RM

EMPLOYMENT TRIBUNALS

Claimant: **Mrs EA Amoah**

Respondent: **London Borough of Hackney**

Heard at: **East London Hearing Centre**

On: **19 & 20 January 2017**

Before: **Employment Judge Moor**

Representation

Claimant: Mr T Okunowo (Solicitor)
Respondent: Mr J Braier (Counsel)

JUDGMENT having been sent to the parties on 7 February 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1 This claim arises out of the dismissal of the Claimant by the Respondent with effect from 23 February 2016.

The Issues

Liability

2 The only claim brought is for unfair dismissal. The fact of dismissal is accepted.

3 Was dismissal for a potentially fair reason under the Employment Rights Act 1996, s98(1) and (2)? The Respondent relies on conduct. The conduct relied upon is the fabrication, ahead of time, of daily record sheets regarding visits to tenants, tasks performed for them and observations about their welfare.

4 On the balance of probabilities, does the Respondent prove it believed the Claimant had committed misconduct?

5 Did the Respondent have in its mind reasonable grounds to sustain that belief?

6 When that belief was formed, had the Respondent carried out as much investigation into the matter as was reasonable in all the circumstance? The Claimant alleged that the investigation was not reasonable in the circumstances because the Respondent failed to take into account the reasons she gave for her admitted conduct. She also queried whether the investigator was independent.

7 Was a finding that the Claimant should be dismissed for gross misconduct within the range of reasonable responses to the conduct of a reasonable employer? The Claimant contended that the decision to dismiss her fell with outside this reasonable range because she argued that it did not take into account her long and unblemished service record and/or the heavy workload that she was under on the day in question. It was agreed between the parties that evidence about mitigation, reinstatement or re-engagement would be heard after my decision on liability and Polkey and contribution.

8 As a result of my decision on liability, I do not set out the agreed issues on remedy.

9 I timetabled the witness evidence at the outset of the hearing. I thank both representatives for their efficient approach to the evidence and their courteous conduct towards witnesses.

Findings of Fact

10 Having heard the evidence of the Claimant, Mrs Omo-Edoh, Ms Ducie, Mrs Asimeng-Cann, Ms Staines, Ms Millen, Mr Madden and Mrs Ichoku, and having read the documents referred to me by the parties that appear in the agreed Tribunal bundle, I make the following findings of fact.

11 The Claimant works at Rose Court, a building owned and operated by the Respondent Council as 'Housing with Care'. Rose Court comprises flats lived in by tenants (also known as 'service users') who are over 65 years of age some of whom receive care from staff employed by the Respondent.

12 The Claimant had been a night care worker at Rose Court for some 12 years, first as agency staff but for the last five years employed directly by the Respondent. She started work at 9.00pm and worked through the night. Her duties are set out at page 47. They included to check the building for security and to make sure that tenants were secure in their flats for the evening. She was to assist them by providing drinks and snacks as requested, assisting with personal hygiene as required, which included checking and changing incontinence pads if necessary. She was required to do laundry for tenants and assist tenants waking-up in the morning. She then handed over to the day staff.

13 As part of her duties the Claimant had to fill in the part of the daily report sheet that covered the night. This was set out very clearly in her essential duties document (47), which she was provided on induction:

> *"Night report sheets. Care staff are expected to keep a full report of the care they provide to service users during the night. Night staff are responsible for completing the night report sheet in full including specific comments about the service user. It is not sufficient to say service user slept well, staff should report observations and facts".*

14 The Claimant knew how to fill in the night report sheet. She was shown how as part of induction and, in any event, she had lots of experience in this task. She accepted she needed no training to know that it was not appropriate to fill in the night summary in advance of the tasks and checks that she undertook during the course of the night; nor that it was appropriate to fill in observations of tenants before she had made them. The night report sheet, at bottom of the daily report sheet, required the Claimant to fill in a summary of the night from her observations—a short narrative of how the service user (the tenant) had spent the night. Sometimes it was fairly simple, sometimes it required the Claimant to write when she changed an incontinence pad, for example. There was also a column in this part of the report on the left hand side that required the Claimant to tick what time she had checked certain service users during the night. Some service users did not require such a check but others did.

15 It is plain to me and has been accepted by the decision makers of the Respondent that the Claimant's workload was a heavy one. All the tenants were over 65 and many had lived in Rose Court for some years and gradually had become more frail and less independent. Many were vulnerable and had care needs, some for example having dementia. At the time of the incident in question 38 out of 41 flats in Rose Court were occupied. The Claimant was responsible for about half of this number over two floors and she also had to help on other floors where tenants required double handling (at the time about 7 or 8 tenants in the building required double handling). About 21 (i.e. more than half) of the total residents in Rose Court did not require particular care during the night: 4 of those required no check at all and 17 required simply a check and sometimes snacks. Whereas 17 residents had particular care needs, for example repositioning or the changing of incontinence pads, and 4 of those were at risk of wandering in the night.

16 The Claimant had raised concerns about her workload on occasions during supervision and appraisal with her managers. She had never told managers, however, that she was so busy that she could not complete her night report sheets and night checks in real time. Her managers kept the workload at Rose Court under review, as did the CQC, which was the regulatory body independent of the Respondent that made sure Rose Court operated in accordance with certain standards. The CQC have not ever identified Rose Court as being dangerously under-staffed.

17 There is a dispute about whether the Claimant received training on report writing. The contemporaneous documents I have seen suggest that she received direction as to how to fill in the night report sheet, as I have quoted, on induction and some refresher training about general report writing in September 2011. In any event, the Claimant accepts that the night report sheet was straightforward to fill in and she understood how to do it. She accepts she needed no training to know that it was not something that she ought to have filled in in advance of doing tasks and checks.

18 The Claimant states she was able to estimate how busy a night was going to be because of her knowledge of tenants and their predictable behaviour. To some extent I

accept that but, given what I have heard about the vulnerability of tenants and that some had dementia, it is obvious that the Claimant could not anticipate health emergencies or when those tenants with dementia behaved differently. Nor could she anticipate when a tenant was going to die in the night.

19 On 24 November 2015 the Respondent's managers did a spot check at Rose Court. This was unannounced and randomly chosen. Spot checks were an important part of the Respondent's duty to ensure compliance with the CQC standards. Ms Ducie, Service Manager, and Mrs Asimeng-Cann, the registered manager for Housing with Care, attended Rose Court to do the spot check at 4.20am. I accept that this check took them about an hour and ten minutes because the visitors' log showed that they left at 5.30am. The managers looked through the paperwork and discovered that both the Claimant and her co-worker on that night had filled in the night report sheets in advance of events actually taking place. In other words they had ticked that they had done checks after 4.30pm and they had filled in the narrative summary of the night in question before the night had shift had been completed.

20 During the course of the investigation into the matter, the Claimant admitted that she had written some 7 service user records in advance on the night in question. I have been shown page 310, which is agreed between the parties and was during investigation, an example of a sheet that the Claimant had filled in in advance. There the Claimant has ticked a 6.00am visit before such a visit took place. The Claimant filled in the night report summary as follows.

> *"Mr X seems ok he watched TV till very late had a quiet night, no concerns he had a wash at 6.00am."*

21 The Claimant admits that she wrote this before she could make observations about what sort of night Mr X had had or whether indeed he did have a wash at 6.00am.

22 I prefer Ms Ducie and Mrs Asimeny-Cann's recollection that upon this discovery they immediately asked the Claimant and her co-worker why they had filled in sheets in advance. That was a serious matter and I therefore have no doubt that at the time managers would have wanted to ask about it straight away. I accept Ms Ducie's evidence that the Claimant initially denied having filled in night report sheet in advance but ultimately, after her colleague Mrs Omo-Edoh admitted to that practice, the Claimant also admitted not only to filling in the night report summaries in advance on the night of the spot check but also to having done it on other occasions in the past.

23 I prefer Ms Ducie's account about this because it is corroborated by Mrs Asimeng-Cann and neither has any reason to mislead me. They both made statements during the investigation soon after the night in question, which corroborate their account. It is also clear in the disciplinary documents that the Claimant admitted to filling the night sheets in advance on previous occasions (for example at page 165). These are the notes of the interview with the Claimant by Ms Staines, the investigating officer. The Claimant accepted that she had seen a draft of page 165 and had verified it as being an accurate statement of what she had said as did her trade union. Therefore the Claimant's denial before me that she had made those admissions is inconsistent with the record, which she verified at the time and is less credible. It is only at this hearing that the Claimant asserts that this was a one-off act. It would have been an extraordinary coincidence for her to

have undertaken that conduct only once on the night of a random spot check. If find her assertion therefore to be less credible. The Claimant's co-worker on the night in question, Mrs Omo-Edoh, admitted to me and the investigatory meeting that she had adopted the practice of filling in night sheets before the night in question. The Claimant's appeal letter at page 194 also infers that it was the Claimant's practice. Indeed she suggested was the practice of others. There is nothing in the disciplinary documentation that suggests the Claimant's trade union representative defended the conduct as being a one-off. I have no doubt they would have done, if that had been the Claimant's account at the time. At the disciplinary hearing the Claimant said she had filled in the night sheets in advance before and the defence she made at the time is that she said she did that only when she was particularly busy (page 189).

24 I find that the evidence before the Respondent during the disciplinary hearing as a result of what the Claimant said on the night of the spot check, during the investigation and at the disciplinary hearing, was that she admitted she had filled in the night report sheets in advance on the night in question and that this was her practice on particularly busy evenings. That is the evidence that the employer had in mind when it made its decision.

25 Ms Staines was appointed to investigate the matter after the spot check. She did not know the Claimant and, although she was appointed by dint of Ms Ducie requiring an investigation to be made, there is no mystery in that: the person who discovered the alleged misconduct has to instigate the investigation. Ms Staines had no axe to grind.

26 Ms Staines investigated the matter by interviewing the Claimant, her co-worker on the night in question, the two managers who undertook the spot check and by looking at relevant records. She completed a detailed investigation report, which was handed on to the disciplining officer.

27 Ms Staines specifically addressed the Claimant's reasons for why she had acted as alleged (page 153). In particular Ms Staines addressed, during her investigation, the Claimant's contention that she had been particularly busy on the night in question. Ms Staines looked at the type of tenants who lived in Rose Court and looked at the night summaries to reach a view about that and her conclusion was that the documents did not support the Claimant's contention. I find that Ms Staines investigation was thorough and even-handed.

28 Her conclusions were that the matter should go to a disciplinary hearing for alleged gross misconduct because of the Claimant's admission, because false recording was a serious matter, because there was no evidence the Claimant had been particularly busy, because the Claimant knew what she had done was wrong and because the acts, in her view, were breach of the code of conduct both as to honesty and because they risked bringing the council into disrepute (page 155).

29 A disciplinary hearing was held on 12 February 2016 before Ms Millen, Head of Adult Safeguarding. The Claimant was represented by her trade union. She had every opportunity to put her side of the story knowing the allegations against her.

30 Ms Millen decided to dismiss. She set out her reasons in a lengthy letter of 23 February 2016. This letter shows that Ms Millen took into account all the circumstances

and weighed up matters going to the seriousness of the conduct and mitigation. I find that Ms Millen weighed up all relevant matters before reaching her decision and did so with some care. Ms Millen found that the Claimant admitted the conduct; in her view that conduct was in breach of the code of conduct both its requirements for honesty and integrity and its requirements not to bring the council into disrepute; she found that the Claimant knew and had said she knew that managers would not have approved of her conduct. I find that Ms Millen had plenty of evidence upon which she could have made that decision.

31 Ms Millen carefully weighed the mitigation points raised by the Claimant: that she was particularly busy that night and had overall a heavy workload. Ms Millen accepted the workload was heavy but was not of the view that that outweighed the seriousness of the conduct because falsifying the record—writing the record in advance—was not the only option open to the Claimant. The better option would have been to write very brief notes or give a verbal handover or indeed draw to the attention of her managers the fact that she simply could not write the notes in the time available to her. Ms Millen also was of the view that it was not logical for the Claimant to say that she knew it was going to be a busy night in advance of the night actually happening for the reasons I have already referred to. Ms Millen took into account that, although the workload was heavy, the Claimant had not informed managers what she was doing because of that heavy workload.

32 Ms Millen also took into account, in weighing the seriousness of the conduct versus mitigating factors, her concern that the Claimant had not appreciated how serious the consequences of her conduct could have been. Ms Millen tested this by asking the Claimant during the disciplinary hearing what would have happened if a tenant had died during the night or if the CQC had discovered the practice of completing notes in advance. The Claimant said, in relation to the question if the matter had gone to the coroner's court, that she would have apologised for writing the note in advance and would have changed the record. Ms Millen thought that this did not show the Claimant really appreciated the seriousness of the matter. The Claimant has denied before me that Ms Millen asked those questions of her but I prefer the clear evidence of Ms Millen that she did suggest that those hypothetical scenarios to her: they are set out in the dismissal letter (189). The Claimant accepts that the disciplinary hearing was about a couple of hours, which would have given Ms Millen plenty of time to explore those matters with her.

33 Ms Millen took into account the Claimant's good work record (188). While she did not specifically refer to the length of that record, it seems to me Ms Millen considered the work record as a whole.

34 Overall Ms Millen decided that the facts that the Claimant put forward in mitigation did not outweigh the seriousness of the conduct and that a final written warning would not have been appropriate bearing in mind the failure of the Claimant to appreciate how serious the consequences of her conduct had been. She therefore dismissed the Claimant for gross misconduct. Ms Millen recorded her decision as follows.

> **"*Mitigating Factors***
>
> *I was convinced that on the balance of probability you were intending to carry out the tasks that you recorded prior to their taking place. This was due to your presentation and also, by the fact that the day shift staff had not complained*

that the night shift staff had not completed their duties.

From the information provided by yourself, your representative and the investigating officer I was convinced that the early morning period is a very busy time for you and your colleague and that the work is demanding.

From your presentation I accept that it is challenging to record all your care actions in real time due to work pressures or to record these actions at the end of the shift as this is the busiest time for you.

From the answers you gave to the questions asked at the disciplinary hearing I was convinced that you did not realise the serious risks that you were taking in relation to the residents, yourself and the Council by recording events that had not yet happened.

I was convinced by the three appraisals produced that you had a reasonably good work record. This is the first allegation of misconduct.

I was convinced by three of the appraisals and various supervision notes produced at the hearing that you had raised the issue of not having time to carry out all tasks with your line manager.

You stated that you only undertake the practice of recording in advance when you felt that the shift was particularly busy.

You also stated that you only carried out this practice for those residents with stable needs who you felt had a predictable patter of behaviour.

Other factors that I took into consideration

The majority of tenants at Rose Court had high level complex needs and are amongst our most vulnerable service users. Therefore it is essential that the Council can be assured that the care they receive meets their needs. It is vital that the written records accurately reflect the care that has taken place.

Managers' have to be able to trust that records written by staff are accurate ad a true representation of what has happened. Trust had been broken as a result of the findings of the unannounced visit.

The potential consequences of recording actions in advance of carrying them out are very serious and involve high levels of risk to the service users, member of staff and the Council. Such recording methods means that it is impossible to be sure that these actions ever happened even if it is likely that they did.

If Rose Court had been visited by the Care Quality Commission (CQC) and these records had been discovered there would have been very serious consequences for the Council. Likewise, if something had happened to one of the service users unexpectedly and the records had not matched what had

happened the consequences would also have been very serious.

Regardless of your apparent lack of awareness of the risks in carrying out these actions they do constitute fraud.

These allegations constitute gross misconduct.

As a very experienced member of staff you inducted other night care staff and may have shown them this method of recording in advance.

You mentioned that you were aware that management would not approve of this practice.

Upon questioning you admitted you have been writing up activities in advance for at least 5 years.

There was no indication from the written records that this night was busier than other nights.

Conclusion

Taking into account all of the evidence presented, my conclusion is that you have breached the Code of Conduct in respect of the areas outlined by the investigating officer (MS) in her report:

- *Honesty and Integrity*
- *Representing the Council*
- *Gross Misconduct*

Taken as a whole, these breaches constitute gross misconduct. The Code of Conduct states that:

"any act which destroys the relationship of trust and confidence that the Council needs to have in an employee will constitute gross misconduct"

You have admitted both of the allegations against you but have cited mitigating circumstances. I have considered these mitigating circumstances and have weighed them up against other factors. I have also considered the seriousness of the allegations in deciding on what action to take.

Decision

Your actions of recording in advance on service users' record sheets on the night of 23rd/24th November 2015 constitute gross misconduct. These actions are very serious and have resulted in a lack of confidence and trust in you as

> *an employee. Therefore I have no other choice than to dismiss you from your employment with the London Borough of Hackney with effect from 23rd February 2016. You will be paid for any outstanding leave."*

35 The Claimant appealed the decision by letter. Mr Madden, Deputy Borough Director for Adult Mental Health Services, heard her appeal and decided upon it on 3 March 2016. I find that Mr Madden looked at the material again carefully and was happy that Ms Millen had reached a sound and reasonable conclusion. He listened to the Claimant's grounds and took into account what she had said. The Claimant again was represented by her trade union representative and had every opportunity to say what she wished at that appeal hearing. Mr Madden was also of the view that the conduct admitted was serious because of the risk and serious consequences to the council and to service users if anything had happened in the night.

36 I will now deal with some matters that were raised before me in the evidence so that the parties understand how I have taken them into account.

37 The Claimant suggested to me at the end of her oral evidence that she did not know what she was doing was wrong. But I find, for the reasons I have already set out, that this was not her account to Ms Millen. She said to Ms Millen that she knew her managers would not approve of her conduct.

38 Ms Ducie made contemporaneous notes of the spot check on the back of an envelope, literally. I find that this was not professional behaviour. She has told me and I accept that she has learnt from her experience in this case and now takes a notebook in which to formally record notes of her observations at spot check. In the event, her failure carefully to record what she discovered at Rose Court on the night in question is not relevant because of the clear admissions the Claimant and her co-worker made on the night in question and the during the course of the disciplinary hearing. It has not been something that I have had to take into account in this hearing.

39 Quite a lot of time was spent by the parties in relation to the Claimant's training. Training was not raised as a mitigation point during the disciplinary process and therefore it is not relevant to my decision. I do note, however, if it had been raised, the documents would have shown the Claimant received the induction and refresher training that I have referred to and in any event the Claimant quite sensibly agreed that filling in the sheets was a straightforward matter and she did not need training to know not to do it in advance.

40 The Claimant's witness statement, at paragraph 14, did not admit seriousness of what she had done. That obviously was not evidenced before Ms Millen but it chimes with Ms Millen's conclusions and reinforces me in my findings that Ms Millen conclusions were genuine.

41 In his submissions to me, which were economical, articulate and helpful, Mr Okunowo suggested that this was not fraud. He went so far to suggest the conduct was not dishonest because the Claimant had not intended to write a dishonest report and had not personally had any intention to benefit from what she had done. At times Mr Okunowo referred to what the Claimant had done as a 'mistake'. I am afraid I do not agree. The Claimant knew what she was doing: she intended to write reports in advance. She also knew what she was writing was literally not true. While I appreciate that is

something she may find hard to accept, it plainly is not true to write that somebody had a wash at 6.00am when you are writing it earlier than 6.00am. It is plain that the Claimant did not intend to benefit personally from her conduct and nobody has found that to be the case. This is not a case where the Claimant has been accused of theft or anything of that kind but, be that as it may, it is certainly a serious matter in my view to write that you have made a check on a vulnerable person or made an observation about that person's well-being or done a task for that person when, in fact, you have not yet done so.

Submissions

42 I thank the representatives for their helpful and economic submissions. In effect, their submissions turn on the question was this decision within the reasonable range of responses of a reasonable employer.

43 Mr Okunowu, for the Claimant, argued that it was unreasonable of the Respondent not to take into account her long and good service, her admittedly heavy workload, the fact that this was the first time her conduct had been discovered and her lack of intention to personally benefit. He also argued that there had been an unreasonably insufficiently investigation of the Claimant's workload which would have provided a mitigating factor.

44 Mr Braier, for the Respondent, argued that this is a case where the employer's decision falls squarely within the range of reasonable responses of a reasonable employer. He relied upon the seriousness of the misconduct: writing a false record in relation to a vulnerable service user was a matter that could have very serious consequences both for the service user, the Claimant and the Council. He referred to Ms Millen's conclusions in relation to that. He argued that the reasonableness of the investigation should be by reference to the circumstances of the case where an employee admits misconduct and the investigation need not be as detailed. He argued that Ms Millen the decision maker had looked at everything in full and had been careful to weigh up the factors against the Claimant but also the mitigating factors that she put forward. He emphasised her conclusions about her concern that the Claimant had not appreciated the serious consequences if she had written, for example, that somebody had been seen at 6.00am when they had died earlier in the night and the repercussions for that resident's family, the CQC and the coroner's court. These were very serious indeed and could have led to trust in the Council's provision of care at Rose Court to be very much reduced not only by the residents and their families but also the regulatory body.

Law

45 I can summarise the law very briefly in this case because it has been agreed between the parties that my decision depends on an application of Section 98(4) the Employment Rights Act 1996.

> "*The determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, 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 shall be determined in accordance with equity and the substantial merits of the case.*

46 The case of *BHS v Burchell* gives guidance on the application of s98(4) in a misconduct case: the Tribunal should ask itself whether the employer had a genuine belief in the misconduct, had reached that belief on reasonable grounds and after a reasonable investigation.

47 The case of *Iceland Frozen Foods v Jones* reminds the Tribunal not to substitute its own view for the view of the employer but to ask whether the employer's decision falls within a range of reasonable responses of a reasonable employer. I remind myself that the question for me is not what I would have done but whether what the Respondent did was reasonable.

48 Mr Braier has referred me to *AEI Cables v McLay [1980] IRLR 84* which does not really establish any point of principle but reminds me that length of service is a relevant consideration but it would be a rare case where a Tribunal finds it unreasonable for an employer, deceived by an employee, to allow their length of service to trump the seriousness of that conduct. *Strouthos v London Underground Ltd [2004] IRLR 636* makes a similar point: there the long service of an employee of 20 years was a factor for the Tribunal deciding that the dismissal was unfair when no dishonesty was found. The Court of Appeal make similar observations to the Employment Appeal Tribunal in *McLay*, that length of service is a factor and can be taken into account in the range of reasonable responses question. These cases remind me that each case depends on its own facts and I will apply the facts of this case to my decision and the principles Section 98 (4).

Application of facts and law to issues

49 It is accepted that there was potentially fair reason for dismissal here, namely conduct. That was the reason in the mind of Ms Millen at the time.

50 I find that Ms Millen had reasonable grounds upon which to reach her decision that there was misconduct and did so after a reasonable investigation had taken place.

50.1 Ms Staines was an independent investigator and did a full investigation of the relevant matters by interviewing the relevant witnesses, the two night shift workers and the two managers who did the spot check, and by looking at the relevant documents—the night sheet summaries in respect of those tenants the Claimant cared for.

50.2 During the investigation the Claimant had every opportunity to give her side of the story and this was recorded.

50.3 I bear in mind that, at that stage, the Claimant admitted to the conduct on the night alleged and also admitted to having done the same thing i.e. filling in night sheets in advance on other occasions. I therefore note that the level of investigation need not have been as detailed as that which Ms Staines undertook.

50.4 Ms Millen conducted a full disciplinary hearing at which the Claimant was represented, knew the allegations against her and had every opportunity to put her side of the story. Importantly both Ms Staines and Ms Millen

carefully considered the Claimant's defence and the mitigating factors she put forward namely her work load and that she was particularly busy that night and her long, good service. I have set out in my findings of fact how they did so. I wish to emphasise that, although Ms Millen did not expressly refer to *length* of service, she did refer to the Claimant's good service record and it seems to me that one includes the other.

50.5 I have also found that while those mitigating factors were investigated and taken into account the Respondent gave a careful explanation to the Claimant as to why they did not outweigh the seriousness of the conduct in this case and I have quoted the dismissal letter in full in order to illustrate this.

51 The reasonable grounds to conclude there was very serious or gross misconduct in this case were:

51.1 first, the Claimant's admission that on the night in question she had written 7 service user records in advance of doing the checks and making the observations in question and her admission that she had done this before when she was particularly busy. I find that that is an admission of more than making a mistake that is an admission of making a false record and that Ms Millen was entitled to reach that view;

51.2 second, Ms Millen's view about the importance of making a contemporaneous record and potential consequences if a contemporaneous record is not made. The purpose of these records is to record in real time that checks had been made that observations had been made on residents in the home. The consequence of not recording those activities in real time could have been serious if something had gone wrong. For example if a tenant died or had serious health emergency. It was quite reasonable for Ms Millen to test the importance of making a record in real time by reference to those hypothetical cases, a death or, for example, a visit by the regulator the CQC. By doing these hypothetical tests Ms Millen was able to conclude reasonably that the records were an important contemporaneous record of the welfare of the tenant and that, if it had been discovered they were not done in real time, trust would have been lost both in the records, in the Claimant and in the Council's ability to provide Homes with Care to the proper standard and that loss of trust could have seriously damaged the Respondent's reputation and the reputation of Rose Court where the Claimant had worked for so many years. None of those consequences are fanciful. They are all serious and it was reasonable for Ms Millen to consider them.

51.3 She also had reasonable grounds upon which to conclude that trust had been lost in the Claimant herself and it was not possible to maintain that trust in the future, despite the Claimant's good service record, and that was especially because Ms Millen had evidence before her that the Claimant had not appreciated the seriousness of her misconduct namely her inappropriate answers to what would have happened if the coroner had become involved.

51.4 There were also reasonable grounds to conclude that this was gross misconduct because, despite the heavy work load which Ms Millen acknowledged, the Claimant had options other than to falsify the record. I have already set out the options Ms Millen identified.

52 The next question was whether Ms Millen's decision to dismiss fell within the range of reasonable responses of a reasonable employer to the conduct alleged. I find that it falls within that range for the following reasons:

52.1 The conduct was obviously wrong: it was making a false record. Honesty and integrity were matters required of the Claimant in the code of conduct.

52.2 It was plainly a serious matter for the reasons I have set out above. The sheets became worthless if they were written in advance. To write them in advance undermined their important purpose—they could not be relied upon if something had gone wrong. To write them in advance risked the reputation of the Claimant, Rose Court, the Council and risked it losing its CQC rating and risked therefore the trust in the Respondent of its residents and their families.

52.3 Even if this had only been a one-off all of those conclusions would be valid though the evidence that Ms Millen had, was that the Claimant had committed this misconduct on other night shifts.

52.4 I find it reasonable for Ms Millen to have decided that the mitigating factors of workload and good service did not outweigh those serious concerns. In other words, it was reasonable for her not to reduce the sanction from dismissal. This is because there were options even if there had been a heavy workload other than falsifying the record: to write a much briefer narrative or none at all or merely to tick the box and to raise with managers the particular difficulties the Claimant had in writing a record at the time.

52.5 Finally, it was reasonable for Ms Millen to dismiss because of her conclusion that the Claimant lacked an appreciation of how serious the matter was and because of the lost of trust that that entailed. The long and good service record of the Claimant does not outweigh that consideration. In a case of serious misconduct of this kind it is reasonable for employer, even in a case where this is a first allegation of misconduct to dismiss, bearing in mind the seriousness of the conduct.

53 I therefore find that the complaint of unfair dismissal is not well-founded and does not succeed.

54 I wish to say one further thing. I do have a great deal of sympathy and respect for those, like the Claimant, who work in the front line of social care. It is a public service of great importance and I acknowledge that the Claimant had a demanding and often difficult job that she did well for a number of years. It is a job that is not always valued but I do not want the Claimant go away thinking that this Tribunal does not value her work. It seems to

me the Respondent did also. Those considerations however cannot and have not in this case excused the misconduct the Claimant committed. This is not a case where the Claimant has been scapegoated for a poorly resourced or failing service. She was given appropriate training and support and it is a great shame that her job came to an end because of her decision to cut corners in a wholly inappropriate way. In this case, the responsibility is hers.

Employment Judge S Moor

16 February 2017