



Case Number: 2300260.2016

MK

## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mrs C Richards

**Respondent**

1. Avante Care & Support Ltd
2. Mrs D Woodward

and

Held at Ashford on 3, 4, 5 April and, in Chambers, 12 May 2017

**Representation**

**Claimant:**

In Person

**Respondent:**

Mr T Dracass, Counsel

**Members:**

Mr P Adkins  
Ms J Forecast

**Employment Judge** Kurrein

## JUDGMENT

The Claimant's claims are not well founded and must be dismissed.

## REASONS

### Claims and Issues

- 1 On 2 February 2016 the Claimant presented a claim to the tribunal alleging unfair dismissal and disability discrimination. On 11 March 2016 the Respondents presented a response in which they contested those claims.
- 2 At a preliminary hearing on 8 April 2016, which the Respondents failed to attend, the Claimant's claims were clarified. They were set out in a case management order sent to the parties on 12 April 2016 as follows: –

Disability

- a) was the Claimant a disabled person at the time of the suspension and dismissal;

Reasonable adjustments claim – section 20 Equality Act 2010

- b) if so, did the Respondents apply a provision, criterion or practice (PCP) that an employee could not be accompanied for support at meetings;
- c) if so, did that place the Claimant at a substantial disadvantage compared to a non-disabled person (as the affect of her condition made it difficult for her to respond properly to questions);
- d) if so, did the Respondents know, or could they reasonably have been expected to know, that the Claimant was a disabled person at that time, and

would be placed at that disadvantage (the Claimant relies upon the occupational health reports);

- e) if so, and the duty to make adjustments arose, did the Respondents take such steps as were reasonable to avoid the disadvantage (the Claimant suggested that a reasonable step would have been to allow her to be accompanied at meetings);

Unfavourable treatment claim – section 15 Equality Act 2010

- f) was the Claimant treated unfavourably by being dismissed;
- g) if so, was that because of something arising in consequence of her disability namely that her condition caused her to make a false statement because she was in an extremely distressed state during the investigation meeting;
- h) if so, did the Respondents know, or could they reasonably have been expected to know, that the Claimant was a disabled person at that time, and that there would be that disadvantage (the Claimant relies upon the occupational health reports);
- i) if so, can the Respondents show that the dismissal was a proportionate means of achieving a legitimate aim;

Unfair dismissal claim – section 98 Employment Rights Act 1996

- j) what was the reason for dismissal (the Claimant contends that the First Respondent should have been aware that she had not acted as alleged, firstly because her condition affected her responses at the meeting, and secondly, because the paperwork did not support the allegations about medication);
- k) if the reason was conduct, did the First Respondent have a genuine belief that the misconduct had taken place;
- l) if so, was that belief based on reasonable grounds following a reasonable investigation;
- m) was a fair procedure followed;
- n) did the decision to dismiss fall within the range of reasonable responses open to a reasonable employer;
- o) if the decision was unfair, should any compensation be reduced by reference to any blameworthy conduct by the Claimant and/or by reference to the possibility that with a fair procedure the Claimant would have been dismissed within a short period of time in any event;

Remedy

- p) if any of the claims is successful, what is the appropriate remedy.

3 At the start of the hearing we explained the law and procedure to the Claimant and advised her of the principles of the overriding objective. We then adjourned so as to read the witness statements and the principal documents referred to.

4 Towards the conclusion of the second day of the hearing the Claimant became distraught. She declined emergency assistance. However, the situation appeared to be very similar to that which had occurred toward the conclusion of the second investigation hearing conducted by the Respondent,

which was thought to be a possible epileptic seizure. Although the Claimant attended on the morning of the third day it was our unanimous view that it was inappropriate to require the Claimant to go through the stressful process of hearing, considering and responding to the final submissions on behalf of the Respondent. We gave directions for written submissions to be made in due course.

- 5 As is so often the case, unfortunately, that resulted in the Respondent submitting lengthy written submissions extending over 21 pages and 68 paragraphs. The Claimant provided closing submissions extending over 86 paragraphs in reply. In them she sought to raise new matters of evidence and also appended new documentation. We have ignored that inadmissible evidence.

### **Evidence**

- 6 We heard the evidence of the Claimant on her own behalf. We heard the evidence of Mrs Woodward, the Second Respondent, a Human Resources Adviser formerly employed by the Respondent, Heather Brimm, Regional Care Director, and Jacqueline Catt, known to her colleagues as Jacqueline Morris, Director of Quality Standards and Compliance on behalf of the Respondent. We considered the documents we were referred to and the submissions made on behalf of the parties. We make the following findings of fact.

### **Findings of Fact**

- 7 The Claimant was born on 7 June 1975 and started her employment with the Respondent as a care worker on 21 January 2013. The Respondent was well known to her as an employer her: it employed several of the Claimant's relatives.
- 8 The Respondent is a long established registered charity that operates a number of care homes. It has approximately 1600 employees. It has a professional HR staff and has a number of relevant policies to which we will refer when necessary.
- 9 In early May 2015 the Respondent was approached by a number of the Claimant's subordinates who made complaints regarding her conduct toward them. Mrs Woodward took the decision to investigate these matters further, and in light of the nature of the allegations and their consistency took the decision that the Claimant should be suspended on 15 May 2015. This was confirmed in writing by letter of the same date that informed the Claimant her suspension was with pay and that she should ensure she was available to attend meetings..
- 10 By letter of 29 May 2015 the Claimant was invited to an investigation meeting to take place on 4 June 2015. The Claimant was told that the meeting was a fact-finding exercise and that no decision had been taken as to whether any formal disciplinary proceedings should be taken. The Claimant was told that Mrs Woodward would chair the meeting in the presence of a note taker and that after the meeting the Claimant would be provided with copies of the

minutes and given the opportunity to comment on them so as to ensure their accuracy.

- 11 The Claimant attended that meeting by herself. Following introductions the Claimant read out her opening statement, as set out above, and was assured by Mrs Woodward that the meeting would not be an “interrogation”. The Claimant was told that she should take her time, and that if she wanted to end the meeting she should just say so, and the meeting would continue on another date. The Claimant was also informed that she could take a break, which she did so on several occasions to have a cigarette, and was asked on the meeting reconvening whether she was happy to continue and said she was.
- 12 The meeting started with Mrs Woodward writing down the question she wished to ask and the Claimant then reading that question and writing down her answer. That process continued for some time but here came a point when Mrs Woodward took the view that the process was not flowing as she would wish it to, and she took the decision that it would be appropriate to continue the meeting by asking oral questions and seeking oral responses.
- 13 At this point the Claimant gave Mrs Woodward a copy of her closing statement, in which she set out the stress that had been caused by the position in which she found herself and to which she attached a letter she had written to her landlord giving notice to quit because of her suspension. The Claimant became upset at this point, and Mrs Woodward offered to adjourn the meeting, and for it to be reconvened when the Claimant could be accompanied by a friend. The Claimant declined that offer.
- 14 The meeting continued for almost 4 hours in total. We thought that to be grossly excessive, even though the Claimant was allowed cigarette breaks and expressed a willingness to continue with the meeting after each such break. We take the view that the imbalance in power between a manager and a “shopfloor” employee is such as to make the supposed consent wholly unreliable. Mrs Woodward should have adjourned this meeting after an hour or so.
- 15 In the course of that interview the Claimant made a number of admissions of potential wrongdoing such as: –
  - 15.1 sleeping over on the premises, using a vacant resident’s room;
  - 15.2 bringing food in to the premises for her and for residents’ consumption;
  - 15.3 working excessive shifts.
- 16 Later on in that meeting, and after she had been the opportunity for it to be adjourned, when being asked questions about her relationships with her subordinates, the Claimant made specific admissions to the effect that she had deliberately made errors in recording medication given to the residents so as to “fit in” with her colleagues and not be seen as “perfect”. She also said, “at one point everyone had signed the medication wrongly, [I] signed it a couple of times so it wasn’t [me], pointing it out.” In common with the others who had made similar errors, and in accordance with the Respondent’s

- procedures, the Claimant had had to compile a “reflective account” concerning her error.
- 17 The minutes of that meeting were sent to the Claimant, and she was invited to make amendments or comments on them. She did so, in detail and at considerable length, but did not challenge the passages set out above concerning her deliberate errors in making entries concerning medication.
- 18 At the same time the Claimant was provided with those minutes she was invited to a second investigation meeting to take place on the 25 June 2015. The Claimant was specifically informed that she was entitled to be accompanied at that meeting.
- 19 That meeting took place as planned. The Claimant was accompanied by her colleague, Ms Ayres, a care manager at one of the Respondent’s other care homes. Following introductions and clarifications concerning the letter of invitation Mrs Woodward asked question concerning the relationship between the Claimant and her subordinates. It is clear from the nature of the questions during the majority of this meeting that Mrs Woodward’s primary interest was in the accusations of bullying by the Claimant of her subordinates.
- 20 However, towards the conclusion of that meeting, Mrs Woodward returned to the issue of the Claimant having made medication errors. The Claimant confirmed that she had deliberately made an error in respect of medications, and had done so so as not to be the person responsible for pointing out such errors. She was specifically asked whether she had done so in order to “fit in” and confirmed that she did not wish to be “the person that’s identifying things.” The Claimant confirmed that this had been a premeditated error.
- 21 The meeting then concluded, having lasted about 40 minutes, which we thought to be in stark contrast to the earlier meeting, which had effectively covered the same ground.
- 22 At the conclusion of that meeting the Claimant was taken unwell, collapsing and appearing to have a fit. An ambulance was called and the Claimant was assessed and then treated in hospital where a possible diagnosis of an epileptic fit was made.
- 23 On 10 July 2015 the Claimant was provided with copies of the notes taken at the second investigatory meeting and invited to make such comments or amendments to them as she wished and to return them. The Claimant did take this opportunity.
- 24 By a letter of 16 July 2015. Mrs Woodward wrote to the Claimant to notify her of the intention to hold a disciplinary hearing to consider an allegation of gross misconduct against the Claimant on 11 August 2015. The allegation was,  
“Falsification or wilful or negligent failure to keep or satisfactorily maintain records as required by the organisation. On these dates 8<sup>th</sup> and 10<sup>th</sup> of May 2015, (the Claimant) falsified medication records along with her reflective learning documentation.”

- 25 The Claimant was informed of the arrangements for that hearing and told that the preliminary findings of the investigation indicated very serious allegations amounting to gross misconduct which might lead to the Claimant's summary dismissal without pay in lieu of notice. She was advised that the meeting was unlikely to last more than two hours but that if it did so it might be adjourned. She was referred to the staff handbook for the procedure. A summary of the Respondent's management case was enclosed, and the Claimant was advised of her right to be accompanied.
- 26 The management case had been prepared by Mrs Woodward and set out the allegations, the background and evidence and had attached to it a number of appendices, being relevant documents such as the medication forms and reflective learning forms.
- 27 By letter of 6 August 2015 the Claimant raised a grievance/complaint regarding the manner in which the original investigation meeting had been conducted. She also complained that the conduct of the second meeting had resulted in her collapse. She concluded by suggesting that the matter should be dealt with and resolved in line with her needs and disabilities.
- 28 That letter was promptly acknowledged and the Claimant was invited to attend a grievance meeting, accompanied if she wished, with Mrs Rogers on 19 August 2015. That meeting took place as arranged, and the Claimant was again accompanied by Ms Ayres. Mrs Rogers had the benefit of a note taker. The Claimant has made no complaint about the manner in which that meeting was conducted. In the course of it Mrs Rogers took the view that the Claimant should be referred to occupational health.
- 29 That was confirmed to the Claimant in a letter of the 20 August 2015, when the Respondent completed its referral to occupational health. The Claimant saw the occupational health physician on 1 September 2015, and he responded with a report dated 3 September 2015. He was a consultant and accredited specialist in occupational medicine. That report, in summary, advise as follows: –
- 29.1 The process should be completed as soon as possible.
- 29.2 The Claimant was fit to partake in the process.
- 29.3 The Claimant should, if possible, be given advance notice of any allegations.
- 29.4 The Claimant should be permitted support from a union representative, family member or colleague.
- 29.5 The Claimant should be given extra time if required.
- 29.6 The disciplinary process should be undertaken by a manager without previous involvement in the process.
- 29.7 The Claimant's level of anxiety on 4 June 2015 had impacted on her cognitive function.
- 29.8 He was unable to provide any medical information in respect of mitigating circumstances concerning the Claimant's alleged actions.

- 29.9 In the event the Claimant was to return to work, it should be on a phased basis with appropriate support.
- 30 By letter of 9 September 2015. Mrs Rogers wrote to the Claimant to confirm that she had received the occupational health report and wished to see the Claimant as a further part of the grievance meeting. That meeting took place on 17 September 2015 at which the Claimant was again accompanied by Ms Ayres. There has been no complaint regarding the conduct of that meeting.
- 31 On 23 September 2015. Mrs Rogers wrote to the Claimant to update her on the outcome of her grievance, to inform her that there had been some delay, and that the disciplinary hearing would now take place on 6 October 2015.
- 32 By a letter apparently misdated 18 September 2015 Mrs Rogers set out in summary her conclusion that the Claimant's grievance was not upheld. She went on to set out in detail, the precise reasons for that decision and the steps that would be taken by the Respondent for the disciplinary hearing in light of the advice received by the Respondent from occupational health. She concluded by advising the Claimant of her right to appeal that outcome. The Claimant did not appeal that grievance outcome and has not made any complaint concerning the manner in which it was dealt with.
- 33 By a letter of 23 September 2015, effectively in identical terms to that of 16 July 2015. Mrs Woodward invited the Claimant to attend a disciplinary hearing on 6 October 2015. The Claimant was again advised of her right to be accompanied.
- 34 On the same date Mrs Rogers wrote to 2 members of staff, whom the Claimant had requested should attend the disciplinary hearing as witnesses on her behalf. It appears they declined to do so.
- 35 That hearing took place as planned. It was chaired by Miss Brimm, who was accompanied by an HR adviser and a note taker. Mrs Woodward was present as the investigating manager to present the management case. The Claimant attended with Ms Ayres. Following introductions the Claimant was advised that if she wanted a break at any time, she should simply ask for one, and that if the meeting lasted for more than an hour or so it might be adjourned to continue on another day. The Claimant did raise concerns about the number of people present and was advised that it was normal in a case of this nature for such a number of people to be present.
- 36 In the course of that hearing the Claimant admitted that she had said what was alleged she has said, but denied that those statements were true. She asserted that any errors she might have made had been accidental, not deliberate. She was, however, quite unable to offer an explanation as to why she had said that the errors had been committed deliberately. The Claimant did not at any time deny that she had made such medication errors, but did assert that she sometimes had memory issues. It was pointed out to the Claimant that she had made three pages of detailed notes of amendments that she wished to have made to the notes of the first investigation meeting. The Claimant then became upset, and the hearing was adjourned for a short

- break. The Claimant confirmed that she was happy for the hearing to continue thereafter.
- 37 In closing the management case Mrs Woodward made the point that the Claimant had admitted to deliberately making medication errors on four occasions, and had not resiled from the notes relating to that at any time prior to the disciplinary hearing. In mitigation the Claimant put forward that the errors she had made had not been dangerous or put anyone at risk.
- 38 Miss Brimm wrote to the Claimant on 19 October 2015 and set out in that letter a summary of the disciplinary hearing. She concluded by finding on the balance of probabilities that the allegations against the Claimant had been substantiated and referred specifically to the Respondent's Head of Pharmaceutical Care's evidence that, regardless of the potential harm level of a medication error, it is a breach of the Regulations, the Respondent's policies and a reckless act. Miss Brimm stated that she had given consideration to the Claimant's mitigation concerning her service and good conduct, but did not believe that this was sufficient to set off or reduce the normal penalty for deliberate falsification of medication records or medication errors, which was a serious breach of trust and with regret had led to her deciding that the Claimant's employment should be terminated without notice with effect from the date 12 October 2015.
- 39 That, of course, was an error. An employer cannot dismiss an employee retrospectively. The notice given to the Claimant of her dismissal could not take effect before it either did or reasonably could have come to her notice.
- 40 By a lengthy letter dated 21 October 2015 the Claimant appealed against the dismissal. She made all the points she had in the course of the disciplinary hearing, in particular that the errors she had made had not been deliberate and were not such as to justify a finding of gross misconduct.
- 41 That letter was acknowledged promptly and by letter of 2 November 2015 the Claimant was invited to attend an appeal hearing on 17 November 2015. Enclosed with that letter was the summary of the disciplinary investigation and reasons for the action and the Claimant was again advised of her right to be accompanied. The date of that meeting was subsequently re-arranged at the request of the Claimant and took place on 23 November 2015.
- 42 The appeal hearing was conducted by Mrs Catt. The Claimant was again accompanied by Ms Ayres and Miss Brimm was present to present the management base. Mrs Catt had the benefit of HR Assistant, who also took notes.
- 43 The Claimant has taken no issue with the manner in which that appeal hearing was conducted.
- 44 By letter of 9 December 2015, set out over four closely typed pages, Mrs Catt provided her detailed reasons for rejecting the Claimant's appeal.

**Submissions**



45 As noted above, we received detailed and lengthy written submissions on behalf of each party. It is neither necessary nor proportionate to set them out here.

### **Disability Discrimination**

#### **The Law**

46 Disability discrimination is probably the most complex area of equality law. In addition, the formulation of the Claimant's claims are by no means simple.

47 However, as a starting point, the onus is on the Claimant to establish on the balance of probabilities that she was at the material times a disabled person within the definition set out in the Equality Act 2010 and that the Respondent had the necessary knowledge. It is important to bear in mind that:-

47.1 the definition of disability for this purpose is quite different from any other definition of disability, such as those used in respect of entitlement to benefits or a "blue card" for parking; and

47.2 the knowledge required to be shown on the part of the Respondent in this case is very specific.

48 It is not appropriate to set out in detail the relevant provisions of the Equality Act 2010 because they are readily available.

49 We have had regard to Sections 4, 6, 15 and 20 of that Act, as well as the detailed provisions set out in Schedules 1 and 8 and the Statutory Guidance.

### **Further Findings and Conclusions**

#### **Disability**

50 The Claimant was directed to provide a disability impact statement by the CMO made in April 2016, following receipt of which the Respondent maintained its position that the Claimant was not a disabled person.

51 We received, in addition to that statement, the evidence of the Claimant at the hearing and a number of letters and reports from medical professionals, the more detailed of which post-date the events we are concerned with.

52 It was not in dispute that the Claimant, when a child, had been subjected to a serious sexual assault<sup>1</sup>. We accepted that she had been traumatised by her cross-examination in the Crown Court at that time, and that she has recently been diagnosed with, amongst other conditions, PTSD. She has been treated for depression ever since those events. This has in the past caused the Claimant significant difficulties in her day to day living.

53 In earlier years the Claimant's depression undoubtedly seriously affected her life. These problems appear to have been exacerbated by relationship and other domestic issues. She had to return to live with her mother because she could not care for herself or her son. She could not manage the benefits she received and was suicidal on more than one occasion. Her mother denied her

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<sup>1</sup> The Claimant declined our offer to have her identity anonymised for the purpose of these reasons.

possession of her medication. She was often unable to leave the house and relied entirely on her mother.

54 We accepted that during these earlier periods, some years before the relevant events, the Claimant was a disabled person.

55 However, the Claimant's discrimination claims are specifically based on the events of 4 June 2015, when the Claimant attended the first investigation meeting, and the fact of the Claimant's dismissal on 12 October 2015. Those are the dates on which the Claimant has to establish, on the balance of probabilities, that she was a disabled person within the provisions of the Equality Act 2010.

56 At the time of the events we are concerned with she has been treated with antidepressants for over 20 years without a break.

57 However, there was, in reality, no evidence before us that the Claimant's depression was having a substantial adverse effect on her ability to perform normal day to day activities at the relevant times. She gave us no examples of any such difficulties. Much of the evidence she relied on was in respect of her condition many years earlier, or related to the period after she had been dismissed.

58 At the time of the events with which we are concerned she had been working for the Respondent for over two years without any difficulties regarding her attendance or performance. She had obtained qualifications, had recently enrolled to obtain an NVQ 5 in Social Care, and been promoted to the position of Team Leader. She had passed her test to drive a motorcycle and used it to commute. Whilst we acknowledge that these are all matters concerning what she could do, there was no evidence of anything she could not do or had difficulty with because of her depression at the relevant times.

59 The evidence before us that:-

59.1 Her depression might recur;

59.2 That her depression would, absent her medication, amount to a disabling impairment;

was scant.

60 The only evidence concerning this was in:-

60.1 An OH report of 3 September 2015 that reported "heightened anxiety and low mood" and suggested this affected her "cognitive functions" on 4 June 2015, but did not mention depression.

60.2 A letter of 27 July 2016 from her GP, which suggested it was "possible" that if treatment were withdrawn there would be a significant adverse effect on day to day activities.

61 In the above circumstances we are quite unable to infer that the Claimant's depression was likely to recur, or that it would do so if medication was stopped, on the basis of that evidence. A mere possibility is simply not enough.

62 Having regard to all the evidence before us, and whilst we have a great deal of sympathy for the Claimant, we are unanimous in concluding that the Claimant has failed to establish on the balance of probabilities that she was a disabled person at the relevant time.

#### Knowledge

63 We were, in any event, also unanimous in concluding that the Respondents did not have the necessary knowledge to support the claims relied on by the Claimant.

64 The only knowledge the Respondent had of any potential disability and/or its effects was limited because:-

64.1 In response to a health questionnaire the Claimant only disclosed that she had had "slight depression" two years earlier when her son left home to join the army. This statement was later repeated with the comment "No problem" added by her.

64.2 There were no depression-related absences or incidents in the course of her employment.

64.3 Whilst the Claimant's mother, who was the Manager of the home where the Claimant worked at the time, and two of the Claimant's sisters who worked there, had knowledge of the previous adverse effect of the Claimant's depression on her there was no evidence that this knowledge was shared by any of those family members with any relevant person.

64.4 At the start of the first investigation meeting on 4 June 2016 the Claimant gave Mrs Woodward an "Opening statement", in which she informed her of the traumatic events she had suffered in childhood and that she had put a coping strategy in place, she did not refer to herself as being disabled.

64.5 Whilst the Claimant asked that the interview be conducted by means of written questions and answers she did not suggest that her answers might otherwise be false.

64.6 Whilst the Claimant's letter of grievance of 6 August 2015 referred to her "disabilities" it was less than specific, and the OH report that resulted from it did not mention depression or disability at all.

65 We concluded:-

65.1 The above matters are simply insufficient to inform Mrs Woodward, or put her on notice to make further enquiries, of the fact of the alleged disability itself, far less the specific substantial adverse effect relied on.

65.2 The Claimant did not provide any further information to the Respondent or Mrs Brimm prior to her dismissal from which they would have had the requisite knowledge of the Claimant's disability or the alleged very specific and somewhat unusual causal connection alleged to exist between the Claimant's alleged disability and the dismissal.

#### The Claims

66 We should add, for the sake of completeness that:-

- 66.1 We did not accept that the Respondent applied the alleged PCP: it offered the Claimant the opportunity for the meeting to be adjourned and re-convened when she had the benefit of being accompanied before she made the alleged admission of wrongdoing;
- 66.2 In any event, that PCP did not have the alleged adverse effect contended for: the Claimant made like admissions of wrongdoing when she was accompanied;
- 66.3 We could not accept that the Claimant's depression caused her to make false admissions.

### **Conclusion on Discrimination**

- 67 In light of all our above findings we are unanimous in concluding that the Claimant's claims alleging disability discrimination are not well founded.

### **Unfair Dismissal**

#### **The Law**

- 68 In considering this aspect of the claim we have regard to the provisions of S.98 Employment Rights Act 1996 and the decisions in the following cases:-

British Home Stores Ltd v. Burchell [1978] IRLR 379

Iceland Frozen Foods v. Jones [1982] IRLR 439

Sainsbury's Supermarkets Ltd v. Hitt [2003] IRLR 23

Taylor v OCS Group Ltd. [2006] IRLR 163

Newbound v. Thames Water Utilities Ltd [2015] IRLR 734

### **Further Findings and Conclusions**

#### **The Reason**

- 69 The Respondent has established on the balance of probabilities that it dismissed the Claimant a reason relating to her conduct. That is a potentially fair reason.

#### **Honest Belief etc**

- 70 We were satisfied that Miss Brimm held an honest belief based on reasonable grounds that the Claimant was guilty of gross misconduct. It was not suggested otherwise. She was quite entitled to reach that conclusion on the evidence before her. The Claimant had admitted falsifying records several times on two previous occasions. The fact that the Claimant resiled from those admissions at the hearing does not alter that fact. The fabrication of records was specifically an offence of gross misconduct under the Respondent's policy.

#### **The Investigation**

- 71 We thought the manner in which Mrs Woodward conducted the first investigation interview to be unfair. It went on for far too long, and failed to adopt the process the Claimant had requested, and that Mrs Woodward had agreed to. As an HR professional she should have known better.

72 However, that is the only aspect of the investigation process with which we find fault. There was no other criticism of it. We also note that the Claimant did not challenge the accuracy of the relevant parts of the first investigatory meeting, and made the same admissions in the second meeting.

Proportionality

73 In the circumstances of this case we are quite unable to find that the decision to dismiss the Claimant was disproportionate to the seriousness of the conduct the Claimant had admitted to. It was within the band of reasonableness open to an employer in a case of this nature.

**Conclusion on unfair dismissal**

74 Looked at as a whole, and particularly in the context of S.98(4) of the Act, we have concluded that the error of Mrs Woodward in persisting in her interview of the Claimant on 4 June 2015 is insufficient to render this dismissal, as a whole, unfair.

75 The Claimant's claim is therefore not well founded and must be dismissed.

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Employment Judge Kurrein

15 May 2017