 May 2021 Meeting

36. The Claimant asked to meet with Mrs Hawkes again and they did so by Zoom on 7 May 2021. Mrs Hawkes had been somewhat concerned about the Claimant's demeanour at their last meeting and this recent request. She decided it would be prudent to keep a record, typing brief notes as they spoke. The document created in this way was produced into evidence and I accept it is an accurate reflection of the discission. For the most part, the Claimant agreed its contents. She did, however, dispute part at the end, which records a disclosure she now denies. No credible reason was put forward for Mrs Hawkes to fabricate the note. The Claimant's witness statement might be read as inviting an inference that Mrs Hawkes was worried about her own position and sacrificed the Claimant to save herself. Nothing to support Mrs Hawkes having this fear was shown and nor was she challenged to this effect in cross-examination. I made a point of clarifying how Mr Allan was putting the Claimant's case and he relied upon Mrs Hawkes making a mistake. This seemed a remote possibility, in circumstances where she was making the notes whilst the meeting was underway.

37. Much of the meeting was taken up with the Claimant explaining concerns about her workload. Mrs Hawkes had found the Claimant to be rather protective of her domain and less likely to share than her other RM colleagues. Although the Claimant had raised issues with her workload in the past, she had also been reluctant to countenance giving anything up. On this occasion, however, the Claimant did express a willingness to surrender some of her duties. Toward the end of the meeting, the Claimant moved onto safeguarding. The material part of the note provides:

> **Staffing and reporting**
>
> **Risk**
>
> **Don't feel safe**
>
> **Safeguarding**
>
> **concerned about St Andrews and Mersey Care**

Previously always repeated immediately on the unit and then gone to Safeguarding Lead for Mersey or St Andrews also then to the commissioners.

We have done this to resolve things in the first instance.

On these 2 contracts we only report internally to other professionals

There is an audit trial and if we are not happy we challenge them again.

This has resulted in dismissals and process changes in the post

St Andrews / NHS Mersey

We said in interview that our process was to report it immediately to the right person and then report it to the commissioner.

Agreed by Roan at start of contract that we would be doing this

With other outlier areas straight to LA

Fucked up and not appreciated implications not safeguarding

I can 100% see it, we have been wrong but have tried really hard

It's not healthy for me to have the only view and there needs to be oversight

Really welcome it can't just sit with me.

I need to take personal responsibility

Take off me what you want to take off me

Ready to move on

38. In substance, this amounted to an admission the Claimant had made a mistake ("fucked up") by only reporting safeguarding concerns internally in the first instance. Whilst the Claimant denied having made this comment, or that she would use such language, or that she had any reason to say this, once again it would seem to fit with the practice she says had been in place. The strong language would appear to be accounted for by the Claimant's concern about the position she was in. At this meeting, if not before, it appears the Claimant recognised that what had been done in her area was not in accordance with the Respondent's policy or legal duties. Notably, the Claimant did not preface what she was saying about the policy with words such as "Lyz, as you know…".

Suspension

39. Mrs Hawkes was very concerned about what the Claimant had just told her. Notwithstanding this discussion had taken place late on a Friday afternoon, Mrs Hawkes did not think she could just sit on the information received. In the absence of being able to get in touch with Ms Moulinos, Mrs Hawkes contacted Julie Born, Director of People. A decision was made the Claimant should be suspended without delay. Mrs Hawkes called the Claimant to an immediate

meeting and suspended her, using a form of words agreed with Mrs Born, explaining that in view of the disclosure made by the Claimant, she was being suspended to allow for an investigation. The Claimant became extremely upset, screaming at Mrs Hawkes and ending the call. The Claimant returned to the call little later.

40. The Claimant denies that when being suspended she was told this was because of her recent disclosure. Mrs Hawkes has produced into evidence a photograph of her handwritten notes of the form of words agreed with Mrs Born, which she had written into a notebook. It was not suggested to Mrs Hawkes that this note was a fabrication and there would seem to be little scope for her recollection to be in error if she was reading from a script. These notes are also consistent with the Respondent's correspondence. Once again, I accept the evidence of Mrs Hawkes.

41. By letter of 10 May 2021, sent to the Claimant by email, the basis for her suspension was confirmed in writing:

> **I write further to our meeting on Friday 7th May, where Lyz and I discussed the disclosures made to Lyz during the meeting you had requested earlier in the day to talk about your workload.**
>
> **Towards the end of the earlier meeting with Lyz, you disclosed that the safeguarding and the reporting practices you have put in place in secure and complex services may not match safeguarding and legal requirements. As explained, your disclosure raised serious concerns of possible gross misconduct and as a result, we felt we had no alternative other than to suspend you from work.**

42. The Claimant did not write in denying any disclosures or indeed, asking for clarification about what this referred to.

First Disciplinary Investigation

43. The Respondent decided to commission an external investigation into the question of whether or not the Claimant had committed misconduct. Safer Edge were again instructed, the terms of reference were:

> **An investigation needs to establish:**
>
> - **Has AB acted in a way that contravenes or seriously breaches POhWER's Safeguarding policy and procedure?**
> - **Has the AB acted in a way that seriously breaches the procedures for reporting safeguarding incidents externally e.g. to the Local Authorities?**
> - **If there has been any serious breaches of the above policy and procedure:**
>   - **Why did AB do this?**
>   - **Are there any mitigating circumstances?**
>   - **How often and how long has this breach been taking place?**

44. Safer Edge conducted interviews with Mrs Black, Mrs Hawkes (incorrectly referred to as Mrs Haines) and the Claimant (twice). Various documents were also taken into account, including at least one provided by the Claimant in connection with one of the Secure settings, St Andrews.

45. The Claimant's first interview included:

> **AB stated "I want to say that the suspension letter sent to me is factually incorrect. I did not make any declaration, I haven't changed any policies and I don't know what I have done wrong"**
>
> **[…]**
>
> **JP asked what was discussed about safeguarding during that meeting.**
>
> **AB - EH was all over the place, she was talking about something that had happened the week before, (JP clarified that this was the Eldertree Lodge case that AB had alerted the exec to before it appeared on news).**
>
> **EH said that this had not followed process and it led to a conversation.**
>
> **JP - What was said?**
>
> **AB nothing specific and we (I?) agreed that if we needed to look at the process ten we should and we said we would meet the following Wednesday to discuss.**
>
> **JP - I have been told that you stated that in 2 specific contract cases (NHS Mersey and St Andrews Healthcare) you had not been making external safeguarding reports?**
>
> **AB- No, that didn't happen, I did not make that statement**
>
> **JP - Did you talk about those contracts at all?**
>
> **AB -No**
>
> **[…]**
>
> **AB noted the (safer edge) audit. "If there had been issue in secure services this should have been raised then or was this not looked at?"**
>
> **JP asked about POhWER independence from the units and if no reports were made externally.**
>
> **AB explained that sometimes reports were made externally and in these instances they were discussed internally (in POhWER and SIR raised)**

46. The Claimant's second interview included:

> **AB started by saying this was not a process for just these contract cases but the process in place throughout the organisation for secure services and has been in place for the 10 years that AB has been with POhWER and is agreed and documented in the contracts in place. This is what AB was shown when joining and she has followed this. In basic terms the explained the process as follows:**

Advocate (or others) witness something

First step report to most appropriate immediate person (which may vary based on setting/timing/incident.

The report to Line manager (usually CM) and complete incident form - discuss with manager and make notes if needed (and actions).

Report as agreed within unit (exact internal reporting line varies but usually safeguarding lead) and they escalate.

Incident form added to log in POwHER (as well as within unit)

Follow-up may be us checking or unit coming back to us.

If we are satisfied with actions taken in unit then the incident may be closed.

If noting changes or we are not satisfied with outcome or if it is really serious we may also report directly to local authority but no in all cases - In these incidents AB would certainly be aware and often discussed with EH or others in POwHER.

AB - This is the process and is documented in contracts and flowcharts. Everyone at POhWER knows this is the process and will be within case logs.

We follow multi-agency approach and work with units to ensure safeguarding is raised. This approach is explained in tenders and is part of why POhWER has won contracts (like St Andrews).

AB - I did not introduce those procedures so if this is wrong it has been wrong for a long time and across all the areas, not just 2 contracts

47. Mrs Hawkes interview included:

EH - There was nothing to raise my concerns in AB area of work and we had discussed SG many times in various meetings. AB often brought good examples of SG to meetings so I had no idea there were issues.

Looking back on reflection we could have reviewed each report submitted by AB t and looked into cases more closely for an external alert but we didn't and I trusted AB 's experience to raise alerts appropriately. I don't do this with other RMs They are senior positions.

[…]

Initial 'trigger' for the incidents was AB alerting the Exec team of a possible PR incident. Local BBC news were running a news story concerning a unit where we work. EH thinks HM asked SB to follow-up on that with AB.

[…]

In the end with holidays and so on the 5th May meeting took place between EH, SB, AB and Becky (CM)

EH - I sent out the online submission form in advance so everyone could prepare as we would use this to see if we need to do an SIR.

In meeting AB was unusually quiet (I felt) whilst we went over the actual case - Becky did most of the talking when we reviewed the case

AB appeared uncomfortable in this meeting (although it was on zoom so sometimes hard to read emotions)

Once we had reviewed the case discussion continued and it became apparent that in every case in Secure services, the Advocates and CMs do not ever raise any incidents without going through AB first. SB/EH were surprised by this as this is not in line with organisational process.

AB stated "We don't always need to raise cases (externally). If we did that we would only be dealing with safeguarding"

[…]

AB emailed EH on Friday 7th May to request a meeting about her workload.

Meeting was set up for 4pm -

EH - I was feeling a bit uncomfortable so I decided to take notes during the meeting (I normally would only make notes after to capture actions etc.)

EH - Read from the written notes (provided)

First 45 mins of the meeting were more like standard 1:1 - AB asking about restructure, discussion on workload, delegation of tasks, specific cases etc, possibly giving up certain areas, need for additional staff.

EH tried to offer some suggestions and support "what would help?" "Delegate to other specialists (HR and Fiona's team)

In the last 15 mins of the meeting AB then started talking about not feeling safe and having concerns about Safeguarding.

EH questioned on this.

AB then revealed that for 2 contract areas (St Andrews and NHS Mersey) that they had not been raising safeguarding cases externally.

AB stated that during the interviews (to secure the contracts) they (AB and previous Director Roan) had stated that safeguarding would be raised internally and then to the commissioner (of the contract).

AB said that she could now see that was wrong and understood and that it was good that it was open and would not all sit with her.

EH said that she was shocked and didn't really know how to react. She closed the meeting and did not really talk with AB about any next steps

First Disciplinary Investigation Report

48. Safe Edge provided their report later in June 2020. Somewhat surprisingly given they had been instructed to carry out a disciplinary investigation, the report's introduction included:

> **An external investigation of this type examines actions and compliance with policy and procedure. It does not examine performance of individuals (interpersonal skills, delivery of job objectives etc) and does not include recommendations on whether individual(s) actions constitute a disciplinary offence. No inference, of any kind, in either of these areas should be drawn from this report.**

49. Safer Edge found no wrongdoing on the part of the Claimant:

> **I. Our investigation revealed AB has not passed (most) safeguarding reports directly to the Local Authorities (LAs) for St Andrews and Mersey Care Secure services Units. We have also identified that POhWER's contracts, policies and statements on external reporting to Local Authorities are contradictory and unclear on whether and when incidents should be reported to LAs. On this basis while AB's actions have led to reports not being directly made to LAs, they cannot reasonably or fairly be said to have breached written policy on external reporting to LAs.**
>
> **II. The processes for external reporting and logging of safeguarding reports - for which AB is partly accountable - appears to be different to those followed elsewhere in POhWER. However no formal procedures appear to exist for the logging of reports and there are indications that the process has been left open to interpretation and confusion. On this basis AB's actions cannot reasonably or fairly be said to have breached internal procedures when no such written procedures exist.**
>
> **III. Within the scope of this investigation we cannot make a finding either way whether AB gave conflicting information to their LM on external reporting to local authorities.**

50. This conclusion was based upon an analysis of various documents, including one the Claimant provided, which was the St Andrews Safeguarding Protocol March 2019 (appendix B). That document described steps to raise safeguarding concerns within the secure setting or Respondent and concluded:

> **POhWER would only externally refer to the local authority if there was no action taken.**

51. The report's authors also found the use of the word "external" in connection with reporting safeguarding concerns to be ambiguous, as it might be taken to refer to the secure setting provider rather than the relevant local authority.

Response to First Investigation

52. Ms Moulinos was very dissatisfied with the outcome of the investigation report. In her statement she sets out her view of what Safer Edge had produced:

> **12. […] I was of the opinion that this report was inconclusive - it failed to take into account crucial evidence and did not address the specific**

> **matters which it was asked to investigate. The Safer Edge investigator had also failed to interview any staff members within the Claimant's region and excluded key evidence provided to them by POhWER. In addition to this, I felt that investigator had placed undue weight on unofficial policies and procedures which had been provided by the Claimant during their investigation (these were not known to POhWER). […]**

53. Put more simply, my finding is that Ms Moulinos thought the Claimant had, unreasonably, been let off the hook.

54. Mrs Hawkes was instructed to prepare a rebuttal This recited training and SMT sessions the Claimant had attended in the period since July 2020 before going on to say:

> **[…] appendix B is not an authorised POhWER procedure that is recognised as having been approved in line with the delegation of authority was not known to exist by the DSL.**
>
> **Whilst covering AB's absence it was identified as being in use by AB's secure service managers through individual conversations on the escalation of safeguarding incidents on behalf beneficiaries.**
>
> **It is further noted through inspecting the properties of the document that it was authored by a supervising advocate in AB's team. It is not compliant with safeguarding legislation, POhWER procedure or duty under the Care Act 2014**
>
> **It is concerning that following a significant programme of training and audit involvement for Senior managers that this document had not previously been revealed at the time when it was made known that POhWER;s wider safeguarding policies , procedures and guidance needed reviewing in line with Charity Commissions compliance and safeguarding best practice.**
>
> **If AB knew about this procedure, and was "confused" by it as Safer Edge suggest, why did she not raise the matter previously. Why was it not mentioned in any of the safeguarding training meetings;**
>
> **If AB did not know about the policy then she could only have been following the POhWER policy, and therefore couldn't have been confused as Safer Edge have suggested.**
>
> **This procedure was found whilst covering for AB's absence and appears to have been held locally by AB's staff in secure services teams. It was not a recognised approved POhWER procedure and was not part of the approved corporate Safeguarding Policy section on SharePoint**

55. The short point being made was that if the Claimant was following the unauthorised policy set out in appendix B, as a result of all of the training provided and discussion within SMT since 2020, she should have been well-aware this was not (or at the very least was no longer) compliant with the Respondent's safeguarding policy.

56. Ms Moulinos discussed her view with Mr Thomson, Director Safeguarding & Risk for Safer Edge. She criticised the approach adopted in the report, presumably with a view to eliciting a revised outcome. Mr Thompson did not agree and the parties fell out over this dispute. Ms Moulinos advanced what Mr Thomson considered to be unsubstantiated allegations against the investigator.

57. Ms Moulinos decided to commission a fresh investigation and Lamont Jones, an HR consultancy, was instructed.

Continued Suspension

58. By email 7 July 2021, the Claimant was informed that her suspension (which had been in place for 2 months) was to be extended:

> **Thank you for your email and additional follow up email. As discussed, I have now met with some of the trustees and have a further update for you.**
>
> **As you are aware Safer Edge have been carrying out an external investigation. We have also decided today that we would like Heather Jones, an external HR Consultant to also join the investigation process. The reason for this decision is to ensure that as a senior member of staff, our investigation into the allegations against you has a balanced approach. This means that your suspension from work is likely to last at least a further two weeks.**
>
> **Heather Jones will be in touch with you shortly to arrange a further meeting. […]**

59. The explanation given for the decision to instruct Heather Jones to investigate was a best euphemistic. The Claimant replied the following day, seeking clarification of why she had to be interviewed again and asking for the outcome of the report. She said her trust and confidence in the Respondent had been completely broken. Her requests did not receive a meaningful response.

First Grievance

60. By an email of 14 July 2021, the Claimant submitted a grievance complaining about her treatment. She asked for this to be sent to the Chair of Trustees, Anthony Kildare and not shared with the CEO or SMT. The substantive grievance included complaints against Mrs Moulinos, Mrs Hawkes and Mrs Born. She accused them of lying and said her treatment was appalling. She set out her version of events with respect to the discussions that had taken place immediately prior to her suspension. She also included a timeline of events, a lack of welfare support, delays in the investigation, no response to her request for documents and an absence of transparency.

61. Mr Kildare replied to the Claimant on 20 July 2021, he said that given the close connection between the Claimant's grievance and the ongoing disciplinary matter, it was appropriate for Heather Jones to investigate that matter as well. He also referred the Claimant to Care First for counselling support and encouraged her to speak with her GP.

Second Disciplinary Investigation

62. As far as the disability matter was concerned, Lamont Jones were provided with the following terms of reference:

> **1) Did Alette Beavis (AB) disclose to her line manager that she was not following safeguarding procedures in a meeting held in May 2021.**
>
> **2) Are the proper POhWER safeguarding procedures being following in the secured settings under AB area specifically St Andrews and Mersey Care and Eldertree Lodge.**
>
> **3) Is it reasonable for Pohwer to have an expectation from someone who holds a senior position and someone with the amount of experience and knowledge of AB to have not executed safeguarding within her area as instructed and show the leadership required for this role.**

63. By email on 21 July 2021, Mrs Jones wrote to the Claimant proposing a face-to-face meeting, for both the investigation interview and grievance meeting. The Claimant replied asking for questions in writing as her mental health was being affected by stress. She also wish to be accompanied by a work colleague.

64. On 22 July 2021, Mrs Moulinos wrote to the Claimant to say that whilst she did not have a statutory right to be accompanied to investigation meeting, it would be allowed providing the companion was an employee of the Respondent or trade union representative, their name was provided in advance and they understood they were bound by confidentiality. The request for written questions was denied. The Claimant was also granted access to her laptop and files so that she could prepare herself (i.e. look for documents to support her position). Mrs Moulinos also referred her to Care First.

65. The Claimant wrote to Mrs Jones expressing her relief that she could be accompanied for both the investigation and grievance. She expressed concern, however, that Mrs Moulinos appeared to be aware of her grievance. Mrs Jones replied saying that Mrs Moulinos was aware of the fact of the grievance, in her role as CEO, but not the content. Having been presented with various options, including refusing to attend a further interview, the Claimant agreed to meet with Mrs Jones face-to-face on 5 August 2021.

66. The Claimant sought clarification as to the scope of the investigation. On 30 July 2021, Mrs Jones wrote:

> **The allegations are still the same as in your suspension letter. Attached again.**
>
> **Towards the end of the earlier meeting with Lyz, you disclosed that the safeguarding and the reporting practices you have put in place in secure and complex services may not match safeguarding and legal requirements**

Claimant's Interview

67. On the morning of 5 August 2021, Mrs Jones commenced an investigatory interview with the Claimant, who was accompanied by Gill Wingfield. Whilst a

notetaker was also present, Mrs Jones agreed the Claimant could make an audio recording. Mrs Jones said Mrs Wingfield could not answer questions for the Claimant but could stop the meeting if she wished to confer in private.

68. The Claimant could not remember being at the roundtable SMT meetings or receiving a copy of the Respondent's safeguarding policy (i.e. that as updated following the appointment of Ms Moulinos). The Claimant said there was "another one". On a number of occasions the Claimant did not to answer the question she was asked but instead said something else, in the general area of the question. The Claimant adopted a similar approach from time to time whilst being cross examined at the Tribunal and I did not find this helpful or persuasive.

69. Mrs Jones referred the Claimant to a section in the safeguarding policy under which managers should approach the DSL (i.e. Mrs Hawkes) for guidance in connection with making reports to local authorities. Mrs Jones asked the Claimant how many times she had approached Mrs Hawkes in this way. Notably, this question had to be asked 4 times before the Claimant eventually said that she did not know. Shortly thereafter, the Claimant insisted on returning to an earlier question and making a lengthy statement about the circumstances in which he had been suspended. This exposition was not responsive to the questions Mrs Jones was then asking. The Claimant outlined concerns surrounding her suspension and denied that Mrs Hawkes told her why she was being suspended.

70. The Claimant stated she had not been following the safeguarding policy to which Mrs Jones was referring her:

> **I - So in POhWER's safeguarding policy it says you alert the commissioners, commissioning authorities safeguarding lead and/or the police in cases of abuse, you document all actions, conversations and reasons. You pass documents of abuse-related events the DSL, you ensure that all staff are familiar with the commissioning authority's safeguarding policy procedures and guidelines, so that's actually in the policy and we have already acknowledged that you know this policy, you've seen that policy and everybody in POhWER should be working to that policy. So do you have the records of the documents of these phone calls that you've reached out to the DSL? Are there any documents anywhere?**
>
> **A - No, because, we never, ever done that in all the 10 years that I have worked at POhWER...**
>
> **I - Even though in the policy it says you should?**
>
> **A - It's never ever happened.**
>
> **I - But why are you not following the policy, Alette.**
>
> **A - Nobody has been following the policy.**
>
> **I - I'm not interested in other people, I am asking you as a regional manager who is responsible for safeguarding, why are you not following the policy?**

A Could you...?

