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EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Clark**

Respondent: **Department for Work and Pensions**

Heard at: **London Central Employment Tribunal**

On: **31 January, 1, 2 & 3 February 2017**

Before: **Employment Judge Brown**

Representation

Claimant: Mr A Gloag (Counsel)
Respondent: Miss N Patel (Counsel)

JUDGMENT

The judgment of the Tribunal is that:-

1. **The Respondent dismissed the Claimant unfairly when it failed to follow its Attendance Management Procedure, paragraph 7.14, and held a meeting prematurely, without informing the Claimant of the date of the meeting or giving her a reasonable opportunity to attend.**

2. **The Respondent would have dismissed the Claimant fairly on 19 April 2016, following a fair hearing on 31 March 2016.**

3. **BY CONSENT the Respondent shall pay the Claimant a total of £13,846.06 on account of unfair dismissal and Tribunal fee costs.**

REASONS

Preliminary

1 The Claimant brings a complaint of unfair dismissal against the Respondent, her former employer. She had previously withdrawn a complaint of disability discrimination against the Respondent. At the start of this hearing she also withdrew a complaint of age discrimination.

2 The parties agreed the issues to be determined at the outset of the hearing. They were issues 1 – 26 of the list of issues and 5 of the disability discrimination list of issues, as follows:

1. What was the reason for dismissal?

2. Was it a potentially fair reason under s.98?

3. Was dismissal on the grounds of capability?

4. If so, was there a genuine belief that the Claimant was incapable of giving full and effective service due to her health?

5. Did the Respondent comply with the requirements of the Absence Management Policy (herein 'AMP') in arranging a case conference with an Occupational Health (herein 'OH') advisor to discuss resolving long-term sickness?

6. Was the Claimant's consent required for the Respondent to arrange a case conference with its independent OH provider?

7. Was the Respondent unable to obtain advice from its independent OH provider because the Claimant would not give her consent?

8. Was the Claimant's consent required for the Respondent to arrange a referral to its independent OH provider?

9. Did the Claimant withdraw her consent to such referral?

10. Did the fact that there was no referral mean that the Respondent was unable to obtain medical advice on the impact of ill-health, guidance on disability, and reasonable adjustments?

11. Did the AMP require the Respondent to seek further OH advice at the time of making the decision to dismiss, if the initial advice was over three months old?

12. Was the advice over three months old?

13. Did the AMP require the Respondent to wait for the Claimant's absence to exceed six months before deciding to dismiss?

14. Did the AMP require Senior Management engagement to ensure everything was being done to facilitate a return to work?

15. Did the Respondent act in accordance with the AMP in dismissing the Claimant?

16. Was the Claimant entitled to the benefit of six months full pay, then six months half pay before dismissal could take effect?

17. Was dismissal the last resort in that;

    a. everything had been done to facilitate the Claimant's return,

    b. mitigating factors were considered such as domestic, personal, work problems or NHS delays,

    c. the nature of any underlying medical condition or disability was considered,

    d. reasonable steps were taken to understand the illness in order to facilitate a return to work,

    e. the Claimant was asked to consent to the Respondent contacting the Claimant's GP regarding her medical condition.

18. Was the decision-maker an independent person, having had no previous involvement in the case?

19. Did the decision-maker write to the Claimant informing her of the information that had been used to make the decision to dismiss?

20. Did the Respondent act reasonably in deciding there was a sufficient reason for dismissal as the dismissal was within the range of reasonable responses?

21. Was the procedure adopted by the Respondent fair?

22. Was there a requirement to delay referral for six months, until sickness absence on full pay had ended?

23. If the Tribunal find that the Respondent was in breach of procedure at any stage, did such breach make any material difference to the decision to dismiss?

24. Did the Claimant contribute towards her dismissal, by not cooperating with her employer in operating the procedures?

25. If the dismissal was unfair, would the dismissal nevertheless have taken place fairly at such later time as to affect the period of loss?

26. As an alternative to the above, was dismissal on the grounds of redundancy?

27. Was the Claimant offered a stress reduction plan during her absence in accordance with the AMP?

3 I heard evidence from the Claimant; from Lorna Henry, her Line Manager; from Mark Chenery, dismissing Officer; and Mandy Howells, Appeal Officer. There was a bundle and a supplementary bundle and both parties made submissions.

Findings of Fact

4 The Claimant commenced employment with the Respondent on 1 August 1989. At the time of the events in question in this case, the Claimant was a Benefit Fraud Investigator at the Respondent's Barking office. Her line manager was Lorna Henry.

5 The Claimant had partially retired on 6 September 2009, aged 59. She continued to work part-time thereafter.

6 Between March and April 2014 the Claimant was absent from work for four weeks with a knee injury. Lorna Henry completed a report, asking that the Claimant's absence be treated as a one off occurrence. Pursuant to the Respondent's procedures, that report was reviewed by Mark Chenery, Fraud and Area Service Senior Leader. He considered that the circumstances of the Claimant's absence did not fulfil the criteria for the absence to be treated as a one off event and advised that the Claimant should be given a formal warning about her attendance, supplementary bundle, page 3. Lorna Henry did then give the Claimant a warning about her attendance. The Claimant successfully appealed against that warning.

7 Between April and June 2014 the Department of Work and Pensions ("DWP") offered a Voluntary Exit Scheme to its employees, due to a 10% reduction in its budget. The Claimant asked, at that time, for a calculation of the sums which might be paid to her under the Scheme, but she was told that her post was a business critical post and an exit would not be offered to her.

8 Later in 2014, Local Authority Housing Benefit Officers transferred to the DWP, to form a single fraud investigation and welfare benefits service. The Housing Benefit work that they had previously done for Local Authorities transferred to the DWP along with those officers.

9 On 9 April 2015 the Claimant had booked the only interview room at the Respondent's Barking office from 2.00pm, in order for her to conduct an interview under caution. The Claimant's colleague, Sue Dudley, had started another interview under caution earlier that day and was still in the interview room at 2.00pm. The Claimant knocked on the door at 2.20pm. Sue Dudley shrugged and indicated that she was finishing shortly. The Claimant considered that Ms Dudley had behaved very dismissively towards her, failing to apologise for running over, either then, or later.

10 The Claimant raised Ms Dudley's conduct with Lorna Henry, who invited both employees to a meeting on 17 April 2015. That meeting did not go well. The Claimant considered that Ms Dudley had refused to engage in the meeting and the Claimant ended the meeting by walking out of it, saying to Ms Dudley, "You are a horrible person". The Claimant submitted a grievance against Ms Dudley the same day, bundle pages 16 – 22. Three days later, Ms Dudley submitted a grievance against the Claimant, complaining about the Claimant's behaviour in the meeting on 17 April, page 23 – 28.

11 The Respondent's grievance procedure provides that, if a grievance is not resolved after 40 days, the line manager must refer the case to be reviewed by their line manager. The procedure provides that, "..the purpose of the review is to ensure that everything is being done to progress the case, that the correct process is being followed and there are no unnecessary delays..," supplementary bundle, page 32. It also provides, at paragraph 5.16, that a manager investigating a grievance should invite an employee to discuss their grievance within five days of receipt of that grievance. At paragraph 5.17 it provides that, at the meeting, the manager may adjourn the meeting to undertake a speedy investigation, during which witnesses can be interviewed. At paragraph 5.18, the procedure stipulates that, if the adjournment will take longer than five days, the manager should inform the employee when they can expect a decision and the reason for the delay.

12 On 1 May 2015 the Claimant emailed Ms Henry, asking what was happening with her grievance, supplementary bundle 9. Ms Henry replied the same day, saying that she was seeking advice from the Employee Services Department on how best to handle it, supplementary bundle 9. The following day Ms Henry invited the Claimant to participate in mediation conducted by the Respondent's HR Mediation and Investigation Service; she provided the Claimant with information on this, supplementary bundle, page 10. The Claimant did not agree to proceed further by mediation.

13 On 20 May Ms Henry emailed the Claimant again, saying that Mr Conrad Bernard had been appointed as investigatory of the grievances, but that he was away on leave until 1 June, supplementary bundle page12.

14 On 4 June, on his return from leave, Mr Bernard wrote to the Claimant, inviting her to a meeting on 6 July 2015 to discuss her grievance, supplementary bundle page 13. The Claimant queried the date of the meeting with Mr Bernard, saying that the proposed meeting would take place two and a half months after the submission of her grievance. She said that this was not an ideal situation in her working environment, ".. given the nature of my grievance and the effect the whole situation is having on me.. ," supplementary bundle page 15. Mr Bernard replied, saying that Lorna Henry had offered mediation and had spoken to both the Claimant and Ms Dudley on separate occasions, but that no agreement had been possible. He said that 6 July was the earliest date when everyone was available and that he had tried to convene a meeting on 16 June, but that the Claimant had had a team meeting that day, supplementary bundle page 14 – 15.

15 The Claimant and Ms Dudley were working together in a small office while their mutual grievances were unresolved.

16 The Claimant responded once more on 8 June, querying Mr Bernard's approach and his interpretation of the policy and saying. ".. the delays in dealing with this matter are unacceptable and have only added to strain situation in the office …" supplementary bundle, page 14.

17 On 6 July 2015 Mr Bernard interviewed the Claimant, Sue Dudley and Lorna Henry, pages 29 – 38. On 22 July Mr Bernard completed his investigation report, page 41 – 45. He decided that Sue Dudley had no case to answer. He sent her a letter telling her this, page 40a and 40.

18 In mid August 2015 Lorna Henry called the Claimant to her office and handed the Claimant a letter. The Claimant opened the letter at her desk. It was from Paul Wynne, inviting the Claimant to a disciplinary hearing the following week. The Claimant emailed Mr Wynne, asking what had happened about the outcome of her grievance.

19 The Claimant made an appointment with her GP around this time. The earliest date which could be offered was 21 August. On 21 August the Claimant's GP signed her off work, on account of stress at work. Her GP prescribed the Claimant antidepressant depression, page 48. She was signed off work, sick, again on 1 September for the same reason, page 49.

20 On 4 September 2015 the Claimant submitted a second grievance, against Conrad Bernard and Paul Wynne, saying that they had failed to comply with the Respondent's grievance procedure in relation to her grievances, which had resulted in the Claimant suffering stress and depression. She asked for an outcome to the grievance that she had submitted on 17 April, page 50.

21 On 7 September Conrad Bernard sent the Claimant a letter setting out the outcome of her grievance. He sent it to Lorna Henry, to forward to the Claimant. Mr Bernard said he had considered the grievance and felt that there was no case to answer. He enclosed copy of his report. The Claimant received this letter on 9 September, page 56.

22 On 15 September, Paul Wynne also drafted a letter for the Claimant, informing her of the outcome of Ms Dudley's grievance against the Claimant. He said that he considered that the Claimant's behaviour had fallen outside that expected of employees, but the matter could be dealt with by way of informal action, because the Claimant's behaviour was not serious enough to warrant formal action and there had been significant delay between the date the grievance had been lodged to the date it had been concluded. Mr Wynne reminded the Claimant that raising her voice and being rude to other members of staff was not acceptable. He said that a record of the informal action would be retained and, if the behaviour was repeated, the record could be used in future formal action, page 60c.

23 The Claimant told Ms Henry, at this time, that she did not wish to receive Mr Wynne's outcome letter. The Claimant appealed against the grievance outcome.

24 The Respondent has an Attendance Management Procedure, page 268. It contains a section on continuous absence which provides for employees, who are off work sick on a long term basis, to attend review meetings with their managers after 14 and 28 days' sickness and monthly thereafter. The Claimant attended these meetings with her manager.

25 At a meeting on 25 September 2015 the Claimant indicated that she felt unable to work and did not wish to take up her GP's offer of counselling. She said that she did not agree to be referred to the Respondent's Occupational Health service. The Claimant was told, at the meeting, that decisions would therefore be made without Occupational Health advice. The Claimant was also told that the Respondent's Employee Assistance programme was available to her and she was given a telephone number for it.

26 In a follow up letter, confirming what had happened in the meeting, a manager said that the Department would support the Claimant's sickness absence and would not make a referral for dismissal, or demotion, at that time. The letter continued, "Your absence will be reviewed regularly and if it becomes unlikely that you will return to work in a reasonable period of time, I may review the position again." Page 68 – 90.

27 Unfortunately the Claimant's mother died on 2 October and the Claimant found her that day. The Claimant was understandably very distressed by this.

28 On 23 October 2015 Lorna Henry wrote to the Claimant, inviting her to a further meeting and enclosing the Respondent's Attendance Management Procedure and a Question and Answer sheet regarding the Respondent's Occupational Health Service. She asked the Claimant to read them, page 70.

29 The Claimant attended the further absence review meeting with Lorna Henry on 27 October 2015. Ms Henry and the Claimant discussed the Claimant's appeal against her grievance and disciplinary informal action outcomes. The Claimant advised that she had neither received letters from the appeal officers, nor any invitations to meetings with them. She said that she would prefer if Julie Creedon, who had been appointed to consider the Claimant's appeal against Mr Wynne's decision, could deal with the matter on paper.

30 The Claimant again said that she did not agree to being referred to the Respondent's Occupational Health Service. Ms Henry told her, again, that decisions would be made without Occupational Health advice. Ms Henry reminded the Claimant about the Respondent's Employee Assistance programme. The Claimant said, in the meeting, that the thought of returning to work frightened her, because of the grievances, how they had been handled and the way the Claimant's version of events had been ignored. A record of the meeting was sent to the Claimant on 6 November, page 73.

31 On 5 November 2015 Lorna Henry contacted the Respondent's Human Resources Department for advice, page 80. The Human Resources Adviser told Ms Henry that, given that the Claimant's work related stress was due to outstanding grievances, the Respondent should conclude those as quickly as possible. The adviser also said that Ms Henry should be compassionate about the Claimant's continued absence, in the light of her bereavement.

32 The same day, Ms Henry emailed Ms Creedon about the Claimant's absence. She referred to the advice she received from Human Resources, saying that the Respondent should support the Claimant's absence for compassionate reasons due to the Claimant's bereavement. Ms Henry also said that the Respondent needed to remove the barriers to the Claimant's return to work, by concluding her grievances as soon as possible.

33 On 6 November 2015 Christine Bidwell wrote to the Claimant, notifying her of the outcome of the Claimant's appeal against the first grievance decision. Ms Bidwell said the appeal was not upheld because, in her opinion, the management decision had been fair and thorough. Ms Bidwell said that the Claimant had refused mediation. She said that, whilst the Claimant was frustrated and upset on 17 April, the Claimant's conduct had not been appropriate. Ms Bidwell concluded her letter by saying, ".. the original decision

taken by the decision maker stands. This decision is final." Page 211.

34 On 9 November 2015 Julie Creedon wrote to the Claimant, giving the outcome of her second grievance. Ms Creedon said that she had upheld the Claimant's grievance regarding delays in the fact finding and decision making processes by both Conrad Bernard and Paul Wynne. She also said that the decision not to take formal action would be kept on the Claimant's personnel file, but would *not* be used if other standards of behaviour were breached, as the matter was now closed, page 82.

35 On 7 November 2015 the Claimant wrote to Ms Bidwell, questioning her decision. The Claimant said that she had, in fact, agreed to mediation and that Mr Bernard had failed to follow the procedure by not interviewing independent witnesses. The Claimant said that she had also produced new evidence, page 84.

36 On 17 November 2015 the Claimant chased a reply to her email, page 83. Ms Bidwell responded on 18 November, answering each of the Claimant's points, page 83.

37 On 20 November 3015 the Claimant wrote again to Ms Bidwell, querying her most recent answers and asking whether Ms Bidwell had received her grounds of appeal, page 87. The same day, 20 November, Ms Bidwell replied once more. She said that she had sought advice about how to move forward in light of the Claimant's dissatisfaction with the process and Ms Bidwell's responses. Ms Bidwell said that she would look at the matter again and would invite the Claimant to a meeting. Ms Bidwell asked the Claimant to concisely state, in bullet form, the basis of the Claimant's appeal and what new evidence should be taken into consideration, because Ms Bidwell did not want anything to be ambiguous. Ms Bidwell concluded her letter by saying, "I hope you are in agreement with this development." Page 87.

38 The Claimant replied to Ms Bidwell on 24 November. She said, ".. No, I am not in agreement with the development as you put it. As far as I am concerned it is a step backwards and again causing more stress and upset for me… Why are you back tracking now? What complete and utter shambles the whole situation has become. .. ". The Claimant then said she wished to add some matters and made further arguments regarding her appeal. She concluded by saying, "I cannot see how meeting you will assist in bringing this matter to a conclusion when the parties involved have had since 17 April 2015 and still not been able to bring it to any sort of conclusion and would only hinder my recovery." Page 92 – 93.

39 The Claimant met with Ms Henry again on 25 November, to discuss her ongoing absence, page 108. The Claimant said that her grievance was not being handled in accordance with Department of Work and Pension guidelines and had taken seven months with no conclusion. The Claimant said that concluding her grievance would aid her return to work. She said that Julie Creedon and Christine Bidwell needed to respond to the points the Claimant had raised, to bring the grievances to a conclusion which could be justified. The Claimant told Ms Henry that she had now attended counselling appointments through her GP and had been assessed as suitable for one-to-one counselling. The Claimant again declined Occupational Health referral. Ms Henry again told the Claimant that her absence would be supported, but that it would be reviewed and, if it became unlikely that the Claimant would return to work in a reasonable time, Ms Henry would review the situation.

40 On 7 December Julie Creedon responded to the Claimant's queries about Ms Creedon's appeal outcome. She addressed the Claimant's points and said, "I hope this has answered your questions but if not please contact Sue Ponton … she can arrange a date for us to meet to discuss any other outstanding questions you have regarding your grievances." Page 100. The Claimant did not contact Sue Ponton to arrange such a meeting, nor did she reply further to Ms Creedon.

41 On 23 December Ms Henry invited the Claimant to a further meeting, to be held on 31 December. She asked the Claimant to read the Attendance Management Procedure and the Question and Answer sheet about Occupational Health, again, before the meeting, page 113.

42 The Respondent's Attendance Management Procedure had the following provisions. Paragraph 3 stated, "The department will ensure your job and working environment do not cause or contribute to ill health. DWP will take all reasonable steps to support you if your health affects your ability to attend work and/or do your job and you will be given the opportunity to improve your attendance within a reasonable period of time."

43 It also contains provisions regarding referral to its Occupational Health Service, at paragraphs 6 – 9. Paragraph 8 provides, "If you consent to your case being referred for Occupational Health Service advice, you may be invited to a consultation with a doctor or nurse… the Occupational Health Service may also contact your GP or specialist. If you do not consent, your manager will decide what to do about your absences without guidance from an independent Occupational Health provider."

44 Paragraph 9 states,

> "Usually a referral will be made if your manager
>
> - Needs to understand the impact of your health and your ability to attend work …
> - Needs to understand whether you have a … underlying health condition and how this might affect your attendance at work such as how long or how often you are likely to be off work in order to make a decision about the action that needs to be taken.
> - Needs advice in order to consider reasonable adjustments or a back to work plan to help you to return to work and support you when you return.
> - Is considering dismissal from work … page 271 – 272"

45 In its section on Continuous Absence, the Attendance Management Procedure states:

> "Once you have been absent for 28 continuous days your manager will arrange a review meeting with you to discuss any support you need for your return to work. This will include you and your manager developing a back to work plan. If you are

unlikely to return to work within a reasonable time period your employment with the department may end." Page 275.

46 In its section, Considering Referral for Dismissal or Demotion, the procedure provides at paragraph 7.1:

"Dismissal or demotion should normally be considered when the Attendance Management Procedures have been followed but the employee is unlikely to return to satisfactory attendance within a reasonable period of time. This could be … during a period of long term absence…

Paragraph 7.2 of that section states,

"The manager may decide not to refer a case to the decision maker to consider dismissal or demotion where:

– one of the special circumstances applies; or

– the absence has been uncharacteristic of the employee's overall record or; ....

– the employee is on long term sickness and a return to work within a reasonable timescale is likely, page 300 – 301.

Paragraph 7.9 provides,

"A decision to dismiss should not be taken lightly or as anything other than a last resort. In coming to their decision the Decision Maker must consider the following:

- whether everything reasonable has been done to support the employee back to work

- whether there is a reasonable expectation of improved or sustained attendance to a satisfactory level

- any mitigating circumstances e.g. domestic, personal, work problem NHS delays

…

- whether reasonable steps have been taken to understand the effects of the illness

- the employee's length of service and previous attendance record

- whether the employee has been given every opportunity to state their views and if those views had been properly considered", page

303.

Paragraph 7.13 states,

"If the employee is unable to attend the meeting, the decision maker must try to rearrange within 5 working days of the original date."

Paragraph 7.14 states,

"If the employee is unable to attend the rearranged meeting, the decision maker must:

– write to the employee summarising the points that would have been raised at the meeting. In the letter the decision maker must ask the employee to:

- provide any further any information they feel is relevant

- confirm in writing that the points raised are accurate

- reply by a reasonable date." Page 304.

47 The Respondent Sick Leave and Sick Pay policy provides, with regard to sick pay:

".. If you were recruited and took up post in DWP on 13 October 2013 or earlier, you may receive full pay for the first 6 months of absence and half pay for a further 6 months, subject to a maximum of 12 months paid sick leave in any four years period. You may be entitled to an extension of paid sick leave of up to 40 calendar days."

48 The Claimant met Lorna Henry again on 31 December 2015. On 4 January 2016 Ms Henry sent the Claimant a letter, confirming what had been said in their meeting. The Claimant said that her aunt had died in Australia on Boxing Day and the Claimant had been very upset by this. The Claimant said that she had had a first counselling session on 21 December 2015 and that the second session was booked for 4 January 2016. The Claimant confirmed that her next appointment with her GP was on 11 January 2016. She said that she would speak to her GP about coming back to work on recuperative hours. The Claimant again said that she did not consent to an Occupational Health referral.

49 Ms Henry said that she would support the Claimant's return to work on recuperative hours and that she would send the Claimant DWP Guidance on recuperative hours. Ms Henry told the Claimant that the Department would support the Claimant's sickness absence until 11 January 2016, due to their discussion. Ms Henry said that she expected the Claimant to provide her with further information about her return to work following the appointment on the 11 January. She said that she would not refer the Claimant for dismissal, but reminded the Claimant that, if it became unlikely that the Claimant could return to work in a reasonable time, Ms Henry would review the situation, page 120 – 121.

50 There was a dispute of fact between the parties about whether Ms Henry had made clear to the Claimant, at this meeting, or at any other meeting, that the Respondent considered that all the Claimant's grievances had been concluded. Ms Henry told the Tribunal that she had done so. The Claimant said that Ms Henry did not. The Tribunal notes that none of the letters recording the discussions at the absence review meetings records that Ms Henry had told the Claimant that her grievances had been concluded. I therefore decided that Ms Henry did not, herself, make clear to the Claimant that the grievance procedures were at an end.

51 On 11 January 2016 the Claimant emailed Ms Henry, saying that her GP had signed her off work again until 11 February. The Claimant said that her counsellor had asked the Claimant whether all her work issues had been resolved and the Claimant said that this was not the case, because she had raised several matters with Julie Creedon and Christine Bidwell and they had never addressed them as they had promised to. The Claimant said that her counsellor had advised her that the work related issues must be resolved before the Claimant could return to work, page 124.

52 Ms Henry sent the Claimant a follow up letter on 15 January, page 125. She said that she had sent the Claimant DWP Guidance on returning to work on recuperative hours. She acknowledged the Claimant's email of 11 January and its contents and said,

> "I have considered all the facts and have decided to refer your case to Mark Chenery who will decide whether you should be dismissed or demoted, or whether your sickness absence level (from 11/01/16) can continue to be supported.." .
>
> She said that Mr Chenery would invite the Claimant to a meeting.

53 Mr Chenery was on a rota of managers to whom decisions about dismissal were referred. The Claimant's case was referred to him in accordance with the rota.

54 The Claimant replied to Ms Henry on 19 January 2016, asking why her case had been sent to a decision maker when her absence had not reached 5 months. She said that it was her understanding that 6 months absence was the time when dismissal would be considered, page 134.

55 On 24 January Ms Henry replied, enclosing the provisions of the Respondent's Continuous Absence process and saying that the process required that dismissal be considered when a manager believed that the absence could no longer be supported by the Department. The Claimant responded further by email that day, saying that, at a third counselling session, she had said, once more, that her work related issues had not been resolved and that Julie Creedon and Christine Bidwell had failed to bring her grievances to a conclusion, page 128.

56 Ms Henry referred the Claimant's case to Mr Chenery on 27 January 2016. She attached a chronology of the Claimant's absence and review meetings. Ms Henry also prepared a report. In the report, Ms Henry said that the Claimant felt that Ms Creedon had partially upheld the Claimant's grievance on 9 November and that the Claimant's appeal had not been upheld by Ms Bidwell. Ms Henry said the Claimant felt that Ms Creedon and Bidwell needed to respond to points she had raised to bring grievances to a final

conclusion; but that Mrs Creedon and Bidwell had both responded to say that the matters were closed. Ms Henry said that Occupational Health had been consulted for general advice, only, because the Claimant would not give consent for a referral. Occupational Health, therefore, could not give a prognosis or timescale for the Claimant's return without a clinical assessment, page 137 – 162.

57 Ms Henry's report also considered a check list for dismissal. She said that the Department could not sustain the Claimant's absence because it was having a detrimental effect on her colleagues, who were having to cover the Claimant cases and were therefore carrying a bigger workload. Ms Henry said, "The original reason for Sue's absence is related to work related stress by outstanding grievances and appeal. In my opinion and grievance has been completed fairly and therefore there is no reason for Sue not to return to work." Ms Henry stated that, in her view, the fact that a date for a return to work had not been given by the Claimant's GP showed that there was no imminent return to work likely. Ms Henry said, "I have challenging annual targets which were attributable to me and the team on the assumption that she will be at work making an effective contribution to these. This has not been the case since 24 August 2015," page 155 – 156.

58 The report contained all the details of Ms Henry's discussions with the Claimant during absence review meetings, including details of the Claimant's unfortunate bereavements, page 160 – 161.

59 On 1 February Mr Chenery wrote to the Claimant, inviting her to a meeting at his office on 10 February, page 215 – 216. The Claimant did not receive that letter and did not attend the meeting. On 10 February Mr Chenery sent the Claimant an invitation to a meeting at his office to take place on 23 February, to consider whether the Claimant should be dismissed, or whether her absence could continue to be supported, page 217.

60 The Claimant replied to that invitation on 22 February 2016, p219. She said that she would be unable to attend the meeting the next day. The Claimant said that she was not well enough because her GP had increased her medication on 12 February. She said that the Respondent was responsible for her illness and that she had submitted a second grievance to Julie Creedon but, ".. to date I have not had her findings confirmed in writing or indeed points I raised with her addressed." The Claimant stated that she was yet to receive notification of Christine Bidwell's final decision. The Claimant assured Mr Chenery that she was doing all she could to return to work; taking medication, attending counselling and completing tasks set. She said that she would be receiving counselling for some time. The Claimant questioned why she had been referred for a dismissal decision after 4 ½ months sick leave following 27 years of service. She also said that she felt that expecting her to travel 19 miles to Mr Chenery's office was unreasonable and lacked consideration for her health.

61 Following receipt of the Claimant's email on 23 February, Mr Chenery forwarded it to Julie Creedon and Christine Bidwell and asked for their comments on it, page 221. The next day, 24 February, they responded, pages 226 – 232.

62 Julie Creedon forwarded the email she had sent to the Claimant on 7 December, which had concluded by saying, "I hope this has answered your questions but if not please contact Sue Ponton…". Ms Bidwell sent her original decision letter to Mr Chenery. She told him said that she had informed the Claimant that, although the decision had been

final, Ms Bidwell would give the Claimant a last opportunity to provide information or attend the meeting. Ms Bidwell said the Claimant had declined and disputed matters, including the validity of the process. Ms Bidwell said, "As this had been my last option and in the absence of her providing further evidence or attending a meeting, rather than prolong the email exchange, I did not respond further." Page 230.

63 Mr Chenery emailed the Claimant on 24 March. He said that he was available to meet and that an alternative location could be arranged. Mr Chenery stipulated that an alternative meeting would have to take place within 5 days of the original meeting date, by 1 March 2016. He said that if the Claimant could not meet due to her continued ill health, he would make a decision based on the information provided to him by the Claimant's line manager and the information in the Claimant's email, page 223.

64 The Claimant did not reply.

65 Mr Chenery did not send a further meeting date to the Claimant. He did not send the letter setting out the points which would have been raised at a second meeting, nor did he ask the Claimant to provide any further relevant information, or confirm that the points he had raised were accurate. This was contrary to the requirements in the Respondent's Attendance Management Procedure, paragraph 7.14, page 304.

66 In evidence to the Employment Tribunal, Mr Chenery said that he considered that the Claimant had set out what she wished to say in her email to him of 22 February.

67 Mr Chenery spoke to Ms Henry on 24 February about the working environment, page 225. He spoke to her again on 1 March, asking if a stress reduction plan had been offered to the Claimant. Ms Henry said it had not been, due to the Claimant's absence from work. Later that day, Mr Chenery made a decision to dismiss the Claimant. He completed a record of decision pro forma. He recorded that there were no mitigating factors in the Claimant's case and no special circumstances. He referred Ms Henry's report of 1 February and concluded that attendance discussions had taken place with the Claimant and that the procedures had been followed correctly and applied correctly, page 240 – 243.

68 On 2 March Mr Chenery wrote to the Claimant, dismissing her with effect from the 2 March and giving her 13 weeks' pay in lieu of notice. In his letter, he said that he had considered Ms Henry's report and the Claimant's emails of 11, 19 and 21 January 2016 and 22 February 2016. Mr Chenery said that the Claimant had asserted that her absence was due to the Department failing to ensure that her job and working environment did not cause or contribute to her illness. He reported that, on 24 February, he had obtained emails from Julie Creedon and Christine Bidwell and had established that Departmental processes had been concluded and that the Claimant had been told of this in writing. Mr Chenery said that management investigations had exceeded expected timetables and that this would have been stressful for the Claimant. He also said that he noted that the Claimant did not agree with the outcome of the investigations; he acknowledged that this, too, would have been stressful for her. Mr Chenery said that, having considered all the relevant factors, he had decided to terminate the Claimant's employment because, " .. you have been unable to return to work within a timescale that I consider reasonable … there does not appear to be a likelihood of your returning to work in the near future." Mr Chenery told the Claimant of her right of appeal, page 236 – 237.

69 The Claimant appealed against her dismissal on 14 March 2016, page 178 – 187. In her appeal she said, amongst other things, that Mr Chenery had not been independent because he had instructed her manager to give the Claimant a formal warning for sickness in 2014. The Claimant said that nothing had been done to support her return to work. She said that she had had personal problems due to the dramatic circumstances of her mother's death. She also said that there had been NHS delays in securing counselling and that the Respondent had failed to show that the Department had made any reasonable adjustments to facilitate her return to work. The Claimant stated that Mr Chenery had failed to provide the Claimant with further information, or to seek confirmation from the Claimant that the information was accurate and, instead, he had simply made a decision to dismiss her.

70 The Claimant attended an appeal meeting with Mandy Howells on 31 March 2016, page 192. At that meeting, the Claimant said her ongoing counselling would not prevent her from returning to work. Ms Howells asked the Claimant whether, if the grievance investigators confirmed that the case was complete and that there was no action to be taken, the Claimant would accept that and return to work. The Claimant said that she did not consider things to have been resolved and that she needed closure and acknowledgement that she was sick because of the way matters had been handled. The Claimant said that she did not feel able to return to work and sit on the same bank of desks with the member of staff against whom she had raised grievances without the grievance being properly resolved.

71 The Claimant said that neither Ms Henry nor Mr Chenery had sought input from the Claimant's GP. Ms Howells asked the Claimant if her condition had improved and whether the Claimant could return to work. The Claimant said that she could go back if she had closure on the grievances, but to go back with matters unresolved would be upsetting, as questions had not been answered, page 205 – 210.

72 On 19 April 2016 Ms Howells wrote to the Claimant, dismissing her appeal. Ms Howells said that Mr Chenery had been independent, in that he had not been part of the Claimant's line management chain during her latest absence. She said that the Respondent had done all it could to support the Claimant's return to work. The Claimant's line manager had kept in touch with the Claimant on regular basis, signposting the Employee Assistance programme and recommending an Occupational Health referral. Ms Howells said that the Claimant's line manager had completed a fit for work plan with the Claimant and had agreed a phased return to work. Ms Howells said that, when the Claimant's mother passed away, Ms Henry had taken a compassionate stance and continued supporting the Claimant's absence, because of the Claimant's understandable bereavement reaction. Ms Howells said that the Claimant had questioned the basis on which it had been concluded that the Claimant was unlikely to return to work within a reasonable period. She said that, as the Claimant has not consented to Occupational Health referral and the Claimant had been absent since 24 August 2015 and the Claimant had not returned to work on 11 January, Mr Chenery's conclusion on this had been reasonable. Ms Howells said that, regarding the Claimant personal circumstances, while Mr Chenery had specifically mentioned the Claimant's stress and depression, he had not mentioned the Claimant's bereavement and ought to have included this in his letter, to give a fully round picture. Ms Howells said, however, that in her opinion, this omission did not render the decision unsafe.

73 Ms Howells acknowledge that Mr Chenery had not followed paragraph 7.14 of the Absence Management procedure, by not writing to the Claimant, outlining what he would have discussed at the meeting and inviting the Claimant to state her case. Ms Howells said that there was, however, nothing mentioned in the appeal meeting which Mr Chenery failed to take into account. Therefore, the failure to write to the Claimant would not have made a difference.

74 Regarding the Claimant's grievances, Ms Howells set out a detailed chronology of them. She said that, when the Claimant emailed Christine Bidwell because the Claimant had been unhappy with her decision, Ms Bidwell had encouraged the Claimant to meet with her, to try to resolve the issues face to face, but that the Claimant had declined this and so Ms Bidwell drew the matter to a close. Ms Howells stated that Julie Creedon had offered to meet the Claimant, but had heard nothing from her, and so that matter was also closed. Ms Howells concluded that the Claimant had received all her grievance appeal decisions and that, although the Claimant might not agree with their contents, the Claimant had exhausted all internal processes.

75 In evidence to the Tribunal, the Claimant told the Tribunal that a colleague, Nicola Scott, had been allowed to stay on sick leave for a year, with 6 months' full pay and 6 months' half pay, before she was dismissed. Mr Chenery, who dismissed Ms Scott, told the Tribunal that Ms Scott was, in fact, absent on sick leave from 1 October 2014 until she was dismissed by Mr Chenery on 8 April 2015 - six months and two weeks after she had commenced sick leave. He said that Ms Scott's case had been referred to him after 5 ½ months absence. I preferred Mr Chenery's evidence to that of the Claimant on this matter. Mr Chenery had detailed knowledge of the facts of Ms Scott's case, including dates and the circumstances of the case.

Relevant Law

76 By *s94 Employment Rights Act 1996*, an employee has the right not to be unfairly dismissed by his employer

77 *s98 Employment Rights Act 1996* provides it is for the employer to show the reason for a dismissal and that such a reason is a potentially fair reason under *s 98(2) ERA*. Capability is a potentially fair reason for dismissal.

78 If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under *s98(4) Employment Rights Act 1996*. In doing so, the Employment Tribunal applies a neutral burden of proof.

79 The Employment Tribunal allows a broad band of reasonable responses to the employer, *Iceland Frozen Foods v Jones* [1982] IRLR 439. It is not for the Employment Tribunal to substitute its own view for that of the employer, but to consider the employer's decision and whether the employer acted reasonably, *Morgan v Electrolux Ltd* [1991] IRLR 89, CA. This last point was emphasised in *London Ambulance Service NHS Trust v Small* [2009] IRLR 563, CA.

80 The fact that an employer has caused the incapacity in question, however culpably, cannot preclude the employer from ever effecting a fair dismissal, *Royal Bank of Scotland v McAdie* [2008] ICR 1087. In that case, the Court of Appeal held that, where the

reason for the dismissal was an employee's indefinite incapability to do their job, the dismissal was fair, notwithstanding the employer's culpability in bringing about the relevant incapability. The Court of Appeal also cited with approval the EAT judgment in the same case, which held that there must be cases where the fact that an employer is responsible for an employee's incapacity is, as a matter of common sense and fairness, relevant to whether, and if so when, it is reasonable to dismiss him for that incapacity. It may be, for example, necessary in such a case to put up with a longer period of sickness than would otherwise be reasonable, paragraphs 36 and 40 of the judgment.

81 Factors which may be relevant in considering whether a dismissal for incapability was fair include the nature of the illness, the employer's need for the employee, the impact of the absences and the extent to which the employee was made aware of the position, *Lynock v Cereal Packaging Limited* [1988] ICR 760.

82 A decision to dismiss an employee may be unfair if it is inconsistent with the practice or policy of the employer with regard to other employees, but only in limited circumstances. In *Hadjioannou –v- Coral Casinos Limited [1981] IRLR 382,* at paragraph 25, the Employment Appeal Tribunal stated that Tribunals should scrutinize arguments based upon disparity with particular care. It is only in the following limited circumstances that the argument is likely to be relevant:

82.1 That an employee has been led by the employer to believe that such conduct will either be overlooked or at least not dealt with by the sanction of dismissal;

82.2 The evidence supports an inference that the purported reason is not the real or genuine reason for the dismissal or;

82.3 Evidence as to the decision made by an employer in truly parallel circumstances may be sufficient to support an argument in a particular case that it was not reasonable on the part of the employer to dismiss the employee for that misconduct.

83 The EAT commented there will not be many cases in which the evidence shows that there were other disciplinary cases at the same employer which were truly similar or sufficiently similar to allow an employee to argue unfair inconsistency in dismissal decisions.

84 If the Tribunal determines that the dismissal is unfair the Tribunal may go on to consider the chance that the employer would have dismissed the employee fairly, *Polkey v AE Dayton Services Limited* [1988] ICR 142.

85 Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it reduces any compensatory award by such proportion as it considers just and equitable having regard to that finding, *s123(6) ERA 1996.* A deduction from the basic award can be made on a similar basis, *s122(2) ERA 1996.*

Discussion and Decision

86 I first addressed issues 1 – 4 & 26 of the list of issues and considered whether the Respondent had shown the reason for dismissal and that it was a potentially fair one. I

considered that the Respondent had shown the reason for dismissal was incapability; that is, the Claimant's long absence from work and her failure to return within a reasonable time. The reason for dismissal was not redundancy. I had found that the Respondent had conducted a voluntary exit some time before the Claimant's dismissal. The Claimant was not permitted to take voluntary exit at that time, because her post was business critical. There was no evidence that that view of the Claimant's post had changed by the time of her dismissal.

87 I concluded that it was clear that the Claimant was considered for dismissal in 2016 following an attendance management process, in the circumstances that she had been off work, sick, on a long term basis. I concluded the matters taken into account by Mr Chenery and Ms Howells, in their decisions on dismissal and appeal, solely related to the Claimant's absence and circumstances surrounding it. They did not take into account any need for head count reduction.

88 I concluded that they did genuinely believe that the Claimant was incapable of working. She had remained signed off sick from August 2015 to April 2016, throughout the attendance management process, and there was no date given for her return to work.

89 Issues 5 – 12. Regarding Occupational Health referral, I considered that the Respondent acted fairly and followed a reasonable procedure in attempting to obtain the Claimant's permission to refer her to Occupational Health. The Respondent did this on several occasions, but the Claimant never consented. I concluded that it was the Claimant's failure to cooperate with an Occupational Health referral which led to the Respondent's lack of independent Occupational Health advice before considering her dismissal.

90 The Claimant contended that the Respondent acted unfairly in not obtaining a report from her GP. I considered that the Respondent was reasonable in not doing so because:

90.1 Its Attendance Management Procedure made clear that GP advice would be sought through an independent, expert, Occupational Health adviser.

90.2 Ms Henry had sent the Respondent's Attendance Management Procedure to the Claimant and a Question and Answer sheet on Occupational Health and had asked her to read these, twice. The Claimant ought, thereby, to have been aware of the advice which Occupational Health could provide on her absences and possible return to work. Her unwillingness to consent to an Occupational Health referral was an informed decision.

90.3 The Respondent, in any event, accepted the Claimant's account of the treatment and advice given to her by her GP.

90.4 The Respondent had GP certificates throughout, all advising that the Claimant was unfit for work.

91 I therefore conclude that the Respondent was reasonable in proceeding without Occupational Health advice. The Claimant did not consent to it, on an informed basis.

Further, it acted reasonably in proceeding without GP advice because the correct route for obtaining this was through Occupational Health, to which the Claimant had not consented. The Respondent had information from the Claimant, in any event, on the GP's treatment and advice to her. Accordingly, it was in possession of relevant medical information regarding the Claimant's illness, treatment and lack of an imminent return to work.

92 Issues 13, 16 and 22. I concluded that the Respondent acted reasonably in referring the Claimant for a decision on whether to dismiss her before she had been absent for 6 months. Ms Henry had sent the Claimant a copy of the Respondent's Attendance Management Procedures. The Procedures made clear that dismissal was a possibility after 28 days of absence. The Respondent's Sick Pay Policy provided only that employees "*may* receive" six months full pay and six months half pay. Employees were not entitled to receive full six months full pay; that was the maximum period for which full pay might be received.

93 Issue 14: management's engagement to ensure a return to work. I considered that Ms Henry acted reasonably in attempting to ensure a return to work. She complied with the Respondent's Attendance Management Procedure, by meeting with the Claimant regularly and discussing her absence with her and asking whether there was anything that she could do to support the Claimant's return to work. Ms Henry had completed a Fit For Work Plan for the Claimant in September. She had regularly recommended Employee Assistance programmes to the Claimant and had repeatedly asked the Claimant to agree to an Occupational Health referral. She had provided relevant explanatory documents to the Claimant about Occupational Health. Ms Henry had also treated the Claimant's continued absence, following the Claimant's mother death, compassionately and had continued to support her absence for about 3 months after it. Ms Henry had asked Ms Creedon and Ms Bidwell to conclude the grievance procedures and to remove the barriers to the Claimant returning to work. I therefore concluded that Ms Henry acted reasonably in the way that she tried to support the Claimant to return to work.

94 Issue 18. I considered that Mr Chenery was an independent hearing manager. It was reasonable for the Respondent to select him to make the decision about whether to dismiss the Claimant. He was independent of the process which had been covering the Claimant's absence from 24 August 2015. The fact that, on a previous occasion, he may have made a decision recommending a warning for an unrelated matter does not indicate any reasonable basis for concluding that he was not independent.

95 Issues 15 and 19. I considered that Mr Chenery did not act in accordance with the AMP and that he acted unreasonably when:

95.1 He failed to tell the Claimant of a further date for the dismissal hearing after she indicated that she could not attend on 23 February; and

95.2 He failed to inform the Claimant of the matters he would take into account at that hearing and failed to invite her to comment on them, or agree to them.

I considered that Mr Chenery's actions were in breach of paragraph 7.14 and were also unreasonable. It was not in dispute that the Claimant was genuinely ill at the time. Even if an employee is not able to attend a meeting due to ill health, I considered that it was a basic requirement of fairness to give the employee a

reasonable opportunity to present arguments and information on the matters to be considered at such a meeting. This could be done in a number of ways, but the Respondent's AMP procedure specifically provided that matters should be set out in writing and a written response invited from the employee. That was a reasonable procedure which ought to have been followed to allow the Claimant to participate in the dismissal meeting, even if she could not attend it.

96 Moreover, I decided that it was outside the broad band of reasonable responses to proceed to make a decision within 5 days of the original meeting date, when the Claimant had not been well enough to attend that meeting. Although the 5 day period was specified in the Respondent's AMP Procedure, it appeared to take no account of an employee's relevant circumstances and, in particular, genuine illness. I considered that it was unreasonable to fail offer the Claimant a further short period, measured in a few weeks, rather than in a few days, to adjust to her medication before convening a meeting. Alternatively, further, it was unreasonable not to invite the Claimant to say when she would be able to attend a meeting within a further reasonable period of time. I considered that Mr Chenery's dogmatic approach to the AMP Procedure was unreasonable in the circumstances of the Claimant's genuine illness and when the Claimant had previously attended several attendance management meetings. Mr Chenery had ample evidence that the Claimant was, otherwise, engaging in the attendance management process.

97 Issues 15 and 21. Otherwise, I concluded that the Respondent did act, procedurally, in accordance with the AMP and in a fair manner. The Respondent held absence management review meetings on the dates specified; attempted to seek Occupational Health advice; completed reports and check lists which addressed all the matters required to be addressed in the AMP. The Respondent had also warned the Claimant, on a number of occasions, after 28 days of absence, that, if it was decided that she could not return to work within the reasonable time, then she could be dismissed, page 68, 73, 110 and 120.

98 Issues 17 and 20. I concluded that the Respondent was reasonable in deciding that dismissal was the appropriate sanction. I concluded that everything reasonable had been done to facilitate her return to work. I considered that it was reasonable for the Respondent to decide that Ms Creedon and Ms Bidwell had completed the grievance process and the appeal process.

99 Ms Creedon gave a grievance outcome on the 9 November, page 82. Ms Creedon's email of 7 December answered the Claimant's further questions and said that, if the Claimant had any further questions, it was for her to contact Sue Ponton. The Claimant never did. The plain meaning of that email exchange was that the matter closed unless the Claimant made further contact, page 99 – 100.

100 Ms Bidwell gave a final decision on the Claimant's grievance appeal on 6 November. The Claimant queried it; Ms Bidwell answered her queries; and then offered the Claimant a further appeal and hearing by an email dated 20 November. Ms Bidwell said, at the conclusion of that email, "I hope you are in agreement with this development", pages 93 – 94. I found that the Claimant replied, emphatically saying that she was not in agreement with the development, that it would be a step backwards and would cause her stress and that she would not attend the meeting. While the Claimant did add some further arguments in her letter, I found that the clear reading of the Claimant's email was

that the Claimant did not agree to a further appeal, or meeting. Seeing that she did not, the reasonable understanding of the Respondent was that the final decision stood.

101 I acknowledged that the Claimant did not accept that she had had a final outcome, but concluded that the Respondent was reasonable in deciding that, whatever the Claimant's belief, its grievance processes had been concluded.

102 I considered whether the Respondent took mitigating factors reasonably into account, including the Claimant's personal and work problems, NHS delays and so on. During the Attendance Management Process, Ms Henry had supported the Claimant's ongoing absence following the Claimant's bereavement and while the Claimant obtained counselling from the NHS. She detailed these matters in her report to Mr Chenery. Mr Chenery clearly read the report and referred to in his dismissal check list.

103 I concluded that it was reasonable for the Respondent to dismiss the Claimant in light of her medical condition, in the circumstances there was no indication that the Claimant was likely to return to work and, in particular, in the circumstances that the Claimant was saying that she could not return to work due to grievance matters, which had, in reality, been concluded. It was reasonable for the Respondent to conclude that there was no reasonable prospect of the Claimant returning to work, within a reasonable time.

104 Issue 27. I also decided that, while the Claimant's absence from work may have been caused, or contributed to, by delays in the grievance process and while the Respondent may have failed to offer a stress reduction plan during July and August 2015, the Respondent waited for a reasonable time before dismissing the Claimant on account of her absence. The Claimant went off work sick on 24 August 2015. She was dismissed on 2 March 2016. That was more than 6 months after she first went off work, sick and it was at a time when her illness, and the reasons for it, appeared to be intractable. I found that the Respondent did not rush to dismiss the Claimant, even in the circumstances of her 27 years' service. The Respondent gave her an opportunity to recover, to obtain treatment, and to return on a phased basis. The dismissal decision was 3 months after the last correspondence from Ms Creedon. That was a reasonable period after the end of the grievances.

105 Applying *McAdie v RBS*, I considered that a Respondent could dismiss an employee, even if it had caused or contributed to her illness. The fact that it had done so could be relevant to whether the dismissal was a reasonable sanction. In this case, in the circumstances that the Claimant had been off work for more than 6 months and where the illness and reasons for her absence appeared not likely to be resolved within the foreseeable future, dismissal was reasonable. Furthermore, the dismissal was reasonable in the circumstances that the Claimant's absence had been supported by her colleagues, but that they were enduring heavier workloads as a result and the Department performance targets were under pressure because of the Claimant's absence, page 155.

106 Issues 21, 23, 25. Accordingly, I consider that the dismissal decision was procedurally unfair in that the dismissal meeting conducted by Mr Chenery, on his own, on 1 March, was conducted in such a way that the Claimant was not given a reasonable opportunity to engage in it. She was not given an opportunity to comment on the facts to be considered and she was not given a short time to adjust to her medication, or to say

when she could attend a meeting. Mr Chenery could not make a fair decision in those circumstances.

107 However, I concluded that the appeal hearing conducted by Ms Howells corrected the unfairness. The dismissal letter set out the matters that Mr Chenery had taken into account. It therefore gave notice to the Claimant of those matters. The Claimant had written an appeal document; she was given the opportunity to set out her grounds and arguments in response to Mr Chenery's letter. The Claimant was also well enough to attend the appeal hearing on 31 March. Ms Howells and the Claimant together addressed all the matters set out in the Claimant's notice of appeal. I decided that the appeal conducted by Ms Howells was scrupulously fair and that Ms Howells gave the Claimant a reasonable response to all her appeal points.

108 I decided, therefore, that this Respondent would have dismissed the Claimant fairly, following that appeal hearing, and on the date the appeal outcome was sent to her: 19 April 2016.

109 With regard to other matters, I considered that the decision was not inconsistent with other dismissals in similar circumstances. For example, the Claimant's comparator, Ms Scott, was dismissed after 6 months and 2 weeks of absence: a similar period to the Claimant's absence.

110 Issue 24. I also found that the Claimant did not contribute to her dismissal. I found that she did engage with the Attendance Management Procedure. I accepted that she was genuinely unable to attend the hearing on 23 February 2016.

Remedy

111 There was a discussion about remedy. The parties were not able to provide the Tribunal with all the figures needed to calculate remedy.

112 The parties agreed to write to the Tribunal with agreed figures for remedy judgment, including the Claimant's fee costs. They did so on 10 February 2017, stating that they had agreed that the Respondent should pay the Claimant a total of £13,846.06 on account of unfair dismissal and Tribunal fee costs, and asking that the Tribunal make a consent judgment in those terms.

Employment Judge Brown

02 March 2017