



EMPLOYMENT TRIBUNALS

Claimant: Valerie Corner
Respondent: St Kentigern Hospice

Heard at: Prestatyn

On: 20th–22nd August
2025

Before: Employment Judge A Williams

REPRESENTATION:

Claimant: Mr Jaffier, Consultant
Respondent: Ms Scarborough-Lang, Consultant

JUDGMENT

1. The claim for unfair dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. The Claimant, Mrs Valerie Corner was employed by the Respondent, St Kentigern Hospice as a Retail Manager from 4th August 2020 until her dismissal on 12th February 2024.
2. The Respondent is a Charity which provides specialist palliative and end of life care to people with advanced, life limiting, progressive illness and supports their families and carers.
3. By way of an ET1 Claim Form received on 23rd May 2024 the Claimant claims for unfair dismissal and notice pay.
4. The Respondent denies all claims. It maintains that the Claimant was fairly dismissed following a fair process and its decision to dismiss was within the range of reasonable responses open to a reasonable employer. It further states that even if the process by which the Claimant was dismissed was unfair, any award of damages should be reduced to reflect the likelihood that she would have been dismissed in any event.

The Hearing

5. I heard the claim on 20th-22nd August 2025. The Claimant was represented by Mr Jaffier and the Respondent by Ms Scarborough Laing. At the end of the hearing, I gave oral judgment dismissing the claim and provided my reasons.

The Respondent requested, pursuant to Rule 64 Employment Tribunal Procedure Rules, written reasons for the decision within the required period of 14 days. Unfortunately, that request was not provided to me until 26th September 2025 which is why the decision has been delayed in being provided.

6. I had received in advance of the hearing a bundle running to 241 pages and witness statements from the Claimant and the Respondent's witnesses. I took time at the beginning of the hearing to read the documents in the bundle that were referred to in the Witness Statements. I told the parties I would only read those documents I was specifically referred to either in the witness statements or orally during the hearing.

7. I heard evidence from 3 of 4 of the Respondent's witnesses:

Joyce Bellingham, Operations Manager

Mandy O'Hara, Head of Income Generation

Jane McGrath, CEO

I had witness statements from each witness. I also heard from the Claimant.

8. Mr Thomas, the Chair of Board of Trustees and one of the Appeal Officers, did not attend to give evidence. Where relevant, I indicate the weight I attach to his evidence in light of the fact that the Claimant did not have an opportunity to challenge it in this hearing.

9. At the beginning of the hearing I dealt with an application by the Claimant to submit into evidence an email from the Respondent's previous representative which I refused for the reasons I gave orally.

List of Issues

10. The parties agreed I should deal with liability only at the hearing. All parties were agreed that the issues for determination were as follows. They included, in light of the ET3 pleading, questions of contributory fault and application of the no difference rule, which although strictly issues of remedy, were appropriate to be considered at this stage.

11. I explained to the parties that I need only hear evidence and submissions relevant to the determination of the following issues:

- 1.1 What was the reason or principal reason for dismissal? The Respondent says the reason was conduct.

- 1.2 The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.

- 1.3 If the reason was misconduct, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to

dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

1.3.1 there were reasonable grounds for that belief;

1.3.2 at the time the belief was formed the Respondent had carried out a reasonable investigation;

1.3.3 the Respondent otherwise acted in a procedurally fair manner;

1.3.4 dismissal was within the range of reasonable responses.

1.4. The Claimant makes a number of specific allegations of unfairness in paragraph 42 of her ET1 Claim Form:

1.4.1. The Claimant has an exemplary service record, she had no disciplinary warnings on her personnel file.

1.4.2. The reason for the dismissal was a sham...The Respondent initially accused the Claimant of theft, failed to set out what she had stolen and when the theft occurred. As late as the appeal process, the Respondent claimed that the allegation was a whistleblowing action.

1.4.3. At no point during the investigation and disciplinary hearing did the Respondent provide the Claimant with the name of the alleged complainant,

the date the alleged concerns were raised, who it was reported to and a statement setting out the true nature of the complaint.

1.4.4. The Respondent failed to properly investigate the alleged allegations of theft and/or provide the Claimant with the notes of the investigation.

1.4.5. The Claimant was never provided with minutes of the meetings in a timely manner to review the content. The Claimant disputes the accuracy of the notes from the investigation and disciplinary.

1.4.6. The Claimant asserts the whole process was fundamentally flawed in that an unnamed member of the board of trustees purportedly raised concerns about the process...

1.4.7. The Respondent wilfully failed to provide Induction, Training, Performance Review and Staff appraisal in line with its Handbook.

1.5. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the Claimant would still have been dismissed had a fair and reasonable procedure been followed?

1.6. If the claim succeeded, would it be just and equitable to reduce the amount of the Claimant's basic award because of any blameworthy or culpable conduct before the dismissal, as set out in s.122(2) of the 1996 Act, and if so to what extent?

1.7. Did the Claimant, by her blameworthy or culpable conduct, cause or contribute to her dismissal to any extent and, if so, by what proportion, if at

all, would it be just and equitable to reduce the amount of any compensatory award under section 123(6).

1.8. Did the Respondent fail to follow a relevant requirement of the ACAS Code of Practice on Disciplinary and Grievance Procedures, and if so, whether an adjustment and if so in what amount, should be made to the compensatory award under section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992

FINDINGS OF FACT

6. I make the following findings of fact. Where I have had to resolve a conflict in the evidence, I indicate how I have done so at the material point. I make findings on the relevant standard of proof, the balance of probabilities. That is, I am deciding what I consider is more likely than not.

Credibility

7. I say at the outset that I am satisfied that all witnesses who gave evidence before me did so to the best of their ability and with a genuine belief in the truth of their evidence. I understand and appreciate that witnesses are being asked to recall in some detail matters that some time ago now and that may cause some witnesses not to recall certain events in a great amount of detail. Failure to recall particular details did not lead me to discount the totality of a witness's evidence.

Contract of Employment

8. The Claimant had the benefit of a contract of employment dated 4th August 2020 which was in the bundle at pages [49-53]. She was contracted to work 37.5 hours per week at a rate of £33,415.20 per annum. Her Job Description page [90] describes her job as Retail Operations Manager, accountable to the Hospice Manager who at the time was Joyce Bellingham. Her main duties included, among others, ensuring all retail outlets are delivering maximum profitability, ensure the retail division reflects best practice in charity retail, to oversee the daily operation of the Distribution Centre (referred to throughout the hearing as the 'Warehouse') ensuring that all donated goods are sorted quickly and efficiently, ensure stores are efficiently and effectively managed and monitoring their compliance with policy, procedure and standards, and management of all staff and volunteers in relation to more complex employee relations issues. The Claimant's office was based in the Warehouse where donated goods were stored and sorted.

9. The Respondent has in place a Disciplinary Policy which I have at pages [54-62] of the Bundle. The Respondent does not have a Human Resources Department, but utilises the services of an external HR Advisor named Peninsula, which they consulted throughout the process this claim is concerned with.

10. Insofar as is relevant to this claim the Disciplinary Policy provides that Gross Misconduct will result in summary dismissal. This applies even for a first offence. Summary dismissal is dismissal without notice or payment in lieu of notice. It gives a non-exhaustive list of examples of behaviour and acts that will be regarded as gross misconduct that include:

- Flagrant disregard for safety precautions thereby putting life at risk
- Corrupt or improper practice e.g. when an employer improperly uses or attempts to use an official position for private gain
- Wilful or flagrant action which the employee might reasonably expect to adversely affect the reputation and standing of the hospice within the community

11. It provides that the manager discovering the potential act of gross misconduct will be responsible for the initial assessment of the circumstances and then they will report the matter to the senior manager to direct if the matter should go forward for full formal investigation.

12. It provides a right of appeal. A panel drawn from members of the Governing Council (Board of Trustees) nominated by the Chair will hear appeals against dismissal. The Chair has sole right to decide the size and constitution of the panel.

13. The Employee Handbook appears to distinguish Unsatisfactory Conduct and Misconduct, Serious Misconduct and Gross Misconduct. For serious

misconduct, where established, employees may be issued with a final written warning in the first instance. In gross misconduct cases, employees may receive a final written warning if there is some level of mitigation present. The employee handbook gives further non-exhaustive examples of what might constitute gross misconduct, but also repeats at f): breach of health and safety rules that endangers the lives of, or may cause serious injury to, employees or any other person

Commencement of Employment

6. The Claimant says that contrary to the Respondent's Employee Handbook, when she commenced her employment she was not given an Induction. She also says she never had regular appraisals or training or a performance review. This is relevant because the Claimant says she was later accused of failing to follow the Respondent's policies and procedures which she had not been formally inducted on.

7. Ms Bellingham accepted in her oral evidence that the Claimant did not receive an induction because she began her employment during Covid. She accepted that the Claimant did not receive a formal performance review but she said she did have a probationary review in 2021. She said the Claimant would have been aware of the Respondent's internal policies and procedures because all Management staff have access to a Management Drive which includes all relevant policies and procedures. She said the Claimant had referred to those policies and procedures when she herself had conducted

disciplinaries or dealt with sickness leave. Both Ms McGrath and Mrs O'Hara made reference to the Management Drive during their evidence.

8. I accept that the Claimant had access to the Management Drive and that she was therefore able to access and read the Respondent's policies and procedures that were uploaded there. I also accept that in light of the nature of her role with the Respondent the Respondent was reasonably entitled to expect the Claimant would have acquainted herself with those policies, and in fact demonstrated that she had done so in discussions with other members of Management.

THE INVESTIGATION – JANUARY 2024

9. Some time in January 2024, Mr Thomas received a telephone call from Mr Jonathon Osborne, Vice Chair of the Board of Trustees who said that an acquaintance of his who wished to remain anonymous had informed him that the Claimant's husband was regularly letting himself into the Warehouse early in the morning before staff arrived and taking items of stock which had been donated to the Hospice. It was also suggested that Mr Corner had a stall at an antiques fair that provided an opportunity to sell items on.
10. Mr Thomas met with Ms McGrath, the CEO, the day after receiving this call and asked that an internal investigation was carried out.
11. Ms McGrath appointed Mandy O'Hara to conduct the investigation. There is no written record of this request. Ms O'Hara told me in evidence that Ms McGrath asked her to look at the operational procedures in the warehouse,

in particular how the warehouse was opened up. She said she knew a whistleblower had gone to the Board but did not know the name of the complainant or how the complaint had been made. She said the first time she'd read the details of the allegation made by Mr Osborne's acquaintance was when she read it in Mr Thomas' statement.

12. Ms McGrath says she did disclose to Ms O'Hara that there had been a whistleblowing complaint. She didn't use names but she said that an allegation had been made. I find that Ms O'Hara was aware that the request to conduct an investigation was borne out of a complaint but was not aware of the substance of that complaint, as both witnesses' evidence on the issue was consistent.

13. In carrying out the investigation Ms O'Hara took the steps outlined in the paragraphs below.

14. On 3 January 2024 she viewed CCTV footage of the warehouse from the same morning. She records her findings in paragraph 9 of her Witness Statement *"The footage showed a male later identified as the Claimant's husband Dave Corner entering the premises on his own at around 6.50am. The Claimant's husband is seen entering the management office using keys and remains in there for a period of 8 minutes. He is seen checking product on the shop floor and taking products into the management office closing the door. The footage also shows the Claimant's husband leaving the warehouse with what appears to be a candlestick, walking to his car and driving away. The item was not paid for by Dave Corner."*

15. I have seen the footage of Mr Corner arriving at and leaving the warehouse carrying an item.

16. Ms O'Hara told me in evidence that she contacted the CCTV provider because she felt that the image showed Mr Corner arriving when it was still dark and thought the time shown on the footage, 7.36am might not be correct. The CCTV company told her that the time on the CCTV footage is incorrect. The footage shows Mr Corner entering the premises at 7.36am, but she says the CCTV provider told her the actual time was 6.50am. The footage shows Mr Corner leaving the premises with the item at 9.27am. On the basis that the earlier footage was 46 minutes late, then Mr Corner would have left at approximately 8.40am.

17. The Claimant says the item was paid for, by her, at 8.50am and has provided the receipt. She says the time on the CCTV is correct and that Mr Corner was still on the premises when she paid for the item.

18. Ms O'Hara says the time is incorrect and that Mr Corner had already left the premises when the item was apparently paid for.

19. I accept that Ms O'Hara does not detail the conversation she had with the CCTV provider in her Witness Statement, and I accept it is evidence given for the first time in these proceedings. However, I find that this conversation did occur and that was the explanation given to Ms O'Hara about the time on the CCTV footage. The correct time given is consistent with other evidence collated by Ms O'Hara during her investigation which I detail below, namely

her conversation with staff member Duncan Blackburn, who told her when the item was paid for Mr Corner was not present.

20. Ms O'Hara also contacted the Respondent's alarm provider and was told that the alarm had been unset between 6.30-7am on 14 occasions in November and 8 occasions in December.

21. Whilst she was at the warehouse that day, Ms O'Hara was asked to access the filing cabinet in the Claimant's office to obtain a gold sovereign ring that had been bought by a customer. She found the left hand side of the cabinet was locked but the right hand side was open. In the right hand side she says she found a mix of confidential board papers and CV's. She also found a number of items of high value stock in the Claimant's office.

22. The Claimant disputes this state of affairs, and says that Ms Bellingham had conducted an audit of the Claimant's office in December 2023 and found no confidentiality concerns. I accept that as I have seen the completed audit form. The claimant says this is inconsistent with what Ms O'Hara says she found in her office.

23. I find that in the course of attending the Claimant's office on 3rd January Ms O'Hara found confidential documents in the unlocked cabinet. Ms Bellingham's findings relate to what she found on the day, as do Ms O'Hara's, so both things can be true at once. On the balance of probabilities, I accept Ms O'Hara's account of what she saw. I note the Claimant does not deny it in

the investigation meeting [page 163] *‘to clarify, there is some confidential paperwork stored in the unlocked cabinet CV’s and board notes?’ ‘some but only leavers CV’s’* and in the appeal hearing [page 238] she said *‘I’m not fully aware of everything that is in the cabinet’*

24. In the course of her investigation Ms O’Hara also interviewed two Warehouse Employees, Molly Mae Thomas and Duncan Blackburn on 24 January 2024. [page 156]. She asked Duncan about the process for staff and volunteers making purchases from the Warehouse. He told her that if its priced he puts it through the till and *‘we write it in the staff book’*. She asked if there’s anyone who doesn’t use the book and he said *‘Dave sometimes buys something, I may not have put him in the book’ ‘What has he bought that is not in the book’ ‘tins and an elephant thing. So sometimes I don’t see it, Val just tells me and gives me a couple of quid’. ‘So Dave does not pay for his own items’ ‘No usually Val’.*

25. All of these steps in the investigation takes place whilst the Claimant is on holiday in New Zealand. On the Claimant’s return on 29th January 2024, Ms O’Hara is waiting for her in her office and says she would like to ask her some questions.

29TH JANUARY 2024

26. I have seen the notes of that Meeting [163-169]. At the outset it states that *“MO explains why she was there today, concerns raised regarding processes at the warehouse, VC to answer questions as part of an ongoing investigation, WR present to take notes”*

27. During the Investigation Meeting the Claimant is recorded as asking what the investigation was about and saying that she thinks it is 'mad' that Ms O'Hara is waiting for her in her office on her return from holiday. Later in the meeting, she asks a second time why she is being questioned. Ms O'Hara tells her that the questions are general questions about the Claimant's role and processes in place and proceeds to question her.

28. When Ms O'Hara's concerns arising from her investigation are put to her, the Claimant denies that any confidential paperwork is kept in the unlocked cabinet and says there is no key for it available to lock it. She accepts that she keeps stock in her office, sometimes for months. She says she 'drip-feeds' stock to shops and ebay. She says some items will be kept in her office for 12 months, such as items that come back as not having been sold, or seasonal items.

29. When asked about the process for staff and volunteer discounts and purchases, she says that there is no real process to record staff and volunteer purchase, but she says they will go to the till and write it in the purchase book. She says she does not check the book and tells Ms O'Hara to ask Duncan about it.

30. When asked about the process of recruiting volunteers, she said that Sharon, Jo and Duncan are responsible for the induction of volunteers. Sharon and Jo do the paperwork. She said the last time she checked the paperwork was 12 months ago.

31. When asked about health and safety, she says when she is in a particular shop she checks the health and safety forms. She doesn't know when she last checked all the forms.
32. She is asked about the processes for opening up the warehouse. She says that she opens, but on days when there's a lot to be sorted her husband Dave opens up so that sides can be cleared ready for when others come in. Depending on how much stock there is he can come in at 6.30am. She accepts that Mr Corner has a key to the warehouse. He opens up 2-3 days per week. He has keys to the warehouse and her office. When challenged, she says she never thought the fact that Mr Corner had keys to her office was a problem.
33. Ms O'Hara showed the Claimant the CCTV footage from 3rd January 2024. The Claimant says Mr Corner would have paid for the item he took and left it in the office. She said if Mr Corner sees something he'd like to purchase he'll tell her and she'll price it for him and he'll leave the item in the office. She says the record will be in the book. When Ms O'Hara tells her it's not in the book, she says there will be a receipt for the item.
34. At the conclusion of the investigation meeting Ms O'Hara is recorded as telling the Claimant: *'I have a real concern regarding the lack of process in a number of areas which are your responsibility. All areas looked at there was either no process at all or a very loose process which is a real worry and a risk to the organisation. I feel it's appropriate to carry on with the investigation and it*

would be better if you were out of the workplace during that time. The best route is to suspend you on full pay which I will confirm in writing.'

35. Following the meeting with the Claimant, Ms O'Hara conducts a further telephone call with Mr Blackburn on 30th January 2024, the record of which is at [170]. He recalls that on 3rd January 2024, the day of the CCTV footage, the Claimant brought in £2 or £3 and said it was from her husband. He does not recall what was bought because Mr Corner was already gone, the Claimant gave him the money and said it was for something Mr Corner had taken. He says that it happens a lot, and he is not aware of what the item was.

Suspension

36. In an undated letter the Claimant's suspension is confirmed [162]. The letter states that suspension is in order to *"allow an investigation to take place following the allegations of theft from the pre loved warehouse and failure to follow internal processes"* and goes on to confirm that suspension does not indicate guilt and that no outcome has been determined.

Knowledge of Mr Corner's status as a volunteer

37. At some point in February 2024 Ms Bellingham was made aware of the investigation and was asked by both Ms O'Hara and Ms McGrath if she was aware that Mr Corner had been entering the warehouse using the Claimant's keys and entering the management office, and she says she told them she was not aware. Ms Bellingham could not recall, when giving evidence, where or when these conversations took place and there is no record of them. She

said she thinks she was asked when the investigation was ongoing or before the disciplinary meeting.

38. There is a significant dispute as to whether or not the Respondent knew that Mr Corner was a volunteer for the organisation and that he had keys to the warehouse. Ms Bellingham said in her evidence that she was not aware that Mr Corner was a volunteer. She said *"I didn't officially recognise him as a volunteer. I didn't know he was officially a volunteer. I knew he came to see Mrs Corner but didn't know in what capacity"*. She said she can remember one occasion at the old warehouse where someone introduced him to her as the Claimant's husband.

39. In her statement, she says in paragraph 7 that she was asked in February 2024 if she was aware that a *"the Claimant's husband a volunteer Dave Corner had been entering the warehouse premises using the Claimant's keys..."*

40. I find on balance that Ms Bellingham was aware that the Claimant's husband volunteered for the organisation. She refers to him as a volunteer in her Witness Statement and in her evidence she twice made a somewhat artificial distinction between a volunteer and an 'official' volunteer. That is, in my judgment, an odd way to put matters if he was genuinely thought of as simply the husband of a fellow employee and suggests that he was known to be in the warehouse often.

41. This also accords with the fact that clearly other less senior staff in the Warehouse such as Molly-Mae and Duncan thought of Mr Corner as a volunteer.

42. I also find, however, that Ms Bellingham was not aware of the fact that Mr Corner had keys to the warehouse and used them to access the warehouse before anyone else had arrived. She has remained consistent in her evidence on this issue and I consider it is more likely than not that she, not being based in the Warehouse, would be unaware of the intricacies of the opening up procedure there.

43. The Claimant says that the Respondent was aware that Mr Corner had keys to the warehouse and opened up on occasion because she had confirmed the arrangement with a former CEO, Iain Mitchell.

44. Mr Mitchell resigned from his post in 2022 and there is no evidence of the Claimant making any other senior members of staff aware of the arrangement. She has never asserted that she had made them aware of the arrangement. In the disciplinary hearing, which I deal with next, the Claimant accepted she should have declared this fact in meetings as a declaration of interest. I therefore find on the balance of probabilities that senior management at the time of the investigation which led to dismissal were unaware of the arrangement. This accords with the seriousness with which the Respondent clearly takes the matter throughout the investigation and disciplinary process.

DISCIPLINARY PROCESS

45. By letter dated 2nd February 2024 [page 177], the Claimant was invited to attend a disciplinary hearing on 7th February 2024 and advised of her right to have fellow employee present. With the letter, she is provided with a copy of her Job Description, Statements taken in the course of the investigation, Staff Purchase book and CCTV footage.

46. The letter sets out 6 matters of concern that are to be discussed at the disciplinary hearing: *Alleged failure to follow internal processes and procedures; Breach of confidentiality allowing access to a management office where confidential documents were unsecure; Knowingly allowing a volunteer to take a product without them making payment; Failing to take accountability for elements of your job description, namely stock; Volunteer recruitment process; and Health and Safety of all retail premises.*

47. The letter confirms that if the allegations are substantiated, the Respondent will regard them as serious misconduct and that if the Claimant is unable to provide a satisfactory explanation, she may be given a final warning or dismissed, if deemed appropriate, in accordance with the Respondent's disciplinary procedure.

48. At some point between the Investigation Meeting and Disciplinary Hearing, Mr Thomas says in his Witness Statement that Ms McGrath told him that the investigation had found concerning evidence and that the matter would now proceed to a disciplinary hearing.

DISCIPLINARY HEARING 7TH FEBRUARY 2024

49. The Disciplinary Hearing was chaired by Ms Jane McGrath and Ms Laura Evans was present as a note taker.

50. I have the notes of the disciplinary meeting [179]. The notes record that the Claimant accepted she allowed her husband to have access to her office and agreed this was a potential breach of confidentiality but says that she “trusts Dave 100%”. She also declined to accept any allegation other than that she shouldn’t have given Dave a key. She accepted that she should have declared this in meetings as a declaration of interest.

51. In the Appeal Hearing the Claimant disputed the accuracy of the Disciplinary Hearing notes. When asked during the appeal, she was not able to give specific examples of inaccuracies. In her second Witness Statement the Claimant says that she disputes the accuracy of the notes of the Disciplinary Hearing and sets out what she says she in fact says she said instead.

52. I find that the Disciplinary Hearing Notes are accurate. Despite having been provided with the notes in advance of the Appeal Hearing the Claimant was unable to identify the inaccuracies in her appeal hearing. I find it is more likely than not that the Claimant’s memory of what she said during the disciplinary hearing will have been better at the appeal hearing than when she prepared her second witness statement, some 7 months after the fact.

53. An allegation that official notes of meetings have been doctored, as the Claimant suggests, is a serious one that requires cogent evidence to establish on the balance of probabilities, evidence that I must consider very carefully. The alternative wording the Claimant suggests is correct is in large part so entirely different to what is recorded that it is not a matter of a simple mishearing or mistake, and I find there is no evidence on which I can make what is a serious finding that the minutes of the Disciplinary Hearing have been doctored.

54. In her evidence before me, the Claimant accepted, and I find, that the allegations as set out in the invitation to the disciplinary hearing were put to her during the hearing and she had an opportunity to respond to them.

Termination

55. On 12th February 2024 Jane McGrath sent the Claimant a letter terminating her contract of employment with immediate effect. The letter addresses each of the allegations against the Claimant in turn and reaches a conclusion on the explanation she gave in the disciplinary hearing. The conclusion of the letter goes on to state:

“I concluded you are in a position of responsibility and trust, I believe you have broken this trust by not declaring your husband was working as a volunteer, further to this you allowed him to use your keys to access the warehouse, including your office where you accept confidential documents were kept. Your behaviour is in question as you failed to inform senior management of this

conflict, you also acted inappropriately when pricing items for your husband to take without him making the payment himself”

56. I find that the alleged failure to declare that the Claimant’s husband was a volunteer was not an allegation put to the Claimant either in the investigatory meeting or in the disciplinary hearing. There is no record of it being put to the Claimant, and it is not specified in the invitation letter dated 2nd February 2024.

57. At some point after the decision had been taken to terminate the Claimant’s employment Mr Thomas records in his Witness Statement that he was informed of the outcome of the Disciplinary Hearing and agreed to conduct the appeal if required.

APPEAL HEARING 29TH FEBRUARY 2024

58. The Claimant appealed the decision. On 21st February she was invited to an appeal hearing to be chaired by Mr Thomas and Rhian Williams, a Trustee, in a neutral venue. The invitation letter [page 187] set out the Claimant’s 5 grounds of appeal.

59. The notes of the Appeal Hearing are at [page 237]. At the Appeal Hearing, the Claimant said that she had not been told what the allegations against her were nor received them in writing. Mr Thomas is recorded as telling her that the allegations were as detailed in the letter inviting the Claimant to the

Disciplinary Hearing on 2nd February 2024 and also told her that a whistleblowing allegation was made to a trustee that was then investigated.

60. The Claimant says, and I accept in the absence of any evidence to the contrary, that the first time she knew about the substance of the allegation received by the Trustee was when she saw it in paragraph 4 of Mr Thomas' statement.

61. In the Appeal Hearing, when asked if she thinks it is appropriate for her to price items for her husband the Claimant says it isn't in the policies and procedures not to do that so she is simply following policy. She said she regularly prices items for Mr Mitchell, the former CEO. The Claimant says she feels she is being accused of theft. She said Iain Mitchell has confirmed he is happy for the hospice to contact him to confirm that Mr Corner had been opening up the Warehouse.

62. The Appeal was dismissed by letter dated 6th March 2024. The Appeal Outcome letter details each of the Claimant's Grounds of Appeal in turn, her representations made at the Appeal and the decision made on those Grounds.

RELEVANT LAW

UNFAIR DISMISSAL

63. Section 94 Employment Rights Act 1996 gives employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to an Employment Tribunal under section 111. The Claimant must show that she

was dismissed by the Respondent under section 95, and in this case all parties are agreed that the Claimant was dismissed on 12th February 2024.

64. Section 98 Employment Rights Act 1996 deals with the fairness of dismissals.

There are two stages. First, the employer must show that it had a potentially fair reason for the dismissal within s.98(2). Second, if the Respondent shows it had a potentially fair reason, 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.

65. In this case the Respondent argues that the Claimant was dismissed due to committing acts of misconduct. Conduct is a potentially fair reason for dismissal under section 98(2).

66. Section 98(4) then deals with fairness generally and provides that the determination of the question whether 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.

67. There is well-established guidance on fairness within s.98(4) in *British Home 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, whether employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects, investigation, grounds, penalty and procedure, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances.

68. It is immaterial how 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.

69. I make it clear at this juncture, it is not for the Tribunal to decide whether misconduct in fact occurred. The Tribunal is not a further appeal from the Disciplinary Process. The Tribunal's role is to review what was actually done by the employer and, taken together to decide whether, in law, the decision to dismiss was unfair.

Analysis and Conclusions

70. Taking each of those issues in turn, applying my findings of fact to the applicable law, I reach the following conclusions:

What was the reason or principal reason for dismissal?

71. I find, in accordance with the Termination Letter and the evidence of Ms McGrath as to the reasons she felt dismissal was justified, that the Claimant was dismissed for the reason of misconduct. Misconduct is a potentially fair reason for dismissal.

72. In approaching the next stage of my enquiry I remind myself that the range of reasonable responses applies across the spectrum of the Birchell test I must apply.

Did the Respondent genuinely believe the Claimant had committed misconduct?

73. I find the Respondent's dismissing officer, Ms McGrath and the Appeal Officers Mr Thomas and Ms Williams, held a genuine belief that the Claimant had committed misconduct.

74. Ms McGrath gave clear evidence about the concerns the Claimant's conduct gave rise to, in particular in relation to Mr Corner having access to the Warehouse unsupervised and unbeknownst to senior management and the risks of lone working and of confidentiality breaches. The dismissal and appeal letters were unequivocal, the Claimant did not dispute that she had given her husband a key to the warehouse and that he attended unaccompanied. Ms McGrath's genuine belief in the Claimant's guilt was not challenged in the hearing.

Did the Respondent carry out a reasonable investigation?

75. The Claimant contends that the Respondent did not carry out a reasonable investigation.

76. She says that Ms O'Hara was not aware of the substance of the whistleblowing allegation and therefore the investigation is fundamentally unfair because she investigated a different matter to the whistleblowing allegation.

77. I find that the fact Ms O'Hara was not aware of the substance of the whistleblowing allegation did not render the investigation unfair. Ms O'Hara was asked to investigate opening up procedures at the Warehouse. She began her investigation broadly, considering CCTV and information from the alarm company, and interviewing staff at the Warehouse about a number of matters. It is only having collected that evidence that she proceeds to interview the Claimant, and only at that point that the substance of the concerns regarding the Claimant's conduct becomes clear to her.

78. Much has been made of the whistleblowing allegation in this claim. In my finding, once the Claimant was interviewed the allegation becomes largely irrelevant. The focus of the investigation and subsequent disciplinary hearing is in effect overtaken by the matters that come to light during Ms O'Hara's interview with the Claimant. For example, the element of the allegation surrounding a market stall is taken no further once Ms O'Hara has conducted her investigation. Although there is a reference to an allegation of theft in the suspension letter, that is taken no further in the disciplinary process. That is

an indication, I find, that Ms O'Hara applied close scrutiny to the evidence she collected.

79. I find that Ms O'Hara, as a Manager of sufficient seniority without prior involvement in the allegation made by the whistleblower, was an appropriate person to conduct the investigation. I do not accept that the fact Ms O'Hara was not aware of the substance of the initial allegation rendered the investigation a sham, as contended by the Claimant. Indeed, I find the opposite, in that it shows Ms O'Hara approached the investigation in an open and broad manner, and only focused on the areas of concern once she had collated all the evidence.

80. The Claimant says the investigation meeting was unfair because she was not told about the whistleblowing allegation and she was not told what the allegations against her were. She had just come back from holiday and was surprised by the meeting happening.

81. I accept that the explanation given by Ms O'Hara was somewhat vague. However, she did tell the Claimant that she was there to investigate the processes at the Warehouse. At that point, the Claimant knew she was being asked questions in the course of an investigation.

82. I find that at that stage in the investigation the precise disciplinary concern was not known to Ms O'Hara. It was only after the Claimant made admissions in the investigation meeting, for example that her husband has a key and opens the warehouse early that those concerns became clear and Ms O'Hara was able to formulate the disciplinary concerns.

83. The Claimant says the investigation meeting was unfair because she was not provided with the statements of Duncan and Molly-Mae. There is no absolute requirement to present all of the evidence collated to an employee in an investigatory meeting. I find that the substance of what later formed the allegations in the disciplinary hearing were put to the Claimant in the investigation meeting and she had an opportunity to respond. She had a further opportunity to respond in the disciplinary hearing.

84. The Claimant says the investigation was flawed because Mr Corner was not interviewed. I find that the disciplinary concerns having become clear in the course of the interview with the Claimant, it was within the range of reasonable responses for Ms O'Hara not to interview Mr Corner. The Claimant had already accepted that she had given Mr Corner a key to the Warehouse and her office and that he sometimes opened up the Warehouse unattended. The Respondent's concern, as explained by Ms O'Hara, was the confidentiality and health and safety risk that this gave rise to, not necessarily whether in fact there had been an incident, breach of confidentiality or theft of an item. In those circumstances Mr Corner's evidence would not have added substantially to the Respondent's investigation. The CCTV footage showed that he had attended the Warehouse on 3rd January unattended. The Claimant says he would have been able to tell Ms O'Hara that he paid for the item he left with, but again that it seems to me is misunderstanding the Respondent's concern, which is that Mr Corner had access to the Warehouse and office at all. I also accept that as Mr Corner was a volunteer Ms O'Hara had no power to compel him to attend an interview.

85. The Claimant told Ms O'Hara in the investigation meeting that there would be a receipt for the item Mr Corner purchased. She says the investigation was unfair because Ms O'Hara did not search for this receipt. I find it was reasonable for Ms O'Hara not to search for the receipt. Mr Blackburn had confirmed that the Claimant had given him money for the item. Ms O'Hara's concern was not that the item was not paid for, but that it was paid for without the cashier, Mr Blackburn, having seen what it was.

86. The Claimant says the investigation – and by extension, the disciplinary process - was a sham because senior management knew that her husband was a volunteer and that he opened the warehouse and had access to her office. For the reasons I have already given I have found that that was not the case. Given the seriousness with which senior management approached the matter, if they had known then that would render the entire investigation and disciplinary process disingenuous and a sham as the Claimant says. Given the totality of the evidence before me I simply cannot accept that that is the case.

87. The Claimant says the investigation was flawed because Ms O'Hara failed to record a conversation with Ms Bellingham in which Ms Bellingham confirmed she was not aware that Mr Corner had keys to the Warehouse and the Claimant's office. I find that this conversation did form part of Ms O'Hara's investigation and should have been recorded, however I do not consider that this falling short amounts to a procedural unfairness because the Claimant was later afforded an opportunity to address the allegation in full in the

disciplinary hearing when she is asked if she accepts she should have declared this fact in meetings as a declaration of interest and she agrees she should have. She does not dispute that senior management were not aware of this fact.

Did the Respondent otherwise act in a procedurally fair manner?

88. The Claimant says the Respondent did not otherwise act in a procedurally fair manner.

89. The Claimant says the suspension letter refers to an allegation of theft which caused her alarm and distress. I accept that this will undoubtedly have caused the Claimant alarm and, although it does not attribute the allegation specifically to the Claimant, that she might have felt it was an allegation that she was guilty of theft. However, it is clear from the allegations set out in the invitation to the disciplinary hearing that the Claimant was not being accused of theft. Applying the range of reasonable responses, it was reasonable in my view for the Respondent to have in mind, when investigating the issues raised, whether a theft had occurred, and to conclude that there was insufficient evidence to pursue that allegation further.

90. I find that in advance of the disciplinary hearing the Claimant was provided with the evidence collated in the course of the investigation and was told in the invitation to the disciplinary hearing what the allegations that would be considered were. I accept that the way in which some of those allegations are phrased in the invitation lack specificity, such as failure to follow internal

processes and procedures without specifying which processes and procedures, but I find those allegations were put to her in full in the course of the disciplinary process and the Claimant would, or ought to have been aware, in the course of the disciplinary hearing, of the substance of the allegations against her.

91. In particular, the allegation of allowing Mr Corner access to her office and allowing him to take an item without paying were both put to the Claimant specifically in the Disciplinary Hearing. I have already found that the Claimant will have been well versed in the Respondent's policies and procedures and reference is made throughout the investigation meeting, disciplinary hearing and appeal hearing to issues such as confidentiality, lone working and health and safety. The Respondent acted reasonably, I find, in the formulation of the allegations against the Claimant.

92. I find that the Dismissal Letter addresses in turn each of the allegations and engages with the Claimant's explanation for each allegation. I find that the Dismissal Letter explains why Ms McGrath considers dismissal is justified.

93. I do accept that in her conclusion Ms McGrath says that the Claimant has broken the Respondent's trust by failing to declare her husband was working as a volunteer, something which does not form part of the Respondent's allegations and is not put to the Claimant either in the investigation meeting or disciplinary hearing. However, on considering the conclusion in its totality Ms McGrath then goes on to refer to the fact that Mr Corner had keys to the warehouse and Claimant's office and that the Claimant acted inappropriately in pricing items for her husband to take without making payment himself. In

the course of the Dismissal Letter she also deals with each of the other allegations against the Claimant and upholds them. Failure to disclose the fact that Mr Corner was a volunteer was not the primary reason for the Respondent's decision to dismiss and I find that failure to put that allegation to the Claimant does not render the ultimate conclusion that dismissal was appropriate unfair.

94. The Claimant says the appeal hearing was unfair because Mr Thomas was the person who initially received the complaint from the anonymous whistleblower and Mr Thomas conducted discussions with Ms McGrath about the progress of the disciplinary process. I accept that that would understandably give rise to concern on the part of the Claimant, particularly as those matters had not been disclosed to her either prior to or in the appeal hearing. However, having considered the contents of the appeal hearing notes and the appeal outcome I find that Mr Thomas' prior knowledge did not impair his ability to hold a reasonable appeal. He afforded the Claimant an opportunity to explain each of her grounds of appeal and, in deciding the appeal, engaged with the Claimant's reasoning. I note that in accordance with the Respondent's policy Mr Thomas retains a discretion as to who can hold appeal hearings and he and Ms Williams both conducted the appeal hearing jointly. In his statement he confirms that the decision was made jointly by himself and Ms Williams.

95. The Claimant says the process was unfair because Mr Thomas did not contact Mr Mitchell to confirm the truth of what the Claimant said about his knowledge of Mr Corner attending the warehouse to open up. I find it was

within the range of reasonable responses for him not to. Mr Mitchell was a former CEO and had not worked for the Respondent for a number of years. The issue under consideration was the risk posed by Mr Corner attending the Warehouse and the Claimant's office unattended without the knowledge of senior management in post at the time.

96. For the reasons I have already given, I find that failing to tell the Claimant about the whistleblowing complaint does not render the Respondent's procedure unfair. The whistleblowing complaint was, I find, overtaken by the findings of Ms O'Hara's investigation.

Did the Respondent act reasonably or unreasonably in all the circumstances including the Respondent's size and administrative resources in treating that as a sufficient reason to dismiss the Claimant? In accordance with equity and the substantial merits of the case?

97. It is possible to identify defects in any disciplinary process with sufficiently close scrutiny, but it is not my role as Tribunal to simply identify defects in the process. I must take a step back and consider, as a whole was the Respondent's decision to dismiss the Claimant fair.

98. The Respondent is a small operation with a small senior management team and no HR department. I am satisfied that those involved in the disciplinary process approached it with open-mindedness and sought at all times to afford it the weight it was due given the potential seriousness of the consequences

for the Claimant. I have identified some areas where the procedure followed by the Respondent fell short, but I do not consider that those deficiencies were of such significance as to render the Respondent's decision either substantively or procedurally unfair. The Tribunal is not looking for perfection, but at whether what the Respondent did fell within the range of reasonable responses.

99. It was within the range of reasonable responses, I find, for the Respondent to treat the Claimant's admission that her husband often had access both to the Warehouse where donated items were stored and to her office with the utmost seriousness.

100. The Claimant does not appear, either in the course of the disciplinary process or these proceedings, to have appreciated why the Respondent held those concerns. She says she trusts her husband 100%, but the Respondent's concerns are of the risks that that conduct gave rise to, not of any incident that in fact occurred.

101. In those circumstances and in the absence of any acknowledgment by the Claimant of the seriousness of her conduct or the risks it gave rise to I find it was within the range of reasonable responses for the Respondent to consider the trust and confidence between it and its employee had been fundamentally undermined and to treat the conduct as a sufficiently serious and a fair reason to dismiss the Claimant.

102. For all those reasons, I find that the Claimant was fairly dismissed and I dismiss the claim.

Employment Judge Williams

Authorised for issue on:

29th October 2025

Judgment sent to the parties on:

29 October 2025

For the Tribunal:

Kacey O'Brien

Note

Public access to employment tribunal decisions

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