? Yeah.

71. The Claimant also described a practice in which, she as RM appeared to have no role in safeguarding reporting, rather it was a matter for the Advocate or CM below her and / or the DSL above:

> **I - Okay finished with me asking the question "why are you not following the safeguarding policy?" and your answer at that point was "nobody does", do you want to expand on that or shall I move on to the next question?**
>
> **A - No I want to expand on it.**
>
> **I - Okay.**
>
> **A - What happens is if it's the advocate or the community manager because I'm not client facing, I don't work directly with the client, they will follow our reporting procedure so they'll fill in the safeguarding template report. It would go to their line manager, the line manager would make comments and that goes on to log, so that's the reporting process. Liz has access to the safeguarding log, and I believe monitors all of the safeguarding incidents that are reported.**
>
> **I - Do you monitor it?**
>
> **A - No.**
>
> **I - As the regional manager are you ultimately responsible for all the safeguarding that happens in the areas that you have the ultimate control over?**
>
> **A - Any that I'm made aware of, I'm not always made aware of every safeguarding that's reported.**

72. The Claimant complained that Mrs Jones was not being independent and was trying to tie her up in knots, using her words against her. This observation was made in connection with an exchange whereby Mrs Jones asked why the Claimant was not following "the policy" (singular) and she replied that she did follow "the policies" (plural). This is an example of the questions and answers not quite matching-up. Mrs Jones was, reasonably, exploring with the Claimant her reasons for not following that which the management side said was the Respondent's safeguarding policy at the material time. The Claimant was responding in more general terms, about following "policies" in general.

73. The Claimant went on to develop her position, namely that there was a different safeguarding reporting policy which applied to the contracts in her area of operation:

> **I - Conversations? Conversations in your 1 to 1 , so what happened in these conversations?**
>
> **A - We decided what actions to take, we had email communications about that incident.**

I - And in every case with the safeguarding concern, was it reported to the local authority? No?

A - That's not the policy or the process we have in place for those contracts.

I - It's the policy of POhWER and it's the procedures of POhWER. So irrespective to the contract that you've got, its under the care act, its under the charity act and it's under the law that all safeguarding gets reported to the local authority but you told me no, we don't because you're following the procedures in the agreement with the settings, is that right?

A - No, I'm following the procedures that were agreed in the contract and the tender with POhWER, with those services.

I Okay, so you're not adhering to POhWER's policy or procedures then?

A Yeah, I am.

I You are?

A I am, I'm adhering to what they have specified in the contract.

74. The Claimant showed Mrs Jones the St Andrews flowchart. This is a document on St Andrews (one of the units in the Claimant's area of operations) headed notepaper and appears to have been created by that unit to describe its own internal policy. The first significant box in the top left hand corner refers to "alerts by nursing, advocacy, CQC, patient self-report". The Respondent would be "advocacy" for these purposes. Accordingly, this appears to set out what St Andrews should do if the Respondent made a safeguarding report to it. The Claimant said that was the policy she had been following for 10 years. Mrs Jones suggested that what the Claimant had produced was a St Andrews policy, whereas she should have been following the Respondent's policy. The Claimant said this document (i.e. the St Andrews flowchart) was the Respondent's policy.

75. The Claimant said Ms Moulinos had agreed to and signed-off on this different policy in April 2021. The Claimant sought to show Mrs Jones a version of a (very lengthy) tender document, including tracks changes. Mrs Jones declined to read through this at the time but asked the Claimant to send it to her and said she would read it then. The Claimant believed it was unfair Mrs Jones would not look at the document there and then.

76. The Claimant said she had read the Safer Edge audit report for her interview and learned from that the Respondent's safeguarding policies and processes were not fit for purpose and were being re-written. The Claimant could not remember if this had been discussed in SMT roundtables.

77. The Claimant reiterated her position Ms Moulinos had signed-off on the approach being followed in her area of operation and said Mrs Hawkes had done so too:

A - Let me answer, let me answer the question. In all of these documents I have here, tender documents, signed off by Helen, signed off by Liz,

> **signed off throughout the whole year, that is the process that they have told me to work to, that is what I have worked to. And they are all aware, that that's how it works in secure services. It is not something that I have introduced. And I never said that I have introduced, in that suspension letter, I never ever said to Liz I have introduced policies and processes which I think are against the legislation.**

78. Mrs Jones asked the Claimant whether she felt it was right to report safeguarding concerns back to the setting responsible for the wrong done. The Claimant replied that she was following the process. Mrs Jones said that was not answering her question. The Claimant's responses, at this interview and indeed in the hearing before me, tended to avoid engaging with the 'marking your own homework' problem inherent in the approach she was following.

79. The Claimant said that if the setting did not deal with the matter then it would be reported to the local authority. She said this determination would be made by the CMs, who would then probably send her an email about it. Notably, the process the Claimant described did not include the Respondent being copied in on any correspondence about the safeguarding concern sent by the setting to the local authority. The Respondent would not, therefore, know whether and if so in what terms the unit had itself reported the matter to the local authority. At this stage, the Claimant was not asserting that any duty the Respondent had to raise alerts to the local authority would be satisfied indirectly, by the unit reporting to the local authority that which the Respondent had reported to the unit.

80. Unsurprisingly, Mrs Jones was asking the Claimant questions about what she did. Very often the Claimant answered in terms of, what "we" did. Mrs Jones also asked a number of questions, expressly inviting a yes or no response. The Claimant did not answer in that way. Disagreements of this sort between investigator and interviewee appear to have created a degree of tension and rancour. There is scope for both of their respective positions to be understandable. It is a question of degree. The Claimant may, reasonably, want to speak of what others were doing so as to indicate that she was not on her own in this. Ultimately, however, the task of the investigator is to ascertain the position of the interviewee. Similarly, questions of professional judgement may not be susceptible to a simple yes or no answer. There may, however, come a point when a long expansive answer can appear evasive and the investigator needs to understand the position being taken on a particular point. This resulted in accusation and counter-accusation. The Claimant accused Mrs Jones of being aggressive. Mrs Jones responded that the Claimant was not answering the questions and conceded she might be exasperated. The Claimant said the interview was biased because Mrs Jones was "trying to steer" and "twisting" her words. As the temperature began to rise, the quality of questions and answers deteriorated. The parties took a break and then resumed.

81. Not very long after the resumption, the interview again became difficult. The Claimant said Mrs Jones was being aggressive and belittling. Mrs Jones denied this, she said the Claimant was answering questions that had not been asked or responding vaguely, in which case it was necessary to clarify the answer. Mrs Jones cut the Claimant short in a number of her answers. They both spoke over each other.

82. Towards the end of the interview, the Claimant denied having given instructions to her CMs only to report to the local unit. This had been one of the findings in the Safer Edge report.

83. The final topic covered was the Claimant's response to the suspension letter. Mrs Jones asked why she had not challenged the assertion set out within that, namely that she had made a disclosure to the effect safeguarding and reporting in her area of operation may not match the Respondent's policy and legal requirements. The Claimant said she had not done so initially because she was distressed. She then waited until the investigation started. Mrs Jones was dismissive of this explanation. During the latter stages, Mrs Jones language became more casual and unprofessional.

84. A break was taken for lunch. Mrs Jones wished to continue the investigatory interview in the afternoon, before hearing the Claimant's grievance.

85. Mr Allan arrived, intending to accompany the Claimant for the grievance. He spoke with Mrs Jones. He said he had listened to the morning's audio. He accused Mrs Jones of grilling the Claimant aggressively and being sarcastic. He said her role was to find the facts rather than prosecute. Mr Allan said that Mrs Jones was bullying the Claimant. He said the interview with the Claimant would not recommence. He also said it was not appropriate for Mrs Jones to discuss the Claimant's grievance because she had shown herself to be one-sided. This exchange went back-and-forth at some length. The investigatory interview did not resume and the grievance meeting did not go ahead.

Other Interviews

86. Mrs Jones conducted interviews with: Mrs Hawkes; Mrs Born, Mrs Black; Abi Cope (CM); Lisa Smart (CM); Thomas Walsh (CM); Jess Wright (CM); Becky Hesketh (CM); Linda Baxter (CM); Fiona Jeynes (CM); Emma Morhan (CM).

87. Ms Cope's interview included:

> **My team and I were TUPE'd over in 2017 and I follow the set system that was put in place between POhWER and Mersey Care - we follow these procedures. In other areas of POhWER, I am aware that safeguarding's are raised directly with the local authority, but the process is different within Mersey Care. The local safeguarding leads in the Trust either work directly for the local authority or the Social Workers responsible for safeguarding assess each alert and if they meet the threshold, they will alert to the Local Authority and inform the advocates of the Safeguarding Log number should they wish to follow it up. I have been doing this for 15 years mostly in secured units and it just does not work sending safeguarding concerns into the local authority through the safeguarding hub - it creates complications - alerts are raised with the CQC, NHS England, CCG's and other external agencies and everything is duplicated within the system. When an alert is raised with the local authority, they delegate it to the Trust to deal with in the first instance and maintain oversight going forward - we build professional relationships with the safeguarding leads on site, so they keep us apprised of progress re: alerts we have made and put in measure to keep people safe - this just works better.**

88. Mr Walsh's interview included:

> **Once I because a manager I rely on the safeguarding policy and the whistle blowing policy of Pohwer - I look to the care act for guidance and the care act section always refers that you cannot assume that anyone else will make a referral so you need to make sure someone does it so you should do it for example say there was a safeguarding in a hospital and someone disclosed abuse then to rely on the staff in the hospital to raise a safeguarding is not right so I always err on the side of caution and refer all safeguarding to the local authority safeguarding hub I would rather be told no than miss something or assume it had been done by someone else and no one does it**

Second Grievance

89. By letter of 9 August 2021, Mr Allan wrote on the Claimant's behalf complaining about the manner in which Mrs Jones conducted the investigatory interview with the Claimant. He said this had left the Claimant in tears. He described Mrs Jones approach as aggressive and condescending. He said the Claimant wished to continue with a grievance without further contact from Mrs Jones.

90. Mr Kildare replied to the Claimant on 12 August 2021. Her request for the grievance to be dealt with by someone else was refused. For the same reasons as before, namely the connection with the disciplinary process, Mrs Jones would remain seized. He suggested the Claimant may wish to make written submissions rather than attend another face-to-face meeting or could do so via Zoom. Any written representations were required by 17 August 2021.

91. Mr Allan responded the following day, complaining about the Respondent corresponding directly with the Claimant, despite his request to the contrary. He said his suggestion of written representations was in connection with the investigation of the grievance. During the hearing at the Tribunal, the Claimant's account was that she had not received Mr Kildare's letter of 12 August 2021 because it was sent to her work email address. The difficulty with this evidence is that it is contradicted by the fact and the content of Mr Allan's letter of 13 August 2021. When he gave evidence, I asked Mr Allan if he could think of a more likely explanation for what he wrote than it being prompted by the Claimant forwarding Mr Kildare's letter. Mr Allan said he could not. I am satisfied the letter from Mr Kildare was sent and received by the Claimant on the date indicated. This was clearly a very difficult time for the Claimant and her recollection of events has not always been entirely accurate.

92. On 16 August 2021, Mr Kildare wrote to Mr Allan saying the Respondent would continue to correspond with the Claimant, as she was its employee. He said a request had been made to the union for a copy of the recording which had been made and they would not comment further on the second grievance until this was received. He referred Mr Allan to paragraph 46 of the ACAS code. He said the Respondent remained open to a grievance meeting (i.e. on the first grievance) or receiving written submissions.

93. Whilst there was further correspondence in this vein, the Claimant did not take up the invitation to make written submissions in support of her first grievance.

Second Disciplinary Investigation Report

94. Mrs Jones reported on 31 August 2021.

95. With respect to the first question - did Alette Beavis (AB) disclose to her line manager that she was not following safeguarding procedures in a meeting held in May 202 – Mrs Jones found she did. She preferred the evidence of Mrs Hawkes and said had no reason to lie. She also considered the Claimant's denial was undermined by her failure to contradict the assertion in her suspension letter until more than a month later.

96. With respect to the second question - are the proper POhWER safeguarding procedures being following in the secured settings under AB area specifically St Andrews and Mersey Care and Eldertree Lodge - Mrs Jones found they were not. Mrs Jones concluded that instead of following the Respondent's safeguarding policy, the Claimant was following a different procedure. She highlighted this was occurring despite Ms Moulinos email of 14 July 2020 requiring confirmation safeguarding material had been read, understood and cascaded downward, together with subsequent training and SMT roundtables. Mrs Jones considered the various documents she had received, both from the management side and the Claimant, were consistent with the requirement in the safeguarding policy. She did not attach weight to the draft tender document the Claimant had found during her search of the Respondent's IT systems.

97. With respect to the third question - is it reasonable for Pohwer to have an expectation from someone who holds a senior position and someone with the amount of experience and knowledge of AB to have not executed safeguarding within her area as instructed and show the leadership required for this role – Mrs Jones found that it was. She relied upon the Claimant's job description, Ms Moulinos email, the training and roundtables.

First Grievance Investigation Report

98. Mrs Jones provided her report into the Claimant's first grievance on 17 September 2021. Given events on 5 August 2021, this was finalised without meeting the Claimant to discuss her grievance. Whilst the Claimant had been invited to make written representations, she did not do so.

99. Mrs Jones did not uphold any of the Claimant's grievances. There was an overlap between her conclusions in this report and those set out previously in her disciplinary investigation report, such as finding that Mrs Hawkes had not lied when saying the Claimant made disclosures to her about safeguarding practice in her area of operation. In some respects, the Claimant's complaints were rejected because she did not participate in the process and provide further information.

First Grievance Outcome

100. An outcome to the Claimant's first grievance was provided by a letter of 20 September 2021 from Ms Moulinos. Reasons for not upholding the various complaints were provided over 11 pages. In substance, she adopted the

conclusions reached by Mrs Jones. The Claimant was advised of her right to appeal against this decision but did not exercise that.

Second Grievance Outcome

101. An outcome to the Claimant's second grievance was provided by a letter of 22 September 2021. Mrs MacArthur-Worbey explained that in addition to considering the Claimant's written complaints about Mrs Jones, she had listened to the audio recording of their interview. The letter set out her analysis. This included:

> **I do note that there does appear to be frustration at some points, both from Mrs Jones and you, although for the majority of the meeting, I do feel that you both maintain a professional, if strained dialogue.**
>
> **I asked Mrs Jones how you presented and she felt that you were in control and appear aggressive in demeanour. Mrs Jones also stated that she at times did get frustrated as you often tried to side track in to a different area, rather than answer the question. Whilst I cannot see how you presented, I can see that there is often avoidance of direct answers to the questions asked of you.**
>
> **There is one point where I feel that the frustration is heightened and I do feel that I would not have phased the question in such a way. I asked Mrs Jones about this directly and understand that the recording does not provide a full picture. Mrs Jones is asking you about where you prioritise safeguarding in your work schedule, as you have explained that other matters took priority. Despite asking several times, you continue to avoid classifying the priority of safeguarding. In total frustration, Mrs Jones asks where in your world you place safeguarding. You are very clearly upset by this and question her professionalism and request a break. Mrs Jones presses you for an answer and you then question if you are being denied a break. Mrs Jones explained to us at this point you are standing up, with your hands on the table and leaning across the table, she said you were angry. Mrs Jones said she is a firm investigator and did not allow herself to be derailed. I considered if there was any merit in speaking with your companion and the note taker to support this allegation or not, however felt that with both there would be some natural bias, with your companion supporting you and the note taker supporting Mrs Jones. This is also supported during the very first break you take, where your companion makes suggestions to you for you to then refer to in your response to the question. I therefore feel that whilst the wording of the question at this point is questionable, if as Mrs Jones alleges you were displaying angry body language, then it could be reasonable to assume that both parties acted in an unreasonable manner. I therefore will not make a determination regarding this particular part of the investigation in favour of either party**

102. Mrs MacArthur-Worbey set out her view of other exchanges. Broadly, where Mrs Jones, on the page, might appear to have spoken excessively or in some other unreasonable way, this was accepted as being justified by the Claimant's own behaviour. With respect to the Claimant's distress, this was not found to have been apparent during the interview. Mrs MacArthur-Worbey did not uphold the grievance. The Claimant was advised of her right to appeal and did not exercise it.

Disciplinary

103. The disciplinary hearing panel were Mrs Kinsey (a non-executive board member), Geoff Gibbs (Deputy Chair of the Board of Trustees) and Tim Jarvis (CFO). On 3 September 2021, they met with Ms Moulinos, Mrs Hawkes, Mrs Born and Mr Kildare. Mr Kinsey referred to this meeting in her witness statement. She said it was for the purpose of giving the panel an overview of the background to the case and documentation they would receive.

104. I was extremely surprised that such a meeting should be convened. It seemed wholly unnecessary for the stated purpose, as the background and documentation could be set out in writing, which would then be transparent. The meeting also appeared to me ill-judged, given the scope for it to be construed as an opportunity for the Respondent's senior managers to tell the panel what was expected of them, in terms of an outcome. Whilst I found Mrs Kinsey to be, generally, a satisfactory witness, she was somewhat evasive when I asked her about the propriety of proceeding in this way. Drawing a parallel, I asked whether it would have been fair for me to have met with the Respondent or its representatives, separately from the Claimant, prior to the commencement of this hearing. Mrs Kinsey gave a non-responsive answer to this question and did not engage with it directly until pressed, at which point she said it might suggest bias. This point is and ought to have been entirely obvious. It was not, however, put to Mrs Kinsey on behalf the Claimant that the decision she and her colleagues arrived at was other than their own. Save for her initial response on this point, Mrs Kinsey's evidence was satisfactory. Her account was also consistent with contemporaneous documentary evidence. In these circumstances, I accept the pre-meeting went no further than she said.

105. By an email of 8 September 2021, the Claimant was required to attend a disciplinary hearing:

> **Having concluded the investigation and fully considered the evidence, it is our belief that there is evidence to support the allegations as follows:**
>
> > **1) Failure to follow POhWER's Safeguarding Policy and procedures and good practice**
> >
> > **2) Failure to report safeguarding in line with legislation**
> >
> > **3) Failure to appropriately safeguard vulnerable beneficiaries**
> >
> > **4) Failing in your duty of care, causing a breakdown in trust and confidence**
> >
> > **5) That the above failings if proven could amount to gross negligence and/or gross misconduct**
>
> **We have therefore recommended that a Disciplinary hearing be convened to formally consider the case under POhWER's Disciplinary Procedure in respect of the above allegations.**

106. The invitation email notified the Claimant that the documentary evidence would be made available to her by way of a digital transfer, in light of its size. She was warned that dismissal was a potential outcome and reminded of her right to be

accompanied. The letter also invited her to submit a request for a witness statement or questions 7 days before the hearing. Whilst the wording in this regard is a little odd, the Claimant agreed it amounted to or included an invitation to her to put in writing any questions she wished witnesses to be asked. The Claimant did not submit witness statements herself or put forward any questions.

107. The Claimant was provided with the first and second investigation reports, together with all of the supporting interviews and documentary evidence.

108. The disciplinary hearing took place on 23 September 2021. It began with introductions and a reminder of the allegations. As with the investigatory interview, this hearing was recorded and a transcript has been provided. From reading the discussion, it appears this proceeded without rancour and discord, such as had occurred during the exchange between the Claimant and Mrs Jones.

109. In response to an early question about not following the Respondent's safeguarding policy and why she had chosen a different approach, the Claimant replied:

> **[…] in the tender documents and interviews that we've gone through for secure services there's always been, I don't know what the right word for it, like some additional steps, so there's a safeguarding policy which we follow but in all of the tender documents and, that POhWER have submitted in interviews that we've gone to we have said that as you should do anyway, it's important to make sure that the person is safe and then follow their governance and their reporting processes. So they will report it on their systems and it will go to the local authority through, through that route. And that's what the flowcharts have always shown. So the, sorry I'm just. . .**

110. This reply appeared to involve a refinement of the position she had adopted during the investigation. Her argument at this stage and indeed in the Tribunal, was that the statutory duty for the local authority to be alerted was discharged by the Respondent reporting a safeguarding to the setting and then setting the making its own report to the local authority. The Claimant went on to say, in effect, everybody knew about this, no one said it was wrong and she did not realise it was wrong:

> **So the exec team service design and delivery, you know the bid writers, have always put that into the tenders so I've never known that I was doing, I was following what we said to our commissioners that we would, that we would do. So I've never understood you know I've got all the evidence here and I've got from the St Andrews tender that was submitted this year, Helen's email which I didn't, I haven't accessed anything that I shouldn't have, I've got access to folders as a member of the SMT, for the St Andrews tender where Helen has gone through what SDD have written and they've written in that tender exactly the process that I've always been doing and I haven't made up this process. If I had identified at any time hang on a minute something's wrong but I didn't know that anything was wrong. The audit didn't pick anything up that it was wrong. You know the exec team and Sandra didn't pick up that anything was wrong because they knew that it is not something I've done. I don't write the tender documents so I've never understood from the beginning of this. I**

> **just don't I just don't understand it. And when all of this first happened I never ever said to Liz what she's stating that I said. I never ever said that.**

111. The Claimant denied any disclosure or admission of wrongdoing to Mrs Hawkes on 7 May 2021. She said their conversation ended with a general discussion to the effect that if things need change then they would change and they would meet again on Wednesday to carry on with their discussion. The Claimant said the matter escalated from there, with "lie after lie".

112. The Claimant was referred to various communications about the Respondent's safeguarding policy, mandatory training and SMT round tables. She was asked whether it occurred to her the practices she was following were different. She replied no and immediately followed this up by saying: it did not occur to anyone else either; the matter would be reported to the local authority by the setting; and Ms Moulinos had signed-off on this (by way of her tracked changes to the tender document). The Claimant made these same points repeatedly.

113. The Claimant gave some very long answers that must have gone on for many minutes. She emphasised her good work for the Respondent, including setting up a safeguarding log, onto which safeguarding concerns would be recorded.

114. The Claimant was asked to explain her understanding of the Respondent's legal responsibility for safeguarding. Her answer included staff knowing how to report safeguarding concerns and the need to report serious incidents to the CQC. Her answer did not include making a report to the local authority.

115. Asked how often she would expect the regional manager to review the safeguarding log, the Claimant replied:

> **"I looked at them from time to time […] but to have a proper good look around exactly what was going on for all of them was, was impossible. And that's why I said to Liz somebody needs to be monitoring that safeguarding log …"**

116. The Claimant said she had been following the same safeguarding reporting policy since she joined the Respondent, which was 10 years.

117. The Claimant was invited to comment on the variation in external reporting numbers following her suspension:

> **JK - In the documents that we have there was I think it's in the Safer Edge reporting, it was talking about the number of escalations to commissioners, commissioning body external to the unit across a number of the different regions and just an example in the period that you were working in the secure services there was 66 external notifications to commissioning bodies and in that same period in St Andrews there was zero and in Mersey Care there were four so there was quite a broad differential and looking at it subsequently then sort of after you were suspended and went in to help support it does backup here what you're saying that there's been a shift and there's been a requirement to recommunicate with the commissioning bodies the numbers at St Andrews has gone to 41, safeguarding issues that were reported externally and the number in Mersey Care has gone up to 10.**

> **A - Well first off we don't know how many, you know if they've changed, not changed, if they're going straight to the local authority and reporting it then it would. In, but we don't know how many Mersey Care reported to the local authority that we reported to them. You know there was a big incident in Mersey Care in December/January. They opened a new unit, a whole new unit and it was, it was awful and we reported that to the local authority and we wrote to the commissioners and said why that's not on that log I don't know, it's just that, it's things like that I would expect, if we were looking at that and able to you know we would be asking those questions but it may have said zero for Mersey Care it shouldn't have and maybe I've missed a couple or the advocates have that should have gone on there for whatever reason. […]**

118. The Claimant was asked about the safeguarding training, not only that she received but what she had done to cascade that down to her CMs:

> **GG You talked to all 10 of your community managers about this but I understand that you still think you had the correct way of doing things which clearly wasn't right but you, that's what you were working to and that's what you were trying to cascade down to your community managers that we do this and it happens across all the secure services in a consistent way.**
>
> **A The safeguarding training that came out?**
>
> **GG Yeah.**
>
> **A That's what I went through with them. I didn't specifically talk about this because we were talking about the emails and the information that Helen sent down and we'd always been working in that way so I didn't specifically say we carry on doing this. I wouldn't, I didn't recognise it was anything different. So I focused on the things that Helen had had said needed to be cascaded.**

119. Asked why she had not completed the mandatory safeguarding training, the Claimant said "it was purely down to the time and the pressure that I was under". She then went on to discuss a great length various matters she had been dealing with at work.

120. The Claimant said there was ambiguity (i.e. in the policy position, the finding made by Safer Edge) and it would have been reasonable for the Respondent to look at changing its process (i.e. that which she followed). She then referred to her long period of suspension, during which she said there was a lack of communication and support.

121. The Claimant was asked if there was anything more she wished to say and in response to this Mr Allan read his closing submissions. He reiterated many points the Claimant herself had made. He said this was not a case in which the Claimant had been trying to cover things up. The practice she followed was not something she had dreamt up, it was the recognised practice for more than 10 years. It was widely known and amounted to custom and practice. Mr Allan said there was no reason for the Claimant to speak up about a practice which everyone knew. He said you could not punish someone for breaking the rules if they did not know the rules had been changed. Nobody had told the Claimant to

stop. He referred to Ms Moulinos having seen a document describing this process in April 2021, which is the tender document with tracked changes. The point in this regard was made briefly and not in the same detailed way as before me.

122. Mr Allan criticised the investigation for failing to ask the "commissioners" if they had a problem with the way things were done. Mr Allan said the reason for the Respondent having commissioned the Lamont Jones report was that the one prepared by Safer Edge did not target the Claimant. As for the Lamont Jones report, he had never seen such a biased or targeted report, peppered with opinion rather the fact, in his 30 years as an HR director. He castigated the way in which the Claimant had been treated by Mrs Jones during the interview. It was not unusual for a busy manager not complete mandatory training. The Claimant had been scapegoated because Mrs Moulinos was "breathing down Liz's neck and questioning this practice that goes on in secure units".

123. Asked if there was any more she wished to say, the Claimant said her grievances had not been responded to. Mr Allan said the reason the Claimant was "muddled and evasive" was because of the impact on her of the manner in which Mrs Jones conducted the interview.

Additional Enquiries

124. Following the disciplinary hearing, the panel sought further information. Mrs Hawkes provided a statement with respect to the Claimant's workload and discussions about this. The dates were provided for supervision and one-to-one meetings.

125. Mrs Moulinos confirmed the flowchart upon which the Claimant had sought to rely was part of the suite of documents for a tender. She went on, however, to say this could not be read in isolation and referred to a list of appendices comprising the bid.

126. The result of these additional enquiries were not provided to the Claimant for her comments.

Decision

127. The panel upheld the allegations against the Claimant. As part of the decision-making process, they created a document containing their reasons. This was reflected in the dismissal letter of 4 October 2021 sent to the Claimant. The detailed rationale ran over 5 pages.

128. In connection with the first allegation - failure to follow POhWER's Safeguarding Policy and procedures and good practice – the dismissal letter included:

> **We noted the following key points in reference to the secure and complex services that you had overall responsibility for as the Regional Manager:**
>
> > **Despite attending round tables where case discussions took place, you failed to recognise that safeguarding was different in your area to other areas.**

Despite attending training, you failed to recognise that safeguarding was different in your area to that outlined in the training.

Despite receiving policies and processes to implement, you failed to recognise that safeguarding in your area was different to that outlined in these documents.

Despite policies in place in 2020 and 2021 outlining clearly who commissioning authorities are, you failed to recognise this in your area.

Despite being clearly directed to complete mandatory training by the CEO, you failed to complete this training. Rather than inform the CEO that you had not completed the training, you confirmed in writing that you had completed the training and would cascade this information to the CM's working in your area.

Despite confirming you would cascade this information in your role as a Regional Manager to your CM's, we have been unable to find any supporting evidence of this and note that when interviewed, your CM's confirm they are not carrying out safeguarding in line with POhWER policy and procedures and the training that has been provided to you.

As a panel we struggled to overcome the following observations: You appear to have prioritised operational issues over mandatory safeguarding training.

You didn't complete the training, however you claim to have trained your CM's.

You carried on your practises despite the low number of referrals in your area compared to other areas, which you were aware of.

You were aware of some high profile safeguarding cases and the focus of the Charity Commission on safeguarding, yet you failed to understand and recognise the implications of not completing training.

Your CM's are aware of POhWER policy and procedures, however they confirm they are instead working under your direction in relation to reporting safeguarding, which conflicts with POhWER's policy and procedures.

You confirmed in both investigations and in the disciplinary hearing that you are aware of POhWER's policies and procedures.

With so much emphasis placed on safeguarding, we feel that it is reasonable for a leader at your level (Regional Manager) and with your experience, who has been involved with and provided with so much information and training in relation to safeguarding, to have reflected on the practices in your area and taken time to ensure that POhWER's policies and procedures were adhered to in your area and by all your direct and indirect reports.

> **In relation to your suspension, we do feel it is reasonable to believe that you did make a disclosure to Lyz Hawkes in your meeting with her, for the reasons outlined above and that was serious enough to result in your suspension.**
>
> **Taking all this information in to account, we believe your actions as a Regional Manager in failing to following POhWER's policy and procedures constitute Gross Misconduct, as listed in the disciplinary process. Further, as a Regional Manager, failure on your part to evaluate and change your working practices following the safeguarding training constitutes Gross Negligence.**

129. This same reasoning was also relied upon in support of the remaining allegations, along with additional factors in each case. In connection with allegation 4, which included a breakdown in trust and confidence, the panel also took into account:

> **You appeared to have a complete lack of ownership of the situation and quickly blame others and in fact, as a panel we concluded there was too much conjecture, we did not see attention to detail or the level of control we would expect to see in a senior leadership role and we have no confidence that even now, you realise the seriousness, the implications and the long term affects these actions may have had on the beneficiaries POhWER support.**
>
> **You are a leader, in a senior position in the organisation and yet your judgement led you to not keep abreast of legislation, through the training that was offered and therefore you ultimately did not fulfil your role as Regional Manager.**

130. The panel decided to dismiss:

> **Taking all this information in to account we consider you did fail in your duty of care as a Regional Manager, sufficiently enough to result in a complete breakdown of trust and confidence. We have determined that in this part your actions constitute Gross Misconduct and the lack of recognition on your part also constitutes Gross Negligence.**
>
> **We have carefully considered the appropriate sanction. Given the seriousness of our findings and that you held a position of trust as a Regional Manager with responsibility for safeguarding vulnerable adults, and considering any mitigating factors, we have concluded that the appropriate sanction is dismissal with pay in lieu of notice. […]**

131. Central to the Respondent's decision to dismiss was a conclusion by the panel that the Claimant had failed to recognise that the practice in her area of operations was not compliant with the Respondent's policy and its legal obligations or raise any concerns in this regard, notwithstanding a programme of training and SMT roundtables which had focused specifically on safeguarding and the need to ensure the Respondent was fulfilling its duties. Despite having a responsibility to ensure that her own CMs were appropriately trained and in a position to implement the Respondent's safeguarding policy, the Claimant had not herself completed mandatory training. Despite being a senior manager, the Claimant accept no responsibility for the policy erroneously followed in her area

of operation. The Claimant blamed others and accused Mrs Hawkes of lying about her own disclosures and admissions.

Appeal

132. The Claimant sent her appeal on 12 October 2021. She relied upon the following grounds:

> **I do not believe that there is evidence to support findings of 'gross misconduct' nor of 'gross negligence'.**
>
> **2. I believe that the evidence considered at the disciplinary hearing, arising from the (second) disciplinary investigation was focussed on supporting the allegations against me and failed to take account of evidence weighted in support of my actions. It was therefore biased against me.**
>
> **3. I believe that the sanction of dismissal was not warranted and was outwith the band of reasonable responses.**
>
> **4. I believe that I have been 'scapegoated' and blamed for a working practice which I did not instigate and which was known by other senior personnel in the organisation, none of whom, to the best of my knowledge, have been subject to any sort of disciplinary action.**
>
> **5. I do not believe that appropriate consideration was given to my absolute commitment to the organisation over the last 10 years, nor to the work pressures that I was under and which I had highlighted to my manager.**

133. An appeal hearing took place on 29 October 2021. Toby Cotton (Trustee and Chair of the Finance and Audit Risk Committee) presided over a panel including Anthony Kildare and Julie Born.

134. In the Tribunal, Mr Allan complained the composition of the panel was not compliant with the Respondent's policy, as it ought to have included two trustees only and not the People Director. He did not make this or any other objection to the panel at the time.

135. In support of her appeal, the Claimant provided the letter from Mr Wheeler, to which I have already referred.

136. At the beginning of the hearing, Mr Allan indicated that he would be presenting the Claimant's appeal, although the Claimant would answer the panel's questions. Mr Allan's presentation included:

136.1 it had been suggested at the disciplinary hearing the Claimant was the architect and implementer of the process in her department and this was not the case, the process was well-known and predated her own appointment;

136.2 Mrs Moulinos had made detailed comments on the tender document and did not pick up on it describing the wrong procedure and nor did Mrs Hawkes, who Mr Allan said must also have seen the document;

136.3 it was unfair to throw this at the Claimant and say no one else knew;

136.4 if Mrs Hawkes did not know this policy was being followed, then that must be gross negligence on her part as DSL because the practice had been in place for 10 years;

136.5 Mr Wheeler's evidence showed this policy was long-standing;

136.6 it did not matter if the amended tender document was not actually included in the Respondent's bid, it was relevant because Ms Moulinos did not stop the process;

136.7 as part of the investigation, Mrs Hawkes should have been asked when she first knew there were different processes being followed in the Claimant's units;

136.8 the investigation should have looked at when this different practice first developed;

136.9 the Chief Executive was the accountable officer and the Claimant should not have been picked upon;

136.10 there was no evidence of beneficiaries being harmed as a result of a failure to report to the local authority;

137. Much of what was said on the Claimant's behalf repeated her position as articulated at the disciplinary hearing.

138. Whilst the Claimant certainly rely upon the amended tender document as showing Ms Moulinos must have been aware of a different procedure being followed by the Claimant, a detailed textual analysis of the sort engaged in at the Tribunal was not conducted either in the disciplinary or appeal hearings.

Appeal Outcome

139. By letter of 2 November 2021, the Claimant's appeal was rejected. Having summarised the arguments advanced on behalf of the Claimant, the following rationale was provided:

> **As a panel we have considered the information put forward and have determined the following: Jonathan Wheeler left the organisation in 2016 and therefore, he would not know the current practices in place in relation to safeguarding. Whilst we understand his letter was submitted to show the practice had been in place for a number of years, the fact still remains that in the last 18 months the organisation has gone through a significant process of change in relation to safeguarding and how it is reported. Your disciplinary matter related to activity between 2020 - 2021 and therefore this letter is not related to the policy and process in place at this time.**
>
> **We do not accept your argument that a dual process was in place and accepted. As you are aware in May 2020 there was a significant change in responsibility that was placed upon Charities for safeguarding beneficiaries, following the issues with RNIB. In July 2020 the CEO explained to the SMT, of which you were part that significant changes**

needed to be made and that she was commissioning an audit of the processes that were currently in place. Safer Edge were appointed and whilst the audit was being carried out, all management were required to undertake mandatory safeguarding training.

Roundtable discussions were also set up to allow everyone to discuss the old processes in place and the changes that were being made to improve safeguarding. There were a number of discussions that highlighted our independence as an advocacy provider and how safeguarding should always be reported externally. You were part of these discussions and training and this is supported by the evidence provided to you previously. In December the audit results were presented to the SMT and a detailed plan to improve processes was included in the presentation. As a panel we are also aware of the audit results and the changes that have been implemented throughout POhWER.

As a panel we are also aware that as the audit was taking place a number of group discussions were had in relation to safeguarding. The Trustees, the Executive Team and the SMT have all been involved in these discussions and an open forum was held to allow people to discuss the safeguarding practices they had in place in their areas and how they needed to change to fall in line with the new policy and procedures. You were part of these discussions and we feel you had ample opportunity to highlight the 'dual' process and that you did not report externally to the local authority in the first instance. We feel that over a 10 month period of change, at any point you could have raised the way you were advising your team in relation to safeguarding, or you could have raised that you were not planning to follow the new policy, you could have questioned if you needed to follow the new policy as you interpreted that the contracts required you to do something differently, you could have shared with the wider SMT team the flow chart you issued to your teams and asked them to follow.

We find it extremely difficult to believe that given the level of seniority in the organisation and with your knowledge of safeguarding, you did not realise at any point during this time that you needed to change the alternative practices you had in place and that you continued to assert.

We can see that when the investigator spoke to the managers that reported in to you, they recognised the need to change and that they were not following policy and were instead carrying out your instructions.

When you asserted that no safeguarding matters had fAllan between the two processes, we would respectfully disagree with this assertion. It is impossible to know what or if there has been any impact on beneficiaries by failing to report safeguarding externally and as mentioned by the disciplinary Chair, POhWER will continue to investigate this.

You confirmed to the panel that you did not write tenders and had no input in to the documents, however this is not supported by the email traffic between yourself and the business development team. As with other senior managers you would have had input in to any contracts in your area.

Finally you suggested that discussions with Lyz Hawkes about your workload generated no reduction in that workload. However it is our

> **understanding that Lyz did try to reduce some of your workload, but this was met with hostility and push back from you and therefore no change was ever made.**
>
> **To conclude and after consideration of all new evidence you presented to the panel, we do feel that the disciplinary panel were correct in dismissing you for gross misconduct and gross negligence. You have failed to change your practices despite being given ample opportunity to make these changes.**

St Andrews Draft

140. The Claimant places considerable weight upon a draft tender document for the provision of advocacy services to St Andrews Healthcare. Whilst she asserted, repeatedly, that "everybody" knew a different safeguarding reporting policy was followed in her area of operations, beyond that bald assertion this draft would seem to be the only evidence, if construed in the way the Claimant suggests, to support her position. I set out below the way the point was developed before me.

141. By an email of 8 April 2021 to Fiona MacArthur-Worbey, Ms Moulinos attached her tracked changes to a draft tender document for St Andrews Healthcare, writing:

> **I have read 'the monster 100-pager'. It is really well written. Great work.**
>
> **I have marked up the document as it was the fastest and most efficient way to work (but did not touch the master document in the folder).**

142. The Claimant says this draft tender document reflected the practice she followed. Given Ms Moulinos read this document she must have been aware of that practice. Her tracked changes did not seek to change that practice. During the hearing in the Tribunal the Claimant pointed to a number of sections in this regard, including:

> **Managing the safeguarding process:**
>
> **In accordance with our safeguarding policies the following process is followed if a safeguarding issue is witnessed or suspected in a care/secure setting:**
>
> - **POhWER's staff member will report the safeguarding issue as soon as possible to the senior person on duty in the facility. If the alert relates to the senior person on duty this would be escalated to a senior service lead**
> - **If the vulnerable ~~adultperson~~/child is in immediate danger, the emergency services will be contacted (usually by the senior staff member on duty)**
> - **The staff member will follow up with an email to the senior staff member and the Safeguarding Lead for the setting.**
> - **POhWER's staff member will report the safeguarding issue to the Service Manager and make a detailed internal report including**

names of people concerned, location and what was witness/discussed. The record is signed and dated.

- **The manager will support the staff member and add details of the issue to POhWER's central safeguarding log and escalated where appropriate**
- **The staff member will cooperate with any subsequent investigation by the care provider**
- **If, following escalation to senior staff in the care setting, POhWER does not feel that appropriate action has been taken by the care provider to address the safeguarding issue or to mitigate further risk an alert would be raised with the local authority safeguarding board and POhWER's staff would cooperate with any subsequent investigation. The commissioner would be informed of our actions.**

143. The Claimant says these bullet points set out the policy she followed because it is only at the last stage, if it was felt the setting had failed to take appropriate action, that an alert would be raised with the local authority.

144. Ms Moulinos did not attend to give evidence. Mrs Hawkes did and she was asked about this document. Mrs Hawkes read it differently. In particular, she drew attention to the amendment made by Ms Moulinos to the fifth bullet point, adding the words “and escalated where appropriate”. Mrs Hawkes said the Respondent’s employees were still required to follow the safeguarding policy and escalate matters to the local authority, where that was required. Making internal reports as agreed with the provider did not displace the obligation to make external reports to the local authority. The Respondent’s policy still applied.

145. Other passages were also referred to and different interpretations advanced, including:

145.1 in connection with the support and management of third party relationships:

We always work closely with the Charity in the first instance to address safeguarding concerns, but our advocates are conscious of the roles of others involved in safeguarding processes, for example the police, the ambulance services and the local authority safeguarding teams/multi-agency hubs and safeguarding boards. They understand when issues must be escalated and the process for doing this. They also strive to ensure that they are aware of the status of safeguarding processes to avoid compromising investigations.

145.2 a comment in a speech bubble, which appeared to be a quote from an external quality assessment recited to demonstrate the Respondent’s good standing, as opposed to a term of the proposed relationship with St Andrews:

"Community Mangers described how they work with wards and hospitals to resolve safeguarding concerns locally and will escalate safeguarding concerns to the Local Authority and at times to CQC if they fell there

> **hasn't been an adequate response. All incidents and safeguarding concerns are reported in quarterly monitoring reports."**
>
> **NDTi Quality Performance Mark Assessment Report 2020**

146. One key difference between the way the parties read this document would seem to be that whereas the Claimant construed the tender document in isolation, the Respondent did so against the backdrop of its own updated safeguarding policy.

147. Whilst I have set out above the way in which this potentially important document was addressed during the hearing before me, my function in determining an unfair dismissal claim is to look at the process conducted by the Respondent, including the way the case was put on behalf of the Claimant at the time. The detailed analysis I heard was not advanced in the same way domestically. The point was put more far more shortly then, the Claimant asserting the policy she followed was in the document and Ms Moulinos must have seen it when making her amendments, including to the bullet points.

Law

148. Pursuant to section 98(1)(a) of the **Employment Rights Act** 1996 ("ERA"), it is for the respondent to show that the reason for the claimant's dismissal was potentially fair and fell within section 98(1)(b).

149. If the reason for dismissal falls within section 98(1)(b), neither party has the burden of proving fairness or unfairness within section 98(4) of ERA, which provides:

> **In any case where the employer has fulfilled the requirements of subsection (1) 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 sufficient reason for dismissing the employee, and**
> >
> > **(b) shall be determined in accordance with equity and the substantial merits of the case.**

150. Where the reason for dismissal is conduct the employment tribunal will take into account the guidance of the EAT in **BHS v Burchell [1978] IRLR 379**. The employment tribunal must be satisfied

150.1 that the respondent had a genuine belief that the claimant was guilty of the misconduct;

150.2 that such belief was based on reasonable grounds;

150.3 that such belief was reached after a reasonable investigation.

151. The employment tribunal must also be satisfied that the misconduct was sufficient to justify dismissing the claimant.

152. The function of the employment tribunal is to review the reasonableness of the employer's decision and not to substitute its own view. The question for the employment tribunal is whether the decision to dismiss fell within the band of reasonable responses, which is to say that a reasonable employer may have considered it sufficient to justify dismissal; **see Iceland Frozen Foods v Jones [1983] IRLR 439 EAT**.

153. The band of reasonable responses test applies as much to the Burchell criteria as it does to whether the misconduct was sufficiently serious to justify dismissal; see **Sainsbury's Supermarkets v Hitt [2003] IRLR 23 CA**.

154. Where an appeal hearing is conducted then the Burchell criteria must also be applied at that stage, in accordance with the decision of the House of Lords in **West Midlands Co-operative Society v Tipton [1986] IRLR 112** and the speech of Lord Bridge:

> **"A dismissal is unfair if the employer unreasonably treats his real reason as a sufficient reason to dismiss the employee, either when he makes his original decision to dismiss or when he maintains that decision at the conclusion of an internal appeal."**

155. After an appeal, the question is whether the process as a whole was fair ; see **Taylor v OCS Group Limited [2006] IRLR 613 CA**, per Smith LJ:

> **46. […] In our view, it would be quite inappropriate for an ET to attempt such categorisation. What matters is not whether the internal appeal was technically a rehearing or a review but whether the disciplinary process as a whole was fair.**
>
> **47. […] The use of the words 'rehearing' and 'review', albeit only intended by way of illustration, does create a risk that ETs will fall into the trap of deciding whether the dismissal procedure was fair or unfair by reference to their view of whether an appeal hearing was a rehearing or a mere review. This error is avoided if ETs realise that their task is to apply the statutory test. In doing that, they should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceeding with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or a review but to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage.**

156. In connection with allegations of inconsistent treatment, pursuant to **Paul v East Surrey District Health Authority [1995] IRLR 305 CA**, approving **Hadjioannou v Coral Casinos Ltd [1981] IRLR 352 EAT**, the employment tribunal is reminded that such arguments ought to be treated with care and not lead away from the essential task of determining whether dismissal was fair in an all the circumstances of the particular case:

> **25. […] We should add, however, as counsel has urged upon us, that industrial tribunals would be wise to scrutinise arguments based upon disparity with particular care. It is only in the limited circumstances that we**

> **have indicated that the argument is likely to be relevant, and there will not be many cases in which the evidence supports the proposition that there are other cases which are truly similar, or sufficiently similar, to afford an adequate basis for the argument. The danger of the argument is that a tribunal may be led away from a proper consideration of the issues raised by s.57(3) of the Act of 1978. The emphasis in that section is upon the particular circumstances of the individual employee's case. It would be most regrettable if tribunals or employers were to be encouraged to adopt rules of thumb, or codes, for dealing with industrial relations problems and, in particular, issues arising when dismissal is being considered. It is of the highest importance that flexibility should be retained, and we hope that nothing that we say in the course of our judgment will encourage employers or tribunals to think that a tariff approach to industrial misconduct is appropriate. […]**

Conclusion

Reason

157. The reason for dismissal was a belief by the panel that the Claimant was guilty of the misconduct alleged, as set out in the dismissal letter. Whilst there were several allegations, in essence this boiled down to a failure by the Claimant to comply with the Respondent's updated safeguarding policy and legal duties, to make external reports to the local authority. This was found to have been a failure to beneficiaries, to have caused a loss of trust and confidence and to amount to gross misconduct. This is a reason relating to conduct within ERA section 98(2)(b). No other reason was suggested to Mrs Kinsey and her evidence is corroborated by the decision-making notes and dismissal letter.

Investigation

158. Although I did not understand Mr Allan to argue it was not open to the Respondent to commission a second investigation, for the avoidance of doubt I am satisfied that step did not take the Respondent's investigation outside of the band in which different reasonable employers might conduct matters. An employer is not bound by the view reached by the person first charged with investigating allegations of misconduct and may choose to look at matters again if there are concerns about the adequacy of that initial inquiry.

159. Mrs Moulinos and her colleagues believed the first investigation was insufficiently thorough and had let the Claimant off the hook. The Safer Edge investigator had attached considerable weight to a document produced by the Claimant during their investigation (not the tender document later relied upon) which she said was the policy she had been following. Quite plainly, that was not the Respondent's updated safeguarding policy. Following her arrival as CEO, Mrs Moulinos had made reviewing the Respondent's safeguarding policy one of her most important tasks. She was concerned the existing policy and practice of the Respondent may not be discharging its legal obligations. There was a substantial programme of training and discussion, in particular with the SMT at Roundtables. The Claimant was not a junior employee, she was a senior manager responsible for a considerable area of the Respondent's operation and also a member of the SMT. Given the emphasis that had been placed on reviewing the existing practice to ensure it was compliant with the Respondent's

legal duties, it is perhaps unsurprising Mrs Moulinos was dissatisfied by Safer Edge finding no misconduct because the Claimant said she was following a different policy and produced a document in support. Even if this document were accepted at face value, the Safer Edge conclusion effectively discharged the Claimant of any responsibility to ensure that practise in her area was compliant with the Respondent's safeguarding policy and legal duties, as had been so much discussed at a senior level within the Respondent over much of the previous year. It was not unreasonable for the Respondent to wish to investigate this further.

160. Mrs Jones' interview of the Claimant was poorly conducted. It is not at all uncommon for those accused of misconduct to respond to questions indirectly or in a manner which may appear evasive. Whilst this can be a frustrating experience for the investigator, they should remain calm and patient. Questions can be repeated. Where the employee does not answer, this can be drawn to their attention. Where such a pattern is persisted in, especially after it has been raised, an adverse inference may be drawn. There is no need to continue pressing for a response, especially not in a bad-tempered manner or with intemperate language, which I find Mrs Jones did. Such behaviour is apt to be construed as aggressive and indicative of bias by the employee, as was the case here.

161. The question of fairness is not, however, a matter of form it is one of substance. Stepping back from the rancour and ill feeling of the Claimant's interview with Mrs Jones, it is apparent that matters were explored thoroughly. The Claimant is an articulate and expansive speaker. She took the opportunity of this interview to set out her position, very fully. As an audio recording was permitted, this was captured in its entirety. The Claimant was asked relevant questions. She gave many appropriate and detailed answers. There is nothing to suggest the Claimant was prevented by Mrs Jones' approach from responding to the allegations fully.

162. To the extent it is suggested by the Claimant or on her behalf that the allegations were confusing and she did not understand them, there is little evidence to support such a conclusion. The central proposition over which the parties disagreed was whether the Claimant was guilty of misconduct by reason of failing to follow the Respondent's safeguarding reporting policy and complying with its legal duty to make external reports to local authorities. She argued there was no misconduct because a different policy was in place in her area of operation and she followed that instead. The Claimant understood the allegation and responded to it. Evidence and argument on this was ventilated at great length.

163. Separately from the Claimant's interview, Mrs Jones spoke to other relevant personnel, both above and below the Claimant. She gathered relevant documentary evidence insofar as this was available.

164. Importantly, the Claimant was given the opportunity and means to interrogate the Respondent's IT systems and search for relevant documentary evidence herself. One of the difficulties often faced by employees who are suspended from work, is their inability to look for the material with which they might defend themselves. In this case, the Claimant was not at that disadvantage. Through

this search the Claimant found the email and tender document, which became central to her defence in the domestic proceedings and her case at the Tribunal.

165. The Claimant did not ask for any other employees to be interviewed as witnesses. The Claimant did submit any questions she wished to be asked of those the Respondent had already conducted interviews with.

166. Before me, Mr Allan argued for various additional investigatory steps. These included taking witness statements from the local authorities and / or the secure settings. This is a suggestion that might have been made more usefully before the disciplinary hearing. In any event, given the issue at large was non-compliance by the Claimant with the Respondent's policy and legal duties, it is difficult to see how light could be shed on that by the opinion of officers of these third-party bodies.

167. In this case as in many, there was also a degree of investigation undertaken at the disciplinary hearing itself, when the Claimant was asked questions and the documentary evidence explored.

168. Subsequent to the disciplinary hearing, the panel made limited further enquiries, the fruits of which were not shared with the Claimant for her comments.

169. During the appeal hearing, the Claimant said Mrs Hawkes should have been asked when she first learned of the different policy being followed in the Claimant's area of operations. This is a weak criticism. It would seem abundantly clear Mrs Hawkes' position was she learned about this for the first time when told by the Claimant in May 2021 and indeed, had been taken aback by the revelation.

170. Looking at the matter in the round, I cannot say the Respondent's investigation fell outwith that which some reasonable employers would consider sufficient. I had been concerned about two aspects of this, the manner in which Mrs Jones conducted the Claimant's interview and failure to share the making of subsequent enquiries by the disciplinary hearing panel. For the reasons set out above, I came to the conclusion that notwithstanding the deficiencies of Mrs Jones' approach to this interview, that did not prevent the Claimant from engaging with the relevant issues and giving a good account of her position. As far as the post-dismissal enquiries are concerned, whilst these ought to have been shared with the Claimant, they are peripheral matters. The substance of the alleged misconduct was explored thoroughly. Relevant documentary and witness evidence was obtained and disclosed.

<u>Grounds</u>

171. I am satisfied the Respondent had reasonable grounds for its belief the Claimant was guilty of misconduct.

172. The panel did not simply adopt Mrs Jones' report and findings. They took into account all of the material put forward, including the Safer Edge report which favoured the Claimant, and reached their own conclusions.

173. One of the points developed in cross examination of the Claimant before me was to the effect that the way in which her claim was framed suggested she may not have reflected upon the reasons given by the panel and how they concluded she was guilty of misconduct. This points seems to have some force.

174. Both at the disciplinary and in the Tribunal, the Claimant argued she was following the existing policy in her area of operation and no-one told her to stop. The findings of the panel, however, focused on the Claimant's failure to recognise and address the fact that the practice she was following did not comply with the Respondent's updated policy of legal duties, which had been subject to so much training and discussion at the SMT. The Claimant was not a junior expected merely to do as she was told, she was a senior expected to lead. There would seem to be little point in the SMT devoting so much time and energy to a review of the Respondent's safeguarding policy, if the Claimant could simply ignore that in her own area of operations and carry on as she had been doing for the previous ten years.

175. The Claimant failed to complete mandatory training and the panel did not accept that workload was an acceptable excuse for this. She also had a responsibility to ensure her line reports were appropriately trained, which she had not discharged. The CMs were following her lead in this, notwithstanding local practice involved a departure from the Respondent's safeguarding policy.

176. The panel also placed weight on the lack of any systematic approach to the reporting of safeguarding concerns in the Claimant's area operation. Whilst her position was that internal reports might be escalated externally if the local response was insufficient, there was no process in place to ensure this was done. There was no regular review of such matters.

177. In the circumstances, it is difficult to fault the conclusion reached by Mrs Kinsey and her colleagues:

> **With so much emphasis placed on safeguarding, we feel that it is reasonable for a leader at your level (Regional Manager) and with your experience, who has been involved with and provided with so much information and training in relation to safeguarding, to have reflected on the practices in your area and taken time to ensure that POhWER's policies and procedures were adhered to in your area and by all your direct and indirect reports.**

178. Notably, the panel accepted the evidence of Mrs Hawkes to the effect the Claimant had recognised and disclosed her own failings on 7 May 2022. To that extent, of course, the Claimant's position at the disciplinary involved a rowing back. Her original position, accepting personal responsibility, may have been more attractive.

179. One of the Claimant's arguments is that "everybody" knew a different policy was being followed in her area and it was, therefore, unfair to single her out. Beyond The Claimant's assertion, however, there would seem to be little to support that proposition. The highpoint of the Claimant's case is the email from Mrs Moulinos, with tracked changes to a tender department. This point appears to have been developed more fully before me than it was domestically. As set out above, whereas the Claimant reads this document in isolation, the Respondent says it

would have to be understood against the backdrop of its recently updated and much discussed safeguarding policy. Given the enormous effort put by Mrs Moulinos into reviewing the safeguarding policy because she was concerned the Respondent was not complying with its legal duties, even taking into account the fuller arguments advanced about tracked changes on the Claimant's behalf at the Tribunal, it would be asking a great deal to say this document proved Mrs Moulinos knew the Claimant was following a different policy in her area of operations.

180. Another obvious difficulty with the Claimant's argument is that Mrs Moulinos had only been with the Respondent since 2020. Aside from the Claimant's point about tracked changes, there is nothing else to suggest this divergent practice was ever brought to the attention of Mrs Moulinos. Even on the Claimant's case this was not said to be the earlier practice of the Respondent generally, on the contrary it was said to apply in her area only. There was no reason to suppose Mrs Moulinos would know what the Claimant had been doing for the previous ten years. Similarly, whilst the Claimant argued that Mrs Hawkes, as DSL, should have been aware of the safeguarding practice being followed in her area of operation, Mrs Hawkes was only appointed into that role in 2020 and there was nothing to show she had been made aware of it since that time. There was no equivalent tracked changes document for Mrs Hawkes. Furthermore, the suggestion Mrs Hawkes already knew about this would seem to be contradicted by her shocked reaction to the Claimant's disclosure on 7 May 2021.

181. The one person who did know about the policy being followed in the Claimant's area operations was, of course, the Claimant. It is surprising she did not raise this during any of the SMT Roundtable discussions. Given the issue on each such occasion was bringing the Respondent's practice into compliance with its legal duties and embedding good practice, the omission is glaring. This is a point which weighed heavily with the panel.

182. Mr Allan sought to rely upon the finding of Safer Edge of there being ambiguity in the Respondent's policy. That presupposed the Respondent's policy was to be found otherwise than in the updated safeguarding policy, which was not a conclusion reached by the disciplinary panel. There was ample evidence before the panel to support a conclusion that the Respondent had updated its safeguarding policy and discussed this extensively at SMT roundtables, such that the Claimant would have been aware of that. The policy document was not itself said to be ambiguous.

Process

183. In terms of the process followed, I am satisfied this did not take the Claimant's dismissal outwith the reasonable band.

184. Mr Allen said the decision to suspend the Claimant was flawed because the wrong officer of the Respondent made it. This point does not appear to have been articulated contemporaneously. I am not persuaded it caused any unfairness to the Claimant. Her lengthy suspension is most unfortunate and I have no doubt was an extremely stressful time for her. Nonetheless, the misconduct under investigation was of a potentially serious nature. The Claimant was a senior manager believed, as a result of her own disclosure, not to have

been following the Respondent's safeguarding policy with respect to external reporting. It appears reasonable in the circumstances to suspend her whilst an investigation took place. Importantly, she was given access to the Respondent's IT systems to search for evidence, so her absence from the workplace did not prevent her from preparing to defend herself.

185. The Claimant's grievances do not shed much light on the fairness of her dismissal. To the extent the points she made related to the disciplinary case, such as alleging Mrs Hawkes was lying or Mrs Jones' investigation was one-sided, these could have been and were put forward by the Claimant in the disciplinary process.

186. The Respondent had few managers sitting above the Claimant and only a small number of trustees. With both disciplinary and grievance proceedings, it would be difficult to ensure the personnel involved had no prior knowledge or involvement. Similarly, the Respondent did not have a large HR function. Mrs Born was involved at more than one stage. Taking into account the size and administrative resources available, this was not unreasonable. Nor was it improper or unfair for HR to be involved in the drafting outcome letters.

187. The matter was thoroughly investigated, in the course of two separate enquiries. I have already addressed the inappropriate manner in which Mrs Jones conducted the Claimant's interview and set out my reasons for concluding this did not undermine the investigation.

188. The Claimant had a full opportunity to defend herself at the disciplinary hearing, which she took, supported by Mr Allan. Whilst I was concerned about the pre-meeting, this had not been one of the Claimant's complaints and in any event, I accepted Mrs Kinsey's evidence about it. That get-together was ill-advised and unnecessary but did not cause unfairness.

189. The Claimant had another chance to defend herself during the appeal hearing. While she had drafted 5 grounds of appeal, her arguments at the hearing went beyond those matters. Indeed, to a large extent she repeated what she had said at the disciplinary. Before me, Mr Allan argued the appeal panel was not compliant with the Respondent's policy because Mrs Born, a non-trustee, should not have been a member of it. Objections to the composition of a disciplinary or appeal panel should be raised at the time and will tend to carry less weight if articulated for the first time after a disappointing outcome. I was satisfied the appeal panel approached this matter appropriately, taking into account the grounds advanced and other arguments made before considering whether this undermined the original decision. They concluded, reasonably, the original decision should be upheld.

190. The Claimant was ably supported by Mr Allan, who said everything on her behalf that properly could be (domestically and at the Tribunal). Nothing has been shown, however, which takes the Respondent's process outside of that which many reasonable employers would consider sufficient.

Sanction

191. I am satisfied the decision to dismiss was within the band of reasonable responses.

192. Mrs Kinsey and her colleagues decided dismissal was the appropriate outcome. Whilst they took a number of factors into account, they were especially concerned about the extent of the Claimant's failure and her unwillingness to accept any responsibility:

> **Taking all this information in to account, we believe your actions as a Regional Manager in failing to following POhWER's policy and procedures constitute Gross Misconduct, as listed in the disciplinary process. Further, as a Regional Manager, failure on your part to evaluate and change your working practices following the safeguarding training constitutes Gross Negligence.**
>
> **[…]**
>
> **You appeared to have a complete lack of ownership of the situation and quickly blame others and in fact, as a panel we concluded there was too much conjecture, we did not see attention to detail or the level of control we would expect to see in a senior leadership role and we have no confidence that even now, you realise the seriousness, the implications and the long term affects these actions may have had on the beneficiaries POhWER support.**

193. These were proper conclusions open to the panel on the evidence they had received.

194. Whilst the Claimant had good mitigation to advance in some respects, including her many years of hard work for the Respondent and positive contribution to safeguarding in the past, including with the creation of a log, these factors would not tend either to reduce the seriousness of the misconduct found or answer the loss of trust and confidence resulting from her stance during the process which led to her dismissal.

195. The Claimant was found to have failed to implement the Respondent's updated policy, upon which training had been provided and so much discussion had at SMT Roundtables. Where the Respondent was seeking to bring about change, in particular to ensure its policies were compliant with its legal duties and obligations to beneficiaries, the panel was entitled to find that in simply carrying on a she had for the last ten years, the Claimant was guilty of serious misconduct.

196. The obvious person, well-placed to identify that a divergent and non-compliant practice was being followed in her area of operations, was the Claimant. She did not, however, raise this on any of the occasions when the Respondent's safeguarding policy and legal duties were under discussion with Mrs Moulinos and the SMT.

197. The Claimant did not accept any responsibility for this state of affairs. Her position amounted to the fault resting above or below her. Where an employee is found to be in the wrong but will not accept that is so, the employer will often find

it difficult to continue with trust and confidence in that person. The panel arrived at that conclusion here.

198. Mr Allan said that whilst the Claimant denied making any disclosure or admission on 7 May 2021, given the panel found she had done, this ought to have been construed as commendable action on her part. This is a difficult argument to make. Whilst the Claimant was found, in effect, to have recognised and admitted her fault to Mrs Hawkes (in frank and a blunt terms) her subsequent stance undermined that. Had the Claimant maintained her contrition, that position may have served her better. While she could not undo the past, an acceptance of fault may have persuaded the Respondent she could learn from this experience, make amends and continue to be trusted in the future. But that was not what happened. Not only did the Claimant deny any disclosure she accused Mrs Hawkes of lying about their discussion. This would appear to make the Claimant's position worse rather than better.

199. The Claimant's objection to being unfairly singled-out is based on her argument that everybody knew. This was not, however, a conclusion the panel arrived at.

EJ Maxwell

Date: 30 October 2023

Date: 1 February 2024
[as corrected]

Sent to the parties on:
9 November 2023

For the Tribunal Office: