EMPLOYMENT TRIBUNALS

Claimant: Mrs K Mann

Respondent: Citizen Housing Group Limited

FINAL HEARING

Heard at: Birmingham

On: 14 to 17 October 2025

Before: Employment Judge Camp
Mrs RJ Pelter[1]

Appearances
For the Claimant: in person
For the Respondent: Mr A Ismail, counsel

RESERVED JUDGMENT

The claimant's entire claim, consisting of a complaint of unfair dismissal and two complaints of unfavourable treatment because of something arising in consequence of disability, fails and is dismissed.

REASONS

Introduction, complaints & issues

1. The Claimant was employed by the Respondent, a registered provider of social housing, latterly as a Homelessness Assistant based in Coventry, from 7 November 2011 until her dismissal with effect on 31 January 2024. The given reason for dismissal was

[1] The following order was made on 14 October 2025: By consent, the final hearing will be heard by Employment Judge Camp and Tribunal non-legal Member Mrs RJ Pelter (from the panel of employers Members).

misconduct on 23 June 2023. Early conciliation was from 4 February 2024 to 17 March 2024. The claim form was presented on 24 April 2024.

2. The claim is mainly about the Claimant's dismissal, although there is also a disability discrimination claim connected with the Claimant changing jobs in August / September 2022. In her claim form and the document attached to it in which she gave details of her claim – the "Details of Claim" – the Claimant was alleging she was unfairly dismissed in accordance with section 98 of the Employment Rights Act 1996 ("ERA"), but apart from that, precisely what complaints she was making that the Tribunal has the power to deal with was not clear.

3. At a case management preliminary hearing on 6 November 2024, Employment Judge Woffenden spent some time discussing and clarifying the Claimant's claim with her. Evidently on the basis of those discussions, the Judge, in her written record of that hearing, set out what was intended to be a comprehensive list of issues (the "List of Issues"). We refer to that List, which should be deemed to be incorporated into these Reasons.

4. We have not dealt with everything in the List of Issues, because it has not been necessary to do in order to make and to explain our overall decision.

5. In the List of Issues, Employment Judge Woffenden identified three complaints:

    5.1 unfair dismissal – so-called 'ordinary' unfair dismissal (as distinct from automatically unfair dismissal);

    5.2 two complaints of unfavourable treatment under section 15 of the Equality Act 2010 ("section 15"; "EQA") respectively about the following (to quote from the List of Issues) –

        5.2.1 "In August 2023 when she was asked to move to Frank Walsh House, Emma Thewlis told the Claimant that there were fewer notices to quit to prepare because she did not like proof reading the Claimant's notices to quit";

        5.2.2 "Moving the Claimant from Gateway to Frank Walsh House at end of August / beginning September 2023".

    5.3 As both sides agree, the section 15 complaints in fact relate to 2022 and not 2023. They are therefore very significantly out of time and relate to things that are quite some distance from the Claimant's dismissal.

6. The section 15 complaints rely on the Claimant's dyslexia as the relevant disability; and on the Claimant's "grammatical difficulties and the length it took her to prepare notices to

quit"[2], i.e. that it took her longer than others to prepare notices to quit, as the "something arising in consequence of … disability". The Respondent concedes:

6.1 that the Claimant had dyslexia and that it was a disability. (We have been mindful throughout this hearing of the Claimant's dyslexia and of our duties in accordance with the Equal Treatment Benchbook);

6.2 that it had knowledge of disability;

6.3 that, at least in principle, "grammatical difficulties and the length it took [the Claimant] to prepare notices to quit" was something arising in consequence of disability.

7. Employment Judge Woffenden made an order that if the parties thought the List of Issues was wrong or incomplete, they had to write to the Tribunal and the other side by 20 November 2024 and that if they did not, "the list will be treated as final unless the Tribunal decides otherwise". Unfortunately, although she approved them on 6 November 2024, the Tribunal administration did not send out Judge Woffenden's orders until 20 November 2024. Nevertheless, no one wrote in to the Tribunal pursuant to that order; and had they done so within 14 days of 20 November 2024 the Tribunal would almost certainly have extended time and taken their correspondence into account. It follows that the List of Issues was and is to be treated as final unless there are proper grounds for us to decide otherwise, i.e. unless there has been a material change of circumstances (see **Liverpool Heart and Chest Hospital NHS Foundation Trust v Poullis** [2022] EAT 9, at paragraphs 30 to 43), or it is otherwise necessary in the interests of justice to have the order varied or set aside in accordance with ETPR Rule 30.

8. One thing that <u>did</u> happen after the preliminary hearing was that the Claimant wrote to the Tribunal and the Respondent on 12 November 2024 making an application to amend her claim. The terms of the application were extremely unclear; analysing it, it is uncertain even what type(s) of claim she wanted to add. On 1 December 2024, she wrote to the Respondent – not to the Tribunal – enclosing what she described as "The statement for the amendment to ET1". It was not a coherent amendment application but was, instead, seemingly, a new version of the Details of Claim. It did not contain any explanation of what changes to her claim she wanted to make. On 10 December 2024, the Respondent's solicitors forwarded it to the Tribunal under cover of an email objecting to the Claimant being given permission to amend. Unfortunately, it took the Tribunal some time to process this correspondence and it was not until 10 February 2025 that Senior Legal Officer Metcalf issued the following direction:

> *… The Tribunal has received, by way of the respondent's correspondence dated 10 December 2024, your application to amend dated 12 November 2024 and the accompanying statement.*

[2] Quotation from the List of Issues.

The Tribunal does not appear to have previously received this application directly from you and it is noted that the respondent did not receive the latter document until 1 December 2024. …

… In terms of the application, it is not appropriate to expect either the Tribunal or the respondent to scrutinise your statement in an attempt to identify what your amendments may consist of. Any application to amend must be properly formulated and sufficiently particularised before the respondent can make submissions upon it and the Tribunal then be in a position to determine whether to grant or refuse the application.

You must set out the precise terms of the amendment you are seeking to include the dates of the incidents relied upon, the people involved and what was said or done before the Tribunal can consider the application.

Given the fact that the substantive hearing is listed to begin on 30 June 2025, the claimant should make her application in the prescribed manner as soon as is possible.

Please provide a response to the Tribunal, by return.

9. The Claimant provided no response.

10. In the above circumstances, we – the Tribunal – took pains at the start of his hearing to ensure that both sides agreed that the complaints which were before us were no more and no less than those set out in the List of Issues; and that the Claimant was not pursuing an amendment application. In terms of the complaints that were before us, this was a more than merely academic exercise. The Respondent could, for example, have argued that the section 15 complaints were not adequately set out in the claim form Details of Claim in accordance with **Chandhok v Tirkey** [2015] ICR 527, that she could not pursue them without being given permission to amend, and that she had not been and should not be given permission to do so. As for the Claimant, within the Details of Claim she mentioned many things which are of no obvious relevance to the three Tribunal complaints identified by Employment Judge Woffenden and which it is far from obvious form the subject matter of any potential Tribunal claim the Claimant could bring. In particular, there is, amongst other things, much in the Details of Claim about how the Respondent supposedly breached its duty to take reasonable care for the Claimant's and fellow employees' health and safety and in other ways undermined trust and confidence.

11. The extent to which these proceedings have been driven as much, or more, by others than by the Claimant herself is not something we are going to express a view on, but it quickly became obvious during this hearing that the Claimant and a group of former colleagues, including her witnesses Ms Bennett and Ms Adams, were deeply unhappy with the Respondent and were wanting to use these proceedings as a vehicle to raise their many grievances against the Respondent and to turn these proceedings into some kind of general inquiry into the Respondent's employment practices. It appeared they were wanting us to find that the Respondent was a bad employer, with insufficient concern for health and safety and, in Coventry, with nepotistic recruitment practices.

Almost none of the matters they seemed to want to raise were relevant to the Claimant's three complaints, given that this is not a constructive unfair dismissal claim.

12. Although, as just mentioned, we struggled to see how anything mentioned could give rise to an additional complaint the Claimant could pursue on the basis of what was in her Details of Claim and although, as above, she had not taken any amendment application forward when, in February 2025, invited by the Tribunal to do so, we checked and double- and triple-checked with her that she did not think she was making, and that she did not want to make, any complaints, in particular disability discrimination complaints, other than a complaint of unfair dismissal and the two section 15 complaints in the List of Issues. Our checks included adjourning for a period to enable the Claimant to consult about this with her former colleagues and witnesses who were supporting her in Tribunal. Ultimately, the Claimant confirmed that the List of Issues was accurate and complete, that she accepted there were no other complaints that the Tribunal had the power to deal with that were made in her claim form and Details of Claim[3], and that she was no longer applying to amend her claim.

13. The practical significance of that confirmation and concession by the Claimant was that a great deal of what the Claimant presented to us and sought to ask questions about of the Respondent's witnesses was of no relevance at all to the claim we are dealing with. As we repeatedly sought to explain to her, the rights and wrongs of what the Respondent did and did not do during the Claimant's employment, other than in relation to her dismissal and to the subject matter of the two section 15 complaints, is not something that we are, or ought to be, looking at. Our – the Tribunal's – job is simply to decide the complaints before us, which she had accepted consisted simply of the three Tribunal complaints in the List of Issues.

The law

14. There is no discernible dispute between the parties as to the relevant law that applies. Our starting point is the relevant sections of the ERA – particularly section 98 – and EQA – particularly section 15. The law is accurately reflected in the wording of the List of Issues.

15. The law relating to unfair dismissal in misconduct cases is very well-trodden ground. We have in mind the so-called 'Burchell test', originally expounded in **British Home Stores Limited v Burchell** [1978] IRLR 379. (We note that the burden of proving 'general reasonableness' under ERA section 98(4) is not on the employer as it was when **Burchell** was decided; the burden of proving a potentially fair reason under subsection (1) is [on the employer], but the burden is neutral under subsection (4).)

16. In relation to ERA section 98(4), we have considered the whole of the well-known passage from the judgment of the EAT in **Iceland Frozen Foods v Jones** [1982] IRLR 439 at paragraph 24, which includes a reference to the "*band of reasonable responses*" test. That test, applies in all circumstances, to both procedural and substantive

[3] Apart from a holiday pay claim which was dismissed upon withdrawal in November 2024.

questions. In this decision, whenever we refer to the Respondent's actions as "reasonable" what we mean is that they were within the band of reasonable responses.

17. Hand in hand with the fact that the band of reasonable responses test applies is the fact that we may not substitute our view of what should have been done for that of the reasonable employer. We have to guard ourselves against slipping "*into the substitution mindset*" (**London Ambulance Service NHS Trust v Small** [2009] IRLR 563 at paragraph 43) and to remind ourselves that only if the Respondent acted as no reasonable employer could have done was the dismissal unfair. Nevertheless (see **Newbound v Thames Water Utilities Ltd** [2015] EWCA Civ 677): the 'band of reasonable responses' test is not infinitely wide; it is important not to overlook ERA section 98(4)(b); Parliament did not intend the Tribunal's consideration simply to be a matter of procedural box-ticking.

18. This is a 'gross misconduct' case and in **Arriva Trains v Conant** [2011] UKEAT 0043_11_2212 (22 December 2011), the EAT provided a helpful summary of the law to be applied by Tribunals in such cases in paragraphs 23 to 32 of their decision, paragraphs that should be deemed to be incorporated into these Reasons.

19. In relation to the issue of fairness under ERA section 98(4), we also take into account the ACAS Code of Practice on Disciplinary and Grievance procedures, at the same time bearing in mind that compliance or non-compliance with the Code is not determinative of that – or any other – issue.

20. In terms of case law relevant to the section 15 complaints, we note in particular:

    20.1 as to such complaints generally, **Griffiths v Secretary of State for Work and Pensions** [2015] EWCA Civ 1265 at paragraphs 13 to 16 and 22 to 25;

    20.2 as to what constitutes detriment under EQA section 39(2)(d)[4], paragraphs 48 to 51 **Warburton v Northamptonshire Police** [2022] EAT 42;

    20.3 as to the burden of proof, paragraphs 36 to 54 of the decision of the Court of Appeal in **Ayodele v Citylink Ltd & Anor** [2017] EWCA Civ 1913.

Facts & evidence

21. The evidence before us consisted of:

    21.1 a file / "bundle" of 829 pages, most of which appeared to be of little or no relevance to what we had to decide. It was impossible for us to read the majority of what was in the bundle in the time available and of necessity we relied on the parties to refer

[4] The effect of which is that to be unfavourable treatment under EQA section 15 in an employment context, the treatment must constitute "detriment".

us to what they wanted us to read in their statements and during cross-examination and submissions;

21.2 the Claimant's own witness statement and oral evidence;

21.3 statements filed in support of the Claimant's claim from her former colleagues Ms Bennett, Ms Adams and a Ms McKenna. As Respondent's counsel had no questions for any of the three of them, it was agreed near the start of the hearing that their evidence would be 'taken as read', i.e. that they would not give any oral evidence and that their written evidence would be given the same weight as if they had confirmed it on oath or affirmation in open Tribunal and the Respondent had not challenged it in cross-examination. After we had dealt with preliminaries, we adjourned until after lunch for the Tribunal to finishing 'reading-in'. When we resumed, the Claimant applied for permission to call Ms Bennett and Ms Adams to give oral evidence, so that she could ask them questions. We refused that application: see the written reasons for that refusal approved on 22 December 2025. None of Ms Bennett, Ms Adams or Ms McKenna had any relevant involvement in the events with which this claim is concerned and their written evidence was in practice of no assistance to us;

21.4 a purported statement in support of the Claimant's claim from a former colleague called Ms Anderton. This consisted of a typed document headed "Statement by Rebecca Anderton" and the following text: "Hi Kam // As requested I can confirm that the dismissal letter was non factual and what was discussed in the meetings was factual. // Kind regards // Becky". Unlike the Claimant's other witnesses, Ms Anderton potentially did have relevant evidence to give. Amongst other things, she accompanied the Claimant to the Claimant's disciplinary hearing. However, Ms Anderton was, apparently, unwilling to give oral evidence. In light of this and of the paucity and ambiguity of her written evidence, her statement, which is not even signed and dated, did not assist us either;

21.5 on the Respondent's side, we had written statements and oral evidence from:

21.5.1 Mrs E Thewlis, a Supported Housing Team Leader. The Respondent had two supported living sites in Coventry: The Gateway and Frank Walsh House ("FWH"). Mrs Thewlis managed the Homelessness Assistants at The Gateway. She was the Claimant's line manager up to August/September 2022, when the Claimant moved from The Gateway to FWH. She is the person alleged to have committed acts of EQA section 15 discrimination and was involved in the incident of 23 June 2023 that led to the Claimant's dismissal;

21.5.2 Mr M Clarke, a Money Advice Services Manager. He investigated the incident of 23 June 2023 as part of the disciplinary process and produced a relatively extensive written report into it;

21.5.3 Mr N Whittenbury, Head of Leasehold and Commercial Services. He chaired the disciplinary hearing on 17 January 2024 the outcome of which was the Claimant's dismissal.

22. In the final analysis, it seems to us that, at least so far as concerns anything to do with the complaint of unfair dismissal, very little, if anything, that affects our decision-making is materially in dispute. We can see, on the face of the documents, which include detailed notes of relevant meetings: what investigations were undertaken and what the product of those investigations was; what procedure was adopted; what the Claimant put forward by way of defence, excuse and mitigation; what evidence Mr Whittenbury had before him when the decision to dismiss was taken; if we take the dismissal letter of 30 January 2024 at face value, what his reasoning was. It follows that the credibility of witnesses is of much less importance in this case than in many others.

23. Nevertheless, we do note that the Claimant was an unsatisfactory witness. Her evidence was for the most part confused and contradictory. (This mirrored what had happened during the disciplinary process.) At one point, Employment Judge Camp, in an attempt to ascertain what the Claimant's case was on a particular point[5], highlighted to her the fact that she had just – as she had – said three or four contradictory things in the space of a couple of sentences and urged her to think about what she was being asked and what she was saying and to explain her position. Unfortunately, that intervention did not improve matters.

24. In relation to the Respondent's witnesses, suffice it to say that we had nothing like the same concerns about their evidence. In particular, the Respondent's main witness, Mr Whittenbury, came across as an impressive and thoughtful individual; and the Claimant when cross-examining him barely challenged the truth and accuracy of his evidence. We have no hesitation in preferring the evidence of the Respondent's witnesses to that of the Claimant where they are in conflict; but as we have just highlighted, there is not very much genuine[6], relevant evidential conflict in this case.

25. We shall now outline the key facts. In this section of the Reasons we do not intend to resolve important factual disputes, such as they are. We shall do that, to the extent necessary, in the later sections of the Reasons where we give and explain our decisions on the three Tribunal complaints being made.

26. The Respondent provides affordable housing and regeneration services. It manages over 30,000 homes across the West Midlands. This case concerns its homelessness provision in Coventry and in particular The Gateway and FWH, mentioned earlier, both of which are in the CV1 postcode area, a few minutes walk away from each other, and are supported by funding from Coventry City Council. The Gateway consists of 79 flats for single homeless people – overwhelmingly males. FWH consists of 44 flats for homeless families. There is a much higher turnover of tenants / residents in The Gateway than in FWH.

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[5] The point being why she would not check on the breathing of a resident, as instructed. This was the instruction that she was dismissed for not complying with.

[6] What we mean by "*genuine*" conflict is a dispute where the Claimant is in a position to challenge the Respondent's witnesses' evidence on the basis of other evidence and not purely on the basis of her own apparent beliefs.

27. The Claimant was, at all relevant times, employed as a Homelessness Assistant. Her responsibilities included:

    27.1 preparing paperwork for evictions / possession proceedings. This involved drafting proportionality assessments to go with notices to quit. (Employment Judge Camp is familiar with these kinds of proportionality assessments from judicial work outside the Employment Tribunals.);

    27.2 doing inspections of the housing provided by the Respondent to check up on, amongst other things, the welfare of tenants / residents. The Claimant had first aid training and would be expected to administer emergency first aid if necessary.

28. In late August 2022, Mrs Thewlis and a Ms Cooper, Housing Support Manager (above Mrs Thewlis and below Mr Whittenbury in the management hierarchy), met with the Claimant to discuss the possibility of her changing jobs so that she was based at FWH instead of at The Gateway. Very shortly afterwards she did this. The section 15 complaints relate to this.

29. The thing the Claimant was ultimately dismissed for was refusing a management instruction to go and see whether a resident was breathing. There are some differences of recollection as to what we consider to be unimportant points of detail, but the essentials are beyond dispute. The Claimant was doing a check of a flat at FWH on 23 June 2023 with a colleague called Mandy, whose role was to stay by the front door. The Claimant saw a male asleep, or at least lying down, on a bed. He was unresponsive to her knocking and calling his name. He was believed to be, and was, one of the residents of the flat.

30. Apart from a suspicion that he might have used cannabis in the past, there were no concerns about the resident and no one – the Claimant included – had put a ‘marker’ against him on the Respondent’s system, as would have been done if he had been deemed potentially problematic. The Claimant told Mr Clarke during the investigation that she had seen nothing inappropriate in her few interactions with him. When asked by Mr Whittenbury at the disciplinary hearing whether she felt there should have been a marker against him, she said something like, “No; lovely family; rooms immaculate; no concern”.

31. During the incident on 23 June 2023, the Claimant could not see whether the resident was breathing. She radioed managers at The Gateway. Both her line manager, a Mr Hancox, and Mrs Thewlis were there. Mrs Thewlis told the Claimant to go and check that he was breathing. She would not do so. Instead, she asked for a man to be sent over to assist her. She was again asked to check on the resident’s breathing. She again refused to do so. (The Claimant has always insisted that she did not “refuse” to do anything; but even on her own case, refusing to check that the resident was breathing, as instructed by Mrs Thewlis, was what she did as a matter of fact.) In light of this, a male staff member, Mr Rahimi, attended the flat and ascertained to his satisfaction that the resident was merely asleep. It was several minutes from the time when the Claimant was asked to check the resident’s breathing to when Mr Rahimi did so.

32. Mr Clarke was asked to investigate the incident. He wrote to the Claimant on 27 July 2023 inviting her to an investigation meeting. The matters he told her he was investigating included, "Failure to follow a reasonable management instruction" and "Refusal to check on the welfare of a resident – not following risk assessment and first aid training – as a minimum check breathing and call 999 without delay". The Claimant went off sick the next day. Mr Clarke undertook his investigations during August 2023 and as part of them interviewed a number of people, including the Claimant herself. His report is dated 29 August 2023 and we refer to it; it speaks for itself. It recommended taking disciplinary action against the Claimant.

33. Meanwhile, on 3 August 2023 the Claimant raised a formal grievance about the investigation and disciplinary process and about various other things that had and have nothing to do with the Claimant's Tribunal complaints. Although, initially, the Respondent invited the Claimant to a disciplinary hearing in September 2023, it decided – entirely reasonably; and seemingly as the Claimant wanted (if the Respondent was unwilling to stop the disciplinary process altogether) – paused the disciplinary process so that a grievance process could be gone through. This delayed the disciplinary process. There were grievance meetings, a grievance outcome of 30 November 2023, a grievance appeal in December 2023, and a grievance appeal meeting and grievance appeal outcome respectively on 3 and 22 January 2024. Overall, the grievance and grievance appeal were rejected. As part of the original grievance decision of 30 November 2023, the Respondent decided that the parts of the grievance that related to Mr Clarke's investigation and, generally, to the subject matter of that investigation and to the disciplinary process could only be dealt with as part of that process and the Claimant had the opportunity to raise them within that process.

34. When the Claimant was cross-examining Mr Whittenbury, she at one point sought to suggest that part of the grievance that was decided was relevant to his decision and should have been taken into account by him; however, she was unable to identify what part of it she was referring to. We are unable to identify anything relevant in it either.

