Case No: 2305219/2021

EMPLOYMENT TRIBUNALS

Claimant: Ms Joanne Gater

Respondent: Parkcare Homes (No2) Limited

Heard at: ET London South via CVP **On: 29 November 2022**

Before: EJ Swaffer

Representation

Claimant: Mr P McNamee, Paralegal, Hadfield Bull & Bull Solicitors
Respondent: Ms A Akers, Counsel, St Philips Chambers

RESERVED JUDGMENT

1. By consent, the name of the respondent is amended by substitution to Parkcare Homes (No 2) Limited.
2. By consent, it was agreed that the effective date of termination of the claimant's employment was 1 September 2021.
3. The claim for holiday pay was dismissed on withdrawal by the claimant before any evidence was heard.
4. The claim for unfair dismissal is not well founded and fails.
5. The claim for notice pay is not well founded and fails.
6. The claim for unauthorized deductions is not well founded and fails.

REASONS

Introduction

1. The claimant was employed by the respondent from 10 December 2012 until her dismissal on 1 September 2021. Initially, the claimant was employed as a support worker working 37.5 hours a week. Sometime in 2015, she became an administrator working 37.5 hours a week. The claimant also worked as a support worker after her appointment as an administrator, and the basis on which the claimant worked as a support worker is one of the issues in dispute. The contract under which the claimant was appointed as an administrator could not be located by the parties.

2. The claimant was summarily dismissed for gross misconduct by letter dated 31 August 2021, sent on 1 September 2021. Paragraph 7.1 of the respondent's disciplinary policy provides a non-exhaustive list of examples of gross misconduct, including at paragraph 7.1(c) "*falsification of records and fraud"*, and paragraph 7.1(f) "*gross negligence"* (pages 44-45).

3. The respondent is part of the Priory Group of companies, and provides adult care services, including residential accommodation. The claimant was employed at a care home operated by the respondent, known as Marshlands and latterly as Peacock House (the site). The respondent had a neighbouring site called the Bungalow, where the claimant began her employment with the respondent.

4. The claimant claims that her dismissal was unfair within Section 98 Employment Rights Act 1996 (ERA). On 20 October 2021 the claimant made a claim for unfair dismissal, seeking compensation. She also claims wrongful dismissal seeking notice pay, and made claims for unauthorized deductions in the form of payment for 10 hours a week which she claimed should have been paid during her suspension, and which relate to her working as a support worker. The claimant also sought holiday pay with regard to those 10 hours, which she described as "overtime" in the particulars of claim. The claims for unauthorized deductions and holiday pay relate to these 10 hours a week, which I shall refer to as *the disputed 10 hours* in these reasons. The claimant alleges that the respondent had always intended to dismiss her.

5. The respondent contests all the claims, stating that the claimant was fairly dismissed for gross misconduct in the form of: inconsistent processing of CFA; requesting additional financial top ups above the impressed amount of £1000; incorrectly processing hours worked on Eroster; incorrectly processing exceptions; incorrectly processing/claiming enhancements; and falsifying documents for times worked and adding these to Eroster generating payment for these times/hours. The dismissal letter states that this conduct is in breach of its polices relating to 1) Financials Controls 2) Payroll- Adjustment Form –Feb21 and 3) Payroll – Feb 21 –Section 7 (page 145). The respondent states that no notice pay is therefore due. The respondent submits that regardless of the manager in post, the claimant was an experienced administrator who had received full training, who had been in that role for a number of years, and who should have been able to perform her role without making such errors. The respondent submitted that it was reasonable to expect the claimant to perform all parts of her role. The respondent also states that the disputed 10 hours did not form part of the claimant's contract and were casual or bank hours worked by her at the discretion of the respondent, and that it was not therefore required to pay her for any such hours during her suspension as she was not offered any such work whilst suspended.

6. The claimant was represented by Mr McNamee, and gave sworn evidence. The respondent was represented by Ms Akers, who called sworn evidence from Mr Neil Barham, formerly Peripatetic Manager at Priory Healthcare Limited, and Ms Elaine Priestley, Registered Manager at Priory Healthcare Limited. I considered documents from an agreed bundle of 169 pages which the parties introduced in evidence. I was also

provided with a witness statement by the claimant, plus other documents from the respondent (payslips) provided during the course of the hearing as agreed by the Tribunal. There was insufficient time at the end of the hearing for the respondent's representative to make closing submissions, and by agreement these were provided in writing on 30 November 2022. The claimant's representative was offered the opportunity to provide written submissions, but preferred to make these orally at the end of the hearing.

Preliminary matters

7. At the start of the hearing, it was difficult to hear Ms Akers. I adjourned briefly so that she could rearrange her technical set-up. When she rejoined, the sound was much clearer and no further concerns were raised during the hearing.

8. The claim was originally made against Priory Group Limited. The respondent requested that this name should be substituted with Parkcare Homes (No 2) Limited, as this was the Priory Group company that employed the claimant. Mr McNamee had no objections. I therefore considered that it was in accordance with the overriding objective to make the requested substitution.

9. The claimant's witness statement was not included in the bundle, and it was only provided to me on the morning of the hearing although it had been sent to the Tribunal some days earlier. The numbering of Mr McNamee's bundle was one page out from the version I and the respondent had. He declined my offer of asking the respondent to send him a copy of the version with the correct numbering, stating that he would be able to adjust references to page numbers during the hearing.

10. At my request, Mr McNamee provided further particulars about the claims for holiday pay and unauthorized deductions. He submitted that the disputed 10 hours were performed under a separate contract, under which the claimant was paid £8.60 an hour gross; Mr McNamee submitted that this was payment for a separate role, and part of her expected wages, not "overtime". He submitted that these hours were included in the claimant's payslips, and should have formed part of her pay during her suspension. He confirmed that there was no claim for unfair dismissal with regard to any separate role. Ms Akers had no instructions with regard to this formulation of the claims for holiday pay and unauthorized deductions.

11. There was no list of issues prepared in this case. I had prepared my own outline list of issues, which I discussed with the parties and which I used as the basis for agreed the list of issues for the hearing. The issues I had identified were:

    a. What was the reason or principal reason for the claimant's dismissal?
    b. Was that reason a potentially fair reason?
    c. Did the respondent have a genuine belief that the claimant had committed an act or acts of gross misconduct?
    d. Was this belief based on reasonable grounds?
    e. Did the respondent carry out a reasonable investigation?

f. