Case No:- 3309702/2023.

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms A Ribaud	v	Cancer Research UK

Heard at: Watford (in person) **On:** 24 – 27 February 2025

Before: Employment Judge A French

Members: Ms A Brosnan and Ms S Wellings

Appearances:

For the Claimant: Mr T Ogbuagu, Solicitor (Days 1 and 2)
In person (Days 3 and 4)

For the Respondent: Mr T Gillie, Counsel

JUDGMENT having been sent to the parties on 17 March 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Rules of Procedure 2024, the following reasons are provided:

REASONS

Introduction

1. By way of claim form dated 24 July 2023 the claimant brings complaints of unfair dismissal, wrongful dismissal (the failure to pay notice pay) and victimisation.

2. In their response presented on 8 September 2023, the respondent denies the complaints and states that it dismissed the claimant for misconduct.

3. Oral reasons were provided to the parties at the conclusion of the hearing on 27 February 2025. The claimant requested written reasons the following day on 28 February 2025, which was not referred to Employment Judge French until 11 March 2025. The Tribunal apologises for the delay.

4. The claimant was originally represented in these proceedings by Mr Ogbuagu. However, on the morning of day 3 of the hearing, the claimant dis-instructed her representative and chose to represent herself for the reaminder of the hearing.

Evidence

5. We had a hearing bundle consisting of 884 and a witness statement bundle which consists of 54 pages.

6. We heard evidence from the claimant herself, and the claimant also presented a witness statement of Jacky Arkwright who was not called as a witness at the hearing. As such her evidence has not been tested and we place very little weight to that statement. The respondent indicates that they were unlikely to have challenged any of the content in any event, because it appears that it is not necessarily directly relevant to the claim.

7. For the respondent we had witness statements and have heard from Yvonne O'Connor, Mr Thomas Underwood and Ms Donna Crossley.

8. There was also a correspondence bundle consisting of 34 pages, but we were not taken to the same throughout the course of these proceedings.

9. Further, we had closing submissions from both parties which we have had regard to.

The Facts

10. The claimant was employed by the respondent from 31 July 2018 until 22 March 2023 as a store manager and worked in the respondent's charity shop of 37, The Broadway, Mill Hill, London NW7 3DA. In her role, the claimant was responsible for sorting and preparing stock for sale, shop standards, management of volunteers, customer service, administration and visual merchandising.

11. The respondent operates approximately 600 charity shops in the UK. The respondent's shops are staffed by a combination of paid employees and unpaid volunteers. Each shop has a store manager who is employed by the respondent, who usually works in the shop on a full-time basis, and a number of volunteers, all of whom work on a rota basis.

12. It is not in dispute that the respondent relies heavily on the services provided by unpaid volunteers, such as sorting and preparing stock for sale and till operation, to ensure the smooth running of its charity shops. The respondent has around 13,000 volunteers, and their value to trading is an estimated wage bill saving of around £25 million per annum.

13. The claim concerns the claimant's dismissal which occurred following an investigation in relation to three complaints made by volunteers against the claimant and also the claimant's use of the shop's address for her own business.

14. In relation to the complaints, the first is made by Ms Datta Shah by text message on 27 October 2022 and can be seen at page 464 of the bundle. That was followed up by way of email from the same individual (page 466 of the bundle), received on 4 November 2022. On 13 November 2022, (page 474 of the bundle) we have a further complaint from a volunteer called Rubeena Anwar. On 27 November 2022, we have a further complaint from Ms Adelle Clancy, (page 490 of the bundle).

15. As a matter of fact, there are three complaints from three of the respondent's

volunteers made about the claimant.

16. Ms Shah's complaint was that she had previously volunteered at the shop and returned after a period of leave working with Ms Bhadra Pandya who was covering for the claimant whilst she was on maternity leave. When the claimant returned from leave in October 2022, Ms Shah alleged that the claimant refused to allow her to volunteer in the shop and gave her no explanation.

17. Ms Anwar's complaint was that having travelled to the shop from Stanmore for her shift on 12 November 2022, the assistant manager at the time informed her that she had been removed from the till (by her pin number being cancelled) and that she was not allowed to work in the shop. She also discovered that she had been removed from the volunteers WhatsApp group without explanation.

18. Ms Clancy's complaint was that on 4 November the claimant had sent her an upsetting message and had subsequently removed her from the volunteers WhatsApp group without explanation.

19. Further, on or around October 2022, junk mail is received to the charity shop address (page 772 and 773) for which the claimant was the manager in the name of A3BizSolutions. That is a company registered to the claimant as can be seen at page 774 of the bundle. We were taken to page 424 in relation to use of the address and that shows certainly that the respondent was aware of the issue at that time, being 6 October 2022.

20. As a result, in December 2022 an investigation by the respondent is launched in relation to the claimant's conduct. The two allegations were failure to follow CRUK's policy in relation to volunteers and misuse of the shop's address.

21. On 6 December 2022 the claimant is sent an invitation to an investigation meeting, originally scheduled to take place on 15 December 2022 which can be seen at page 515 of the bundle. That informs the claimant that she has the right to be accompanied and refers to the possibility of disciplinary proceedings.

22. That meeting is ultimately postponed until 2 February 2023, and it is not in dispute that it was at the claimant's request that it be postponed.

23. The claimant stated that there was a delay between the complaints being made and the investigation being carried out. The Tribunal concludes that there was no delay between the complaints being made and the investigation being launched. In relation to use of the address the Tribunal acknowledges page 424 of the bundle being confirmation that the respondent was aware of the address issue as of 6 October 2022, but that email indicates that the respondent is still seeking legal advice. We conclude from that that clearly the respondents were therefore taking the issue seriously, from the mere fact that they were seeking legal advice on the same.

24. In relation to the three complaints, the first was received at the end of October. The second was received on 13 November with the final complaint

received on 27 November. On 6 December 2022 the claimant was invited to an investigation meeting and therefore we do not conclude that there was any delay there based on the dates alone.

25. The investigation is carried out by Ms Yvonne O'Connor. As part of that she speaks to the three complainants, and she also speaks to the claimant's line manager Miss Shabana Choudhry. Ms O'Connor also spoke to Ms Bhadra Pandya who had been covering the claimant's role during her maternity leave. As part of the investigation Ms O'Connor obtains information from Companies House in relation to the business (page 774 of the bundle) and as per her witness statement at paragraph 22 we can see that she looked into the effects of using the charity's address as the Registered Office address for the company.

26. At the investigation meeting on 2 February 2023, we can see from the meeting notes that that lasts approximately one hour and ten minutes during which we consider that the claimant is given a full opportunity to account for the allegations. The claimant suggested in response to cross examination that she was not given that opportunity to answer, but on review of the meeting notes themselves (starting at page 580 of the bundle), the Tribunal rejects that assertion. We can see from the notes that questions were put to her, and she had a full opportunity to answer the same.

27. There is also an investigation report that is prepared subsequently, (page 599 of the bundle) and we consider that this report is very comprehensive. It lists all of the allegations under which it then states the evidence relied upon and the conclusions reached as a result.

28. The investigating officer also obtains a copy of the text sent to Ms Clancy which can been seen at page 462 and also obtains the text at page 464 sent by Ms Shah complaining about the claimant to her line manager.

29. Following that investigation, the claimant is referred to disciplinary proceedings. We can see the invitation (page 625 of the bundle) and we consider that quite properly and accurately informs the claimant of the allegations against her. It states that a potential outcome could be dismissal and again, refers to her right to be accompanied.

30. The disciplinary meeting takes place on 6 March 2023. It is chaired by Mr Thomas Underwood and we can see that the claimant is accompanied by Mr Lonsdale who is a staff representative. At the outset of that meeting the claimant confirmed receipt of the investigation pack. Again, looking at the meeting notes themselves, (page 636 onwards) the Tribunal considers that questions are put to the claimant, and she had a full opportunity to answer. Therefore, we reject the suggestion made in cross examination that she was not given a full opportunity to give her account. In fact, there is an occasion within those notes where the claimant specifically declines to answer a specific question; she is therefore given the opportunity but does not wish to take it.

31. It is also noted during that disciplinary meeting that the claimant calls Olena Danylenko as a witness and an account is taken from her regarding previous issues that she says she had experienced with Datta Shah.

32. Having reviewed those notes it is clear that during the disciplinary process, the claimant largely accepts the acts of misconduct as are alleged. She does not necessarily consider that that amounts to misconduct, but she accepts the essential elements.

33. The claimant accepts that the individuals were not able to return to the shop and she accepts that she sent the text message to Adelle Clancy. She also accepts that the business A3BizSolutions was her business, and she has used the shop address for correspondence for the business. She points to the issue of homelessness in relation to that allegation and then gives an account in relation to forgetting to change the address back, because the company was dormant. She accepts that Datta Shah was told not to work in the shop and indicates that was because of previous issues which she had tried to deal with informally, but Datta did not comply with that process and then she was unable to do anything more with that because she went off sick. The claimant further goes on to accept that Datta had not been allowed to work because of those issues.

34. We can see (page 641 of the bundle) in relation to the complaint made by Rubeena she says that she did take her pin off of the till and removed her from the WhatsApp group. She says, during cross examination, that she did not tell Sue (the assistant manager) to tell Rubeena not to work, but we note that when she was asked this at the investigation stage (page 583 of the bundle), she gives no answer. Ultimately, within the disciplinary meeting she accepts that this volunteer Rubeena was removed from the group and her pin removed from the till.

35. In relation to Ms Adelle Clancy, the claimant admits that she sent the text message (page 462 of the bundle). At page 643 of the disciplinary meeting notes, the claimant says, 'I guess I could have been nicer' in relation to that text message and she goes on to say that she was not aware that that text message had been put into the group chat.

36. During the course of these proceedings the claimant maintains that she was not aware that the message had been placed into the group chat. The Tribunal does not accept that account. We consider that it is very clear from the top banner of that chat that it is a group chat. Within the message sent, the claimant also refers to having not seen her personal message which we conclude would suggest that she is aware that it is within the group chat because she is making the distinction between the two. Further, the claimant later goes on to immediately remove Adelle Clancy from the group, that being something you cannot do within a one to one chat.

37. The Tribunal further consider that even if the claimant had accidentally put the message on the wrong chat, this would have then been viewable by her when she shortly after goes on and removes the individual from the group. In that situation the claimant would have had the opportunity to delete the message and there is no evidence to suggest that that attempt was made. The consequence is the message that was sent to Ms Clancy was it was a public message in a group chat that included a number of volunteers that work at the respondent's shop.

38. The claimant does raise the issue regarding her homelessness during that meeting and also raises concerns in relation to her mental health. As a

result, Mr Underwood adjourns that meeting, and it is reconvened and takes place on 22 March 2023. Those meeting notes start at page 661 of the hearing bundle.

39. In the meantime, Mr Underwood asked the investigating officer to find out about the issues raised by the claimant in respect of homelessness and her mental health and Ms O'Connor does so. In relation to her homelessness, she speaks to her current line manager, and we can see the response to that given at page 620 of the bundle. That is also covered within Mr Underwood's witness statement at paragraph 11. It was put to him in cross examination that he should have spoken to the line manager of the claimant at the time that she changed the company address and we understand that to be Ms Ingrid Willis and he failed to do so.

40. The Tribunal considers the fact the respondent did not speak to the previous line manager does not make the process unfair. We conclude that even if the claimant was homeless, the conclusions reached were that she had used the address and had done so without permission. The claimant accepts that she had not ever asked permission to use the address for her business.

41. It is noted within the closing submissions that there is a distinction drawn between a correspondence address and a registered address and it is suggested that the claimant only used the address as a correspondence address. We do not accept that. The evidence at page 775 of the bundle clearly shows that the charity's shop address was used as the Registered Office for the claimant's business and not just a correspondence address.

42. The Tribunal do consider that use of the address, even if it was for reasons of her homelessness, was a serious matter. It was used without permission and in breach of her contract (page 69 of the bundle) not to use the respondent's resources. The Tribunal considers that Registered Offices are used to trace companies, enforce debts or disputes, for legal proceedings and although dormant that is the address that is publicly available and would be discovered by any relevant parties searching for its details.

43. In relation to the claimant's mental health concerns, there is the response (page 620 of the bundle) from the claimant's line manager Ms Choudhry in that regard. The Tribunal also notes that Mr Underwood reviews the notes of welfare meetings that have taken place with the claimant and her line manager. He also reviews the Occupational Health reports and he concludes that mental health is not directly relevant in those circumstances. The Tribunal accepts Mr Underwood's explanation that mental health was not relevant in the circumstances as raised by the claimant, because she was not seeking to suggest that she behaved in the way she had because of her mental health.

44. The Tribunal note that there is a documented history, we can see that within the GP letter, but when the complaints were made the claimant had returned from maternity leave and it was only after the investigation that she was signed off work in relation to further mental health concerns. Ultimately, as already indicated, this is not a case where the claimant was saying that she behaved in the way she did because her health was as such.

45. The claimant during the second disciplinary meeting was given the opportunity to add any additional points. Following that second meeting a disciplinary outcome letter is sent to her (page 667 of the bundle) and that sets out the reasons for the dismissal. There is reference in that letter (page 669 of the bundle) to use of the address without knowledge or consent amounting to fraud and indeed, that is because of a question that was put to the claimant during the disciplinary meeting itself. The suggestion by the claimant is that she was therefore in fact dismissed for fraud, which was an allegation that she had not been informed about and as such the process is unfair.

46. The Tribunal concludes that upon reading the letter, that does not suggest that the claimant was dismissed for fraud. We consider that it clearly sets out the two allegations as per the investigation. The reference to fraud is actually a question that was put to the claimant, rather than stating that she has committed an act of fraud and that is what has led to her dismissal. The Tribunal considers that the use of the word is in the context of that being fraudulent information, in that the shop address is not the registered company address; it is misleading information in relation to the registered address. What is very clear are Mr Underwood's final conclusions (page 670 of the bundle) and that makes absolutely no reference to fraud as being a reason for dismissal.

47. We are satisfied therefore that the claimant was not dismissed for reasons of fraud.

48. The claimant also refers to reference to breach of trust as being a new allegation. The Tribunal considers that by their very nature the allegations clearly involve a breach of trust. However more importantly, the Tribunal note that in the disciplinary meeting invitation (page 625 of the bundle) it is expressly stated that both of the allegations constitute a fundamental breach of trust. Therefore, she was on notice that there was a breach of trust from the point of the disciplinary meeting invitation, and this was not a new fact.

49. There has also been an issue in this case in relation to the involvement of Human Resources (HR) and there is clear evidence on the papers that HR were involved in the background of these matters and that is not in dispute. The Tribunal's experience is that it is uncommon for HR to be involved in these types of processes. What is of note is that there is no evidence that HR told any of the decision makers what the outcome should be.

50. This issue is also relevant to the victimisation complaint and that is in relation to an earlier Employment Tribunal claim that the claimant brought on 31 January 2022 for maternity discrimination. That was settled between the parties on 18 November 2022 and issue was taken as to the involvement of HR individuals in this claim who had been involved in the earlier claim.

51. The Tribunal notes that the claimant's ET1 claim form was not pleaded in that way; she does not suggest that victimisation was because of HR influencing the decision making. The matter then came before the Tribunal for a preliminary hearing when the complaints and issues were explored and clarified and during that hearing the claimant did not suggest that is the

basis of her case. Nor is that suggested in her witness statement and in fact it came out for the first time when put by way of cross examination and then in her closing submissions.

52. The Tribunal consider that we can quite rightly ignore that complaint for those reasons; it simply is not pleaded or identified in any way. However, we have heard the case and we do consider that no evidence has been produced that supports the fact that even if those HR individuals who were aware of the previous claim were then involved in this claim, that they passed on any information to the decision makers.

53. Ms O'Connor was very clear that she had absolutely no knowledge of the previous claim and there was no evidence that would rebut that position. Mr Underwood also denied any knowledge and again, there was no evidence that would rebut that position. Further, the Tribunal also note that he had only been working for the respondent company for a period of five months when he conducted the disciplinary process. He had been working in a different team that was also within a completely different region. As to Ms Crossley, she denied any knowledge and there was no evidence that would rebut that denial.

54. The claimant could not take the Tribunal to any evidence that those in HR, if they were involved in the previous claim, had informed any of the three decision makers in this matter. In fact, to the contrary, on page 701 of the bundle we can see that HR actually removed an individual called Rosie as the intended appeal chair, due to her having previously been involved in the other claim. We conclude that is evidence that they were in fact careful to ensure that there was not an involvement across the two claims, which would in turn then support that they were not trying to unduly influence a decision based on the previous claim.

55. In absence of any evidence to the contrary, with reference to page 701 of the bundle, which supports the respondent actively preventing someone previously involved chairing the appeal, the Tribunal accept the evidence of the three witnesses that they were not aware of the previous claim.

The Law

Unfair Dismissal

56. Section 94 of the Employment Rights Act confers on employees the right not to be unfairly dismissed and enforcement of that right is by way of complaint to the Tribunal under s.111. The employee must show that she or he was dismissed by the respondent under s.95 but in this case the respondent admits that it dismissed the claimant.

57. S.98 of the Act deals with fairness of dismissals. There are two stages within s.98, the first is that the employer must show it had a potentially fair reason for the dismissal and second if the respondent shows that it had a potentially fair reason for the dismissal the Tribunal must consider without there being any burden of proof on either party whether the respondent acted fairly or unfairly in dismissing for that reason.

58. In this case the respondent states that it dismissed the claimant because it believed that she was guilty of misconduct. Misconduct is a potentially fair reason for dismissal under s.98(2).

59. S.98(4) then deals with fairness generally and provides that determination of the question whether the dismissal was fair or unfair having regard to the reasons shown by the employer shall depend on whether, in the circumstances including the size and administrative resources of the employer, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

60. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in British Homes Stores Ltd v Burchell 1978 IRLR 379 and Post Office v Foley 2000 IRLR 827. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23, and London Ambulance Service NHS Trust v Small 2009 IRLR 563).

61. In Sharkey v Lloyds Bank Plc EATS 0005/15 Mr Justice Langstaff, then President of the EAT, observed that it will almost inevitably be the case that in any alleged unfair dismissal a claimant will be able to identify a flaw, small or large, in the employer's process, and that it is therefore for the tribunal to evaluate whether that defect is so significant as to amount to unfairness. Langstaff P stated: 'Procedure does not sit in a vacuum to be assessed separately. It is an integral part of the question whether there has been a reasonable investigation that substance and procedure run together.' Therefore it is important for tribunals to consider the reasonableness of the whole procedure, including the decision to dismiss, in the round.

S136 Equality Act 2010 – Burden of Proof

62. Section136(2) Equality Act 2010 provides that if there are facts from which the court or tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of the EqA, the court must hold that the contravention occurred; and S.136(3) provides that S.136(2) does not apply if A shows that he or she did not contravene the relevant provision.

63. We have taken into account the well-known guidance given by the Court of Appeal in Igen Ltd v Wong [2005] ICR 931 which although concerned with predecessor legislation remains good law. It was approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054. Ayodele v Citylink

Ltd [2018] ICR 748, CA confirmed that differences in the wording of the Equality Act 2010 have not changed the test or undermined the guidance in Igen Ltd.

64. In the case of Igen, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place (on the balance of probabilities). If so proven, the second stage is engaged, whereby the burden then 'shifts' to the respondent to prove on the balance of probabilities, that the treatment in question was 'in no sense whatsoever' on the protected ground. The consequence is that the claimant will necessarily succeed unless the respondent can discharge the burden of proof at the second stage. However, if the claimant fails to prove a ''prima facie" case in the first place then there is nothing for the respondent to address and nothing for the Tribunal to assess Ayodele and Hewage.

65. At the first stage of the test, when determining whether the burden of proof has shifted to the respondent, the question for the Tribunal is not whether, on the basis of the facts found, it would determine that there has been discrimination, but rather whether it could properly do so.

66. The following principles can be derived from Igen Ltd v Wong (above), Laing v Manchester City Council [2006] ICR 1519 EAT, Madarassy v Nomura International p/c [2007] ICR 867, and Ayodele v City link Ltd (above); which reviewed and analysed many other authorities.

67. At the first stage a Tribunal should consider all the evidence, from whatever source it has come. It is not confined to the evidence adduced by the claimant and it may also properly take into account evidence adduced by the respondent when deciding whether the claimant has established a prima facie case. A respondent may, for example, adduce evidence that the allegedly discriminatory acts did not occur at all, or that they did not amount to less favourable treatment, in which case the Tribunal is entitled to have regard to that evidence.

68. It is insufficient to pass the burden of proof to the respondent for the claimant to prove no more than the relevant protected characteristic and a difference in treatment. That would only indicate the possibility of discrimination and a mere possibility is not enough. Something more is required, see Madarassy (above).

69. The burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another. (Hewage v Grampian Health Board [2012] IRLR 870, SC.)

Section 27 Equality Act 2010.

69. S27 states:

(1)A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2)Each of the following is a protected act—

(a)bringing proceedings under this Act;

(b)giving evidence or information in connection with proceedings under this Act;

(c)doing any other thing for the purposes of or in connection with this Act;

(d)making an allegation (whether or not express) that A or another person has contravened this Act.

(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4)This section applies only where the person subjected to a detriment is an individual.

(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

70. If it is established that (a) the employee did a protected act and (b) the employer subjected the employee to a detriment, the critical question will be: Why did the employer subject the employee to that detriment? Was it because they had done (or might do) the protected act? Or was it wholly for other reasons? (Chief Constable of West Yorkshire Police v. Khan [2001] ICR 1065).

71. In Scott v London Borough of Hillingdon [2001] EWCA Civ 2005 CA the Court of Appeal held that an employment tribunal was wrong to infer knowledge of a protected act on the part of three councillors who had decided not to offer a job to the claimant, and therefore to find victimisation, since knowledge on the part of the alleged discriminator of the protected act is a pre-condition to a finding of victimisation.

Wrongful dismissal

72. The claimant was dismissed without notice. She brings a breach of contract claim in respect of her entitlement to one months' notice. The respondent says that it was entitled to dismiss her without notice for her gross misconduct. We must decide if the claimant committed an act of gross misconduct entitling the respondent to dismiss without notice. In distinction to the claimant's claim of unfair dismissal, where the focus was on the reasonableness of management's decisions, and it is immaterial what decision the tribunal ourselves would have made about the claimant's conduct, we must decide whether the claimant was guilty of conduct serious enough to entitle the respondent to terminate the employment without notice.

Conclusions

A. Unfair dismissal

Issue 1.1

73. The first question that the Tribunal has to consider is whether the respondent genuinely believed the claimant was guilty of misconduct and we conclude that the respondent did.

74. We consider that it is clear that the decision to dismiss was based on the allegations put to the claimant, involving the treatment of volunteers and her use of the charity's address for her Registered Company. In relation to those complaints and as identified above, most of the essential elements of the allegations were admitted by the claimant during the investigation and disciplinary process.

75. Mr Underwood concluded that this was in breach of the Volunteer Fair Treatment Policy which can be seen at page 114 of the bundle.

76. We also accept that that was based on a genuine belief in the lack of remorse or understanding of those allegations that the claimant admitted to in the disciplinary meeting. In that regard we note paragraph 55 of Mr Underwood's witness statement where indeed he indicates that he had hoped that the adjournment might lead to some reflection.

77. The dismissal letter at page 667 set out his belief in relation to the claimant's misconduct and also his conclusions. He indicates that he considers that that amounts to a lack of respect and breach of the Volunteer's Policy (page 669 to 670). He concludes within that letter that there were six occasions where the claimant had failed to escalate or record issues of complaints.

78. Mr Underwood notes the claimant admits the use of the address for her business. In response to Tribunal questions about any difference in sanction if there had been any awareness or remorse, Mr Underwood stated that there would have been.

79. We do consider that that is entirely consistent with a genuine belief in misconduct and that the lack of remorse was such that it presented as a continued risk that those acts might be repeated if the claimant remained employed.

Issue 1.2

80. Turning to the next question as to whether or not the belief was based on reasonable grounds, we conclude that it was. Mr Underwood had a text (page 462 of the bundle) produced by Adelle Clancy from the claimant to the group chat and the claimant did not dispute that she had sent it, albeit she thought this had been sent as a private message.

81. The facts as they related to Rubeena and Datta were admitted, save for it was in dispute whether the claimant had told Sue to tell Rubeena that she could not come into the shop. We can see, in fact, (pages 641 and 642 of the bundle) that during the disciplinary meeting that was not in fact denied

by the claimant, which of course goes to Mr Underwood's genuine belief as he knew it.

82. We have already referred to the Volunteers Fair Treatment Policy (page 114 of the bundle) and that sets out clearly what should happen when a volunteer falls below standard. It sets out using an informal process first and then escalating to a more formal process. Mr Underwood concludes, based on that document and the information available to him, that procedure was not followed by the claimant. Further, even if the claimant had attempted to resolve matters informally, when on her account the volunteers do not engage in that process there is in turn a failure to escalate the matter.

83. The claimant conceded that she was trained on how to manage volunteers. We were taken to training slides, (pages 235 and 237 of the bundle in particular) which outline the same. In the disciplinary hearing (page 638 of the bundle) we can see that the claimant recites the process to Mr Underwood, therefore it is very clear that she is aware of that and the unchallenged evidence of the respondent was that there is also a Volunteer Compliance Department that the claimant could have emailed for support.

84. Three separate complaints were made by volunteers and all of that evidence was before Mr Underwood. The second allegation was admitted by the claimant (pages 584 and 646 of the bundle) and again that goes towards his reasonable belief in the misconduct and it being held on reasonable grounds. There was evidence from Companies House that the claimant had used the shop address. Further, in the claimant's employment contract (page 68 of the bundle) there is a prohibition on the use of company's resources without permission. There was an admission by the claimant that she had not obtained permission. Mr Underwood considered that to be a serious breach even if it were for reasons of the claimant's homelessness.

Issue 1.3

85. As to the investigation and whether or not the respondent carried out such an investigation in the matters that was reasonable in the circumstances, the Tribunal conclude that there was a reasonable investigation.

86. Mrs O'Connor obtained statements from the three complainants. She obtained information from Companies House and she looked at the effects of the registration of the business.

87. Procedurally, we have already outlined the history and it is summarised again here. Ms O'Connor invites the claimant to an investigation meeting, the claimant is informed of the allegations at that stage and of the right to be accompanied. The meeting takes place albeit delayed at the claimant's request, it lasts for one hour and ten minutes. The claimant is asked questions, and the Tribunal have already concluded that we consider having looked at the meeting notes the claimant is given a full opportunity to advance her account.

88. The claimant criticises the fact that the respondent did not speak to other volunteers. We do not agree with that criticism for the following reasons.

89. Firstly, the claimant does not suggest that any of the other volunteers witnessed any of the incidents. Her position is that they should have been spoken to in order to obtain an overall picture, but she does not identify anyone in particular. In these proceedings she has suggested a minimum of two others. The Tribunal considers that regardless of whether or not the respondent spoke to other volunteers, even if the respondent had spoken to other volunteers who had confirmed that there was no issue with the management style or the approach of the claimant, it does not detract from the three complaints that had been made and were before the respondent.

90. As to obtaining an overall picture, the respondent does go and speak to the claimant's line manager and the other manager of the shop. They are employees of the charity as opposed to volunteers, and they do not report any issues in relation to the three volunteers as raised by the claimant.

91. The Tribunal conclude that that was sufficient to give the respondent an overall picture. We consider that the investigation was a reasonable one.

92. In relation to whether or not the respondent carried out a reasonably fair procedure, the claimant identified a number of matters within the list of issues which she says points to an unfair procedure. The Tribunal address each issue in turn.

Issue 3.1

93. That is that there was a delay of bringing the allegations of misconduct against the claimant, which was so excessive as to render the disciplinary process unfair.

94. The Tribunal have already acknowledged the dates that the complaints were made and by our calculation there were eight days from the final complaint being made and the investigation being started, that is 27 November 2022 and 5 December 2022, with the invite to the investigation meeting being sent on 6 December 2022. The first complaint was made on 27 October and followed up on 4 November. It may have been that in isolation no action would have been taken but there were two subsequent complaints.

95. The Tribunal concludes that there was no delay in those circumstances. In any event even if there was a delay between the first complaint and the investigation, we conclude it was not so excessive as to render the disciplinary process unfair.

96. As to when the investigation meeting itself was held, that was delayed to 2 February 2023, but at the claimant's request. Of course had the respondent continued on with that meeting in the circumstances as raised by the claimant, namely that she was medically unfit, there could have equally been criticism of them for failing to postpone the meeting.

97. As to the address issue, there is evidence that they knew about that from October 2022 and we have already referred to page 424 of the bundle in that regard. We note that that states that the respondent was taking legal advice. We have concluded that we consider they were taking the matter seriously as a result of obtaining such advice. We consider that the nature

of that allegation is not one that requires closer recollection of events in that it is not a matter that can become stale or that memories fade. It is actually a matter of fact as per documentary records which now exist within the bundle.

98. The Tribunal conclude that a delay of two months in those circumstances is not such as to render the whole process unfair. The Tribunal is reminded by case law (cited above) that we have to look at reasonableness as a whole and one flaw does not render the entire process unfair.

Issue 3.2

99. This is that the investigation report was filled with conjecture, opinionated negative views by the author, prolix, not prepared objectively and fairly and completely one sided.

100. We consider that is a very wide criticism of the investigation. Through the evidence we certainly picked up on the suggestion by the claimant that the investigation was one sided. The Tribunal consider that in circumstances where the claimant has largely admitted what is put to her, by its very nature it is likely to be one sided because of course the evidence and her own account is that way.

101. We conclude, having looked at the investigation report, that it is very thorough, and it details each allegation and then sets out the evidence relied upon in relation to that. That report then goes to the disciplinary officer and the claimant is given an opportunity to comment on it, having had it before hand.

102. Of course, that investigation report is not the final conclusion. There is a report and that is referred and then further explored by Mr Underwood.

Issue 3.3

103. This issue was withdrawn.

Issue 3.4

104. This is that the investigation report prepared by the area manager, Shabana Choudhry was unfair.

105. As a matter of fact, the report was not prepared by her. It was prepared by Yvonne O'Connor.

106. The Tribunal acknowledges the claimant has raised the issue about Shabana Choudhry speaking to her at the outset (prior to Ms O'Connors involvement) and raising the complaints with her. The Tribunal concludes that that if there was an initial discussion with Ms Chaudhry, that was not part of any formal investigation but was rather a normal action carried out by the claimant's line manager in response to the complaints. There is no suggestion that she went on to provide an investigation report that was then relied on in the disciplinary process.

Issue 3.5

107. This is a complaint that none of the volunteers had been interviewed. We have already given our findings and conclusions in relation to that and rely on the same.

Issue 3.6

108. This is that the first allegation of misconduct that the claimant failed to show the respondent's policy regarding managing volunteers was far from clear and at no stage was it clarified as it remained too verbose, too wide and not fact specific.

109. We conclude that the allegation as put to the claimant was clear. The investigation invitation (page 513 of the bundle) states a breach of policy. The investigation report itself then very carefully and in detail sets out the complaint and the evidence. The disciplinary invitation (page 625 of the bundle) sets out the allegation. At the beginning of the disciplinary hearing the claimant confirmed she has had the report. Neither her, nor her representative, raised the fact that she is unsure of the allegation.

110. We note that the Volunteer Policy was sent to the claimant as part of the disciplinary pack, it is a short document at only three pages and in any event, the claimant is fully aware of it because she admits that she is aware of the policy and says that she has had training on the same. We conclude in those circumstances that there is no uncertainty around the first allegation of misconduct.

Issue 3.7

111. This is that there was no evidence provided that A3Biz Solutions existed at the time of the investigation, the dismissal, or at the time of drafting the claim.

112. That is quite frankly incorrect. The Companies House information shows it existed and the claimant accepted that it was her company. If what was meant by that was the distinction that it was not trading, i.e. the claimant was not trading her business from that address, that was never the allegation against the claimant. It was never suggested by the respondent that she was trading from the address, it was the registration of the company to the respondent's address and the Tribunal conclude that was perfectly clear from the allegation that was put to her.

Issue 3.8

113. This is the respondent conflated between issues related to capability and conduct.

114. We consider that there is no evidence to suggest that it was ever suggested that this was a capability dismissal. All of the documents confirm and support it was a misconduct issue. Mental health was raised in mitigation by the claimant, but the respondent does not subsequently introduce that as capability at any stage, nor does it introduce any other medical condition of the claimant. The investigation is around conduct and all of the documentary evidence by way of investigation and disciplinary invitation confirm that. The questions put to the claimant relate solely to conduct and

the outcome letter does not identify any issues of capability as a reason for dismissal.

Issue 3.9

115. This is that the investigation officer and the dismissal officer appear to have deliberated the disciplinary matter in respect of the claimant with the appeal officer.

116. As a matter of fact, it is accepted that Ms Crossley in conducting the appeal process, spoke to Mr Underwood and Ms O'Connor. The Tribunal concludes that there is no procedural unfairness in Ms Crossley speaking to the investigation officer and the dismissal officer as part of the appeal. Indeed, the claimant accepted in her own evidence that she would expect her to do so given the points that the claimant had raised herself in the grounds of appeal at page 710 of the bundle.

117. The discussion was therefore part of a thorough appeal process by Ms Crossley. There is nothing on the evidence to suggest that those discussions related to deliberating the final outcome.

118. In all of the circumstances the Tribunal concludes that there was a reasonably fair procedure.

Issue 2 and 4 (A)

119. Turning to the final question in relation to unfair dismissal, was it within the band of reasonable responses to dismiss the claimant rather than impose some other sanction? The Tribunal conclude that it was within the band of reasonable responses to dismiss the claimant.

120. The Tribunal considers that the respondent's business model is unique. They rely on volunteers. It is the difference between million pounds in profits against millions in loss. Ms Crossley described them as the life blood of the charity and the claimant herself recognised the importance of their retention.

121. On Mr Underwoods conclusions, there was a failure by the claimant to follow the Fair Treatment Policy and even taking the claimant's account namely that Datta had discriminated against other staff and Adelle was a bully, this still resulted in a breach of policy in that when the claimant attempts to escalate it with them informally (in accordance with the policy) and on her account fails, she does not take it any further. Further, she does not document any of the issues she says has been experienced with these volunteers.

122. Mr Underwood's evidence was very clear, the lack of remorse went to his decision because of the risk it placed on the behaviour being repeated. We have already referred to paragraph 55 of his witness statement in that regard and his evidence that he had hoped that she would reflect during the adjournment period and indeed, that is supported by the account that he gave to the Tribunal that his sanction would likely have been different if remorse had been shown.

123. Here we are not making a decision on what the Tribunal would have done

but rather was dismissal in the band of reasonable responses open to an employer in the circumstances. It is recognised that another employer may have taken a different course of action but given the respondent's conclusions we do not consider that dismissal was outside of the band of reasonable response in circumstances where it was considered that the lack of recognition of the behaviour meant there was a future risk of repeat behaviour. This is in circumstances where the retention of volunteers is crucial.

124. Ms Crossley at the appeal stage indicated that she placed less weight on the second allegation relating to use of the shop address and she said she would not have dismissed for that. However, Mr Underwood concluded that the use of the address was alarming and ultimately took the decision as a whole, together with the first allegation.

125. The claimant does raise the issue of her mental health as part of the disciplinary process. We consider that was properly investigated by Mr Underwood. He has concluded that it was not directly relevant, and we agree that this was correct and reasonable in the circumstances. This is not a case where the claimant stated that she did those acts because of her mental health. Instead, even in cross examination, her position is still that she does not consider that she had done anything wrong. We consider that the mitigation advanced was therefore properly considered and it was not outside of the band of reasonable responses to dismiss in circumstances there was no recognition of the behavior by the claimant such to prevent it occurring again.

Wrongful Dismissal

126. The first question for the Tribunal in relation to this complaint is whether or not the respondent was entitled to dismiss the claimant without notice.

127. Here we now do look at whether or not there has been misconduct from our point of view and we do conclude that the respondent was entitled to dismiss without notice because the claimant was guilty of misconduct.

128. We can see the disciplinary policy at page 108 of the bundle; that defines, as one example of misconduct, a serious breach of policy. The Tribunal does consider that this is a serious breach of policy in circumstances where the respondent's business model effectively relies on volunteers. Again, we rely on Ms Crossley's evidence in that regard and the claimant's own recognition of their importance.

129. The claimant in cross examination recognised their importance and she recognised part of her role as a manager was to ensure the retention of volunteers. We consider there was clear evidence of breach of the Volunteer Fair Treatment Policy (page 114 of the bundle) because even if the claimant's account is correct and she tried to raise the issues with the volunteers informally but they failed to co-operate, the policy requires that this should have been escalated and there is no evidence that the claimant took this step.

130. We have regard to the WhatsApp message sent to Adelle Clancy (at page 462 of the bundle). That was sent in a public group. We consider the

language used by Adelle Clancy in her initial exchange was polite and courteous. In cross examination the claimant said what annoyed her was the phrase 'oh great' in relation to the clearing of the storage unit and that she understood that to be a sarcastic or a negative response.

131. We reject that interpretation by looking at the message itself and do not consider that it is negative or sarcastic. This is also in circumstances where the claimant accepted that she had never in fact worked with Ms Clancy. We do consider that the claimant's reply to that message (at page 462 of the bundle) is then rude language by the claimant and an over reaction to what we consider to be a polite enquiry. That is done on a group chat in front of other individuals.

132. We go on to repeat that even if the claimant is to be believed about Datta Shah making discriminatory comments and Adelle being a bully, there has then been a breach of the Policy in that they are very serious allegations in their own right. Even if the claimant sought to resolve them informally and was unsuccessful, there is no evidence that the claimant escalated these issues. We consider that in turn is a serious breach in policy because it therefore puts the other volunteers at risk from their alleged behavior.

133. We reject the assertion that the claimant did not have time to escalate matters, either because she went on sick or other leave. She is ultimately a manager; she was aware of the need to escalate it on her own admission of knowledge of the policy. The unchallenged evidence before the Tribunal was that there is a volunteer inbox in use for such issues to be escalated. We consider that the claimant could have taken this action by way of an email to her line manager and to that volunteer inbox.

134. There is subsequently no remorse by the claimant, and we consider that in those circumstances there is a real risk that the incident could have occurred again, and we do also consider that does amount to a breach of trust and confidence in the unique circumstances of this business and the importance of volunteers.

135. On that alone, the Tribunal do consider that gross misconduct was made out, which would mean the respondent is entitled to dismiss the claimant without notice.

136. In relation to the second allegation and use of the shop address, we consider that use of the address was very serious. It was used as a registered address not just a correspondence address. The record is open to the public to search and to ascertain how to trace the company and it could have had wider consequences on the respondent even if the company is dormant. We consider the fact that there were no consequences does not take away from the serious nature of it. It is an abuse of the claimant's position of manager and throughout the process there is little insight into the consequences of her actions.

137. The claimant does apologise, but we consider the lack of insight goes to the genuineness of that apology. We acknowledge the difficulties around the claimant's homelessness. We acknowledge hat she did apologise and of course that there were no consequences, and she changed the address back. In those circumstances the allegation alone we do not consider would

amount to gross misconduct such to dismiss without notice, but of course the respondent was entitled to rely on the first allegation and complaints raised by volunteers which we do consider was gross misconduct.

Victimisation

138. The respondent took us to the case of Scott v London Borough of Hillingdon referenced above in relation to this complaint. The crucial point of that case is that knowledge of the protected act is a precondition of any finding of victimisation because the question is whether because of that protected act the respondent has subjected the employee to a detriment, in this case a dismissal. Of course, if they had no knowledge of the protected act, then they cannot have dismissed the claimant for that reason.

139. We consider that there was a protected act, the claimant brought an earlier Tribunal claim that was settled. There is no dispute that there was a dismissal and that dismissal is a detriment.

140. The key question is why therefore was the claimant dismissed, was it because of the protected act or for wholly different reasons?

141. For it to be because of the protected act, the respondent must have knowledge of the protected act because without it that cannot be the reason for the dismissal.

142. We rely on our findings at paragraphs 53 to 55 in relation to this issue, which are not repeated. For the reasons given, our conclusion is that the three decision makers were not aware of the protected act. As such, the claim fails at this stage.

143. We make the final observation that even if there was knowledge, we conclude that the claimant has not provided any evidence from which we could conclude that her dismissal was due to the protected act. We were taken to the fact that the claim was settled in November 2022. Shortly afterwards, on 6 December 2022 the claimant gets the investigation meeting invitation, but that ignores the fact that the original claim was brought in January 2021 many months before.

144. The evidence all supports that the reason for the dismissal was misconduct. There is nothing on the evidence, orally or in writing that would support it was related to the earlier claim. The claimant was unable to point to any evidence or explain in oral evidence where such evidence might be, or what it might be.

145. We do consider to be of significant, was that the claimant could not remember what her previous claim was about. She knew it was discrimination, but not the basis of the complaint and we consider that that supports the speculative nature of this complaint. The claimant asserts that she was dismissed because of the earlier claim yet cannot herself recall that claim and does not point to any evidence to support this assertion.

146. Therefore, all of the complaints fail for those reasons and the claim is dismissed.

Approved by:

Employment Judge A French

Date: 26 March 2025

Sent to the parties on

27 March 2025

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For the Tribunal office

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