35. The disciplinary process recommenced in or around December 2023. After it recommenced:

    35.1 in preparation for a disciplinary meeting, Mr Whittenbury read Mr Clarke's investigation report in detail and decided that what the Claimant had allegedly done was potentially gross misconduct for which she could be dismissed and not merely misconduct for which the maximum sanction would be a final written warning, as Mr Clarke had originally thought;

    35.2 on 3 January 2024, Mr Clarke added something to his report, in an "Addendum", connected with an incident in February 2023 that the Claimant had referred to as part of her grievance. The Addendum included this: "The following information is a recent development and has not been investigated with Kam [the Claimant] as yet but may be a consideration for discussion during the … disciplinary process as it may indicate a pattern of behaviour."

36. The letter inviting the Claimant to a disciplinary hearing on 17 January 2024 made it clear that dismissal for gross misconduct was a possible outcome.

37. The disciplinary hearing duly took place on 17 January 2024. It lasted around 2 hours. There are detailed meeting notes. Although they were not sent to the Claimant for her to check until Mr Whittenbury had made his decision, their contents are not substantially in dispute in any relevant way.

38. Mr Whittenbury decided that the Claimant should be summarily dismissed for gross misconduct. This was communicated to the Claimant in a detailed and self-explanatory letter dated 30 January 2024. He upheld each the three disciplinary 'charges' levied against the Claimant: failure to follow a reasonable management instruction; refusal to check on the welfare of a resident – not following the risk assessment and first aid training – minimum check breathing and call 999 without delay; not displaying Citizen values and behaviours – pre-judging a resident without any evidence. He also made clear in the letter that he had not taken into account as part of his decision-making the incident referred to in Mr Clarke's 'addendum'.

39. The Claimant was told in the letter that she could appeal his decision, but she chose not to do so.

Decision on the issues – first section 15 complaint

40. For the purposes of this decision, we accept that in practice, and not just in principle, the following arose in consequence of the Claimant's dyslexia: grammatical difficulties and the length of time it took her to prepare notices to quit.

41. The first section 15 complaint relates to the following alleged treatment (from the List of Issues): "In August 2023 when she was asked to move to Frank Walsh House, Emma Thewlis told the Claimant that there were fewer notices to quit to prepare because she did not like proof reading the Claimant's notices to quit."

42. Mrs Thewlis freely conceded that she might well have told the Claimant that there were fewer notices to quit to prepare at FWH compared to at The Gateway. There was nothing unfavourable or detrimental in such a comment. It was an accurate comment and we accept Mrs Thewlis's evidence, having no good reason to do otherwise, that if she did make the comment, it was to highlight what for most Homelessness Assistants, and presumptively for the Claimant too, would be a positive aspect of moving to FWH, because they generally did not like having to do the proportionality assessments. We do not accept, in so far as this is being alleged[7], that any such comment was a pointed one, indirectly referencing the Claimant's dyslexia, nor that, if the Claimant is alleging she genuinely thought it was, that her thinking that was objectively reasonable.

[7] This was not put to Mrs Thewlis in cross-examination.

43. In conclusion on this point:

    43.1 the Claimant was not subjected to unfavourable treatment by any comment Mrs Thewlis made around there being fewer notices to quit to prepare at FWH;

    43.2 Mrs Thewlis made no such comment because of the alleged (or any) something arising in consequence of disability, but instead because –

    43.2.1 as a matter of fact there were fewer notices to quit to prepare at FWH;

    43.2.2 she believed that the Claimant, like most of her colleagues, did not particularly like doing notices to quit because the proportionality assessments that went with them were complicated and time-consuming to prepare, and that the Claimant would therefore welcome potentially having to do fewer notices to quit.

44. We are far from satisfied that Mrs Thewlis said anything to the effect that she did not like proof-reading the Claimant's notices to quit (and/or the proportionality assessments), in connection with the move to FWH or otherwise, in so far as this allegation is still being made. Mrs Thewlis was clear in evidence that she did not do so; the Claimant's evidence about this was inconsistent and unclear. In the claim form Details of Claim, it is put as Mrs Thewlis, "also stated that there is less notice to quit to prepare (This was stated due to my dyslexia Emma didn't like proofreading my notice to quit prepared)". In other words, there was no allegation that Mrs Thewlis actually said that she didn't like proof-reading the claimant's notices to quit, merely that that was what the Claimant thought her motivation was for saying there would be fewer notices to quit to prepare at FWH. Similarly, in the Claimant's witness statement the allegation made was that Mrs Thewlis, "said you won't need to prepare any notice to quit, as if there were problems with the families the Council would move them on (This was not true)." Once again, then, there is no allegation that Mrs Thewlis said she did not like proof-reading the Claimant's notices to quit / proportionality assessments.

45. In her oral evidence, the Claimant said something like this: "Mrs Thewlis had previously raised a complaint about my notices to quit taking longer to proof, but she did not raise this in connection with the move to FWH." That is also a different allegation from the one in the List of Issues, which is that this was explicitly raised in connection with the move to FWH (and, by implication, supposedly explained why Mrs Thewlis was promoting that move, as the claimant moving to FWH would remove Mrs Thewlis's line management responsibility for her). Further, if the allegation is that this comment was made at some unspecified time before the discussions about moving to FWH in August 2022 then the significant time limits problems the complaint anyway has are made even more severe.

46. In other parts of her oral evidence the Claimant gave yet further versions of events:

    46.1 that Mrs Thewlis did say there were issues with the claimant's proportionality assessments, but never said that the claimant's were worse than those of her colleagues. (Mrs Thewlis explained that all Homelessness Assistants made mistakes in their proportionality assessments);

46.2 that she [the Claimant] got a colleague to proof-read one of her proportionality assessments before it was submitted and Mrs Thewlis said it took her longer to deal with it than it normally would;

46.3 that Mrs Thewlis said a number of times that she not like proof-reading the claimant's notices to quit.

47. It is noteworthy that the Claimant was unwilling or unable to put any of her allegations around this issue to Mrs Thewlis in cross-examination, despite us – the Tribunal – repeatedly encouraging her to do this (having previously explained to her what putting her case entailed). It was one of a number of allegations that, in fairness to everyone, we felt constrained to put to witnesses on the Claimant's behalf. One of the things we said to the Claimant before we put it to Mrs Thewlis was that it would be much better if she rather than we put it, because all we could put was what her case was on paper and her case in practice might be different. One of the reasons we said this was that, by that stage, we were rather confused as to precisely what the Claimant's case in practice was.

48. In short, our finding is that Mrs Thewlis did not say that she did not like proof-reading the Claimant's notices to quit / proportionality assessments.

49. The first section 15 complaint therefore fails on its merits. Because it has failed on its merits, we do not make a definitive decision about time limits, but we do note that both section 15 complaints are significantly out of time and would face significant – probably insurmountable – time limits problems had they succeeded on their merits.

Second section 15 complaint

50. The second section 15 complaint is about (as set out in the List of Issues): "Moving the Claimant from Gateway to Frank Walsh House at end of August / beginning September 2023".

51. Even the Claimant is not in fact alleging that she was forcibly moved from The Gateway to Frank Walsh House. It is also inaccurate to say, as the Claimant did in her claim form Details of Claim, that she was "asked to move" to FWH. What in fact happened, as explained by Mrs Thewlis in her evidence, was that the Claimant was offered the opportunity to move and she accepted that offer.

52. We do not think making this offer to her, or the move itself, was unfavourable treatment / a detriment. This is principally because we think the Claimant herself did not think it was so at the time. Had she thought so, she would not have accepted the offer. No doubt she had worries about it, but we do not accept that this was any different from the kind of concerns that anyone moving to a new job in a different working environment might have.

53. We do accept that the Claimant later came to think of the move as detrimental and persuaded herself that she had somehow been forced into it. But those thoughts came in hindsight, when she faced a disciplinary. She all but admitted as much in her oral evidence when she was being asked questions relevant to time limits. She confirmed the truth of the following evidence in her statement: that, in connection with the move, she

thought: “I will give it a go as it would be [a] new experience. When I moved I really loved the role and enjoyed working with homeless families. I was also made to feel really welcome by the residents and had some positive feedback.” Also in her oral evidence, she said something along these lines: at the time of the move, she did not think it was discriminatory and/or detrimental and it was only later, looking back on it in light of what happened, that she came to the view that it was. We are fairly sure that what she was indirectly referring to there in terms of “what happened” was one of her theories of case, to the effect that she was encouraged or persuaded to move to FWH to make it easier to dismiss her. Given the length of time between the move and disciplinary action being taken against her, and the fact that – see below – the disciplinary action resulted from something that, on the undisputed facts, the claimant did of her own free will, without encouragement from anyone else, that theory of case is almost absurd.

54. This complaint would therefore fail, even if we turned the complaint in the List of Issues into one about – say – persuading or encouraging the Claimant to move to FWH and even if there was encouragement or persuasion that was because of something arising in consequence of disability.

55. In any event, the move, and any encouragement given to the Claimant to accept the offer of the move to FWH, had no connection with the Claimant’s disability, nor with the “something arising” relied on: grammatical difficulties and the length it took her to prepare notices to quit. Instead, as explained by Mrs Thewlis[8], the reasons were:

    55.1 the Respondent needed someone to fill a role, on a temporary basis, at least initially, and the Claimant was suitable to fill it;

    55.2 the Claimant had previously unsuccessfully applied for a job at FWH so it was thought she might well want to work there;

    55.3 it would be good experience for her and would support her career progression ambitions.

56. It follows that this second section 15 complaint fails, on much same basis as the first section 15 complaint: there was no unfavourable treatment and any relevant treatment was not because of the “something” arising in consequence of disability. It also would have similar time limits difficulties to the first complaint were it to have succeeded on its merits.

Decision on the issues – unfair dismissal

57. The first question / issue that arises in relation to an unfair dismissal complaint of the kind being brought by the Claimant is: was the reason or principal reason for dismissal that the Respondent genuinely believed the Claimant was guilty of misconduct?

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[8] See in particular paragraphs 10 to 13 of Mrs Thewlis’s statement. The Claimant is in no position to challenge the relevant facts from any direct knowledge she has. To the extent the Claimant is disputing Mrs Thewlis’s narrative here, she is doing so on the basis of pure speculation.

58. In the present case, we suspected, before hearing oral evidence but having read the written evidence, that that was not a 'live' issue here. There is nothing in the documents that even hints that the true reasons for the decision to dismiss might be different from those given in Mr Whittenbury's dismissal letter of 30 January 2024.

59. Nevertheless, during this hearing, the Claimant advanced a number of different, and to an extent contradictory, theories about her dismissal. As with many other aspects of her case, they were fanciful and based not on evidence but on speculation and/or imagination.

60. The first of those theories was not, upon analysis, about dismissal at all but was instead about why the Claimant was [allegedly] encouraged to move to FWH. It runs along these lines: Ms Cooper wanted only family and friends to work at The Gateway and therefore manoeuvred other people from there to FWH; FWH was understaffed and for various reasons was an undesirable place to work.

61. Even if all that were true (and we are not satisfied that any of it is), it would not explain why, having supposedly engineered the Claimant's move to FWH, Ms Cooper / the Respondent would want to dismiss her.

62. This was pointed out to the Claimant by Employment Judge Camp. He did so as part of a discussion with the Claimant, which was not part of her evidence, about what her case was. In response, the Claimant said various things she had not said as a witness (and which she had therefore not had to defend in cross-examination):

    62.1 that she had been dismissed to free up a vacancy at FWH for friends and family, which was not a vacancy directly with the Respondent but was instead a position for an agency worker. This suggestion contradicted the whole notion that FWH was an awful place to work and that Ms Cooper moved people there so that friends and family could take up positions at The Gateway;

    62.2 that Mrs Thewlis wanted her to be dismissed because of her dyslexia. Apart from that being a completely new allegation and there being no direct disability discrimination complaint about dismissal or anything else before the Tribunal, it makes no sense because Mrs Thewlis was not a decision-maker in relation to dismissal and there is no suggestion that she was or might have been one;

    62.3 so far as concerns what the motivation to dismiss was of someone who was or might have been a decision-maker in relation to dismissal, the Claimant's only suggestion for an ulterior motive was that her being off sick with stress at work caused budgetary problems for Ms Cooper, that Ms Cooper was under the line-management of someone called Ms Carroll and Ms Carroll and Mr Whittenbury, who were at the same management level, shared a line manager and met a few times a year at meetings, and that at or alongside one of those meetings, Ms Carroll could have told Mr Whittenbury to dismiss the Claimant. This suggestion was a wholly new case and had no evidence whatsoever to support it.

63. We emphasise that the Claimant did not suggest during the hearing that anyone other than Mr Whittenbury was the true decision-maker in relation to dismissal, nor was this

put to him during cross-examination. It would also be fair to say that it was not put to him in any coherent way by the Claimant that the reasons he gave in the dismissal letter for his decision to dismiss her were not his true reasons.

64. We unconditionally accept Mr Whittenbury's evidence that he – and no one else – made the decision to dismiss the Claimant and that the reason he decided to dismiss her was that he believed she had committed an act of gross misconduct, as set out in the dismissal letter. This dismissal was therefore for a potentially fair reason under ERA section 98(1).

65. That brings us to whether the dismissal was fair or unfair in all the circumstances, in accordance with equity and the substantial merits of the case, under ERA section 98(4).

66. In summary, our decision is that dismissal was fair, in that: the Respondent had undertaken reasonable investigations at the time of the decision to dismiss; there was reasonably sufficient evidence to support Mr Whittenbury's belief that the Claimant was guilty of gross misconduct; the procedure adopted was reasonable and reasonably fair; dismissal was a sanction that a reasonable decision-maker in Mr Whittenbury's position could impose.

67. In coming to that decision, we have considered everything the Claimant raised during the hearing as a potential source of unfairness, as well as whether there was anything else that we noticed that an experienced legal representative, had she had one, might have raised on her behalf. (There wasn't anything else of that kind.)

68. Before us, the Claimant made a number of points that she also made to Mr Whittenbury, mainly concerning what she seemed to think was a lack of evidence to support a finding of misconduct, let alone gross misconduct, and/or things that justified or excused her actions. We think they are all bad points. More importantly from the point of view of assessing whether the dismissal was fair or unfair, so did Mr Whittenbury and it was reasonable for him to reach the conclusion that they were bad points.

69. Unmeritorious points taken by the Claimant at this hearing, many of which she also raised during the disciplinary process, include:

    69.1 that the Respondent should have retained available CCTV footage. But there was no CCTV footage of the inside of the resident's flat where the incident took place. There was anyway no real dispute about what happened that was considered to be gross misconduct, namely that the Claimant refused to move close enough to the resident's bed where he was lying down to be able to check on his breathing when instructed to do so by a manager. In addition, had the Respondent ensured that all CCTV footage taken at the time of the incident was kept, nothing useful would have come out of it. In closing submissions, the Claimant's only suggestion as to what relevant evidence would have come from CCTV footage was that it would have shown whether or not she was laughing at a particular time – something that formed no part of Mr Whittenbury's decision-making. Moreover, it was reasonable for the Respondent to assume at the time that there would be no useful CCTV footage and not to take steps to preserve such footage as there was;

69.2 the Claimant has complained about the upgrading of the disciplinary charges against her from misconduct to gross misconduct between August / September 2023 and January 2024. What in fact happened was that Mr Clarke, who was not an experienced investigator, made a mistake, which was then corrected. We answer 'yes' to each of the following questions: was it reasonable for the Respondent to consider what the Claimant had allegedly done as gross misconduct?; when Mr Whittenbury decided to upgrade the charges, is it right that he was not pre-judging the Claimant's guilt or innocence and was merely assessing how serious the allegations against her potentially were?; was the upgrading of the charges adequately and timeously communicated to the Claimant?;

69.3 the Claimant assumed – understandably, in fairness to her – that the upgrading of the charges from misconduct to gross misconduct was something to do with what was in Mr Clarke's 'addendum'. In fact, it had nothing to do with that and Mr Whittenbury did not take anything in or connected with the addendum into account when he decided to dismiss the Claimant;

69.4 the Claimant says that Mr Saba (or possibly "Sabau" or "Sabat"), the Maintenance Officer at The Gateway, should have been interviewed as part of Mr Clarke's investigation. But even she is not suggesting he was a witness to the incident, we cannot see what useful evidence he could have given, and it was reasonable for the Respondent not to see him as a relevant witness, particularly given that the Claimant did not, so far as we can tell, ask for him to be interviewed;

69.5 the Claimant has kept mentioning her allegation that before Mrs Thewlis told her to check on the resident's breathing, her line manager Mr Hancox had said "carry on". Even if had said this (and he denied he did when interviewed by Mr Clarke), this does not change the fact that whatever he said was superseded by Mrs Thewlis's clear instruction to check on the resident's breathing. There can be no serious suggestion that there was a disagreement between Mr Hancox and Mrs Thewlis, which led to the Claimant being confused as to what she was being told to do, or anything like that;

69.6 the Claimant has also referred a number of times to a dispute, or alleged dispute, about where Mrs Thewlis was when the Claimant first radioed through to The Gateway and spoke to Mr Hancox – whether or not she was originally in a different room to Mr Hancox. The relevance of this to whether the Claimant was or was not guilty of gross misconduct when she refused to do what Mrs Thewlis instructed her to do escapes us and, reasonably, escaped the Respondent during the disciplinary process;

69.7 a further 'red herring' raised by the Claimant is her allegation, denied by the man in question, that when Mr Rahimi attended FWH and checked the resident's breathing, he did not approach the resident but merely stood at the door. She seems to be implying that he didn't do his job properly. Once again, this has nothing whatsoever to do with whether she did her job properly and was or was not guilty of gross misconduct;

69.8 the Claimant has placed great emphasis on the 'risk assessment' she says she conducted that supposedly led to her concluding that it would not be safe for her to check on the resident's breathing, and how she had allegedly not been trained, or adequately trained, in conducting them. We note the incoherence of and inconsistencies within the Claimant's evidence – that which she put forward to the Respondent during the disciplinary process and that which she put forward to us at this hearing – about why she decided not to obey the instructions to check on the resident's breathing, which lead to doubts as to whether there was any reasoned thought-process at all behind that decision. Even putting that to one side, this kind of 'dynamic risk assessment' (as it was described) is very different from a formal risk assessment that would be recorded in writing and which it would not be reasonable to expect someone to undertake without specific training. Instead, it is the kind of thing that most of us do to some extent every day unconsciously, and, potentially, if, like the Claimant, our work means we encounter particular risks that others would not encounter and we have been instructed / trained to be mindful of those risks, consciously too. The Claimant had sufficient training to be able to carry out an adequate assessment of the risks involved in going and checking that the resident was breathing; and it was certainly reasonable for Mr Whittenbury to think that she did. Anyway, even on her own case, the Claimant did not make a mistake due to lack of training. Her true case – during the disciplinary process and maintained at this hearing – is that she behaved entirely properly, and that she would do the same again.

70. The reality is that, at this hearing as at the disciplinary hearing, the essential facts are not in dispute; and that the Respondent could and did reasonably conclude that the Claimant was guilty of gross misconduct and that dismissal was the appropriate sanction on the basis of those substantially undisputed essential facts. No more evidence was needed to support that conclusion than the Claimant's own evidence, including her complete lack of contrition. The impression given to the Respondent (and to us) is that she could arbitrarily, at her whim, decide she was not going to check on the breathing of any male resident who might have stopped breathing and/or refuse to administer first aid to them. As Mr Whittenbury put it in the dismissal letter: "A critical factor in why I have not taken a lower sanction, for example a Final Written warning, is that you have said you would do the same again. To allow you to return to your role could result in serious harm or death of a customer." Mr Whittenbury evidently thought about, as we have, what could have happened if Mr Rahimi had discovered that this resident was not breathing and if the resident could not then be revived. Potentially, the delay of several minutes in administering first aid could have made all the difference; and whether it made any difference or not, the Respondent and the Claimant would likely have found themselves facing public criticism at a coroner's inquest. If the Respondent had not treated what the Claimant did with the utmost seriousness and subsequently she or someone else had done something similar, and this time the resident was not breathing and died, the public criticism would be enormous and the potential for criminal charges real.

71. In conclusion, this was plainly a fair dismissal.

72. Finally, when discussing the issues at the start of the hearing, we agreed with the parties that, alongside dealing with liability, we would deal with some remedy issues of principle

as well: contribution / fault under ERA sections 122(2) and 123(6) and the so-called **Polkey** issue. However, given our findings on liability:

72.1 we are not able to decide the **Polkey** issue because we would have to be able to identify the procedural defect(s) that might have made this a procedurally unfair dismissal and we cannot do so. (Although we can say that if it was made unfair by any of the things referred to in paragraphs 69.1 to 69.7 above, then this would be one of those rare cases where the **Polkey** reduction would be 100 percent);

72.2 similarly, we cannot definitively assess what the reduction to the basic and compensatory awards for contribution and fault would be had we found this dismissal to be unfair, because that would depend on the basis upon which we had found it to be unfair. On any view, though, the Claimant was the author of her own misfortune, not just in doing what she did on 23 June 2023 but in her seeming inability to accept that she had done anything wrong. In all probability, had she admitted wrongdoing to Mr Whittenbury, apologised, and told him with apparent sincerity that she would act differently in the future, she would not have been dismissed. Because of this, on whatever basis we decided this was an unfair dismissal, the reduction pursuant to ERA section 122(2) and 123(6) would be well over 50 percent and, assuming we did not find that the sanction of dismissal was outside the band of reasonable responses, quite possibly as high as 100 percent.

Employment Judge Camp

Approved on 11 January 2026