



EMPLOYMENT TRIBUNALS

Claimant: Mr BW Passman

Respondent: Beyond Housing Limited

HELD AT: Teesside Justice Centre **ON:** 19 to 20 February 2026

BEFORE: Employment Judge Booth

REPRESENTATION:

Claimant: Mrs Passman (Claimant's mother)

Respondent: Mr Kotecha (Counsel)

JUDGMENT

The judgment of the Tribunal is as follows:

Unfair Dismissal

1. The complaint of unfair dismissal is not well-founded. The claimant was fairly dismissed and his complaint does not succeed.

Direct Age Discrimination

2. The complaint of direct age discrimination was withdrawn by the claimant and is dismissed on withdrawal.

REASONS

Procedural Matter

1. On the second day of the hearing, the Tribunal's recording equipment failed at the point at which Employment Judge Booth was due to give judgment and verbal reasons. Employment Judge Booth noted that paragraph 5 of the Presidential Practice Direction on Recording of Employment Tribunal Hearings and the Transcript of Recordings states that if recording malfunctions, the Judge's notes shall constitute the record of proceedings for the part for which no audio recording exists. Employment Judge Booth agreed with the parties to proceed with judgment and verbal reasons, and to issue full written reasons to the parties.

Introduction

2. The claimant, Ben Passman, brings a complaint that the respondent unfairly dismissed him. At the commencement of the hearing, the claimant withdrew his complaint of direct age discrimination and that complaint is dismissed on withdrawal.
3. It is agreed between the parties that the respondent has cited misconduct as the reason for the claimant's dismissal. The misconduct being that the claimant accessed a colleague's laptop without permission and showed a colleague how to access a colleague's laptop without permission. The claimant admitted to this misconduct. The respondent contends that this is a fair reason for dismissal.
4. The Tribunal reviewed documentary evidence contained within an agreed bundle of documents consisting of 222 pages. The parties were reminded to take the Tribunal to any specific documents relied upon during the course of their respective evidence. A reference in this judgment to a page number is a reference to the bundle.
5. The Tribunal was provided with the following statements for the claimant:
 - a. A statement of the claimant, dated 30.07.2025.
 - b. Amended statement of the claimant dated 04.08.2025.
 - c. A statement of Paul Smith with appendices, dated 24.07.2025.
6. The Tribunal was provided with the following statements for the respondent:
 - d. A statement of Dan Duffton, dated 30.07.2025.
 - e. A statement of Ben Fletcher, dated 30.07.2025.
7. Written witness statements were read in advance and the witnesses gave further evidence through cross examination and Tribunal questions.

Issues to be Determined

8. The following issues were set down in the Case Management Orders of 15 April 2025.

9. What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
10. If the reason was misconduct, did the respondent act reasonably 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 will usually decide, in particular, whether:
 - a. there were reasonable grounds for that belief;
 - b. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - c. the respondent otherwise acted in a procedurally fair manner;
 - d. dismissal was within the range of reasonable responses.

Findings of Fact

Background

11. The claimant commenced employment with the respondent on 26 October 2020. The Tribunal notes that the claimant states in his ET1 that he started employment on 4 September 2020, however the Tribunal accepts the respondent's evidence on the start date as supported by the claimant's contract of employment. [Page 52]. The claimant's first role with the respondent was that of Business Administration Apprentice.
12. In October 2021, the claimant moved to the role of HR Administration Assistant. In the claimant's ET1 he describes that he was unfairly dismissed by the respondent in August 2022. In the respondent's ET3 they describe that the claimant was not dismissed in August 2022, he was returned to the role of Business Administration Apprentice. The Tribunal accepts the respondent's evidence on this because there is no suggestion from either party that the claimant left his employment or that the claimant's period of continuous service was broken.
13. In October 2022, the claimant moved to the role of Apprentice ICT Technician. The claimant was issued with an apprentice contract of employment, which confirmed that his continuous employment began on 26 October 2020. [Page 52].
14. The contract also stated at clause 3.4: "we require you to meet satisfactory levels of conduct and performance relevant to your role and will take disciplinary action (up to and including dismissal) if you unreasonably fail to meet such standards".
15. The claimant's employment with the respondent ended on 5 August 2024 (the EDT). The claimant's complaint relates to this dismissal.

Policies

16. The respondent's Disciplinary Procedure defines gross misconduct as "misconduct serious enough to fundamentally breach the contract between the

employer and the employee, making any further working relationship and trust impossible.” [Page 145].

17. The Disciplinary Procedure further states that gross misconduct “can and may lead to dismissal without prior warning (i.e. summary dismissal)”. [Page 152].
18. The Disciplinary Procedure gives examples of gross misconduct, which include:
 - e. “Unauthorised entry to computer or manual records” [Page 146].
 - f. “Failure to adhere to company policies and procedures” [Page 146].
19. The respondent’s ICT Policy states:
 - g. 7.3.1 “Users are only authorised to access those systems and information for which they have been given explicit permission and that are required as part of their duties”. [Page 161].
 - h. 7.10 “Unacceptable, unauthorised and inappropriate use of any ICT facility (...) may lead to disciplinary action... [Page 166]. Unacceptable use will include but may not be limited to the following:... Using the network to gain unauthorised entry to another computer”. [Page 168].
20. In evidence the claimant confirmed that the respondent’s ICT Policy is part of the terms of his employment and that he understood that a breach may result in disciplinary action. The claimant also confirmed that he understood that his role within the ICT department required him to uphold the ICT Policy.
21. In evidence the claimant confirmed that his role gave him the privilege of being able to access other employees’ devices, that this required a higher level of access than other employees and a high level of trust. The claimant had been in his role for approximately 18 months and was not supervised. The claimant also confirmed in evidence that he understood that the respondent had put their trust in him and the respondent’s employees needed to have faith and confidence in the ICT department, given their access privileges. The claimant confirmed that he understood why a breach of that trust and confidence would cause upset and more specifically why NW was upset following the incident on 18 June 2024.

Remote Access to Devices

22. The claimant and the respondent witnesses described that the usual approach to remote access is that an employee makes a request for help and is then asked to launch the AnyDesk application, which is the means by which the ICT employee can remotely access their machine. The claimant described that he will receive a code, which he inputs. Ben Fletcher described that the employee receives a code which they give to the ICT employee. The Tribunal considers that nothing turns on this. It is not in dispute that the usual process involves the employee being actively involved by launching the AnyDesk application and being aware that the ICT employee will remotely access their device.
23. It is agreed between the parties that after an ICT employee has remotely accessed an employee’s device for the first time, it is possible for them to reconnect to that employee’s device on future occasions without the employee

in question launching the AnyDesk application or being aware that the ICT employee is remotely accessing their device. The claimant described that he brought this flaw to Dan Dufton's attention. Dan Dufton did not recall the claimant doing this as he had no record of it but conceded that the discussion could have taken place. The Tribunal considers that not much turns on this point. It is agreed between the parties that the respondent was aware of this flaw in the system that allowed reconnection in this way.

24. In evidence, the claimant confirmed that although he knew he could reconnect to an employee's device in this way, he did not do so in practice. He described that he would still interact with the employee before accessing their device. The Tribunal is satisfied that the claimant was aware that although he *could* reconnect without another employee's knowledge or consent, he should not do so. In evidence, the claimant further confirmed that although he was aware of this vulnerability in the system, he does not blame this for his actions, and it does not excuse what he did. Karen Passman, on behalf of the claimant, contended that if the vulnerability had been corrected the claimant could not have acted as he did. Although this is likely to be true, the Tribunal finds that this does not excuse the claimant's actions.
25. Another mode of access was discussed in evidence. This was referred to as "unattended access" and/or "the break glass method". In essence, this allows access to an employee's device without their knowledge or permission if they are not available and is used only in the event of a serious issue such as a potential cyber attack.

Incident on 18 June 2024

26. On 18 June 2024, the claimant attended an apprentice event at the respondent's offices. The claimant was asked by a colleague, AW, how he could help people with ICT issues when they work from home. The claimant decided to show AW how to do this and they discussed which of their colleagues to try it out on; they agreed on NW as someone they both knew. The claimant opened AnyDesk on his laptop and connected to NW's, computer whilst AW watched. [Page 16].
27. The claimant was connected to NW's computer for 8 seconds. [Page 83]. AW's recollection was that they saw NW was on the Workplace application. The claimant's recollection is that they saw only a blank screen. The respondent accepted the claimant's evidence on this point within the disciplinary procedure and Ben Fletcher confirmed that it did not have a bearing on his decision. [Page 115]. The Tribunal finds that the duration of the connection and what the claimant actually saw was not material to the respondent's decision.
28. Very quickly after disconnecting from NW's computer, the claimant connected to Karen Passman's computer (Karen Passman is the claimant's mum and representative in this hearing, and an employee of the respondent).
29. The claimant described in evidence that both connections were accidental and not in line with usual practice. However, the claimant did not report the matter

to NW or Dan Dufton, his line manager. The claimant admitted to his actions at each stage of the respondent's process and within the Tribunal hearing and maintained that his actions were accidental and that he had intended to show AW the process up to the point of clicking connect and no further. The claimant accepted that he could have talked AW through the process verbally without the demonstration.

30. Following the incident, AW reported the matter to NW. [Page 16]. A transcript details a conversation in Teams messages between the claimant and NW in which it is apparent that NW questioned the claimant's actions because (i) he had accessed her computer without her knowledge and consent, and (ii) he had potentially gained access to confidential information. The claimant explained to NW he had been able to access NW's computer because he had previously remote accessed it and he apologised. The claimant also confirmed to NW that the ICT department would not usually remote access a device in that way when he said "not like we do on purpose of course" and "its not what it is usually used for". [Page 78].
31. It is not in dispute that the claimant connected to NW's device. On balance, the Tribunal finds that it is likely that the claimant did intend to connect to NW's device to show AW how he could do this. The Tribunal takes into account the claimant's evidence that he was "showing off" [Page 97] which was also AW's perception [Page 67]. The Tribunal also takes into account that the claimant did not inform NW or Dan Dufton of his actions.
32. In any case, the claimant accepted that his actions were wrong and took responsibility for them. The claimant understood why NW was upset by his actions and also understood why the respondent may feel a loss of trust in him.

Investigation

33. On 24 June 2024, the claimant was informed verbally and by email that an investigation would be undertaken into alleged gross misconduct. [Page 62]. It is important to note the use of this terminology here as the claimant expressed concern that the terms gross misconduct and misconduct were used interchangeably by the respondent.
34. The claimant was invited to attend an investigation meeting. [Pages 62-62]. The allegations set out in the email included:
 - i. Breach of confidentiality due to unauthorised entry to computer or manual records by accessing colleague accounts without cause or permission. The email states that this allegation is in breach of ICT Policy 7.3.1 and 7.10.
 - j. Showing an individual how to access colleague accounts without cause or permission.
35. The investigation was conducted by Dan Dufton, ICT Service Desk Lead, on behalf of the respondent. As part of the investigation, Dan Dufton looked at the connection log for the previous 6 months and compared it to tickets logged, to understand where connections were made without an apparent justification.

36. On 25 June 2024, AW was interviewed. AW described that she had asked the claimant how he could help people with ICT issues when they work from home, that he had tried to remote login to her laptop but it was offline, and so he had tried to remote login to NW's laptop which was successful. AW described that the claimant had only been on NW's laptop for "one second" but she had seen that NW was on Workplace at the time. [Page 66]. AW then described that the claimant had also tried to remote login to his mum's laptop which was successful and that his mum was on email. AW described that the claimant told her that NW and his mum would get a notification that he had logged on to their machine and stated that he would also make NW aware. However, when AW asked NW, she had not received a notification and the claimant had not made her aware. AW described that the claimant confirmed to her that he would be able to see her through her web-cam if she was checking her camera while he was on her laptop. [Page 67].
37. Dan Dufton did not interview Karen Passman or obtain a statement from her in connection with the claimant's connection to her device and stated in evidence that this was not within the remit of his investigation. The Tribunal accepts that the investigation was focused on the connection to NW's device and that this was a reasonable step given that Karen Passman is the claimant's mum and may have been in a compromised position if involved in the investigation.
38. On 25 June 2024, the claimant attended an investigation meeting. The claimant described that when AW asked him how he could help people with ICT issues when they work from home, he had meant to show her the screen that he uses for this and had not meant to click "connect" but did this out of habit. The claimant described that he connected to NW's laptop and disconnected straight away and that they did not see anything, only a blank screen. [Page 72-73].
39. In the investigation meeting, the claimant was asked why his log of connections showed that he had logged into his mum's laptop straight after disconnecting from NW's laptop. The claimant stated that this comes up at the top of his list "like a favourite" and that he might have clicked on it. [Page 73]. The claimant confirmed that he had also connected to other people's laptops without their knowledge, but not intentionally. He described that this happened rarely and that he always informed the person and apologised straightaway (though he did not do so in this case). [Page 74]. The claimant stated that he had not shown others how to access a laptop remotely without a passcode. [Page 74].
40. In the investigation meeting, the claimant was reminded that he and Dan Dufton had had a discussion about the need to log a ticket for each job that he did and the claimant agreed this discussion had taken place. The claimant was asked why approximately 40% of his connections to other machines did not have a ticket logged against it, to which the claimant responded that he wasn't very good at logging tickets. [Page 74]. The claimant has expressed that this question appeared to be outside of the scope of the investigation and caused him unnecessary concern. The Tribunal finds that it was reasonable for Dan Dufton to explore whether there may have been other occasions on which the claimant connected to employee devices without an apparent justification

although this was not taken forward as a separate allegation against the claimant.

41. On 1 July 2024, the claimant confirmed that the notes of the investigation meeting were accurate. [Page 88].
42. NW provided a written statement to the investigation, which confirmed that she had been told about the claimant accessing her laptop by AW and that she was concerned about the potential breach to her privacy and to confidential information. NW confirmed that she had not received a notification that the claimant had accessed her laptop and that this was scary to her and caused her to question how many other times he had done it. [Pages 77-80.]
43. Dan Dufton prepared a report of his investigation. [Pages 81-86]. In evidence the claimant confirmed that he did not challenge the investigation report and agreed that there was some wrongdoing on his part.

Disciplinary Invitation, and ICT Policy

44. On 5 July 2024, the claimant was informed by email that the outcome of the investigation was a recommendation that the matter progress to a disciplinary hearing. [Pages 91-92]. The allegations set out in the email included:
 - k. Breach of confidentiality due to unauthorised entry to computer or manual records by accessing colleague accounts without cause or permission. The email states that this allegation is in breach of ICT Policy 7.3.1 and 7.10.
 - l. Showing an individual how to access colleague accounts without cause or permission.
45. Returning to the point on terminology, the phrase “gross misconduct” was not used in the email. However, the email stated: “These are very serious allegations and you should note that disciplinary action up to and including dismissal may take place depending on the outcome of the disciplinary hearing.” In evidence, the claimant confirmed that he was aware at all times including before the disciplinary hearing that there was a risk he may be dismissed.
46. On 5 July 2024, the claimant informed Sophie Mann of the respondent that he felt anxious and overwhelmed and unsupported in connection with the process and his apprentice assessment (which he was struggling to complete due to restricted access to the respondent’s systems). Sophie replied to advise the claimant of the details of the respondent’s mental health first aiders and to remind him that he could be accompanied to the disciplinary hearing by a union representative or colleague. Sophie also stated that she was looking into how to assist the claimant in relation to access for his assessment. [Page 90]. It has also been acknowledged in evidence that the respondent had an employee assistance programme that the claimant could have utilised. [Page 110].

Disciplinary Hearing

47. On 12 July 2024, the claimant attended a disciplinary hearing. The hearing was chaired by Ben Fletcher, the respondent's ICT Operations Manager.
48. In the hearing, the claimant confirmed that he admitted to showing a colleague how to access user accounts without a password. [Page 94]. The claimant also confirmed that he had accessed a colleague's laptop and his mum's laptop. [Page 94]. The claimant confirmed that he was aware of the ICT Policy. [Page 95].
49. The claimant submitted a statement in the disciplinary hearing. [Page 97]. The statement included:
- m. Agreement that his behaviour was not acceptable. Statement that it was an error in judgment.
 - n. A wish to rebuild trust.
 - o. Statement that there was no intention to act deceitfully.
50. Ben Fletcher confirmed to the claimant that his statement would be taken into account. [Page 95]. Ben Fletcher also asked the claimant whether there was anything else that he or his colleague, Paul Smith, wanted to raise to which Paul Smith asked when a decision would be made. [Page 95].
51. The disciplinary hearing lasted only 16 minutes.
52. The disciplinary hearing was adjourned to allow time for deliberation. The Tribunal finds that a decision on dismissal was not made in the disciplinary hearing, it was made at sometime between the hearing on 12 July 2024 and the outcome of 16 July 2024, which allowed Ben Fletcher time to consider his decision.

Dismissal

53. On 16 July 2024, Ben Fletcher wrote to the claimant to confirm his decision. [Page 98].
54. Ben Fletcher set out that he took into account that the claimant was still an apprentice, that he had admitted to the allegations and cooperated with the investigation process, that he had apologised to the colleague concerned, accepted accountability for his actions and stated that it was an error of judgment. The Tribunal finds that these points are made in the claimant's statement to the disciplinary hearing. [Page 97]. The Tribunal finds that Ben Fletcher took these points into account.
55. Ben Fletcher did not comment on the claimant's points that he had acted without intent or motivation to deceive. [Page 97]. However, Ben Fletcher did set out that the claimant's actions had breached the ICT Policy and caused distress to another colleague, and that this was a serious breach of confidentiality and brought the ICT department into disrepute. [Page 98]. The Tribunal notes that the claimant's statement acknowledges that trust needed to be rebuilt, which indicates an acceptance on the claimant's part that trust had been broken. [Page 97]. In evidence, Ben Fletcher explained that it is important

that the ICT team abide by the ICT Policy and that the ICT team do a lot of work within the respondent's business to ensure trust and reassure employees that they won't access their devices without them knowing. Ben Fletcher explained that his decision was that the trust was broken as between the claimant and the ICT team.

56. Ben Fletcher set out that the claimant's actions could have resulted in a data breach if the colleague had been accessing personal or confidential information at the time. [Page 98]. Karen Passman, on behalf of the claimant, queried Ben Fletcher's evidence at paragraph 5 of his witness statement where he says: "... where is it stated that a password is put in by a member of the ICT team, the next time they may not require a password, this would only be on occasions if the "remember password" box was ticked. We were all aware of this and everyone in the team knew that it should not be done. I note that the claimant has stated that this explanation allows for data breaches. It does not. All members of the ICT are aware as to the reasons and occasions when they need to or should access any other user's accounts and further it is stated in the ICT Policy (page 161). There is no room for an accidental breach as the team member would have to be intended to access someone's account in the first place." Ben Fletcher explained that he meant there was no risk of an accidental data breach, because ICT would have had to have intended to access the account. The Tribunal finds that, by accessing an employee's device without their knowledge, there was an inherent risk that that employee may have had personal, confidential or otherwise sensitive information visible. The Tribunal notes that the claimant's decision to access NW's device carried additional risk, due to the nature of NW's role.
57. The claimant was paid one month's notice. Ben Fletcher set out in the dismissal letter that this was being granted to allow the claimant time to complete his end point apprentice assessment. [Page 98]. Karen Passman, on behalf of the claimant, contended that the decision to give the claimant one month's notice was not consistent with the claimant being summarily dismissed or dismissed for gross misconduct. Karen Passman also contended that the claimant was permitted access to the respondent's building and continued to come to work, which was not consistent with trust being broken. However, Ben Fletcher confirmed in evidence that the claimant's access to systems and equipment had been restricted, and this was not disputed by the claimant. The Tribunal notes that the claimant was permitted to work to complete his end point apprenticeship assessment. On 21 July 2024, the claimant informed the respondent that he had finished his assessment and asked the respondent whether he needed to be in work. [Page 103a]. On 26 July 2024, the claimant was put on garden leave for the remainder of his notice period. [Page 105]. The Tribunal finds that the decision to give the claimant one month's notice is not inconsistent with a finding that the claimant's actions warranted dismissal.
58. In evidence and within the appeal hearing [page 119], Ben Fletcher confirmed that he had considered whether an alternative role may be suitable for the claimant but stated that this would not be workable because the claimant would need access to the respondent's ICT systems in any role he occupied.

59. Karen Passman, on behalf of the claimant, contended that during the investigation stage the respondent advertised a permanent role on the Service Desk that the claimant would have been eligible to apply for on completion of his apprenticeship. This was not put to the respondent's witnesses in evidence. However, the Tribunal notes that Karen Passman also conceded that the deadline for applications was extended to allow time for the claimant's disciplinary and appeal procedures to be completed. The Tribunal finds that this does not indicate that the decision to dismiss the claimant was pre-determined.

60. The claimant's last day of employment was 15 August 2024.

Other Employees

61. In evidence, both Dan Dufton and Ben Fletcher stated that they were not aware of any other member of the ICT team having accessed another employee's device without their knowledge or consent. Dan Dufton stated that he had looked at the connections log for a period of 6 months and compared it to tickets logged with/ by ICT to determine whether there were justifications for the connections. Dan Dufton confirmed that his specific remit was to look at the claimant's actions, but that he was not aware of anyone else having done anything similar.

62. Mr Kotecha on behalf of the respondent referred in submissions to a dismissal of another employee for something similar. [Pages 219 – 220]. This was not put to any of the parties in evidence and it appears that Dan Dufton and Ben Fletcher were not aware of it. Further, the dismissal appears to have been communicated by Kim Orley who was present throughout the hearing as an observer. On balance, the Tribunal does not attach significant weight to this evidence.

63. Karen Passman, on behalf of the claimant, made reference to another employee (BS) who had breached the ICT Policy and received a final written warning. In evidence, the claimant conceded that the circumstances of BS are that he is employed as a gas fitter and as such he does not have the same level of access or trust that the claimant had as an employee in the ICT team. The claimant described that BS had taken a photograph of his phone using the respondent's tablet and that the phone had a pornographic image on it. BS received a final written warning. The Tribunal finds that this is not comparable to the claimant's situation.

Appeal

64. On 18 July 2024, the claimant submitted an appeal. [Page 100]. In summary, the claimant's grounds of appeal included:

- p. That the Employee and Performance Management Policy has not been applied, because there had not been fair and consistent application of performance management processes (Ground 1).
- q. That the ICT Policy had not been accurately applied, because there was no reference in the policy to a breach being regarded as gross misconduct (Ground 2). That the ICT Policy had not been applied

consistently because other breaches had not resulted in disciplinary or dismissal (Ground 4).

- r. That the information he had put forward within the disciplinary hearing had not been considered (Grounds 3 and 5).
- s. That the Disciplinary Procedure had not been consistently applied because the claimant was dismissed with notice rather than summarily dismissed, and did not have a final written warning (Ground 7).
- t. That his lack of experience and age had been a deciding factor in the decision to dismiss him (Ground 8).
- u. Further, the respondent had advertised a full time service desk role externally that the claimant would have been eligible to apply for if the respondent had not dismissed him (Ground 8).

65. On 8 August 2024, the claimant attended an appeal hearing which was chaired by Clare Harrigan, Director of Development for the respondent. In evidence, Paul Smith confirmed that the appeal hearing took two hours.

- v. The claimant explained that the notes of the disciplinary hearing were not accurate because: (i) he had said that when he connected to NW's laptop he saw a black screen, not Workplace. Workplace was mentioned in AW's witness statement. Ben Fletcher confirmed that this had not had a bearing on the decision to dismiss. [Pages 113 and 115]. And, (ii) Paul Smith had asked whether the allegations were being treated as misconduct or gross misconduct and it was confirmed that the allegations were gross misconduct. [Pages 113 and 116].
- w. With regards Ground 2 of his appeal: it was discussed that the ICT Policy uses generic language of misconduct to cover both misconduct and gross misconduct, but the language could be reviewed. [Page 118].
- x. With regards Grounds 3 and 5 of his appeal: the claimant explained that he felt his statement wasn't taken into account. Ben Fletcher confirmed that the information had been accepted. [Page 116].
- y. With regards Grounds 1 and 4 of his appeal: the claimant explained that there were other occasions when ICT team members had logged into an employee's device without their knowledge. This included where an incorrect code was used which mis-identified a device. This was put to Ben Fletcher, who stated that he was not aware of it and that a review would take place [Pages 116-117]. Ben Fletcher explained that the ICT Policy had been reviewed and he had not noticed further incidents. [Page 118].

66. On 15 August 2024, the claimant was informed that his appeal was not successful. [Pages 125 to 128]. Clare Harrigan did not give evidence to the Tribunal. In the appeal outcome letter, Claire Harrigan recorded that the decision to dismiss the claimant was upheld and noted the following as part of her decision:

- z. Although there were inaccuracies in the notes of the disciplinary hearing, this had not had a bearing on the decision to dismiss the claimant. [Page 126].
- aa. The claimant's written statement was taken into account in the decision to dismiss the claimant. [Page 126].

- bb. The example of the conduct of another colleague (BS) was not the same. The claimant's own conduct fell below the standard expected and justified the decision to dismiss the claimant. [Page 126].
- cc. That although there is a difference in the terms misconduct and gross misconduct, the Disciplinary Procedure makes clear that gross misconduct includes "unauthorised entry to computer or manual records". [Page 127].
- dd. That it is accepted that the claimant acted on a spur of the moment, but there was still a clear breach of trust and a risk that it may happen again. [Page 128].

67. On 2 September 2024, the claimant started new employment with a family friend.

68. On 12 September 2024, Clare Harrigan confirmed to Paul Smith that the respondent would provide a reference for the claimant. [Page 14, witness statements bundle]. The Tribunal finds that the respondent's willingness to provide a reference that did not expressly refer to the claimant's dismissal does not undermine the respondent's reasons for dismissing the claimant.

Relevant Law

69. Section 94(1) of the Employment Rights Act 1996 provides that an employee has the right not to be unfairly dismissed by his employer.

70. Section 98 of the Employment Rights Act 1996 deals with the fairness of dismissals. There are two stages within section 98.

ee. First: section 98(1) provides that, in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or if more than one, the principle reason) for dismissal and that that reason is either a reason falling within section 98(2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position with the employee held. Section 98(2) sets out the potentially fair reasons for dismissal which include section 98(2)(b) a reason which relates to the conduct of the employee. In this case, it is not in dispute that the respondent dismissed the claimant because it believed that he was guilty of misconduct. Conduct is a potentially fair reason for dismissal under section 98(2). The respondent has therefore satisfied the requirements of section 98(1).

ff. Second: section 98(4) of the Employment Rights Act 1996 provides that where the employer has fulfilled the requirements of section 98(1), the Tribunal must determine whether the dismissal is fair or unfair without there being any burden on either party (having regard to the reason shown by the employer). Section 98(4) provides that the question of whether the dismissal is fair or unfair: (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with the equity and substantial merits of the case.

71. The determination of the question of whether the dismissal is fair or unfair, in accordance with section 98(4) of the Employment Rights Act 1996 is to be determined by the Tribunal in line with well-established guidance from the decisions of ***British Home Stores Ltd v Burchell 1978 IRLR 379, Iceland Frozen Foods v Jones 1982 IRLR 439, Post Office v Foley 2000 IRLR 827 and Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23***. The Tribunal must not substitute its view for that of the reasonable employer, but must instead ask itself:
- gg. At the time of dismissal, did the respondent genuinely believe the claimant to be guilty of misconduct?
 - hh. If so, was that belief based on reasonable grounds?
 - ii. At the time that the respondent formed that belief on those grounds, had it carried out as much investigation as was reasonable in the circumstances?
 - jj. Was the respondent's decision to dismiss the claimant within the band of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted?
72. When considering the band of reasonable responses, a claimant may refer to consistency of treatment and identify another employee or employees whom they perceive to have committed a similar act of misconduct for which they have not been dismissed. In ***Hadjionnous v Coral Casinos Ltd [1981] IRLR 352*** the EAT held that arguments based on disparity should be scrutinised carefully and would rarely be properly accepted. The EAT outlined that treatment of other employees in similar circumstances was relevant (1) if there is evidence that the dismissed employee was led to believe he would not be dismissed for such conduct; (2) where the other cases give rise to an inference that the employer's stated reason for dismissal is not genuine; or (3) if, in truly parallel circumstances, an employer's decision can be said to be unreasonable in a particular case having regard to decisions in previous cases.
73. When considering dismissal for a first offence on the grounds of gross misconduct, it is likely to be important to consider how the respondent has defined gross misconduct in its policies and procedures. The Tribunal has to be satisfied that the respondent acted reasonably both in characterising the offence as gross misconduct and in deciding that dismissal was the appropriate punishment ***Brito-Babapulle v Ealing Hospitals NHS Trust [2013] IRLR 854***. The Tribunal will therefore consider whether the respondent considered any mitigating factors.
74. When considering a breach of trust, the Tribunal has in mind that it is well established that the nature and character of the implied duty of trust and confidence is that, if a breach of it is established, then such breach will inherently be fundamental ***Morrow & Safeway Stores plc [2002] IRLR 9***.
75. In ***British Leyland (UK) Ltd v Swift 1981 IRLR 91, CA***, Lord Denning MR stated: "The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then

the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: another quite reasonably take a different view.”

76. When considering the size and administrative resources of the respondent, the Tribunal will have in mind what kind of disciplinary procedure and internal appeals procedure is practical for the respondent and whether suitable alternative work should have been provided for the claimant.
77. Finally, the Tribunal must consider whether the respondent followed a reasonably fair procedure. This will include consideration of whether the respondent complied with the requirements of the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. It is important for the Tribunal to look at procedural flaws in context and to consider their implications for the overall reasonableness of the employer’s decision to dismiss. In Sharkey v Lloyds Bank plc EATS 0005/15 Mr Justice Langstaff, then President of the EAT, observed that it will almost inevitably be the case that in any alleged unfair dismissal a claimant will be able to identify a flaw, small or large, in the employer’s process, and that it is therefore for the tribunal to evaluate whether that defect is so significant as to amount to unfairness.

Discussion and Decision

78. Turning back to the issues to be determined in this case.
79. What was the reason or principal reason for dismissal?
80. The claimant was dismissed for gross misconduct, being the allegations that he had: (i) made unauthorised entry to computer records by accessing a colleague’s account without cause or permission, in breach of the respondent’s ICT Policy; and (ii) shown another employee how to access colleagues’ accounts without cause or permission. The dismissing officer, Ben Fletcher, explained that the claimant’s actions amounted to a serious breach of confidentiality and a breakdown of trust in the employer/ employee relationship. [Page 98].
81. This was the claimant’s first offence and the claimant suggested in evidence that he was unclear of whether the allegations against him were being treated as gross misconduct. The Tribunal has considered the wording of the respondent’s policies and procedures and notes that the respondent’s ICT Policy refers to “misconduct” not “gross misconduct”, however this must be read in the wider context of information available to the claimant. The Tribunal finds that the claimant was aware, or ought reasonably to have been aware, that his actions may be regarded as gross misconduct. The Tribunal has taken into account the following information:
- a. Clause 7.3.1 of the ICT Policy, which states that “users are only authorised to access those systems and information for which they have been given explicit permission and that are required as part of their duties”. [Page 161].

- b. Clause 7.10 of the ICT Policy, which states that “unacceptable, unauthorised, and inappropriate use of any ICT facility (...) may lead to disciplinary action under the appropriate disciplinary procedure”. [Page 166].
 - c. Clause 4.11 of the Disciplinary Procedure, which states that the following may be regarded as gross misconduct:
 - i. “unauthorised entry to computer or manual records”. [Page 146].
 - ii. “failure to adhere to company policies and procedures”. [Page 146].
 - d. Clause 3.5 of the claimant’s contract of employment, which states that “we require you to meet satisfactory levels of conduct and performance relevant to your role and will take disciplinary action (up to and including dismissal) if you unreasonably fail to meet such standards”. [Pages 52 to 53].
 - e. The investigation invite email referred to the allegations as gross misconduct. [Page 62].
 - f. The disciplinary invite email warned the claimant that one possible outcome of the disciplinary procedure was dismissal. [Page 92].
 - g. In evidence, the claimant confirmed that he understood there to be a risk of dismissal.
 - h. In evidence, the claimant confirmed that he understood his actions were wrong, were not the usual way of working, and amounted to unauthorised access to another employee’s device. The claimant also confirmed that he could understand why it had caused the respondent to lose trust in him and cause NW to be upset.
82. The claimant confirmed in evidence that he understood the relationship of trust and confidence had been broken and needed to be rebuilt. [Page 97]. Although the claimant suggested that trust could be rebuilt, the Tribunal finds that it was open to the respondent to conclude that the trust was irreparable. As noted in the appeal outcome, it was accepted by the respondent that the claimant had acted without malicious intention and on the “spur of the moment” but there remained a concern that the claimant’s poor judgment may lead to similar “spur of the moment” actions in future. [Page 128].
83. Did the respondent act reasonably in all the circumstances, including the respondent’s size and administrative resources, in treating that as a sufficient reason to dismiss the claimant?
84. First, the Tribunal has considered whether, at the time of dismissal, the respondent (i) genuinely believed that the claimant was guilty of misconduct and (ii) whether that belief was based on reasonable grounds. The claimant admitted to the allegations against him from the commencement of the respondent’s investigation process through to the Tribunal hearing. The Tribunal therefore has no difficulty finding that the respondent had reasonable grounds on which to form a genuine belief in the claimant’s guilt.
85. Second, the Tribunal has considered whether the respondent carried out as much investigation as was reasonable in the circumstances. Dan Dufton took reasonable steps to investigate the allegation that the claimant had shown

AW how to connection to another employee's device by interviewing both the claimant and AW about what happened. Dan Dufton took reasonable steps to investigate the impact on that employee (NW) by taking a statement from NW. Dan Dufton took further steps including looking at the connections log for the past 6 months and comparing this to logged tickets. The Tribunal concludes that Dan Dufton's investigation fell within the band of reasonable responses, particularly given the claimant's admission of guilt.

86. Karen Passman, on behalf of the claimant, contended that the respondent failed to comply with their Investigation Procedure, paragraphs 5.1 to 5.3. [Page 175]. The Tribunal notes that the Investigation Procedure says that a case manager will be appointed as a first step to assess the facts available and collect preliminary evidence to decide whether further investigation is needed. The respondent's witnesses confirmed that their understanding was that Ben Fletcher was the case manager. However, it appears that Ben Fletcher did not carry out the first step assessment because Ben Fletcher confirmed in evidence that after being informed of the allegation, he had no involvement until the disciplinary hearing. It is unclear who carried out the first step assessment or what this involved; Dan Dufton confirmed that he was appointed as investigating officer but could not recall who had appointed him or on what date. Nevertheless, it is not in dispute that Dan Dufton conducted the investigation and Ben Fletcher chaired the disciplinary hearing. This separation of roles is in line with good practice and fair procedure. Karen Passman contended that if Ben Fletcher was not appointed as case manager until after the investigation then this caused the procedure to be unfair. The Tribunal does not agree. The Tribunal is satisfied that Dan Dufton conducted the investigation without input from Ben Fletcher, and that Ben Fletcher chaired the disciplinary hearing without having been influenced by prior involvement in the investigation. This is a fair procedure in line with the ACAS Code of Practice for Disciplinary and Grievance Procedures. While there may have been some error in the application of the respondent's investigation procedure, this does not undermine the fairness of the respondent's investigation.
87. Turning to the disciplinary hearing, it is the claimant's case that the hearing lasted only 16 minutes and a fair decision could not have been made in this time. The Tribunal acknowledges that this is a short disciplinary hearing. However, the claimant had admitted the allegations against him, had not challenged the information in the investigation report, had submitted a statement to be taken into account and did not raise any other issues. Accordingly, Ben Fletcher acted reasonably in drawing the disciplinary hearing to a close after 16 minutes. Further, the Tribunal has found that the decision was not made in the disciplinary hearing on 12 July 2024, it was made at some time following the disciplinary hearing and was communicated on 16 July 2024. Accordingly, Ben Fletcher had time to consider his decision.
88. The Tribunal concludes that the procedure followed by the respondent was fair and reasonable and within the band of reasonable responses taking into account their size and administrative resources.

89. The Tribunal then considered whether the respondent's decision to dismiss the claimant was within the band of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted.
90. The Tribunal concludes that it was reasonable for the respondent to conclude that the claimant's actions fell within the scope of the offences of "unauthorised entry to computer or manual records" and "failure to adhere to company policies and procedures" as detailed in the respondent's disciplinary procedure, and further that it was reasonable for the respondent to categorise these offences as gross misconduct. The Tribunal concludes that it was reasonable for the respondent to conclude that the relationship of trust and confidence was broken by the claimant's actions and that it could not be repaired. The Tribunal is satisfied that both Ben Fletcher, as dismissing officer, and Claire Harrigan, as appeals officer, took into account mitigating information including the claimant's role as an apprentice and experience in role, the claimant's cooperation and honesty within the process, and the claimant's time with the respondent.
91. The Tribunal considered the point of consistency. The claimant identified another employee (BS) who had breached the ICT Policy and received a final written warning rather than dismissal. In evidence, the claimant conceded that the circumstances of BS are that he is employed as a gas fitter and as such he does not have the same level of access or trust that the claimant has as an employee in the ICT team. The claimant described that BS had taken a photograph of his phone using the respondent's tablet and that the phone had a pornographic image on it. BS received a final written warning. The Tribunal finds that this is not comparable to the claimant's situation.
92. Having considered all of the information available, the Tribunal concludes that the decision to dismiss the claimant was one that a reasonable employer might take.
93. For the reasons set out above, the Tribunal concludes that the claimant was fairly dismissed. The claimant's complaint of unfair dismissal is not well founded and does not succeed.

Employment Judge Booth

Date 20th February 2026

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