



Karen Douglas-Weir – Head of Service;  
Christopher Rooney – Head of Safeguarding Assessment and Support;  
Councillor Hall – Elected Member of the Council, Chair of the Appeal Panel;  
Claire McLaren – Assistant Director of Corporate Services;  
Rachel Clark – HR Business Partner; and  
Gillian Laight – HR Business Partner.

2. The Claimant gave evidence on her own behalf. Julie Farrelly, a Social Worker and former colleague of the Claimant also gave evidence on behalf of the Claimant. Wendy Robins a School Learning and Support Assistant gave evidence under a witness order for the Claimant.
3. The Tribunal were provided with an agreed bundle of documents marked Appendix 1.

### **The Law**

4. The Tribunal considered the following statutory provisions and case law:-

Section 98 (1) of the Employment Rights Act 1996 “In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show:-

- (a) The reason (or if more than one, the principal reason) for the dismissal, and
- (b) That it is either a reason falling within Sub Section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

Section 98 (2) ERA 1996 “A reason falls within this Sub Section if it:-

- (b) Relates to the conduct of the employee.”

Section 98 (4) ERA 1996 “The determination of the question of whether the dismissal is fair or unfair (having regard to the reasons shown by the employer:-

- (a) Depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
  - (b) Shall be determined in accordance with equity and the substantial merits of the case.”
5. The case of *British Homes Stores Limited v Burchell [1978] IRLR 379* where the EAT held that where an employee is dismissed because of misconduct, in determining whether that dismissal is fair an Employment Tribunal must decide whether three elements. First, there must be established by the employer the fact of that belief; secondly, it must be shown that the employer had reasonable grounds upon which to sustain that belief and thirdly that the employer at the time at which he formed that belief had undertaken a reasonable investigation into the matters.
  6. The case of *Way v Spectrum Property Care Limited [2015] IRLR 657*, in particular paragraphs 37, 38 and 54 which effectively held that a prior warning can be taken into account in accordance with Section 98 (4) of the Employment Rights Act 1996 unless there is evidence that it was issued in bad faith or was manifestly unjust.
  7. The case of *Taylor v OCS Group Limited [2006] ICR* page 1602 in particular paragraph 48 where the Court of Appeal held that procedure will not impact adversely on the fairness of a decision if the dismissal accords with equity and the substantial merits of the case. Whether someone acted reasonably is a question of fact. The Tribunal’s duty is to look at the question in the round and without considering it with regard to a lawyer’s technicalities.

8. The case of *Quintiles Commercial v Barongo UKEAT/025517*. The Tribunal were referred to and considered paragraphs 19 -24 of that decision. The EAT held in that case that a fair dismissal for conduct does not necessarily require that misconduct to be “gross”. The EAT referred to the provisions under Section 98 (4) of the Employment Rights Act 1996 which it said had to be considered in relation to whether or not the decision in such circumstances to dismiss was fair. The EAT went on to indicate that the Tribunal had to consider the Respondent’s actions and decisions against the standard of the band of reasonable responses of a reasonable employer in the particular circumstances of the case. In that regard the Tribunal had to take into account the language of Section 98 (4). The EAT held that provision does not lay down any law, absent earlier disciplinary warnings, that a conduct dismissal for something less than gross misconduct must be unfair.
  
9. The case of *Polkey v A E Dayton Services Limited [1988] ICR* page 148 where the House of Lords held that where there may be procedural irregularities in a dismissal, it could still be shown that even if a proper procedure had been followed that there would be no difference and the dismissal could be considered to be fair.

### **The Issues**

10. The Tribunal had to consider the reason for the Claimant’s dismissal - was it conduct and/or was it for some other substantial reason?
  
11. If the reason for dismissal was conduct, did the Respondent have a genuine belief that the Claimant had committed an act of misconduct, was that based on reasonable grounds and did they undertake a reasonable investigation?
  
12. The Tribunal had to consider whether a fair procedure had been followed including whether the ACAS Code of Practice had been followed and any internal preliminary procedures.

13. The Tribunal also had to consider whether dismissal was a reasonable response in the circumstances of the case.
14. Finally, the Tribunal had to consider whether the Claimant would have been fairly dismissed in any event if there were any procedural irregularities and/or whether the Claimant contributed in any extent to her dismissal.

### **Findings of Fact**

15. The Claimant was employed as a Social Worker with the Respondent, a Local Authority in the North East of England. The Claimant commenced employment with the Respondent in 2005, she worked most latterly as a Social Worker with looked after children.
16. Both the Claimant and a number of the Respondent's witnesses indicated that there had been some previous problems between the Claimant and her previous manager. However, no formal disciplinary action had been taken against the Claimant until 2016.
17. The Respondent's disciplinary policy is in the Bundle at pages C1-20.
18. The policies as one would expect refer to undertaking an investigation into any issues and that that the employee would be notified of the nature of the complaint against him/her at the earliest opportunity.
19. Paragraph 4 of the Respondent's policy set out the stages of the formal disciplinary procedure. This is consistent with normal disciplinary procedures namely it refers to the four-stage process of a verbal warning, formal written warning, final written warning and dismissal.
20. Paragraph 4.4 of the Respondent's policy, at page C4 states that dismissal may be invoked only by a designated officer following a Disciplinary Hearing. It may

be invoked only where there has been gross misconduct (it refers to Appendix A for examples) or where the employer has on record a current final warning.

21. The policy also refers to instances under Clause 5 of when an employee may be suspended and goes on to indicate there are rights to appeal against warnings and dismissal. It states at page C6 that warnings for either a formal written warning or final written warning can be given for up to a maximum of 24 months.
22. The policy also sets out examples of gross misconduct which include where there are acts of intimidation against employees; refusal to carry out reasonable instructions; serious and deliberate breaches of regulations/rules; and serious and deliberate harassment.
23. The procedure also indicates how a disciplinary hearing will progress. It states that both parties can provide a statement of case and have the opportunity to question any witnesses called.
24. In the Claimant's record of supervision in January 2015, it is noted that the Claimant can be considered quite forceful and there is a reference to the previous week where it is stated that the Claimant was quite disruptive. It was indicated that the Claimant will look at ways to avoid that happening again. That note is signed by the Claimant as noted at page 26 of the Bundle. In evidence the Claimant suggested that issue related to a particular instance.
25. One of the Claimant's cases involved Child A. The Claimant attended a review meeting at Child A's foster house in March 2016. The Claimant said in evidence that Ann Russell also attended. She was the Independent Reviewing Officer, which is a slightly higher position in the Respondent organisation than the Claimant. A comment was made by Ms Russell to Child A about her father in the car, whilst she was bringing Child A to the meeting. Ms Robins confirmed, in evidence to this Tribunal, that the comment made was an inappropriate comment by Ms Russell to Child A. Ms Robins said that the

Claimant was not happy about the way Child A had been told about this matter, nor whether she should have been told about it. In evidence to the Tribunal the Claimant stated she was also not happy with the term used. Ms Robins could not recall the exact words used, but thought they were along the lines suggested by the Claimant, namely that Ms Russell had referred to the Child A's father as a "kiddy fiddler". The Claimant admitted that she confronted Ms Russell about this comment at the review meeting. Ms Robins confirmed in evidence that there was an argument between the Claimant and Ann Russell at the meeting. She said the meeting was a difficult meeting as there was also an issue between the Claimant and Child A's foster carer about the way the Claimant alleged the foster carer was looking at/speaking to Child A.

26. That same month in March 2016, the Claimant attended an autism course which was run by a person who suffered from autism. The course was attended by social workers and the parents of children with autism. During the course, the Claimant made a number of comments: - commenting on a remark by the presenter when he was recounting a story - the Claimant indicated that she thought that the comment he had made was rude; she also made a comment about the link of autism to certain chemicals. The Claimant's Line Manager received feedback from the course. A number of the feedback comments raised concerns about the Claimant's behaviour at the course in relation to the comments made by her. The presenter also indicated that he had some concerns about the Claimant's behaviour at the course. Ms Suzanne Brennan, the Claimant's Line Manager decided to investigate the Claimant's behaviour at the course.
27. In the meantime, another issue arose about the Claimant's behaviour at a planning meeting regarding Child A, which meeting was chaired by Ms Brennan in April 2016. At that meeting there were a number of people present including Ms Robins and Ann Russell. An argument took place between the Claimant and Ann Russell regarding the comment that was made by Ann Russell at the review meeting for Child A in March 2016. The Claimant confronted Ann Russell about the comment she had made. In her evidence, Ms Brennan

indicated that initially Ann Russell had behaved in a professional manner and suggested leaving the meeting, but that she then started arguing with the Claimant before she left the meeting. The Claimant and Ms Robins said that Ann Russell was arguing with the Claimant and banged her fist on the table and was shouting. On cross examination, the Claimant acknowledged that her behaviour at the meeting was not professional and that she behaved inappropriately at that meeting, but she maintained that Ms Russell also behaved inappropriately. Ms Brennan had to terminate the meeting after 10 minutes. The Claimant's behaviour at that planning meeting was investigated as well as her behaviour at the autism training.

28. The Respondent said that Ann Russell worked in a different team under Maureen McEnaney. They say Ms Russell was also effectively investigated about her behaviour. The Respondent says that she was given an informal warning as part of her supervision. The Respondent's say that she was treated in this way because there were no previous concerns about her behaviour, whereas there were previous concerns about the Claimant's behaviour.
  
29. Ms Russell raised a grievance about the Claimant alleging that she had called Child A's father "a kiddie fiddler" Mr Rooney investigated that grievance at a later stage in 2017. He spoke to both the Claimant and Wendy Robins about it. Wendy Robins said that she could not recall the exact words which were used by Ann Russell, but she said they were along the lines of "kiddie fiddler". This is confirmed in the email exchange between Mr Rooney and Wendy Robins in 2017, as noted at pages C212 and C213. Indeed, in evidence before the Tribunal, Ms Robins said she could not recall the exact words, but that it was something along the lines of the words "kiddie fiddler". Mr Rooney decided not to uphold the grievance. In evidence, he indicated that this was because he could not conclude that the exact words had been used. He decided not to uphold the grievance, albeit that there did seem to be evidence that words similar to those alleged had been used. However, he did make recommendations about Ms Russell's conduct.



30. The Claimant was concerned about the decision, (possibly rightly so) reached by Mr Rooney and sought to appeal against that decision. Technically she could not do so because it was her grievance, but it formed part of one of her grievances which was considered by the Respondent in this case.
31. The Tribunal has referred to this issue because it appears to have been the catalyst about the way the Claimant subsequently acted during the course of her employment. The Claimant appeared to have felt very strongly about the comment made by Ann Russell at the review meeting and the way that Ann Russell was subsequently treated in comparison to the way the Claimant was treated. In particular, in relation to the planning meeting. The Claimant thinks and thought that Ann Russell was treated more favourably than her.
32. A complaint about Ms Russell's comment to Child A was made by the mother of Child A. This was investigated by Maureen McEnaney. The Claimant was not happy about the way that investigation was undertaken. Maureen McEnaney raised a number of practice issues, regarding the Claimant following that investigation and sought to attend some supervision sessions with the Claimant. The Claimant refused to agree to Maureen McEnaney attending those supervisions sessions.
33. The Claimant raised grievances against Ms Brennan and Ann Russell in July 2016.
34. At the Disciplinary Hearing in July 2016, the Claimant was issued with two written warnings. One was for her behaviour at the autism training and the other was for her behaviour at the planning meeting. Both two warnings were issue for a period of 12 months and were to remain in place until July 2017. The warning was that the Claimant behave in a professional manner at all times; not raise her voice and use a professional tone when speaking to others; and adhere to the HCPC standards of practice at all times. The warnings are at page 83a and 83b of the Bundle. The Claimant appealed against those warnings.

35. The Claimant, also in July 2016, raised a grievance about Maureen McEnaney regarding effectively her request to attend the Claimant's supervision meetings. At the same time the Claimant requested that the grievances against Ms Brennan and Ms Russell be dealt with by an independent person.
36. The Respondent decided to deal with the grievances before the appeal against the written warnings.
37. The grievances were not upheld and the Claimant appealed against those decisions.
38. In November 2016, whilst reviewing the case notes for Child A, the Claimant discovered historic allegations about allegations of abuse. She raised this with Ms Brennan.
39. A dispute resolution meeting was convened in November 2016 to consider issues relating to Child A and in particular whether she should be returned to her mother. The meeting was attended by a number of people including the Claimant and Ms Brennan. A further dispute resolution meeting was convened later in November 2016, because concerns were expressed that the Claimant was challenging what had been agreed as the way forward at first meeting. The Respondent suggested that the Claimant wanted Child A to be returned to her mother. The Claimant said in evidence that she was not necessarily advocating Child A be returned to her mother. The Claimant complained about the conduct of Ms McEnaney at the subsequent meeting. She said that Ms McEnaney behaved in an unprofessional manner. Both Ms Brennan and Ms Douglas Weir said in evidence that they did not think that Ms McEnaney had behaved in an unprofessional manner in that meeting.
40. In December 2016, a strategy meeting took place regarding Child A and how to deal with the historic disclosure which had been discovered. The Claimant's position was that Child A and her mother should be informed. The Claimant

also raised concerns about whether Child B should have been taken into care earlier as a result of the disclosure; and whether the Council had in some way failed Child A and/or Child B and that an apology should be made.

41. At the strategy meeting, it was agreed that Child A and her mother would not be told of the disclosure at this stage. The Claimant did not agree with that decision. It was agreed that therapeutic intervention through play would initially take place with Child A as part of the process of considering whether the disclosure should be discussed with Child A.
42. A meeting took place with Ms Reed, the play therapist in December 2016. Ms Brennan had concerns about the way the Claimant behaved towards Ms Reed at that meeting. She felt that Ms Reed was being intimidated by the Claimant into agreeing with the Claimant's point of view about how she thought she should the Respondent should progress this disclosure with Child A.
43. Ms Reed subsequently raised a written complaint later in December about the Claimant's behaviour towards her at that meeting. The complaint is at page C165. Ms Reed complains about the Claimant's behaviour during the meeting. She says that the Claimant seemed to be angry and critical of her about the way she was proposing to deal with the issue. She said that she felt that her professional experience and opinion was being dismissed. She thought the Claimant was bullying and intimidating towards her into trying to get her to agree with the Claimant's point of view.
44. The Claimant continued to be unhappy about the decision not to tell the mother of Child A about the disclosure. She raised it further with her managers Ms Brennan and Karen Douglas-Weir. She also considered it to be a whistleblowing claim and raised it with the Respondent's in-house solicitor. The Respondent's in-house solicitor did not consider that the disclosure by the Claimant amounted to a protected interest disclosure, but he did discuss the matter with the Claimant.

45. The Claimant was absent on sick leave between 23 December 2016 and 17 January 2017. She was referred to and seen by Occupational Health.
46. In late December 2016, the Claimant raised a bullying and harassment grievance against Maureen McEnaney.
47. A sickness review meeting was undertaken with the Claimant on her return in January 2017. The Claimant was offered counselling. In evidence to the Tribunal, the Claimant said that she could not take up the offer of counselling suggested by the Respondent, as she had worked previously on a professional basis with those counsellors.
48. On 25 January 2017, the Claimant asked Ms Brennan for a copy of the notes from the strategy meeting.
49. At the end of January 2017, Mr Jeff Riley, a recently appointed agency manager, sent an email to Ms Brennan and Ms Douglas-Weir about concerns regarding the Claimant. In the email, he indicated that when she met him she told him that she disliked working for the Respondent and could not wait to get out and was going to take her case to a Tribunal and referred to bullying and harassment. In the email, he said that he thought this was inappropriate.
50. The Claimant denied in evidence that she had made any such comments to Mr Riley. She said their conversation was an entirely different conversation to that suggested by him.
51. In evidence to the Tribunal, the Claimant said that she was concerned about being misquoted and, indeed, more importantly she was concerned about notes of meetings being inaccurate. She said that, as a result, she started recording her conversations with people in the organisation. She said that what Mr Riley subsequently said in relation to the meeting of 2 February 2017, was different to what she said was actually on the tape recording.

52. On 2 February 2017 an incident occurred. Initially the Claimant went to see Elaine Braham and asked for a copy of the minutes of the strategy meeting in December. This was on the morning of 2 February. The Claimant says that Ms Braham told her that she was not allowed a copy of the minutes and that some parts of the minutes had been omitted in terms of risks. Ms Braham in her subsequent email to Ms Douglas-Weir said that the Claimant approached her. She said that the Claimant had asked her if she could amend the notes from the strategy meeting and said that she had missed out a discussion which had been taken out. She said that she told the Claimant that she would look at them and would need to speak to Ms Brennan. When she was asked again, she said that she would need to speak to Ms Douglas-Weir.
53. On the same day, the Claimant also raised this issue as a Public Interest Disclosure with the Chief Solicitor for the Respondents.
54. On that morning of that same day, an incident occurred between the Claimant and Ms Douglas-Weir. The Tribunal have had the benefit of hearing the tape recording made by the Claimant of that discussion. The Claimant covertly recorded the discussion. The Tribunal have also been provided with a copy of the transcript from that recording.
55. The Tribunal note that the Claimant went in to see Ms Douglas-Weir. She knocked on her door, but someone else was in the room and appeared to be leaving the room. At the outset, the Claimant appeared to be calm and was not raising her voice. She then started to raise her voice with her manager. During the course of the discussion, the Claimant shouted at her manager's manager, in effect accusing her of omitting parts of the discussion at the strategy meeting. The Claimant went on as is noted in the transcript of the recording to effectively accuse a senior manager of committing a criminal offence. In evidence to the Tribunal, the Claimant said she did not accuse Ms Douglas-Weir of the omission from the notes nor of committing a criminal offence, but did acknowledge that she confronted Ms Douglas-Weir about the matters and made those particular comments. She suggested that the comments were not

actually directed at Ms Douglas-Weir. In cross examination, the Claimant conceded that she did not know if a criminal offence had been committed but felt it must have been. During the incident, Ms Douglas-Weir told the Claimant that she had been sent the minutes and asked for opportunity to review them. She told the Claimant that she had been in meetings all morning and had been booked for audits.

56. Ms Douglas-Weir did raise her voice at the Claimant as well, however, during the discussion, the Claimant starts to get louder and louder and starts to shout over her manager. The Claimant is heard telling her manager to listen to her. It was also noted during the recording that the Claimant was interrupting her manager.
57. As the Claimant left the room, she appears to bump into Mr Riley and is heard to say the words "yes what do you want" said in what appeared to be an abrupt manner. He said that he told her he had he concerns about the noise and said that he was not used to it. She replied indicating that she was getting used to it.
58. The Claimant then went back in to see Ms Douglas-Weir and asked her if she could go home. A further argument then ensued, which the Claimant again started. The Claimant accused her manager of ignoring her and that what Ms Douglas-Weir was suggesting was shocking regarding the non-disclosure of the historic disclosure to the mother of Child A. During the discussion, Ms Douglas-Weir tried to explain her decision to the Claimant.
59. During this discussion the Claimant is heard shouting at Ms Douglas-Weir and Ms Douglas-Weir is also raising her voice back at the Claimant. Ms Douglas Weir keeps saying to the Claimant that she wants a chance to have a look at the minutes of the meeting.
60. During the course of the meeting and indeed in evidence before this Tribunal, the Claimant says that she was upset and felt that she was having an emotional breakdown. Ms Douglas-Weir is also heard to say that she is upset by the

confrontation. The notes of the transcript of that incident are at pages 223-227 of the Bundle.

61. The following day a meeting takes place between the Claimant and Ms Douglas-Weir with HR present, when the Claimant is suspended from work.
62. On 3 February 2017, the Respondents wrote to the Claimant regarding her suspension from work. She is informed that a decision has been made to suspend her following a number of concerns relating to her behaviour and conduct which the Respondent say they believe has led to a serious breakdown in the employee/employer relationship. At the meeting on 3 February 2017, the Claimant, as she acknowledged on cross examination, was told that the suspension related to the incident the previous day.
63. The Claimant then raised her suspension as part of her protected interest disclosure with the Chief Solicitor for the Respondents.
64. In February 2017, the Claimant raised a bullying and harassment grievance against Ms Brennan her Line Manager; Ms Douglas-Weir her Line Manager's Line Manager; Ms Danielle Swainston Assistant Director who is the Line Manager for Ms Douglas-Weir; and Ms Robinson who is the Director of the unit, namely all her senior managers.
65. The Claimant was advised by the Respondent's Chief Solicitor that he did not consider that her disclosure was necessarily a protected interest disclosure, or that the Claimant had suffered a detriment as a result of such a disclosure, as is noted at page 236 of the Bundle.
66. In February 2017, an investigation commenced into the Claimant's behaviour, in particular with regard to the incident of 2 February 2017. The investigation was also looking at the Claimant's previous behaviour and conduct and at concerns about a breakdown in the employee/employer relationship.

67. Ms Claire McLaren was appointed as the investigating officer. She had only just joined the organisation.
68. On 15 February 2017, Ms Swainston wrote to the Claimant to inform her of the investigation. The letter is at page 239 and informs of the name of investigating officer. She also indicates of the various other procedures (grievances/ appeals) will be suspended to enable the investigation to be undertaken.
69. There was a delay in the investigation. The investigating officer had a number of periods of annual leave during the course of the investigation. She was moving house having just moved into the area. During the course of the investigation, the Claimant raised concerns about the delays and was kept updated about the delays in the process. Ms McLaren also apologised for those delays.
70. As part of her investigation, Ms McLaren interviewed a number of members of the Claimant's team. These included Ms Swainston, Ms Douglas-Weir, Suzanne Brennan, Christine Croft, Kirsten Fleming, Jeff Riley, Claire Reed, the play therapist; Maureen McEnaney, Michael Stubbings. She also interviewed the Claimant and Julie Farrelly, the latter whom the Claimant asked to be interviewed.
71. The interviews took place between March 2017 and June 2017, Ms Farrelly being the last person to be interviewed in June 2017. The Claimant was interviewed on 12 April 2017. Ms McEnaney and Mr Stubbings were interviewed after her, but all the other people were interviewed before the Claimant. Specific matters raised by each of the witnesses, other than in relation to the incident on 2 February, were not put to the Claimant in any detail. She was simply asked to comment on matters leading up to 2 February.
72. In her interview, Ms Brennan indicated that she found that the Claimant came across as aggressive towards others and she had to address this in supervision. She said that the Claimant's behaviour had got worse over the last



6 months. She said that it had had an impact on her. She did not want to come back to work. She said that she found the Claimant was challenging towards her.

73. Ms Douglas-Weir related the events in relation to 2 February and indicated that Ms Brennan had said to her that she had struggled to manage the Claimant.
74. Ms McEnaney referred to practice issues relating to the Claimant and indicated that she had found the Claimant difficult and unhelpful at the dispute resolution meeting concerning Child A. She said she found the Claimant's behaviour obstructive.
75. Ms Reed referred to concerns about working with the Claimant, in particular she referred to the meeting at the end of December 2016 when they were discussing the way forward with Child A. Ms Reed said that she had started to work from home because of the Claimant. She said she considered the Claimant's behaviour unacceptable. She said that in relation to the December meeting she felt that the Claimant was in conflict with her and treated her opinion as irrelevant.
76. Mr Riley confirmed that he felt that the Claimant's behaviour was bizarre and confirmed what he had witnessed in relation to the incident on 2 February 2017.
77. Ms Fleming said the Claimant was passionate. She said that she had felt uncomfortable, when she was approached by the Claimant about the report that she was doing for the assessment on Child A. She said that, in January/February 2017, the Claimant accused her of being a management puppet. She said that the Claimant apologised afterwards. Ms Croft said that the Claimant was difficult to work with.
78. In her interview, Ms Swainston said that Ms Douglas-Weir was visibly upset and emotional after the incident on 2 February.

79. Ms McLaren's interview with the Claimant is at pages 321-329 of the Bundle. At the outset of the meeting, Ms McLaren outlined the process that would be followed and explained that it was a discussion to talk about the events that had led to the incident on 2 February and the Claimant's recollection of that.
80. The Claimant indicated that she felt that the Respondent had not allowed her a copy of the minutes and that parts of those had been omitted. She said that was what she was told by Ms Braham. She then set out her version of events in relation to the incident on 2 February. She was asked if she wanted anyone else to be interviewed and indicated that she would like Ms Farrelly to be interviewed.
81. Ms McLaren said that she had tried to set up a meeting on several occasions with Ms Farrelly but had been unable to do so. She said that she ultimately spoke to Ms Farrelly over the telephone and sent her a copy of those notes for approval. Those notes are at page 355 of the Bundle.
82. Ms Farrelly said that the Claimant was not afraid to challenge whenever she felt that something was not right and that she does the best for the children she works with. She also said the Claimant was very honest and that sometimes is to her detriment. She said that the Claimant had a lot to say but would apologise if she upset anyone. She said she was concerned that the Claimant had gone back to work too soon.
83. The outcome of the investigation into the various grievances against Ms McEnaney, Ms Douglas-Weir, Ms Robinson and Ms Swainston were concluded in July 2017. None of the complaints were upheld. It appears that the outcome of those investigations was presented to the Claimant at a later meeting.
84. Ms McLaren produced her report from the investigation in July 2017. The report is at page 381-397 of the Bundle. The scope of the investigation is noted at paragraph 2. It states that it is in relation to a number of concerns relating to the Claimant's behaviour and conduct and that there are concerns that this has led

to a serious breakdown in the employee/employer relationship. It goes into more detail in relation to that, namely at paragraph 3 it notes that the investigation relates to the Claimant's working practice and behaviour around the case of Child A; the incident on 2 February 2017; the Claimant's personal behaviour and attitude in the work place; and the impact on the Claimant, managers and the team.

85. In her report Ms McLaren notes that the Claimant has raised four grievances, five bullying and harassment and one whistleblowing allegation against senior officers of the Respondents. She notes that she is not investigating or looking into any of those matters.
86. Her conclusions from the investigation are at pages 395-396. She notes the accounts given in relation to the incident on 2 February 2017 and the concerns that the Claimant is a challenging character to work with. She also notes that that it appears that there is a breakdown in trust and confidence between the Claimant and her employers. She further notes that the Claimant appears to have lost confidence in the Respondents and notes the various grievances raised by the Claimant. She expresses concern that the Claimant appears to be alleging that management have closed ranks. She also recognises that the Claimant appears to be upset and anxious.
87. The recommendations from the investigation were that there should be a referral to a Disciplinary Hearing to consider the conduct of the Claimant within the work place and whether there was a breakdown in the employee/employer relationship of trust and confidence.
88. The Stage 3 Appeal Hearing in relation to the grievances heard in August 2017 concluded that the appeal should not be upheld. Accordingly, those grievances were rejected.

89. The appeal against the Claimant's warnings issued to her the previous year was then heard on 8 September 2017. The Claimant's appeal was dismissed as is noted at page 429 of the Bundle.
90. Prior to the Disciplinary Hearing, the Claimant was informed of the process and told of the opportunity to call witnesses. She was provided with details of the witnesses who were to attend the hearing on behalf of the Respondents.
91. The Claimant asked for a number of members of the team, who had been interviewed as part of the investigation, to attend the disciplinary hearing so that she could put questions to them.
92. The Respondent's HR Manager indicated that she would contact those witnesses and see if they were willing to attend but could not compel them to attend. She did however advise the Claimant that she could send a list of questions and she would then ask them to respond to those questions.
93. The Claimant did not want to send a list of questions to those witnesses. In evidence to the Tribunal, she said that she was concerned that the questions and/or answers might have been doctored by the Respondents.
94. The Claimant was also given the opportunity to call any witnesses whom she wished to call to give evidence at the Disciplinary Hearing. In the event, she called Ms Farrelly to give evidence on her behalf.
95. Prior to the Disciplinary Hearing, the Claimant informed the Chief Executive of the Respondents that she had a tape recording of the incident on 2 February 2017. She asked to present that at the Disciplinary Hearing. The Respondents agreed to her request.
96. The Disciplinary Hearing took place on 21 September 2017; Dr Edmondson-Jones was the Chair of the Disciplinary Hearing. He was assisted by Rachel Clark a HR Business Partner. Ms McLaren attended to present her

investigation report. The Claimant attended and was represented by Mr Jones, her Trade Union Representative. The meeting was over 3 hours long. A number of witnesses attended the meeting to give evidence. They included Ms Douglas-Weir, Ms Brennan and Mr Riley on behalf of the Respondents. The Claimant also called a witness -Ms Julie Farrelly - who also attended the Tribunal to give evidence on behalf of the Claimant.

97. The tape recording of the incident on 2 February 2017 was played during the course of the Disciplinary Hearing.
98. In evidence before the disciplinary panel, Ms Douglas-Weir indicated she was concerned that the Claimant's behaviour had got worse. She thought the issues appeared to stem from the disclosure made by Ms Russell to Child A. She said that the Claimant was constantly challenging decisions, particularly in relation to Child A. She went through the incident in February 2017 and indicated that she thought that the Claimant threatened her and was aggressive towards her (Page 447). In answer to questions, Ms Douglas-Weir indicated that she felt shell shocked after the incident on 2 February 2017 and broke down in tears (page 449 of the Bundle). Mr Riley also gave evidence about what he said happened on 2 February 2017. During his evidence to the disciplinary panel, he questioned whether or not the tape recording had in some way been paused. Ms Brennan also attended and gave evidence. She indicated that the Claimant had good qualities. She said it was difficult for her to do her job because the Claimant could be difficult and had become more difficult over the last few months. She said that certain team members felt intimidated and challenged strongly by the Claimant. She said that she felt that she gave the Claimant a lot of support. She said that she thought that the relationship with the Claimant had broken down irreparably. She was concerned that the Claimant did not trust senior management (pages 453-454). The Claimant was given the opportunity to question those witnesses.
99. The Claimant was then given the opportunity to respond to the disciplinary case against her. Her Trade Union Representative indicated at the outset of the

Claimant's case that the Claimant did not want to go back and did not feel she could go back to work (Page 455 of the Bundle).

100. The Claimant then called Julie Farrelly as a witness. In her evidence to the disciplinary panel, Julie Farrelly was asked about whether the Claimant was balling; shouting; ranting and raving. She said that, in honesty, that had happened on occasions. She said that she felt that the Claimant was misunderstood. She also said the Claimant is a loud person (Page 456 of the Bundle).
101. In answer to further questions, Ms Farrelly indicated that the Claimant was anxious and paranoid just before her suspension (page 457 of the Bundle).
102. The investigating officer was then given the opportunity to sum up the case. She indicated that she thought that there had been a breakdown in the relationship and did not think there was any way it could be rectified moving forward.
103. In his summing up, Mr Jones, on behalf of the Claimant, indicated again that it would be difficult for the Claimant to go back. He said that he understood why she did not want to go back (page 461 of the Bundle).
104. Following the Disciplinary Hearing, the disciplining officer considered his decision. Ms Clark from HR was present during those deliberations. The deliberations are recorded at pages 462-463 of the Bundle.
105. In his deliberations, Dr Edmondson-Jones noted that the Claimant was passionate and a long serving social worker. However, he was concerned that she was an employee who displayed increasingly erratic behaviour, and that colleagues found her intimidating, potentially bullying and disrespectful. He noted that there was an impact on colleagues. He also noted that the Claimant had two live written warnings for conduct. He considered that there was an ongoing pattern of concerns about the Claimant's behaviour.

106. He went on to consider the appropriate sanction. He noted that, taking account of what the Claimant herself said and what was said by other staff, a final written warning was not an option. He noted the number of grievances raised by the Claimant and considered that redeployment was not an option either. He therefore concluded that the Claimant should be dismissed. He noted that there could not be a final written warning, because there was no realistic prospect of the Claimant returning to work. The Claimant had said that she had no trust and confidence in the Respondent. Therefore dismissal was the only option.
107. On 22 September 2017, the Respondents wrote to the Claimant to confirm the outcome of the Disciplinary Hearing. The letter is at page 464-465 of the Bundle. In the letter the Respondents confirmed that the Claimant was dismissed for conduct. In his evidence before the Tribunal, Dr Edmondson-Jones confirmed that was the reason for dismissal. The Claimant was dismissed with 12 weeks' notice. In his letter of dismissal, Dr Edmondson-Jones indicated that the concerns about the Claimant's conduct related to the Claimant's increasingly erratic behaviour, which culminated in the incident on 2 February 2017, when she behaved aggressively and accusatory towards her Head of Service. He indicated that he had considered alternative sanctions to dismissal. However, as the Claimant had no insight of the impact of her behaviour on colleagues and showed no remorse or regret, he did not consider that there was any realistic prospect of her being able to change her behaviour, setting aside any concerns about the breakdown in relationships. He informed the Claimant that she had a right of appeal.
108. The Claimant appealed against the decision. Her letter of appeal is at page 467 of the Bundle. In her letter of appeal, she indicated that she was appealing on three grounds - the severity of the sanction given; due to time constraints her case being unable to be fully heard; and that she was unable to question some witnesses who had given statements. In her evidence before the Tribunal, she conceded that she was not pursuing, nor had really pursued, the issue about the time constraints.

109. On 16 November the Claimant was informed in writing of the outcome of her grievance hearing held on 9 November 2017. The grievance against Ms McEnaney was not upheld. The bullying and harassment grievances against Ms Douglas-Weir and Ms Danielle Swainston were also not upheld.
110. The Appeal Hearing against the Claimant's dismissal was heard on 27 November 2017. The appeal was conducted before three Councillors. The Chair of the Councillors was Councillor Hall. Ms Laight, HR Business Partner attended the Appeal Hearing and the deliberations.
111. The management agenda, which included the Respondent's management case; issues to consider on the appeal; and responses is at pages 485-492 of the Bundle.
112. Further to the Appeal Hearing, the Claimant was informed that she could submit a statement of case, but she did not do so.
113. The tape recording of the incident on 2 February was played at the Appeal Hearing. Councillor Hall suggested in his evidence to the Tribunal, which evidence was generally confused and unclear, that he was not sure whether it had been played. However, Ms Laight indicated that it had been played, as is recorded in the notes of meeting. Neither Ms Laight's evidence nor the notes of the meeting were contested by the Claimant. The Respondents called Ms Douglas-Weir and Ms Brennan to give evidence at the Appeal Hearing. The Claimant again called Ms Farrelly to give evidence at the Appeal Hearing.
114. The notes of the Appeal Hearing are at pages 497-510 of the Bundle.
115. The Appeal Hearing took over 4 hours including an hour for the decision to be deliberated upon and considered.



116. In her evidence to the Appeal Panel, Ms Douglas-Weir indicated that, in relation to the incident on 2 February, she felt she had been told she had committed a crime. She said that, after the Claimant left her room, she then came back and started on her again (Page 498 of the Bundle).
117. Ms Brennan also gave evidence to the appeal panel. She indicated that the Claimant had good qualities, but was challenging about decisions with which she did not agree. She said that she found it difficult to do her job and felt sick coming to work and having to approach the Claimant. She also said that she felt that the Claimant did not trust any level of management. She said that she thought the Claimant's behaviour was getting erratic (Page 401-504 of the Bundle).
118. The Claimant and her Trade Union Representative were given the opportunity to question those witnesses. The Councillors also asked questions of the witnesses.
119. The Claimant was then asked to present her case and was taken through her case by her Trade Union Representative. She was questioned by the Councillors. She indicated that she was concerned that nobody took on board what she was saying (page 505 of the Bundle). She acknowledged that, where she had been unprofessional in meetings, she had been investigated, but she was concerned that Ms Russell was not investigated (Page 505). She then went through the incident on 2 February 2017 and explained that she had been upset (page 506-507 of the Bundle).
120. In the appeal hearing, she indicated that she did not consider what Mr Riley had said was correct as it was different to what was on the tape recording regarding treating other employees with respect (page 509 of the Bundle).
121. In his summing up, Mr Jones, on behalf of the Claimant, indicated that the Respondents could look at redeployment elsewhere. He indicated that the investigation was not done thoroughly enough and questioned why the

investigations had only focused on the Claimant. However, he did say that the Claimant felt that she could no longer trust senior management, which was one of the reasons why she had been recording some of the conversations (page 510 of the Bundle).

122. The Appeal Panel met to consider the appeal. Their deliberations are at page 511 of the Bundle. It was noted that relationships appeared to be beyond resolution and the Claimant had shown no evidence of improving. The appeal panel concluded that the severity of the penalty was appropriate. Ms Laight then drafted and agreed, with the panel members, the outcome from the Appeal Hearing, as is noted at page 512 of Bundle.
123. On 4 December 2017, the Respondents wrote to the Claimant to inform her of the outcome of the Appeal Hearing. Her appeal was dismissed. The panel agreed that the sanction was appropriate. They stated that the Claimant had been given every opportunity to put her case and could have questions to witnesses, but chose not to do so. The letter confirming the outcome of the Appeal Hearing is at pages 513-514 of the Bundle.
124. In evidence before the Tribunal, Councillor Hall suggested that the reason for dismissal was because of a breakdown in trust and confidence. Ms Laight indicated that the Appeal Panel upheld the decision to dismiss the Claimant for conduct, but did discuss the breakdown in relationships within the department as part of their deliberations, as is noted in their deliberations at page 511 of the Bundle.
125. On cross examination in Tribunal, the Claimant admitted that she did not trust senior managers within the organisation. She indicated that she was not able to work with a number of her senior managers, against whom she had raised grievances and allegations of bullying and harassment.
126. In the course of her cross examination, the Claimant did not dispute that Mr Jones, her Trade Union Representative, had said at both the disciplinary and

appeal meetings, that she, the Claimant, could not go back to work and work with the senior managers in her team. She did suggest during the course of that cross examination that she could have been considered for redeployment in another party of the Respondent organisation. She suggested that she could have been redeployed into adult social care, although she acknowledged that she had not mentioned that during either of the disciplinary or appeal hearing.

127. In her evidence, Ms Farrelly acknowledged that there had been an incident with Ms Fleming, but that the Claimant had apologised to Ms Fleming. In her evidence the Claimant also accepted that she might disagree quite forcefully with colleagues but would apologise to them.

### **Submissions**

128. The Claimant filled a written submission from which she read during the course of her submissions. Her written submission basically set out the history of the case. In her submissions, she submitted that her dismissal was unfair. She also indicated that she believed that she had been treated differently to another employee, in particular in relation to the warnings given to her.

129. The Respondent's representative also filed written submissions which referred to a number of the cases referred to earlier in this decision.

130. The Respondent's representative submitted that the reason for dismissal was conduct. He said that it did not need to be gross misconduct for the dismissal to be fair and relied on the case of *Baronga*. He said that the Tribunal had to simply consider whether the dismissal was fair under Section 98 (4) of the Employment Rights Act 1996.

131. The Respondent's representative also submitted that previous warnings given to the Claimant were not relevant, because they were not manifestly unfair. He referred to the case of *Way* in that regard.

132. The Respondent's representative further submitted that the alternative reason for dismissal was for some other substantial reason, due to the breakdown in relationships between the Claimant and her senior managers.

133. The Respondent's representative submitted that the Claimant would in any event have been fairly dismissed (albeit that he did not concede that there was any procedural error) and that she had contributed 100% to her dismissal.

### **Conclusions**

134. This Tribunal finds that the principal reason for the Claimant's dismissal was conduct. However, the Tribunal also finds, in this case, that there was another connected reason for the Claimant's dismissal, namely some other substantial reason to which the Tribunal refers further in this decision.

135. Conduct is a fair reason for dismissal under Section 98 (2) of the Employment Rights Act 1996.

136. This Tribunal finds that the Respondent had reasonable grounds to believe that the Claimant had committed an act of misconduct. She had provoked a verbal altercation with a senior line manager, when she challenged and shouted at that manager on 2 February 2017.

137. In relation to that particular incident, the Respondent investigated the matter thoroughly by obtaining a witness statement from the manager concerned; the Claimant and the manager who was in the vicinity at the time of the incident. The Respondent also had a tape recording of the argument at the time of the Disciplinary Hearing, which had been covertly recorded by the Claimant and played at both the disciplinary and Appeal Hearings and in this Tribunal.

138. The Respondent also had reasonable grounds to believe that the Claimant had committed misconduct in relation to her dealings with other members of her team. She behaved in a confrontational and aggressive manner with members

of the team, in particular another manager (Mr Riley) at the time of the incident on 2 February 2017, as well as two other colleagues, only a month earlier, namely Ms Reed and Ms Fleming. The Respondent had a written statement from Mr Riley and heard (as did the Tribunal) the tape recording of the conversation on 2 February 2017. The Respondents had written statements from Ms Reed and Ms Fleming and corroborating evidence from Ms Brennan in relation to the incident with Ms Reed.

139. This Tribunal considers that the Respondent did undertake a reasonable investigation into those matters, as a number of witnesses were interviewed including members of the Claimant's team. The Claimant herself was also interviewed as part of this wide-ranging investigation, as was the colleague whom she requested be interviewed.
140. From this investigation the Respondent had reasonable grounds to believe that the Claimant had committed an act of misconduct in February 2017 and there was evidence of misconduct in relation to her behaviour with other members of the team in the months leading up to February 2017, in particular the confrontation with other team members in relation to discussions about the suggestions made by them in the case of Child A, namely Ms Reed and Ms Fleming.
141. The Tribunal has considered the procedure followed by the Respondents in this case. The Tribunal has noted that there was a substantial delay with this wide-ranging investigation, but does not consider the delay fatal, bearing in mind the extent of the investigation into the Claimant's conduct.
142. The Tribunal also has some concerns that the Claimant was not given the opportunity to respond as part of the investigation into some of the additional evidence collated during the investigation itself. However, the Claimant was provided with all the evidence in advance of the Disciplinary Hearing and given the opportunity to put her case at the Disciplinary Hearing at which she was represented by her Trade Union.

143. Furthermore, she was also given the opportunity to question any witnesses in relation to these matters.
144. Although the Claimant was not given the opportunity to question all of the witnesses, she was nevertheless given the opportunity to put questions to those witnesses who were not attending the Disciplinary Hearing. The Claimant chose not to put any questions in writing to any of those witnesses.
145. The Claimant was also given the opportunity to give evidence herself at the Disciplinary and Appeal Hearings and given the opportunity to call witnesses which she did. She called Ms Farrelly as a witness at the Disciplinary Hearing.
146. The Tribunal consider that, on that balance, the procedure followed by the Respondents was fair.
147. The Tribunal went on to consider whether dismissal was a reasonable response in the circumstances of this case and whether the Respondents followed their own procedure.
148. The Tribunal noted that the Respondents' disciplinary procedure states that dismissal for misconduct, as opposed to gross misconduct, would follow their normal four stage process, namely a written warning and then a final written warning.
149. In this case, the Claimant already had two written warnings which were current live warnings. Both of those warnings related to previous concerns about the Claimant's behaviour.
150. Although the Tribunal has some sympathy for the Claimant in relation to the way that she was treated in relation to another employee regarding her behaviour in respect of the second incident for which she was given a warning, the Tribunal does not consider that warning was either given in bad faith nor

does the Tribunal consider that it was manifestly unjust. Indeed, it is quite clear to the Tribunal that the Claimant was quite properly given that warning. She herself admitted in evidence before this Tribunal that she did not behave in a professional manner at that meeting and behaved inappropriately.

151. However, neither of those warnings was a final written warning, so on the face of it the Respondents did not follow their own procedure.

152. That having been said, this is an exceptional case, where it is clear that it would have been futile for the Dismissing Officer to issue the Claimant with a final written warning. The Claimant made it clear, during the course of the Disciplinary Hearing and the Appeal Hearing, that she did not trust any of the senior management team and indicated that she would not be able to work with them. Furthermore, that position is entirely consistent with the fact that she raised four grievances and five allegations of bullying and harassment against senior managers, which were being investigated by the Respondent at this time in respect of effectively the entire senior management team. Further, the Tribunal has noted that, despite the previous warnings given to the Claimant about her behaviour and requirements for improvement, her behaviour had, in the last few months, escalated leading to the last incident in February 2017.

153. The Tribunal has also taken into account the case of *Barongo*, where the EAT made it clear that a Tribunal had to consider Section 98 (4) of the Employment Rights Act 1996 as a starting point in considering the fairness of any dismissal in relation to a case of conduct.

154. In this case, the Tribunal considers that, looking at the equity and merits of this case, and therefore following the wording of Section 98 (4) of the Employment Rights Act 1996, the Respondents had no alternative other than to dismiss the Claimant for this misconduct for the reasons referred to above.

155. In any event, this Tribunal considers that the Respondent could have fairly categorised this dismissal as some other substantial reason justifying the dismissal of this Claimant.
156. As indicated above, by the time of the Claimant's dismissal she had raised four grievances, five allegations of bullying and harassment against senior management within the Respondent organisation, which included the Director and Assistant Director, effectively all her senior managers. By this stage she was also covertly recording conversations with the management team. Furthermore, she had admitted in the disciplinary and Appeal Hearings that she did not trust the management team and could not work with them in the future.
157. It is clear to this Tribunal that there was a breakdown in trust and confidence in the relationships between the Claimant and her managers at the Respondent Organisation, which would amount some other substantial reason for the Claimant's dismissal.
158. For these reasons the Claimant's complaint of unfair dismissal is hereby dismissed.

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Employment Judge Martin  
Date: 27 November 2018