



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms R Oakley

**Respondent:** Business Computer Projects Limited

**HELD AT:** Manchester

**ON:** 9&10 June 2025

**BEFORE:** Employment Judge Fearon

## REPRESENTATION:

**Claimants:** Mr Ali, counsel

**Respondent:** Mr Marshall, Managing Director of the respondent

## RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's complaint that she was unfairly dismissed by the respondent contrary to section 94 of the Employment Rights Act 1996 is well founded and is upheld.
2. Remedy will be determined at a future hearing.

## REASONS

### Introduction

1. Ms Oakley was employed by the respondent as a Technical Author from 26 August 2008 until her dismissal on 16 August 2024. Ms Oakley presented a claim for unfair dismissal on 7 November 2024.
2. The respondent disputes the claim for unfair dismissal. The respondent says the claimant was fairly dismissed for gross misconduct.

### **The Issues for the Tribunal to decide**

3. At the outset I discussed with the parties the issues in the case and the list of issues to be determined was agreed as follows:

#### **Unfair dismissal**

1. Was the claimant dismissed.
2. If the claimant was dismissed, what was the reason or principal reason for dismissal?
  - 2.1 Was the claimant dismissed for a potentially fair reason?
  - 2.2 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? In particular:
    - a) Were there reasonable grounds for that belief?
    - b) At the time the belief was formed, had the respondent carried out reasonable investigations and reached its conclusions based on reasonable investigations?
3. Had the respondent otherwise acted in a procedurally fair manner;
4. Was dismissal within the range of reasonable responses
5. Although the Polkey and contributory conduct issues concern remedy and would only arise if the claimant's claim of unfair dismissal succeeded, I agreed with the parties that I would consider them at this stage and invited them to deal with those issues in evidence and in submissions.

#### **Evidence**

4. I considered the main bundle of evidence of 488 pages including the index.
5. I considered the witness statements provided on behalf of the respondent from the following: Mr Marshall dated 5 February 2025; Mr Steven Roberts dated 5 February 2025; Mr Jeff Higgs dated 5 February 2025.
6. I considered the statement of the claimant dated 5 February 2025.
7. I heard sworn evidence from the claimant and from Mr Marshall on behalf of the respondent.

#### **Findings of fact**

8. The claimant was employed by the respondent as a Technical Author from 26 August 2008 until her dismissal on 16 August 2024.
9. The respondent is a supplier of commercial software systems and has around 55 employees at one site in Stockport.

10. Mr Marshall is the Managing Director of the respondent, a position he has held since 2022. Mr Roberts is the respondent's Technical Services Manager. Mr Higgs is the respondent's Head of DevOps, he was the claimant's line manager.
11. In January 2024 Mr Higgs told the claimant to immediately stop working on documentation of database release 390 and to start on documentation for release 410. The claimant expressed her concerns to him about doing that and he said he would take full responsibility for any comebacks for any undocumented developments in release 390 and any other broken links/incomplete pages.
12. In February 2024 the claimant took a copy of the closed release 390 project files and updated the various areas to release 400 which at that time was classed as the latest published database release documentation available for customers.
13. The respondent's Backup Policy is contained in one paragraph of the Company Handbook and is as follows:

***"9.25 Backup Policy***  
*It is the responsibility of staff to take regular back ups of any files they have created on the hard drives of their PCs or laptops. An example of an acceptable backup procedure can be found in Sharepoint>BCP>Central>Documents and templates>Tech Svcs".*
14. The Backup Policy is very limited and refers to only one example of how to backup, the respondent's policy does not instruct staff to back up in a specific manner or to a specific location.
15. The claimant was never given any more detailed policy or instruction as to how to do any backups and therefore she backed up using the methods available to her and within the constraints of the server access granted to her. Throughout her employment the claimant backed up her work in various ways including to shared spaces, to DVDs and to an external hard drive. I accept the claimant's evidence and find that on various occasions she requested access to the network server to do backups and these requests arose in one-to-one discussions with her line managers over the years. I find the claimant was not specifically told by any individual that access to the network server was denied; I find that instead of access being granted, she was instead provided with DVDs and a hard drive for backing up. The decision on granting server access was taken at a higher management level than the claimant's role and I find it was reasonable for her to conclude that it was a management decision that she was not allowed server access when she was instead provided with other means to backup in response to her request for server access and not being given any other specific response. In the circumstances, the claimant had to continue to back up by the means available to her and her actions do not contravene the wording of the respondent's Backup Policy as she was backing up her work.

16. In March and April 2024, the claimant was having continued issues with her PC running slowly. In the second week of April 2024, she raised those issues with Rick Frost of Technical Services, asking if he could improve performance as the C drive was out of space. The claimant's PC had the C drive which came with the PC originally and the D drive from her previous 2019 PC. Rick Frost recommended that an SSD be purchased to provide more space. The claimant told Mr Higgs about this recommendation and requested authorisation for the purchase. On 29 April 2024, the claimant chased up Rick Frost about this as Mr Higgs had not got back to her about her authorisation request. On 30 April 2024, Mr Frost told the claimant that Mr Higgs had approved it. On 1 May 2024 Mr Frost told the claimant he needed her PC to do the upgrade work. Mr Frost installed the SSD, but afterwards the PC was still slow. On 3 May 2024, Mr Frost confirmed he considered the SSD faulty and that it needed to be returned.
17. On 13 May Mr Higgs informed the claimant that Mr Frost was building her a new PC because of the issues with her old one and Mr Frost told the claimant this would take him a few days to do. On 17 May 2024, the claimant was given access to the new PC. The new PC did not contain the old PC's D drive. The claimant did not have access to that D drive from the time she handed her old PC to Mr Frost to carry out necessary works for her new PC.
18. On 31 May 2024 Mr Frost explained to the claimant he needed a cable so he could try to access files on the D drive from her old PC. He said the cable he needed was at Steve Roberts' home and he couldn't access it. In order to move matters forward, the claimant obtained authorisation from Mr Higgs for a new cable to be purchased, she was clearly trying to facilitate the issues being resolved as soon as possible.
19. In June 2024, the claimant was still working with Mr Frost to get her new PC working with the software she required for her role. The respondent's Acceptable Use Policy regarding permissions, passwords, and installation of software restricted what the claimant could do in relation to her new PC: she needed permissions from Technical Services for the software on her new PC. Mr Frost carried out some of the required downloads and installations. The claimant also had to log an external support ticket with MadcCap's technical support team in relation to their software and had to contact Corel for help in relation to their software. She was unable to update Mr Higgs in person about the software activation issues as he was on holiday, but it appears from her timesheets that throughout he was aware of the PC rebuild and the software required. In seeking input from Technical Services, the claimant was complying with the respondent's Acceptable Use Policy on Installation of Software and Hardware and Security.
20. On 7 June 2024, Mr Frost identified an issue with the D drive: he and the claimant noted they could see there was data on the D drive but the files were inaccessible.

Being aware of this issue, the claimant used what data and files were available to her to try and put together information to allow her to continue her work, including contacting MadCap for assistance. She continued in her efforts throughout June.

21. On return from holidays on 8 July 2024, the claimant continued working on the online help files.
22. On 9 July Mr Higgs contacted the claimant to discuss new work, her timesheets and her new PC setup. On 10 July he contacted her to discuss further the timesheet entries about the loss of access to data and the amount of work she had done. Mr Higgs told the claimant he would discuss with Mr Frost what Mr Frost had done and what had happened about accessing the data on the D Drive. The claimant explained she thought there was a problem with the D drive. She requested space on the network server so others could access her work and there would be no issues going forward. In response to Mr Higgs' query, the claimant explained that MadCap Flare files could not be saved to OneDrive and that she was acting on advice from MadCap technical support in this regard. She was careful to follow the advice from MadCap so as not to do anything which would invalidate the respondent's maintenance support plan with MadCap. Mr Higgs asked the claimant why she had no access to the network server previously and she replied it was a management decision. She did not state that specific managers had denied her access on specific occasions (as I have set out in my findings above on this issue).
23. The claimant arranged with Mr Frost that she would go into the office on 11 July 2024 so that she could continue to work with him and Technical Services on setting up the required software. Steven Roberts connected a caddy to her PC to try and identify what the issue was and retrieve the data files. He didn't discuss with the claimant the specifics of what he was doing. He then emailed the claimant asking for information, some of which she provided as best she could in writing, but she thought it would be easier to discuss it with him and went to talk to him. On her way to his office, she met him in reception, and he queried with her about her server access. The claimant again explained that it was a management decision about her server access and again confirmed no specific individual had told her she was denied access on any specific occasion. I find that on this occasion the claimant did not raise any issue about any of her line managers denying her server access specifically. I find that the claimant did not implicate any line managers as the respondent alleges. I refer to the transcript of the meeting on 29 July between the claimant and Mr Marshall where the claimant says "nobody specifically told me I could not have space on the server, I've never said that, what I've said is as part of my process if something goes wrong its for me to communicate with my manager and then my manager takes whatever steps necessary." I find that from the time

of investigations and throughout these proceedings, the claimant's written and oral evidence on this has been consistent.

24. On 12 July 2024 Mr Higgs asked the claimant which files could not be accessed and she said all the files on D drive, but she had copies of almost everything on it from elsewhere and it was just a few source files for release 400 that she did not have copies of. The claimant in any event did not have direct access to her D drive from the time her PC was given to Mr Frost to resolve issues and build her a new PC.
25. On 16 July 2024 Mr Frost advised the claimant she had now been granted access to, and space on, the network server for backups. She immediately accessed the backup folders to start work on creating the required folder structure and she copied files to the server. She also arranged for others to have shared access to the files. The claimant throughout the whole period from her PC being handed over to Mr Frost, was doing all she could to put things together and to continue working.
26. Mr Marshall emailed Mr Frost, the claimant, and Mr Roberts to confirm that having been made aware of a data loss he was initiating the Serious Incident Report process to better understand what had happened and minimise the chance of a recurrence. He does not indicate that this process is an investigation into any conduct on their part nor that any particular allegations against any of them are being investigated. The email is specific that this is an investigation into data loss relating to Accord documentation.
27. On 29 July 2024, the claimant attended a "Special Investigation" meeting with Mr Marshall. She was not given any information in advance about this meeting, so she looked up the staff manual on the company intranet to try and establish what the meeting might entail. She could not find any information about business investigations or special investigations and these are not dealt with in the Staff Handbook. Mr Marshall asked the claimant to provide a timeline, which she emailed to him on 30 July 2024. On 1 August Mr Marshall told the claimant he wanted another special investigation meeting with her. In that meeting he asked her about backing up files from D drive
28. Mr Marshall held a meeting with Mr Frost on 29 July 2024. The Teams transcript shows that Mr Frost informed Mr Marshall that there was an issue with the new SSD and with the D drive from the claimant's PC and because of the issues he had sought help and advice from Steve Roberts. Mr Frost explained that Steve Roberts agreed that it was best in the circumstances that they build a new PC for the claimant. Mr Frost also confirmed to Mr Marshall that he could see data was on the D drive but he couldn't open the files and therefore the data was not accessible. This corroborates the claimant's account. Mr Frost confirmed to Mr Marshall that they had needed input from MadCap in San Francisco relating to activating software. He explained to Mr Marshall that the claimant had to backup

on the D drive and he explained why she couldn't backup to OneDrive. He further explained it would be better if she could backup to the network server. It is clear the respondent's Technical Service Team were not entirely sure how all the various files interacted with OneDrive and what the best option for backup would be and this only became clearer through the efforts made by the claimant and Mr Frost when trying to install software on the claimant's new PC. Mr Frost corroborated the claimant's account that documents she was still working on and were not yet published were on D Drive but published files/documents were on the server and shared.

29. Mr Frost made Mr Marshall aware that he kept Mr Higgs and Mr Roberts updated on issues throughout the PC rebuild process. He had not informed them that any data may actually be lost and this appears to be because Mr Frost considered the data was not lost and was still available, just inaccessible, but that there may be a way to access it. The claimant confirmed to Mr Marshall that she believed the files on D drive were not lost, just inaccessible, a reasonable assumption bearing in mind that the Technical Services Team member she was working with (Mr Frost) believed that to be the case. Source files were on the D Drive and some data was lost between June 2024 to July 2024 but through the claimant's reverse engineering she was able to access the source data needed to continue her work.
30. The interview transcript of Mr Marshall's investigation meeting with Steve Roberts confirms that Mr Roberts, on 10 July 2024, was aware of problems with the claimant's D drive and once Mr Higgs raised the issue, he became aware of a possible data loss. Mr Roberts recognised there were issues for the claimant being able to backup to OneDrive and acknowledged it would be better if she were able to backup to the respondent's server.
31. Mr Higgs in his investigation meeting with Mr Marshall on 31 July 2024 says he thought D drive was just local back up and not of any importance and it was his assumption everything was being backed up to a safe place "whether it is on the server or something else". I find that Mr Higgs, the claimant's line manager, did not specify to the claimant a location where she should backup specific files to. The respondent had no specific policy on this and the claimant was not given any specific instructions by Mr Higgs or anyone else to backup specific files to any particular place. Mr Higgs knew OneDrive could not be used by the claimant to backup as she had told him MadCap files could not be saved there.
32. Mr Marshall, following his investigation meetings, prepared a report dated 8 August 2024. In it he states: "The incident covers the loss of all working data used by Rachael to perform her duties as Technical Writer. The assumption at present is that all work undertaken by Rachael...have been lost for a period of ten years and this was not notified to line management for a period of 12 weeks". His report covers his views on how data was lost from the claimant's hard drive, when and

how management were informed of the severity of loss, and why no backup was done as per company policy. The report refers to the Backup Policy at Section 9.25 of the Company Handbook but does not deal at all with any potential inadequacies of that policy nor with Mr Higgs' lack of understanding around backing up. Mr Marshall sets out that the claimant didn't backup but I find this cannot be correct as it is clear from the information available to Mr Marshall that the claimant was backing up with the means made available to her by the respondent.

33. Mr Marshall records in his report that Steve Roberts had a conversation with the claimant on 11 July as to why no backups were done and Mr Roberts "recalls that Rachael stated that all her managers had told her not to backup her data". I find Mr Marshall has recorded and accepted Mr Robert's recollection of what was said. He has discounted the claimant's consistent accounts of what she said to him and to Mr Roberts about not having server access. Mr Marshall did not put Mr Roberts' account to the claimant in the invite to the investigation meetings, nor in his meetings with her and nor prior to finalising his report. I find that in these circumstances, he did not fully investigate this issue before drawing the conclusions in his report and calling the claimant's credibility in to question in his report.
34. The recommendations Mr Marshall made in his report include a backup audit, automated backup systems and backup to servers. None of this was in place before his report yet criticism is made of the claimant for how she was backing up without these systems and checks in place. Mr Marshall sets out his recommended actions for disciplinary action against the claimant in his report for presentation to and consideration by the respondent's board.
35. By email dated 13 August the claimant was invited to a disciplinary meeting on 16 August 2024. The email raised four issues for consideration at that meeting and notified the claimant the respondent considered those amounted to gross misconduct and summary dismissal was a possibility. The four allegations raised against the claimant were:
  1. *"Noncompliance in regard to the company policy for data backup.*
  2. *Not reporting a serious data loss in a timely manner to senior management.*
  3. *Providing insufficient and incorrect information to your line manager in both written and verbal form.*
  4. *Bringing the integrity of your previous managers in to doubt."*
36. No further detail was provided in relation to each allegation; no documents or evidence relating to the allegations were enclosed with that letter. The claimant was not provided with transcripts of the interviews with other employees carried out during the special investigation process nor was she provided with a copy of the report Mr Marshall prepared at the conclusion of his investigations.



37. The initial investigations, the recommendations for disciplinary action and the disciplinary process were all conducted by Mr Marshall. The respondent submits Mr Marshall had to conduct the disciplinary process because the claimant had implicated senior managers. I do not accept that submission, I have found that the claimant did not implicate any specific managers and that the investigation in this regard was lacking. Further, by reference to the management structure there were other senior people who could have conducted the disciplinary hearing. Mr Marshall gave evidence as to why some of the senior management may not have been suitable in his subjective view. I find that from the respondent's structure chart there were other managers or members of the senior leadership team who could have conducted the disciplinary process rather than Mr Marshall conducting investigations, recommending action for gross misconduct and then conducting the disciplinary process for that alleged misconduct.
38. The respondent's Staff Handbook sets out the definition of gross misconduct which includes "...fail diligently to attend to your duties...serious or persistent breach of your obligations....wilful neglect". Section 5 of the Company Handbook sets out the Disciplinary Procedure and section 5.4 states:  
*"Serious Disciplinary offences- Three Step Discipline Procedure*  
*i. Following investigation, you will be given a written statement of the findings of the investigation"*  
*ii. You will be invited to a meeting at which you have the right to be accompanied by a colleague. The company will state their case and allow you to respond and then, after the meeting, give you their decision"*
39. The claimant attended the meeting at 9:30am on 16 August 2024. The notes of that meeting prepared on 16 August 2024 show that the meeting was the first time, in relation to allegation 1, Mr Marshall informed the claimant "There is no evidence of any backups on BCP systems for any of your data." In relation to allegation 2 he informed the claimant for the first time at the meeting that it was alleged she had misled Mr Higgs for a period of approximately 12 weeks from late April 2024 by downplaying the severity of the data loss. Further, the meeting was the first time Mr Marshall raised the allegation with the claimant that the respondent alleged that from July 2024 she had sought to confuse the situation with wild technical reasons and to blame others. The claimant was told by Mr Marshall in the meeting they had serious doubts about the credibility of any statement she makes. Following that, in the same meeting, he asked if she had any comment to make or any mitigating factors to raise without her having any opportunity to fully consider them or collate any evidence in relation to those allegations. The claimant accordingly had to respond in that meeting to specific issues raised for the first time and without the benefit of prior evidence which the respondent had been able to consider before the disciplinary meeting.

40. The claimant made her comments, then she was asked to wait at her desk whilst a decision was made and told she would be informed of that decision at a further meeting at 11am.
41. The notes of the decision state that the claimant was told she would be summarily dismissed for gross misconduct because she gave no credible reason for not backing up her data. The decision does not refer to which particular data she failed to back up and does not take account of the fact that she had been backing up to D drive and not given specific instruction or guidance to do otherwise.
42. The decision states she gave no reasonable explanation for failing to inform senior management of a serious data loss, without making any reference as to what data was lost and when. It is also stated, without further explanation for the decision, that the claimant continued "to assert that management have asked that you do not back up data". I find it would be difficult for the claimant to understand how that conclusion would be reached in the absence of any further explanation for it.
43. The Staff Handbook states:
44. iii. *You may appeal against the decision in writing to the Managing Director within 5 days and choose to be accompanied at the appeal meeting".*
45. The claimant was informed she could appeal the decision to the Executive Chairman, who at that time was Mr Peter Shield. This is because Mr Marshall, the managing director, had been involved in all aspects of the process up until that stage and therefore could not be further involved as would be usual company policy.
46. The dismissal decision and right of appeal were confirmed in writing to the claimant by letter dated 16 August 2024.
47. The claimant appealed the dismissal decision in writing on 22 August 2024. She raised that the investigation was not fair and impartial given the investigator and decision maker were the same person, Mr Marshall. She stated she was not given a reasonable time to prepare prior to the disciplinary meeting and did not receive any of the written evidence the respondent relied on prior to the meeting and was therefore unable to properly challenge the allegations made against her.
48. On 5 September 2024 the claimant requested that the respondent provide her with copies of the relevant documents and details of the appeal process so she could properly prepare for the appeal. Ms Kasia Cassinadri responded to the claimant on behalf of the respondent. She eventually provided the transcripts requested but refused to provide a copy of the special investigation report which the respondent had relied on in the disciplinary process.
49. The claimant was informed on 24 September 2024 that the appeal meeting would take place on 4 October 2024. The appeal meeting took place on 4 October 2024, chaired by Mr Peter Shield.

50. Mr Shield was selected by the respondent to be the appeals officer despite having had prior involvement at the conclusion of the investigation stage and discussions of the allegations of gross misconduct in Mr Marshall's report. Mr Marshall's evidence is that he explained to the board why there had been gross misconduct. Peter Shield is on the board so would have had a copy of the report setting out the allegations of gross misconduct and calling the claimant's credibility in to doubt..
51. During the appeal hearing the claimant stated she wanted to raise the bullet points in the dismissal letter as she didn't get any findings in writing and wanted further clarification. The documents Mr Shield referred to as having been provided for the meeting did not include Mr Marshall's report, although he did refer to that report during the appeal meeting.
52. There was limited discussion about the substantive misconduct issues at the appeal hearing and Mr Shield, from the notes, appears dismissive of the claimant's attempts to discuss issues and expected her to do so without having seen all of the evidence which the respondent relied upon.
53. The dismissal decision was upheld by Mr Shield after the appeal hearing and the appeal decision was confirmed to the claimant in writing by letter dated 16 October 2024.

### **Discussion, law and conclusions – unfair dismissal**

54. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he/she was dismissed by the respondent under section 95.
55. Section 95 Employment Rights Act 1996 defines a dismissal for unfair dismissal purposes. Section 98 of the 1996 Act deals with the fairness of dismissals. Firstly, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Secondly, 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.
56. It is not in issue that the claimant was dismissed on 16 August 2024 for gross misconduct, which is a potentially fair reason.
57. Section 98(4) deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

58. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decisions in *British Homes Stores 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).
59. In considering whether the respondent acted reasonable I look at the actions in relation to each of the four allegations of gross misconduct.
60. Firstly, *"Noncompliance in regard to the company policy for data backup"* and *"Not reporting a serious data loss in a timely manner to senior management"*. It is not the respondent's case that the claimant caused the data loss. It is clear from the evidence that Mr Frost identified that there was a fault with the D drive meaning the data was inaccessible. Mr Marshall, who carried out both the special investigation and the disciplinary process, himself admits, as is clear from paragraph 30 of his witness statement, that the cloning operation Mr Frost carried out was the likely cause of the data loss. With regard to any data loss for version 390, the claimant was told by her line manager, Mr Higgs, in January 2024, to immediately stop documentation of database release 390 and when she raised concerns, he said he would take full responsibility for any comebacks for any undocumented developments in release 390 and any other broken links/incomplete pages. It does not appear that Mr Higgs' involvement in any data loss was fully investigated by Mr Marshall and nor did Mr Higgs raise that his actions might have had implications for any data loss. Despite Mr Marshall finding that Mr Frost was responsible for the data loss, Mr Frost was not dismissed but given a first written warning. The respondent's Backup Policy is very limited and in vague and general terms in one paragraph. The claimant's line manager was unaware of the specific permissions she had for backing up and Mr Marshall accepted it was for each staff member to decide how they did backups. In Mr Marshall's investigation meeting with Mr Higgs, Mr Higgs told Mr Marshall that "it was my assumption everything was being backed up to a safe place, whether it's on the server or anything else". Mr Higgs made assumptions about backups and

did not ensure those for whom he was responsible were regularly backing up, he did not appear to fully understand the respondent's backup policy and did not provide the claimant with specific instructions on backing up any particular form of data to any specific location. The claimant did backups within the means made available to her by the respondent to do so. The claimant was never specifically instructed to backup to a particular location and indeed for some of the files she was working on, backup to OneDrive was not possible because of compatibility issues; Mr Marshall was made aware of this in his investigation process. Despite all this, the respondent appeared to place all onus on the claimant in relation to data backup and not fully considered the actions of her line manager, senior managers, or Technical Services in ensuring proper backups. In the course of the investigation and disciplinary process the respondent has not fully investigated and weighed up all the evidence in relation to all these issues when deciding whether or not the claimant was guilty of gross misconduct.

61. The respondent did not properly and fully investigate the issue with the D drive and carried out no proper analysis of what data was not backed up, what was fully lost and what might be accessible. Much of the data which was inaccessible on the D drive was available elsewhere as was made clear during the special investigation process. The claimant made her best efforts to retrieve what she could through reverse engineering and only a limited amount of unpublished data and source files remained in accessible. There was no investigation or analysis to support the respondent's assertion that that had been a much more significant data loss nor that that data loss had been caused by the claimant, indeed Mr Marshall accepting Mr Frost was responsible for the data loss.
62. Regarding the allegation of *"Providing insufficient and incorrect information to your line manager in both verbal and written form"*. The claimant and Mr Frost kept Mr Higgs informed during the PC rebuild process. It was not known by anyone until July 2024 that there was a data loss. Mr Roberts was aware of the issues with the claimant's PC and the D drive. He was the Technical Services Manager and therefore management level within the business were aware of the issues and it was of course open to Mr Roberts to share any concerns with more senior management. The claimant's timesheets clearly referred to data loss in and Mr Higgs had discussed the claimant's timesheets with her. This was not fully taken into account by Mr Marshall as part of his investigations. Mr Marshall has conflated the data loss issue with the claimant not reporting the data loss in a timely fashion. When pressed Mr Marshall raised that the claimant's timesheets were incorrect, however, her time sheets and any form of capability issue were not part of the investigation process. The respondent did not specify to the claimant exactly what she failed to provide insufficient or incorrect information about. The respondent simply stated in the letter inviting the claimant to the disciplinary meeting the one

line allegation and did not provide any evidence in support. Mr Marshall did not ask any specific questions of the claimant in this regard in the disciplinary meeting, despite the serious allegations made at that meeting that the claimant misled Mr Higgs and downplayed the severity of the data loss and that she sought to confuse the situation with wild technical reasons (an allegation which was not fully investigated nor put to the claimant in advance of the meeting).

63. I turn now to the allegation of *"Bringing the integrity of your previous managers in to doubt"*. This aspect was not fully investigated as part of the investigation process including in the interviews between 29 July and 1 August 2024. It was not raised with the claimant as a misconduct issue at that stage. It was raised in the investigation outcome report but a copy of that report was not provided to the claimant. The first time this was raised with the claimant was in the letter inviting her to the disciplinary meeting, with no evidence or documents provided with that letter. I accept the claimant's consistent account that she did not say specific managers told her not to use network server or specifically denied her access. I find that Mr Marshall did not fully investigate this aspect and merely placed heavy reliance on Steve Roberts' "recollections" which were not put to the claimant to respond to. These issues were not fully discussed with Zoe Halstead nor other managers.
64. Taking account of all the above, I find that Mr Marshall did not carry out reasonable investigations in relation to the allegations of misconduct made against the claimant, including those which were formally raised as part of the disciplinary process and those which were additionally raised with her in the disciplinary meeting. I find the investigation was insufficient prior to the disciplinary hearing and issues were not fully discussed with the claimant at the disciplinary hearing.
65. I find that at the time Mr Marshall's belief was formed the respondent had not carried out reasonable investigations and had not reached its conclusions (that the claimant committed any of the alleged acts of gross misconduct) based on reasonable investigations. In the circumstances, I find it was not within the band of reasonable responses for Mr Marshall to conclude that the acts the claimant is alleged to have committed could amount to gross misconduct.
66. I now consider whether the respondent acted in a procedurally fair manner.
67. At the special investigation stage the claimant was not given any information about the process prior to be asked to attend meetings with Mr Marshall and was not informed that any conduct on her part was being investigated. In the disciplinary hearing, issues were raised with the claimant for the first time to which she then had to respond unprepared. She was expected to deal with issues in respect of which she had not been provided with the relevant documents and evidence, which documents the respondent relied upon and which the respondent had had plenty of time to consider prior to the disciplinary meeting. Despite having that time to

consider and prepare, and not affording the claimant the same opportunity, the respondent did not ask any detailed questions of the claimant in relation to the issues raised nor take her to any specific parts of the evidence they relied upon and give her an opportunity to consider that and then to comment in response.

68. The dismissal letter does not include any detailed explanation of the respondent's findings of misconduct leaving the claimant in difficulties understanding the respondent's position and therefore in difficulties in fully being able to set out her position on appeal.
69. Mr Marshall in his investigation report is scathing about the claimant's credibility, something he did not raise as an issue with the claimant before her disciplinary meeting. The respondent failed to provide the claimant with a copy of this report prior to her disciplinary or appeal hearing. The claimant was therefore afforded no opportunity to challenge this at the disciplinary or appeal stage. The onus was placed on the claimant to try and obtain evidence of the special investigation meetings, the respondent failed to provide her with all relevant documents to respond to issues in the disciplinary process and failed to provide her with documents in the appeal process even when she specifically requested them. The respondent's own policy provides:

**70.** *Following investigation, you will be given a written statement of the findings of the investigation.*

The respondent failed to comply with their own policy.

71. The initial investigations, the recommendations for disciplinary action and the disciplinary process were all conducted by Mr Marshall. He was investigator, accuser and decision maker. Mr Marshall's report was shared with the board, including Peter Shield and it therefore appears inappropriate that given Mr Shield's existing involvement, having had these views expressed to him in the report and being part of discussions relating to that report, that he was then appointed appeals officer.
72. The respondent has 55 employees and a management structure. There is no evidence that the respondent lacked the resources to carry out a proper investigation, disciplinary and appeal process. There were staff available to carry out the disciplinary process so that Mr Marshall was not involved as both investigator and decision maker and others available who perhaps would have been more independent than Mr Shield, given his prior involvement at the investigation outcome and allegations stage.
73. The written notes of the appeal meeting indicate the claimant was given limited opportunity to fully address the substantive allegations made against her and put forward her position as to the fairness of the appeals process. I find that the unfairness arising in the investigation and disciplinary process was accordingly not cured on appeal.

74. I conclude that throughout the various stages of the investigation, disciplinary and appeals process, the respondent did not act in a procedurally fair manner and not within the range of reasonable responses open to an employer in the circumstances.
75. I further conclude in all the above circumstances that dismissal was not within the range of reasonable responses open to an employer in the circumstances.
76. I find that there should be no Polkey reduction because had a fair process been followed, and had the respondent fully investigated and considered and properly weighed all relevant evidence, then it is likely that the claimant would have been exonerated and not summarily dismissed.
77. I find no blameworthy conduct on the part of the claimant. The respondent had a limited and vague backup policy which did not even appear clear to the claimant's line manager or senior managers. The claimant was not given any guidance or specific instructions on backing up by her manager or the respondent generally and she did her best to backup her work with the resources made available to her by the respondent. The claimant appropriately involved the technical services team and sought advice from external support teams engaged by the respondent about the software she needed when her new PC was built. She recorded her work on her timesheets and her manager was aware of the issues she was having. She complied with the internal and external technical advice and support given and complied with the respondent's reasonable use policy. Her line manager and the technical services team were engaged with the issues arising and the claimant applied her best efforts to resolve issues by reverse engineering what she could to be able to continue with her work when Technical Services were unable to access the D drive, the very drive within their possession and control and which they had caused issues with.
78. In conclusion I find that the claimant was unfairly dismissed by the respondent and there should be no reduction to any compensation awarded for either Polkey or contributory fault.



Employment Judge Fearon

Dated: 14 July 2025

Dated: 18 August 2025

For the Employment Tribunal

#### Notes

Public access to employment tribunal decisions

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