



EMPLOYMENT TRIBUNALS

Claimant: Ms L Jones

Respondent: Kaleidoscope Project

Heard at: Cardiff **On:** 28th & 29th August 2019

Before: Employment Judge M R Havard (sitting alone)

Representation:
Claimant: Mr Passman (advocate)
Respondent: Mr Tim Sheppard (counsel)

RESERVED JUDGMENT

The claimant's claims for unfair dismissal and wrongful dismissal are dismissed. The respondent fairly dismissed the claimant.

REASONS

Introduction and issues in dispute

1. On 2 October 2012, the claimant commenced employment with the respondent as a Criminal Justice Substance Misuse Worker. She was dismissed on the grounds of gross misconduct with effect from 21 November 2017. The claimant has claimed unfair and wrongful dismissal. Prior to this hearing, the Tribunal had already, with the assistance of the parties, noted the issues in the case and those are set out below:
 - i. Unfair dismissal.
 - (1) Was there a potentially fair reason for the claimant's dismissal?
 - (2) Was the dismissal fair pursuant to section 98(4) of the Employment Rights Act 1996 (ERA)?

- ii. Wrongful dismissal/Notice Pay.
 - (1) Did the claimant commit a repudiatory breach of contract entitling the respondent to summarily dismiss the claimant?

- iii. Remedy.

In the event that the dismissal is found to be unfair (which is denied):

- (1) Contributory fault.

Should there be a reduction to any basic in compensatory award on account of the claimant's contributory fault?

- (2) Polkey.

Should there be a reduction in line with the principles of Polkey?

- (3) Devis v Atkins.

Should there be a reduction to nil in line with the principles of Devis v Atkins on account of matters discussed since the dismissal?

The law

- 2. The relevant legal principles that I must apply are not in dispute.
- 3. The respondent bears the burden of proving, on the balance of probabilities, that the claimant was dismissed for misconduct, which is one of the potentially fair reasons set out in section 98(2) of the ERA.
- 4. The respondent must establish that, at the time of the dismissal, it held a genuine belief that the claimant was guilty of the conduct alleged.
- 5. It is further established that there is a requirement to assess the general reasonableness of the dismissal under section 98(4) ERA. This section provides that the determination of the question of whether the dismissal was fair or unfair depends upon whether, in the circumstances (given the respondent's size and administrative resources), the respondent acted reasonably or unreasonably in treating misconduct as a sufficient reason for dismissal. This is determined in accordance with equity and the substantial merits of the case. It is an objective test and the burden of proof is neutral.
- 6. In considering the question of reasonableness, I have been referred to, and take account of, the decision of *British Home Stores Limited v Burchell* [1980] ICR 303 EAT. I have also taken account of *Iceland Frozen Foods Limited v*

Jones [1983] ICR 17 EAT and Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23 CA. The guidance to be drawn from these decisions is as follows:

- i. When considering section 98(4) ERA in a case where the genuineness of the respondent's belief has been established, the Tribunal should focus its enquiry on whether there was a reasonable basis for that belief and test the reasonableness of the investigation;
 - ii. However, it is important that the Tribunal does not put itself in the position of the respondent and tests the reasonableness of its actions by reference to what the Tribunal would have done in the same or similar circumstances. It is not for the Tribunal to weigh up the evidence that was before the respondent at the time of its decision to dismiss and substitute its own conclusion as if it were conducting the process itself. Employers have at their disposal a range of reasonable responses to the alleged misconduct of the employees and it is, instead, the Tribunal's function to determine whether, in the circumstances, this respondent's decision to dismiss this claimant fell within that range of reasonable responses;
 - iii. The range of reasonable responses applies not only to the decision to dismiss but also to the procedure by which that decision is reached, including the scope of the investigation.
7. It was confirmed by Mr Passman on behalf of the claimant that it was not claimed that the dismissal was procedurally unfair.

