



EMPLOYMENT TRIBUNALS

Claimant: Kim Bright

Respondent: Leeds City Council

Heard at: Leeds (CVP) **On:** 19 September 2023

Before: Employment Judge Rakhim (sitting alone)

Appearances

For the claimant: Represented by Mr N Sharples

For the respondent: Represented by Mr C Illangaratne

JUDGMENT

The claimant's complaint for unfair dismissal is not well founded and is dismissed.

REASONS

Background

1. The Claimant was employed by the Respondent from 4 August 2008 to 31 January 2023 and at the time of her dismissal she was a Family Support Worker. It is not in dispute that she was dismissed by the Respondent.
2. The Claimant started the ACAS early conciliation process on 6 March 2023. The ACAS certificate was issued on 17 April 2023. The claim was presented, in time, on 15 May 2023.

The Claim

3. The Claimant has claimed unfair dismissal pursuant to Employment Right Act 1996, Section 98 ("ERA"). The Claimant was the subject of disciplinary proceedings for engaging in a personal relationship which later turned into a romantic relationship whilst supporting a service user. It is accepted she was dismissed for the potentially fair reason of misconduct. However, the Claimant contends the relationship only developed after she believed the service she provided was coming to an end and believed no further service would be provided.

The issues

4. At the hearing before me, the parties agreed that the following issues fall to be determined in this case:
 - i. Do the circumstances of the dismissal fall within the ambit of one or more of the Articles of the Convention? If they do not, the Convention right is not engaged and need not be considered.
 - ii. Was there a permissible reason for the dismissal under the ERA? If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
 - a. were reasonable grounds for that belief;
 - b. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - c. the respondent otherwise acted in a procedurally fair manner;
 - d. dismissal was within the range of reasonable responses.

The hearing

5. The hearing took place by way of a hybrid hearing. I joined the hearing from Leeds Employment Tribunal. The other parties joined in from remote locations over the Cloud Video Platform. Both parties were represented.
6. At the start of the hearing, Mr Sharples confirmed he was content to proceed as he accepted his application to relist the matter for two days had been rejected on 15 September 2023.
7. I was assisted by a 481 page bundle. The Claimant had also sent in a skeleton argument and two authorities after 6pm the day before the hearing. The Respondent had been copied into the email but Mr Illangaratne had not received these. I stopped the hearing for a few minutes to allow Mr Illangaratne to receive and review these.
8. I am satisfied that the participants were able to see and hear each other throughout the hearing. I heard evidence from:
 - i. Emma Naylor ('EN') (for Respondent)
 - ii. Karla Gannon ('KG') (for Respondent)
9. They each adopted their witness statements and were cross examined by Mr Sharples.
10. I then heard evidence from the Claimant who was cross examined by Mr Illangaratne. I then heard submissions from both Mr Sharples and Mr Illangaratne. At the end of the hearing, I reserved my determination.
11. In reaching my decision, I have carefully considered the oral and documentary evidence, the closing submissions, and my record of proceedings. The fact that I have not referred to every document in the evidence bundle should not be taken to mean that I have not considered it.

12. Where it has been necessary to make a finding of fact in respect of contested matters, I have done so by deciding which version of events is more likely, taking the evidence in the round.

The Facts

Background

13. The Claimant was employed by the Respondent from 4 August 2008 to 31 January 2023 and at the time of her dismissal she was a Family Support Worker. The Respondent gave gross misconduct as the reason for her dismissal.
14. The Respondent is the local authority council and employs approximately 14,000 employees within a wide variety of functions and departments. The Care Delivery Service in the Adults and Health Directorate had approximately 750 staff working directly with the public and their families. Emma Naylor ('EN') is the Services Delivery Manager for the Kinship Care and Family Group Conferencing Directorate and managed approximately 70 staff members. She was also the Disciplinary Meeting Officer at the Disciplinary Hearing on 27 January 2023. Karla Gannon ('KG') is the Head of Service for the Care Delivery Service in the Adults and Health Directorate and was responsible for approximately 750 staff working directly with the public and their families. She also was the Disciplinary Appeal Meeting Officer at the Appeal Hearing on 27 February 2023.
15. The Respondent had a 'Signpost Agreement' (dated April 2020) covering the work undertaken by the Claimant and this had to be signed by both the employee and the parent/carer. In the 'Professional Boundaries' section, the following examples were given:
- *"Relationships - Signpost staff are not permitted to have personal relationships with you or any other family members. This includes both friendships and sexual relationships. It is not appropriate for staff to discuss their private lives, ask you for a favour, borrow or buy anything off you or your family.*
 - *Social Media - It is not appropriate for you to contact Signpost staff via social media sites like Facebook and Twitter. This rule also applies to staff contacting you or your family."*
16. The Respondent's Code of Conduct, Policy and Procedure, (dated 1 March 2013) says the following:
- "3. Objectivity**
- *You must follow the policies procedures and rules of the council.*
-
- 6. Leadership**
-
- *Professional relationships with vulnerable adults and with children who are service users must not develop into personal friendships or inappropriate relationships.*
-
- If you do not follow this Code**
- If you fail to follow the Code you may be referred into formal policies and procedures, including the Disciplinary Policy and Procedure. Depending on the circumstances, including the seriousness of the breach of the Code, a potential outcome of disciplinary action could result in your dismissal with or without notice or payment in lieu of notice. You must treat this Code seriously, and make sure you understand it. If you do not understand any aspect of this Code or the council's requirements with regards to conduct of employees then you should speak to your line manager urgently.*

Appendix 1 – standards of conduct

....

6. Leadership

....

Professional relationships with vulnerable adults and with children who are service users must not develop into personal friendships and/or inappropriate relationships

If you work in a post which has close contact with children or vulnerable adults (or access to key information about them) you must declare any personal relationships with vulnerable adults or children who access services provided by your service.

(Posts with close contact with children and vulnerable adults, or which involve regulated activities as defined in the Protection of Freedoms Act 2012, need an enhanced check under the Disclosure and Barring Scheme).

If you work in such a job you must not form relationships with service users which involve:

...

- *unprofessional emotional or physical interaction; and/or*
- *any element of sexual interaction”*

17. The Respondent’s Disciplinary Policy (dated 25 June 2015) says the following in respect of Gross Misconduct:

“Gross misconduct is much more serious, this can take many forms, ranging from offences which jeopardise the functioning of the business, or safety and wellbeing of employees and/or customers. Examples of gross misconduct include:

...

- *Serious breaches of the Council’s policies and procedures....*

...

When deciding if an allegation should be considered as misconduct or gross misconduct, consideration must be given as to whether the alleged misconduct on the part of the employee is so bad that they may destroy the employer/employee relationship, and may merit dismissal without notice of pay in lieu of notice.”

The Incident

18. At the relevant time, the Claimant was a Family Support Worker working from the Chapeltown Childrens Centre in Leeds. In November 2020 the Claimant was assigned to work with a family under the Respondent’s Signpost service. Signpost provides intensive family support offering suggestions, guidance, practical and emotional support, as well as therapeutic interventions to families in need, and who voluntarily sign up to the service.
19. Those using the service are required to sign an agreement which sets out professional boundaries which service users and Signpost Staff are required to follow (see above in relation to the agreed boundaries for professional relationships and social media).
20. The Claimant was assigned to a family which consisted of the mother (CM), father (IM) and two male children (JM aged 11 and WM aged 4). At the time JM exhibited challenging behaviour and was prone to violent and abusive behaviour against members of the family.
21. During the course of the Claimant’s work with the family, CM and IM separated in September 2021.
22. In March 2022 the Claimant took some time on sick leave to care for her terminally ill mother.
23. On 21 March 2022 the Claimant emailed CM to advise that she was having some time away from work and that she would do the handover of the Early Help Plan on her return.

In the subsequent email exchange, the Claimant suggested to CM that they kept in touch via Facebook. Around this time CM had entered into a romantic relationship with a third party following her separation from IM, but this relationship did not last. Following the email exchange of 21 March 2022 the Claimant and CM communicated via Facebook and WhatsApp.

24. After returning to work the Claimant was instructed by the Respondent to have a final visit with CM and JM in June 2022. The purpose of this meeting was to say goodbye to the family.
25. The Claimant and CM had further communications with each other via social media in July 2022 during the women's Euros football competition.
26. In August 2022 the Claimant's mother was admitted to a hospice near to CM's address and CM offered the Claimant support, particularly when she would be visiting her mother at hospice. The Claimant visited CM's address on a number of occasions during this time. The two became friends, which developed into a romantic relationship in September 2022 and that relationship still continues.
27. The Claimant notified the Respondent of the relationship with CM around this time.

The investigation

28. A fact finding meeting was held on 3 November 2022. The Claimant had confirmed that she had been in contact with her union representative, Sally Ryan ('SR') and they had agreed SR would be invited if the matter progressed further.
29. The Claimant explained the background in the meeting and added that she had ended her relationship with her own wife three hours after her mother died, growing close to CM via visiting her regular after this, a week after the death their relationship progressed to more than a friendship and two weeks post the death they began an official relationship (early-mid September 2023). She also informed how she rung her manager, Susan Cookson ('SC'), to inform her about the relationship.
30. The Claimant explained that she did not believe the Signpost Agreement applied as she was not actively working with the family, her work ended formally in February/March 2022, she had contact with the family in a work capacity in the final session where she met CM and JM in June 2022, and that both IM and the children now knew about the relationship.
31. A formal interview took place on 23 November 2022 and the Claimant attended with her union representative, SR. Following this meeting, the Claimant consulted with SR, and on 5 December 2022 she emailed amendments to the minutes of the meeting that took place on 23 November 2022.
32. An investigation report was prepared by the Investigator, Katie Hall ('KH') who was the RES Team Manager and this was dated 21 December 2022. KH considered the notes of the 3 November 2022 meeting, the minutes of the 23 November 2022 meeting (including the amendments from the Claimant), the Mosaic work records, the emails gathered between the Claimant and CM, records relating to CM's low mood from 15 February 2022, the record of the email to the school by the Claimant on 29 April 2022, records of the last visit of 17 June 2022, the Signpost Agreement and the Code of Conduct. She stated she had been unable to speak to SC as she had left the Respondent's employment. KH's recommendation in her report was a referral to a Disciplinary Meeting.

The Disciplinary Hearing

33. On 4 January 2023 EN wrote to the Claimant to invite her to a Disciplinary Meeting on 27 January 2023 at 10:00 – 14:00 for a single allegation. The letter set out the possible outcomes. The letter also said:

*“The purpose of the Disciplinary Meeting is to examine allegations of **gross misconduct** as follows:*

- *While supporting a service user you have engaged in a personal relationship which has later developed into a romantic relationship. As a result, this has created a conflict with your role not being compatible in accordance with the council’s Code of Conduct which states:*

“Professional relationships with vulnerable adults and with children who are service users must not develop into personal friendships or inappropriate relationships.”

34. The Claimant attended the Disciplinary Meeting and was represented by SR as her union representative. EN was the Disciplinary Meeting Officer and was supported by Tom Brewis who was the HR representative. Witnesses who gave evidence at the meeting included CM as well as KH (investigator). The Claimant also provided detailed written submissions.

35. On 31 January 2023, EM wrote to the Claimant informing her that she was to be dismissed on grounds of gross misconduct, with the final date of service as 31 January 2023. The letter records the following findings:

- *“You stated that you stopped working with CM in a professional capacity on 21/02/22 when you were removed as the allocated worker on Mosaic; however, you subsequently emailed CM on 21/03/22 to notify her that you would be off sick and also undertook a final visit to the family on 17/06/22 when you returned from sick leave. There is also evidence to indicate that you continued to liaise with the professional core group about CM’s family after 21/02/22 (email communication on 29/04/22 between yourself, Susan Cookson and school) and were doing this as an employee of LCC.*
- *On 21/03/22 you added CM as a friend on Facebook and continued to have communication with her of a personal nature. This is in breach of the Signpost agreement between professionals and families (page 35/36 of the Local Authority bundle) and the LCC code of conduct. You stated in your evidence that you believe such communication was ‘friendly not a friendship.’ However, it is clear from the evidence submitted that you disclosed significant amounts of information to CM about your personal circumstances which led to her offering practical and emotional support to you during your mother’s illness. You accepted such support, and on this basis, I conclude that the relationship had overstepped appropriate professional boundaries.*
- *Following a period of communication on Facebook from March 2022 personal conversations progressed to WhatsApp and later culminated in a romantic relationship with CM in around September 2022.*
- *You stated that you are unclear of the LCC definition of a vulnerable person and dispute that CM is vulnerable. Katie Hall, Investigating Manager, gave evidence within the hearing that although she had been unable to find a formal definition, it was her professional opinion that CM’s personal circumstances, including concerns about low mood and anxiety would make her vulnerable. I would concur with Katie Hall and feel that she is qualified to make a professional judgement in this regard.”*

The Appeal

36. The Claimant appealed against that decision on the same day as the outcome, namely 31 January 2023. Her grounds of appeal were clarified as:

"I am appealing against the severity of the sanction imposed as I do not feel this is proportionate to the allegation raised and I do not feel some of the evidence I have provided has been given due attention.

It has been stipulated in both the formal investigation and hearing that decisions have been made based on people's opinions and I would like the evidence bundle re-examined."

37. The appeal went before KG at an in-person hearing at the Respondent's office on 28 February 2023, and KG was supported by Victoria Owens (HR Business Partner). The Claimant attended and was represented by her union representative, SR. The Claimant also provided detailed written submissions. EN attended as a witness.

38. In a written decision dated 3 March 2023, KG dismissed the Claimant's appeal and summarised the outcome as follows:

*"However, the evidence provided to me shows a continued pattern of overstepping professional boundaries, breaching the LCC Code of Conduct and taking all the information presented to me into consideration, it is my view that the decision to dismiss you was appropriate in all the circumstances, and your appeal is **not** upheld"*

The Law

39. Potentially fair reasons for dismissal are set out at section 98 ERA Act as follows:

"(1) in determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

*(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

(2) A reason falls within this subsection if it –

...

(b) relates to the conduct of the employee,

...

(4) Where the employer has fulfilled the requirement 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 a sufficient reason for dismissing the employee,

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

40. In a case in which the employee's conduct is said to be the reason for dismissal, the employer must show that misconduct was the reason for the dismissal. According to the Employment Appeal Tribunal in **British Home Stores Limited v Burchell 1980 ICR 303**, a threefold test applies. The employer must show that:

- a. It believed that the employee was guilty of misconduct;
 - b. it had in mind reasonable grounds upon which to sustain that belief;
- and

c. at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

41. This means that the employer need not have conclusive direct proof of the employee's misconduct; only a genuine and reasonable belief, reasonably tested.
42. In **Iceland Frozen Foods Ltd v Jones [1982] IRLR 439** the EAT held that the function of the Employment Tribunal was to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair.
43. Exactly what type of behaviour amounts to gross misconduct depends upon the facts of each case. However, it is generally accepted that it must be an act which fundamentally undermines the employment contract (i.e. it must be repudiatory conduct by the employee going to the root of the contract) (**Wilson v Racher ICR 428, CA**). The conduct must be a deliberate and wilful contradiction of the contractual terms or amount to gross negligence.
44. In **Paul v East Surrey District Health Authority 1995 IRLR305, CA**, the Court of Appeal held that an employer is entitled to take into account not only the nature of the conduct and the surrounding facts but also any personal circumstances affecting the employee. The Court found that the attitude of the employee to his or her conduct may be a relevant factor in deciding whether a repetition of it is likely and commented: *'Thus an employee who admits that the conduct proved is unacceptable and accepts advice and help to avoid a repetition may be regarded differently from one who refuses to accept responsibility for his actions, argues with management or makes unfounded suggestions that his fellow employees have conspired to accuse him falsely.'*
45. When considering dismissal for gross misconduct, the Tribunal has to be satisfied that the employer acted reasonably both in characterising it as gross misconduct, and then in deciding that dismissal was the appropriate punishment (**Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854**).

Conclusions

Do the circumstances of the dismissal fall within the ambit of one or more of the Articles of the Convention?

46. The Claimant seeks to rely on the right to respect for her family and private life. It is not disputed that this would include personal and sexual relationships. Both advocates had agreed that if it was found that that the relationship started whilst professional work was ongoing then the Convention rights would not be engaged.
47. I find that it was the Claimant's professional work that had brought her into contact with CM and that this work remained ongoing when the relationship began.
48. On balance, I am not persuaded that the relationship only developed after her work with Signpost had concluded. I do not accept merely closing the case on the Mosaic system on 21 February 2022 is evidence of the work concluding as the reality is the Claimant emailed CM on 21 March 2022 to provide an update to her, including the next steps. Even if this was administrative in nature, it was still professional work that was required to be undertaken and thus not complete. The Signpost Agreement did not distinguish what constituted substantive work and thus all outstanding work must remain relevant. I note the Claimant had proposed to add CM on Facebook on the same date.

49. The Claimant had liaised with the school via an email on 29 April 2022. The Claimant had then met CM and JM, in a work capacity, on 17 June 2022 as instructed by her manager. I do not accept Mr Sharple's submission that this was a 'tick box exercise' as it was a formal meeting under the instruction of her manager. Indeed, EM's oral evidence was that she would hope such a meeting was not a 'tick box exercise' as the goodbye visit was very significant for families as they could reflect on the working relationship, implement the work done to date and consider the future sustainability plans.
50. The Claimant admits she started exchanging messages regularly with CM in July 2022 and started to consider her a friend. However, she had also emailed the school direct from her work email in September 2022 to confirm the relationship (see further below). I thus find, that on balance, the work email sent in September 2022 after the relationship was formed supports the conclusion that there was ongoing professional work undertaken by the Claimant.
51. The phrase 'vulnerable adult' had not been defined within the policy. The Respondent provided services to CM and the children. The Claimant had recorded CM's low mood following a visit to CM on 15 February 2022, and also recorded that CM had discussed this with the GP, that she was on the waiting list for IAPT and the Claimant had confirmed she would seek additional support for CM. In oral evidence, KG stated that the Respondent's care strategy recognised CM was in a caring role and she had some vulnerabilities in relation to the support needs of her children.
52. Mr Sharples submits most reasonable people would understand the phrase 'vulnerable adult' to be referring to someone who lacks capacity or requires some form of care. I do not accept the definition would be limited to such a narrow band. I also put little weight on CM's belief that she was not vulnerable as she was a lay service user and not a professional within the field. The same would apply to any other lay person expressing any view on the definition. KH had confirmed in the Disciplinary Meeting that it was her professional view that CM was vulnerable and EN had confirmed her agreement to this in the outcome letter of 31 January 2023. Absent any written definition, the Claimant should have sought clarification in advance. It is not for the Tribunal to impose its own definition and I accept the definition by CM and EN, as both are professionals within the field.
53. The Claimant has no reasonable expectation of privacy in circumstances where she entered into a personal relationship with a service user whilst the services being provided by the Respondent remained ongoing. CM was clearly receiving services from the Respondent. I have already found the relationship emerged from the working circumstances thus I do not accept the Claimant was disciplined for a private matter. Accordingly Article 8 is not engaged.
54. Even if I had found Article 8 to be engaged, which I do not, I would conclude there had been a proportionate interference due to the legitimate aim of protecting the public as this was a case involving a vulnerable service user. There is a public policy reason in ensuring council support workers do not enter into any friendship or personal relationship with vulnerable service users, that confidence in the profession is maintained and that professional standards are maintained.

Potentially Fair Reason

55. I find that the Respondent dismissed the Claimant for a potentially fair reason, namely, her conduct. The Claimant has not asserted any alternative reason for her dismissal. The Respondent was consistent throughout the disciplinary process that the reason for the Claimant's dismissal was her conduct.

56. I find that the Respondent genuinely believed that the Claimant breached the Signpost Agreement by adding CM on Facebook. The Claimant stated she stopped working with the family on 18 February 2022 and no further assistance would be provide to them by the Signpost service. CM appeared to acknowledge the end of the service in her email of 18 February 2022. I note the Mosaic work system shows the case was closed on 21 February 2022. However, the Claimant remained in touch by emailing CM on 21 March 2023 to update that she will be taking time off and that a draft plan was being prepared by the Respondent. I preferred EN's evidence that the email indicated that support would continue and that the email did not rule out further assistance from the Signpost service.
57. It was the Claimant who instigated wanting to know about CM's date and in response to CM stating she was conscious of what she shared on the Claimant's work email it was the Claimant who stated "*I don't normally do this but feel we have built a trusting friendship over time, do you use Facebook? I can add you over there?*" and then stated "*I'll go find you as you are probably easier to find than I am!!*"
58. Social media contact was not allowed as per the Signpost Agreement and this applied to the Claimant. This policy was breached by the Claimant as there was ongoing work undertaken on 29 April 2022 and then the meeting of 17 June 2022. Additionally, the Claimant did say "*I don't normally do this*" before asking CM's permission to add her on Facebook, which indicates the Claimant was aware this was unprofessional. The Claimant wanted to do this to ask CM about her first date with a female, which was thus clearly of a personal nature. Thus the Signpost Agreement had been breached by the Claimant.
59. I note it is in dispute when the relationship began. This is relevant as a friendship or a relationship with vulnerable adults who are service users is not allowed under the Code of Conduct and a breach of this did mean the Respondent is able to refer the Claimant to a formal disciplinary where a potential outcome is dismissal.
60. I had outlined earlier that the Claimant had liaised with the School on 29 April 2022 and met CM and JM on 17 June 2022 in a work capacity. There is nothing to indicate that the Claimant had gone into any personal relationship by this point. The Claimant relies on informing her manager about the contact as support of the Respondent not taking issue with the social media contact, but her manager was never interviewed as she had left and thus it is unclear exactly what information was provided by the Claimant to her line manager. When her manager asked her to take the meeting in June 2022, I note the Claimant did raise the Facebook contact with her manager.
61. As for being in a friendship, the position appears to have changed in July 2022 when the Claimant stated that regular messages started about the football and she considered CM had become a friend. At the Investigation meeting on 23 November 2022, the Claimant had brought her Facebook messages, stated she would read them out but was not prepared to hand them over as she viewed them to be personal. I find no evidence that she read any Facebook messages out at the meeting. No such messages appear to have been provided at the Disciplinary Meeting. Thus there is nothing to contradict the friendship had started in July 2022.
62. Moving to the issue of a personal relationship, the Claimant had stated this developed in August 2022. However, she had also emailed the school direct from her work email on 20 September 2022 to confirm the relationship and that JM was aware of this. The SEND Manager at the school replied and stated she was sure JM would mention this at some point. The Claimant had described her role under the Signpost service in her witness statement as providing "*support to families, who voluntarily sign up to the service, where a family member may be displaying anti-social behaviour which the family may be finding difficult to cope with. I provided support by putting in place strategies for family members*

to deal with the behaviour and co-ordinating with outside agencies such as schools to ensure so far as possible that the individual needs of family members were being met.”

63. In oral evidence, KG explained that if there was no communication at all then she may potentially accept the Claimant was not bound by the Signpost Agreement. KG also added that the email to the school, to put the relationship out in the open, was a breach of appropriate professional boundaries. The Claimant, in oral evidence, accepted sending this email was unprofessional and stated she had sent the email in the interest of JM's wellbeing. Given the email exchange between the Claimant and the SEND manager, I find it is evidence of ongoing professional work undertaken by the Claimant as the exchange fits with the description of the work undertaken for JM.
64. I have already outlined my finding that the CM would be categorised as a vulnerable adult. The Claimant had accepted her role required an enhanced DBS as confirmed by KG. Accordingly there had been a breach of the Code of Conduct as the Claimant had a personal relationship with a vulnerable adult who was a service user, thus it was reasonable for the Respondent to regard this as a serious breach.
65. The Respondent genuinely believed the Claimant's actions to be a breach of the Signpost Agreement and Code of Conduct and of such severity as to amount to gross misconduct.

Reasonable Grounds for belief following a reasonable Investigation

66. The Respondent conducted a fair and reasonable investigation in establishing the facts. I have outlined the investigation above.
67. The only point of contention appears to be that the Respondent had failed to interview the Claimant's line manager, SC. Had they done so, then Mr Sharples submits that SC would have verified that the Claimant's work had concluded and that she had been aware of the social media contact between the Claimant and CM between March to June 2022.
68. I do not consider the lack of interview of SC renders the investigation as unreasonable. In the Disciplinary Meeting, KH stated it was the HR department who advised that due to GDPR they were unable to speak to SC as she was no longer working for the Respondent. I accept the explanation, as KH was led by the advice given by HR. I also note that when that when the explanation was given, neither the Claimant nor her union representative took issue with it or explored it further. I do not consider SC's evidence would have assisted on whether there had been a breach of the Signpost Agreement or Code of Conduct. Any evidence SC would have been able to give on Facebook contact prior to June 2022 would have little relevance given I had found that a work related meeting took place on 17 June 2022. Given my finding in relation to the 20 September 2022 email, I would place little, if any, weight on any witness opinion that the work had concluded any earlier than that, as the work was found to be ongoing.
69. In the circumstances, I do not find that Respondent could have done anything more in relation to the investigation and that the investigation was reasonable.

Procedurally fair disciplinary process

70. The process followed by the Respondent was fair. The Claimant knew what the case was that she had to answer, and she was given a proper opportunity to put her position forward including any mitigating circumstances. She was represented by her union representative at the Disciplinary Meeting and the Appeal Meeting. Both meetings were undertaken by different managers. She was provided with sufficient notice of both meetings. She provided written submissions at both meetings.

71. The Claimant had a fair hearing in relation to both meetings. No objection to this had been raised by the Claimant.

Range of Reasonable Responses

72. The employer acted reasonably both in characterising the Claimant's conduct as gross misconduct, and then in deciding that dismissal was the appropriate punishment

73. The Claimant asserts that her dismissal for gross misconduct was unfair because the only breach was social media contact between March and June 2022 as the work with the family had concluded. However, given my findings above, the Claimant's submissions are rejected.

74. EN had clarified in her statement that after considering the evidence at the Disciplinary Meeting, she did consider whether other sanctions were more appropriate. However, she explained she ruled them out given that in her view there had been clear breaches of the Signpost Agreement and Code of Conduct. She also added that there were safeguarding concerns and that the lack of the Claimant's understanding of professional boundaries would exempt her from working with vulnerable service users.

75. I am asked to take into account the Claimant's previous 15 years' unblemished service, but this had been considered by EN, as confirmed in her statement.

76. I cannot ignore that the Claimant is likely to have been aware she was in the wrong when she asked to add CM on Facebook given the words she used at the time. I also cannot overlook her unrealistic stance that work had concluded in February 2022 when the work had continued, including the June 2022 meeting which she attended. The Claimant lacked insight and did not appear to accept she had been wrong in adding CM on Facebook in March 2022.

77. The Respondent's decision to summarily dismiss the Claimant is within the band of reasonable responses.

Employment Judge Rakhim

11 October 2023