This hearing

8. The dismissal having been admitted, the respondent relied on oral evidence from the following witnesses:
- Ms Gemma Henton, Head of Operations;
 - Ms Kathryn Davis, Clinical Nurse Lead;
 - Mr Martin Blakebrough, Chief Executive Officer.
9. The respondent had intended to call Ms Hayley Jones to give evidence. However, she was unable to attend through ill health. I was provided with some medical evidence to verify the reason for her non-attendance. Neither Mr Sheppard nor Mr Passman requested an adjournment due to her non-attendance. Mr Sheppard invited me to place such weight on Ms Hayley Jones's written statement as I considered appropriate.
10. The respondent had also included in the bundle a statement from Ms Stacey Kerr who, at the material time, was employed by The Wallich, an organisation supporting the homeless. Mr Sheppard confirmed that he did not intend to

call Ms Kerr but, as in the case of Ms Hayley Jones, requested me to place such weight upon its content as was appropriate.

11. The claimant gave evidence in support of her claim. She also relied on the oral evidence of Ms Nicola Carney. Ms Carney worked at the Respondent from March 2017 to 17 November 2017 as a Substance Misuse Worker.
12. The Tribunal was also provided with a bundle. Whilst the index to the bundle ran to 108 pages, the bundle contained considerably more pages as additional documents had been inserted and paginated with their individual pagination contained in brackets. Unless stated otherwise, numbers which appear in this judgment in brackets refer to page numbers in the bundle.
13. At the outset of his closing submissions, Mr Sheppard provided a short document entitled, "Outline Submission on Behalf of the Respondent" which he supplemented with oral submissions.
14. Based on the oral and documentary evidence, my findings of fact on all relevant matters are set out below.

Findings of Fact

15. The respondent is a charitable organisation. Its primary activity is to provide support in Wales to individuals, who are described as service users, with substance misuse and mental health issues.
16. For the purposes of these proceedings, there are two strategic projects or services of particular relevance which are operated by the respondent and for which it is responsible. They are "Powys Substance Misuse Services" (which I shall abbreviate and refer to as "Powys") and "Cyfle Cymru Out of Work Peer Mentoring Project" (which I shall abbreviate and refer to as "Cyfle Cymru").
17. Each project or service would have different staff and would open and maintain different files for a person who may be the beneficiary of both services although certain staff may have access to both files. However, both teams were located in the same building, there would be joint team meetings, and, whilst the claimant endeavoured to understate their significance, the staff of both Powys and Cyfle Cymru would attend away days for training and social purposes.
18. On being referred for reasons of substance misuse dependency, a person would be described as a service user and would be assessed to determine the level of care and support he or she would require with the aim of that person's reintegration into the community.

19. An individual who, having been referred, would be considered a vulnerable adult, could be a service user of both Powys and Cyfle Cymru simultaneously. As its title suggests, Cyfle Cymru is described as, "a service which helps people with substance misuse issues and/or mental health conditions into work, education or training" (95(5)).
20. At the core of its activities, therefore, the respondent provides support to adults who would be described as vulnerable. Examples of this vulnerability included the risk of relapse into substance misuse or developing emotional dependence with members of staff who, as acknowledged by the claimant, occupied positions of power and authority.
21. With regard to Cyfle Cymru, the respondent would take on volunteers to assist in supporting service users in their programme of reintegration and their efforts to resume normal and productive lives.
22. The volunteers would fall into one of two categories:
 - i. those who wished to volunteer as part of their pursuit of professional qualifications for example as a Social Worker, and
 - ii. those who had been, or continued to be, service users who are working towards their reintegration into the community and, as a first step, volunteer to undertake certain tasks of a supportive nature around the office and alongside members of staff.
23. Recognising the nature of the respondent's activities in providing care and support to vulnerable adults, the respondent had developed a Conduct and Boundaries Policy to which all staff had to adhere. The claimant accepted, and I find, that she was familiar with the terms of that policy. The version of the policy to which both parties referred was that which was dated October 2009 with the review date of October 2012 (54(1) – (4)).
24. In the Conduct and Boundaries Policy, a "service user" is described as a "Service User/Ex-Service User" and "Staff" are defined as "Full Time and Part Time Paid Staff, Volunteers and Students". I accept Mr Blakebrough's evidence and find that, as a general guideline, a person can be considered vulnerable for up to two years after being discharged as a service user.
25. The Conduct and Boundaries Policy includes the following:

"Please remember that Service Users may be vulnerable. It is of paramount importance that they feel able to build up relationships of trust and understanding with staff without having their vulnerability exploited. As well as actual physical overtures being forbidden it is not

acceptable to declare a sexual interest or attraction to a client through conversation.

If you feel attracted to a Service User or feel a Service User is trying to develop a personal relationship beyond professional boundaries, it is your responsibility to immediately inform your manager or the chief executive."

"If you meet Service Users in a social setting (such as a pub/club) when you are off duty, you are still representing the organisation and should behave in a responsible manner. If you feel compromised in any way, it is often easier to change venue."

"It is your responsibility to inform your line manager if you are developing or in a personal relationship with another member of the staff team, particularly if there is a supervisor – supervisee relationship. Although this is not forbidden issues around compromise need to be addressed."

26. Section 6 of the policy entitled, "Managing Underperformance Capability, Conduct and Disciplinary Policy" sets out "Examples of Gross Misconduct". One example includes, *"serious breaches of conduct and boundaries including relationships with current, and in some cases previous, Service Users"* (49).
27. As stated, from 22 October 2012, the claimant was employed as a Criminal Justice Substance Misuse Worker. The claimant was provided with a job description (35(5)) which sets out her role. It would include the case management of service users during their involvement with the Criminal Justice System and liaising with a number of external agencies to include the Police, Probation and Drug and Alcohol Rehabilitation Services. The claimant would provide support to service users in their recovery and supporting them in their reintegration into the community. She would also, for example, prepare reports in the course of court proceedings.
28. The claimant had also entered into, and signed, a contract of employment (36 – 38) in which there is a requirement for her to familiarise herself with the rules, regulations, procedures and policies of the respondent. Having worked in this role since 2013, I find that the claimant was an experienced worker within the organisation.
29. On 14 September 2015, an individual to be identified in this decision as "AB" was referred to the Powys Substance Misuse Service. Indeed, it was the claimant herself who referred AB as she signed the Substance Misuse Internal Referral Form (65(9) – (10)).

30. On 25 August 2017, whilst continuing to be a service user of Powys, AB was referred to the Cyfle Cymru to continue his recovery. As already described, *"Cyfle Cymru is a service which helps people with substance misuse issues and/or mental health conditions into work, education or training."*
31. It was not until 6 October 2017 that AB was discharged from his treatment programme in Powys. Therefore, during the period 25 August 2017 to 6 October 2017, AB was a service user of both Powys and Cyfle Cymru. From 6 October 2017, having been discharged from Powys, AB would have been a service user of Cyfle Cymru and an ex-service user of Powys.
32. As part of his role in Cyfle Cymru, AB became involved in such activities as training a local football team and he also volunteered with the charity called The Wallich which supports the homeless.
33. The claimant had been absent from work due to a period of illness but, following her return, she attended a supervision meeting on 27 October 2017 with her supervisor, Ms Hayley Jones. A Supervision Record of that meeting was produced (65(13)). The document is detailed and contains the queries raised by the claimant in relation to the role of AB. The document also contains a detailed note of the responses by Ms Hayley Jones to the claimant's enquiries. In her evidence, it was suggested by the claimant that she had been told by Ms Hayley Jones that AB had been appointed as a member of staff. This was disputed by Ms Hayley Jones in her written statement who stated that, in his role in supporting certain activities, he was to be treated as a member of staff. Whilst I take full account of the fact that the evidence of Ms Hayley Jones could not be tested as she had not attended to give evidence, I have considered the record of the supervision meeting and there is no reference to Ms Hayley Jones informing the claimant that AB had been appointed as an employed member of staff.
34. Further, whilst the claimant referred to the example of one other person who had been a service user who had gone onto be an employee, I take into consideration the fact that AB had only been discharged from Powys on 6 October 2017, exactly three weeks before the date of the supervision meeting, and he continued to be a service user of Cyfle Cymru. Therefore, on the balance of probabilities, I find that Ms Hayley Jones did not tell the claimant that AB was a member of staff.
35. On 3 November 2017, whilst the claimant maintained that she had been made aware that other members of staff had connected with AB on social media, she herself made contact with him on social media. Of significance is the fact that she accepts that she made contact with AB outside of working hours on social media on the evening of 3 November 2017. On 5 November 2017, she again made contact with AB on social media and she confirmed that the exchanges related to the development of a friendship and that they, "liked each other's company".

36. On 6 November 2017, AB and the claimant, "went for a walk after hours and became aware that potentially a romantic relationship could develop between us. At that stage there was no relationship to speak of." Nevertheless, it is suggested by the claimant that due to her awareness of the terms of the Conduct and Boundaries Policy, this "potential for the development of a relationship" should be reported. The claimant says that she did so on the basis that she believed AB to be a volunteer and a member of staff as opposed to a service user. She also stated that, at no stage during her contact with AB, whether in the course of exchanges on social media or during their walk on 6 November 2017, all of which occurred out of office hours, did she become aware of AB's status. When cross-examined, the claimant accepted that a relationship between a member of staff such as herself and a service user or ex-service user would be unacceptable.
37. Clearly, the claimant must have known that AB had been a service user as it was the claimant who had referred AB to Powys in 2015. Further, as at the time of the ensuing investigation on 9 November 2017, the claimant stated that she knew that AB had been discharged from Powys on 6 October 2017 but suggested that she did not know that he was a service user of Cyfle Cymru at the time that she was in communication with him and meeting him for a walk, both of which occurred outside normal working hours. She suggested that she did not discuss with AB what he was doing when holding conversations with him, whether via social media or in person, on 3, 5 and 6 November 2017.
38. I do not find the claimant's account regarding her knowledge of AB's status to be credible. She was an experienced Criminal Justice Substance Misuse Worker. She knew that the claimant had been referred to Powys as it was she herself who had made the referral in 2015. It is not credible to suggest that during their conversations, whether via social media or when walking together on 6 November 2017, there would have been no discussion about his current status. Indeed, at paragraph 7 of her statement, the claimant states, "following my supervision, I do recall becoming aware that [AB] was a former service user but I did not have any more information than that." In making this statement, the claimant is suggesting that it was only following the supervision meeting in October 2017 that she became aware that AB was a former service user. However, as evidenced by the referral form (65(9)-(10)), and as already stated, it was the claimant herself who had referred AB in 2015 at which time she would have known that he had become a service user. Further, the claimant had a professional involvement with other members of AB's family who fell under her care.
39. On 6 November 2017, outside working hours, the claimant called Ms Hayley Jones on her mobile phone and stated that she was developing a relationship with AB informing Ms Hayley Jones that she had been on a walk with AB and had been messaging him.

40. Ms Hayley Jones reported the matter on 7 November 2017 to Ms Gemma Henton who instructed Ms Hayley Jones to carry out an investigation.
41. Also on 7 November 2017, Ms Hayley Jones received a telephone call from a senior support worker at the Wallich Charity for the Homeless, Ms Stacey Kerr. Ms Kerr has provided a statement but she had not attended to give evidence. However, the account of the content of that telephone conversation was not challenged when the claimant gave evidence or in final submissions. Bearing in mind I must exercise considerable caution with regard to the weight that I should attach to untested written evidence, I note that there is a consistency between the account provided by Ms Hayley Jones and Ms Stacy Kerr who both say that Ms Kerr had been made aware of a relationship between a service user at the Wallich, understood by Ms Kerr to be AB, and the claimant. Ms Kerr had been told by AB that he thought that Hayley Jones was "fine about it". Hayley Jones said that she did not consider the relationship to be appropriate and Ms Kerr expressed her shock.
42. On 8 November 2017, Ms Hayley Jones wrote to the claimant inviting her to an investigation meeting (67 – 68). The letter provided an outline of the issues to be discussed.
43. On 9 November 2017, the investigatory meeting took place at the Newtown offices of the respondent. Ms Nic Carney attended to support the claimant. Ms Kath Davis attended as a minute taker. Both Ms Carney and Ms Davis attended to give evidence. Whilst the claimant took issue with the accuracy of the minutes prepared by Ms Davis, Ms Carney stated that she had taken notes but these notes had not been produced. Ms Davis confirmed that she had prepared the notes of the investigatory meeting immediately afterwards as well as the notes of the discussion held between AB and Ms Hayley Jones on the same day. Having listened to Ms Davis, and having seen no evidence to suggest otherwise, I found Ms Davis to be a credible witness and I find the minutes prepared by her of the investigatory meeting with the claimant, and also of the discussion with AB, to be accurate.
44. In the course of the investigatory meeting, the claimant stated that she did not accept that she and AB were in a relationship but agreed that they were in the process of developing a relationship but did not feel that this would impact on her role as, "she is not in a full blown relationship with AB at present".
45. It was accepted that the claimant also was the case manager in respect of certain of AB's relatives and the claimant said that, "if she developed a full blown relationship with AB it would not be appropriate to case manage them".
46. The claimant did not consider that her position had been compromised and that no action needed to be taken. The claimant maintained that, as a

volunteer, AB was now classed as a member of staff and could not be classed as vulnerable and it had not been explained to her the way in which she had fallen short of the requirements of the Conduct and Boundaries Policy. The claimant maintained that AB was classed as a member of staff and whether the same issues would be raised, "if AB was a paid member of staff." The claimant had concerns regarding the subjectiveness of the assessment of AB's vulnerability.

47. On 9 November 2017, Ms Hayley Jones wrote to the claimant informing her that she had been suspended on full pay whilst the investigations into the various allegations specified in that letter were ongoing (69).
48. Subsequently, Ms Hayley Hones prepared an investigation report (61-65). It relates to the disclosure of the claimant developing a relationship with AB which led to concerns regarding a breach of boundaries, professional conduct and safety of both parties. It also related to the consequent effect of the claimant's ability to manage the cases of other members of AB's family.
49. The investigation report contains an outline of the investigation and the conclusion that the claimant did not consider that she had breached any professional boundaries. The claimant also wished to know timescales in which it would be deemed responsible for her to become romantically involved with another member of staff / volunteer and how the respondent measured the vulnerability of volunteers.
50. Ms Hayley Jones also summarises the further enquiries that she had made to include the outcome of her conversation with Ms Kerr at The Wallich. This related to concerns regarding the relationship with AB and the claimant on the basis that AB had attended The Wallich on 7 November 2017 and announced that he and the claimant were in a relationship with each other. Ms Kerr had concluded this was inappropriate as AB had just commenced volunteering but was still an active service user of Cyfle Cymru. Ms Kerr advised that AB, "has a history of relapsing with his mental health and substance use due to relationship problems."
51. The investigation report also contains an account of the informal discussion held between AB, Ms Hayley Jones and Ms Kath Davis. He confirmed that he and the claimant had been messaging each other and that, "they had feelings for each other".
52. On AB being told that he should stay away from work for the time being, he became "very tearful and kept apologising, he stated that he knew it had not been right to get into any type of relationship and that he had felt uneasy about the whole situation."

53. Ms Hayley Jones obtained confirmation from Cyfle Cymru that AB was an active service user and had only recently stopped receiving services as a service user of Powys and was, "very new to volunteering."
54. Initially, Ms Henton of the respondent wrote to the claimant on 10 November 2017 inviting her to a disciplinary meeting to be held on 15 November 2017. The letter sets out the nature of the allegations to be made. However, this meeting did not go ahead and on 15 November 2017, an identical letter was sent to the claimant inviting her to a disciplinary meeting on 21 November 2017.
55. On the day before the disciplinary meeting, namely 20 November 2017, the claimant sent a letter of grievance to Mr Barry Eveleigh of the respondent. The grievance related to her working conditions particularly with regard to the line management supervision of Ms Hayley Jones. The claimant has accepted that this grievance was taken seriously even though it was not upheld.
56. On 21 November 2017, a disciplinary meeting took place at which the claimant attended along with Ms Caroline Harding as a support. Barry Eveleigh attended to assist Ms Henton and to take minutes.
57. In advance of the disciplinary meeting, Ms Henton had considered the investigation report prepared by Ms Hayley Jones and the minutes from the investigatory meeting. The minutes of the disciplinary meeting were recorded by both Ms Henton and Mr Eveleigh (77 – 85).
58. In the course of the disciplinary hearing, the claimant complained about the evidence which had been gathered for the investigation report and discrepancies between the formal minutes prepared by Ms Kath Davis and the minutes that had been taken by Ms Carney. I have already found that, having heard from Ms Davis, and in the absence of any notes prepared by Ms Carney or the particulars of the discrepancies alleged, the minutes of the investigation meeting produced by Ms Davis are an accurate record of that meeting. In any event, Ms Henton has recorded the claimant's concerns with regard to the investigation.
59. Whilst it has not been suggested by, or on behalf of, the claimant that the disciplinary procedure was unfair, I note that the investigatory meeting notes of 9 November 2017 and the investigation report were provided to the claimant who was then offered time to read the documents. However, this opportunity was declined stating that she understood their content and wished to proceed with the disciplinary meeting.
60. The disciplinary meeting describes in some detail the concerns of the claimant with regard to the way in which the relationship between her and AB

had been presented and also the accuracy of the investigatory meeting notes.

61. When Mr Eveleigh asked the claimant if she considered that AB was a vulnerable adult, she replied "no". This is after she has been provided with access to the content of the investigatory meeting minutes, the investigation report, and also after the stage at which she has acknowledged that she was aware that AB had been a recent service user. The claimant suggested that she questioned this in her supervision meeting on 27 October 2017, the notes of which had not been provided to Ms Henton in advance of the disciplinary meeting.
62. The claimant was asked whether she considered AB to be vulnerable after just coming out of treatment. The claimant responded by saying that it would be, "highly inappropriate to be doing volunteering" or "privity to confidential information regarding other service users" "if deemed vulnerable then dangerous".
63. The claimant maintained her comments about the investigation meeting on 9 November 2017 when she had sought clarification of the difference that may exist between a volunteer and a service user.
64. Ms Henton then gave the claimant a further opportunity to clarify the concerns that she had raised during her responses and confirmed that service users were entitled to volunteer and the responsibilities and independence of the volunteers were monitored and allocated as per their assessment and suitability.
65. The claimant was concerned about what was said in the meeting on 7 November 2017 with AB and found it difficult to believe that AB thought that there was a relationship between them. It was confirmed by Ms Henton that the discrepancy between the claimant's account and that of AB with regard to their relationship was the reason for the allegations and the disciplinary letter. It was for this reason that all staff are expected to protect service users from these situations arising.
66. At the conclusion, Ms Henton summarised what had been discussed at the disciplinary meeting and acknowledged the claimant's contention with regard to the validity of the information produced in the investigation. This included the account of what had been said by AB and the feedback from The Wallich. At the conclusion, Ms Henton stated that the allegation of gross misconduct was upheld on the basis there was no recognition by the claimant of what had happened and the impact on AB as a vulnerable adult. The outcome was therefore that the claimant's contract was terminated with immediate effect and she was informed of her right to appeal.

67. It was also confirmed that the claimant's grievance would continue to be addressed.
68. By letter of 23 November 2017 (86) Ms Henton wrote to the claimant informing her of the outcome of the disciplinary meeting and the nature of the allegations which had been found proved supporting the dismissal on the grounds of gross misconduct.
69. By letter of 30 November 2017, the claimant wrote to Mr Martin Blakebrough, Chief Executive for the respondent, informing him of her wish to appeal against the decision of Ms Henton to dismiss her. The claimant sets out in some detail the four reasons which form the basis of her appeal (87 – 89).
70. On 30 November 2017, Ms Blakebrough wrote to the claimant (90) inviting her to an appeal on 7 December 2017.
71. On 7 December 2017, an appeal hearing took place. In attendance was Mr Blakebrough in the chair, Ms Emma Patey who assisted Mr Blakebrough and took minutes, and the claimant. I am satisfied that the points or grounds of appeal which have been set out in some detail by the claimant in her letter were properly considered by Mr Blakebrough in the course of the appeal, first in the form of submissions by the claimant and secondly in answer to questions put to her by both Ms Patey and Mr Blakebrough.
72. It was maintained by the claimant that she considered AB to be a volunteer and member of staff. She confirmed that the relationship with AB would not be appropriate if he was a service user but her understanding was that he was not a service user any more. As a volunteer, the claimant did not consider AB to be vulnerable. In any event, she assumed that he was not vulnerable and that there would need to be an assessment as to his vulnerability. The claimant considered AB to be a peer or colleague of the claimant. However she accepted that a volunteer in the office doing administrative duties could be a service user of Cyfle Cymru.
73. The claimant confirmed in the course of giving her evidence to Mr Blakebrough that a relationship with a service user would not be acceptable as the person would be vulnerable. As for an ex-service user, she, "never assessed vulnerability as such but would not form a relationship ex-service user. Volunteer different."
74. However, the claimant subsequently accepted that she knew that AB was a service user before but she said that it had been determined that AB was suitable to volunteer.
75. I am satisfied that a full and fair enquiry was carried out in the course of the appeal hearing and that the claimant was given every opportunity to state her case.

76. Following the conclusion of the appeal hearing, but before Mr Blakebrough wrote to the claimant informing her of the outcome of her appeal, Mr Eveleigh wrote on 14 December 2017 notifying her of the outcome of her grievance (91 – 92). The letter provided an account of the nature of the grievance that had been pursued and the reasons why, following an investigation, there was insufficient evidence to support the allegations of bullying harassment or discrimination although there was confirmation that the respondent would be offering training on policies and procedures to managers and staff alike which would include performance management and supervision.
77. By letter of 15 December 2017, Mr Blakebrough wrote to the claimant with his decision in respect of her appeal (93 – 95).
78. Mr Blakebrough summarised the outcome of the appeal hearing and the basis on which each point of the claimant's appeal was considered.
79. Having considered the material with which he had been provided in advance of the appeal, and having listened carefully to the representations made by the claimant at the appeal hearing, Mr Blakebrough went on to confirm the steps he had taken to investigate a number of the points the claimant had raised to ensure that he was able to reach a fair decision. This included speaking to Stacey Kerr of The Wallich to confirm the accuracy of the notes of the conversation she held with Ms Hayley Jones. Mr Blakebrough also spoke with Ms Kath Davis to satisfy himself as to the accuracy of the notes of the investigatory meeting and the conversation between Ms Hayley Jones and AB. He was satisfied that the account of what had been said by both Ms Kerr and AB were accurate.
80. Mr Blakebrough had also asked for case notes to verify the position of AB within the service as a service user, ex-service user and volunteer and he was satisfied that AB was still an active service user of Cyfle Cymru throughout the material time.
81. Mr Blakebrough took into consideration the claimant's concession that a relationship between a member of staff and a service user and vulnerable ex-service user would be unacceptable but took into consideration the claimant's assertion that she believed AB was a volunteer and, in her opinion, not vulnerable. The claimant based her conclusion that AB was not vulnerable on the basis that he had been given access to confidential information about other service users.
82. He confirmed that, in the appeal hearing, it was made clear that the respondent considered all service users to be vulnerable and also ex-service users and volunteers who came from a service user background.
83. He had taken into account the claimant's submission that she had been aware of AB's history prior to his volunteering but not aware of his history as

a service user though the claimant had been aware that AB had been a service user.

84. In conclusion, Mr Blakebrough reached the following decision:

"My view is your lack of acknowledgement of [AB] vulnerabilities as an active service user of OOWS [Cyfle Cymru] and previous service user of the Powys Main Services is a serious concern in terms of your ability to undertake your role effectively. Whilst I acknowledge you disclosed your shared feelings in good faith, there can be no excuse for forming a relationship (having declared feelings for each other, met outside of work, exchanged personal details and exchanging social media details at least) with a vulnerable person in what I deem to be an abuse of power relationship and warrants our referral to the DBS Panel and leaves us with no alternative other than to uphold the dismissal as we believe the relationship between you and the organisation has irrevocably broken down as you noted yourself in our meeting, when you confirmed you didn't believe you would be able to return to work given the circumstances."

Analysis and conclusions

85. In reaching my conclusions, I take into consideration the fact that the claimant concedes that the respondent followed a disciplinary process which she accepts as fair.
86. On the basis of my findings of fact, I am satisfied that the respondent had a genuine belief that the claimant had committed an act of gross misconduct in that there was a genuine belief that she had committed a serious breach of conduct and boundaries by forming a relationship with AB who, at the material time, was both a service user and a very recent ex-service user of Cyfle Cymru and Powys respectively.
87. I have considered the reasonableness of the respondent's investigation to support their conclusions with regard to the claimant's misconduct.
88. When informing Ms Hayley Jones of the situation on the evening of 7 November 2017, and also in the course of the investigatory meeting, it is clear that the respondent was entitled to conclude that a relationship of a personal nature had developed between the claimant and AB. The fact that the claimant states that the relationship may become romantic or that it was not yet a "full blown" relationship does not mean that the respondent was unreasonable in concluding that the claimant had already allowed a relationship of a personal nature to develop between the claimant and AB which was of considerable concern. I have also found the claimant's account of her awareness of AB's status to lack credibility. Indeed, the documentary evidence establishes that, despite her assertion that it was only after her

supervision meeting in October 2017 that she became aware of AB's status as an ex-service user, she in fact knew from 2015 that AB had been a service user and I have found her suggestion that she had no awareness of AB's status as implausible.

89. The investigation included an interview with the claimant and also a conversation with AB, both of which were minuted. It was clear to the respondent that AB had formed the view that there was a relationship between him and the claimant. I have already found that the minutes taken by Ms Davis are capable of being relied upon.
90. The investigation report which was then produced by Ms Hayley Jones provides a summary of the meeting with the claimant and also of her conversations with Ms Kerr of The Wallich and AB. Whilst the claimant may take issue with what is said by Ms Hayley Jones, I am satisfied that this amounted to a reasonable investigation into the existence of a relationship between the claimant and AB.
91. In the course of the disciplinary hearing, it was denied that a relationship had been formed and that, even if it had, the claimant had not been aware that AB was a service user or ex-service user but that he was a volunteer and a member of staff. In answer to a question from Mr Eveleigh whether she considered AB to be vulnerable after just coming out of treatment, she replied, "no". The only basis on which the claimant sought to justify her conclusion that AB was not vulnerable was that AB should not be volunteering or privy to confidential information about other service users.
92. Taking account of the comprehensive enquiry undertaken in the course of the disciplinary meeting and the opportunities provided to the claimant to put her side of the story, Ms Henton had decided that the allegations as documented in the letter of 15 November 2017 had been made out and that the allegation of gross misconduct was upheld. In reaching this decision, Ms Henton concluded that there was no recognition or acceptance on the part of the claimant about what had occurred and the impact on AB who, in the view of the respondent, remained a vulnerable adult as a service user of Cyfle Cymru and a recent ex-service user of Powys. In those circumstances, the decision was taken to summarily dismiss the claimant.
93. I am satisfied on the balance of probabilities that the respondent acted reasonably in treating misconduct as a sufficient reason for dismissal. I am satisfied that Ms Henton held a genuine belief that the claimant was guilty of the conduct alleged. I am satisfied that such a belief was based on a reasonable investigation having been carried out. The procedure followed, which led to Ms Henton reaching her decision, including the scope of the investigation, fell within the range of reasonable responses.

94. Further, I am satisfied that the respondent's decision to dismiss the claimant also falls within the range of reasonable responses. In doing so, I take account of the function of the respondent in providing support in Wales to individuals, described as service users, who have substance misuse and mental health issues and who are therefore vulnerable.
95. I reach the same decision with regard to the conclusions reached by Mr Blakebrough in relation to the appeal. He conducted a fair and comprehensive hearing, allowing the claimant to set out her case and then challenging the claimant on the central issues. He made further proper enquiries, before reaching his decision to uphold the decision of Ms Henton to dismiss the claimant. When writing to the claimant to inform her of his decision, he provided detailed reasons for the conclusion that he had reached. Again, I find his decision falls within the band of reasonable responses.
96. In all the circumstances of the case, my conclusion is that, for the purposes of section 98(4) ERA, the respondent acted reasonably in concluding that the claimant had acted in breach of the Conduct and Boundaries Policy, and had formed a relationship with AB who was a service user and a recent ex-service user of Cyfle Cymru and Powys respectively, together with the respondent's concern that there was a failure on the part of the claimant to recognise AB as vulnerable. The respondent acted reasonably in treating that as a sufficient reason for dismissal and the decision falls within the reasonable band of responses. The claim of unfair dismissal fails.
97. On the same basis, and having found that it was reasonable for the respondent to summarily dismiss the claimant, her claim for wrongful dismissal is also dismissed.

Employment Judge M R Havard

Dated: 25 September 2019

JUDGMENT SENT TO THE PARTIES ON 30 September 2019

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS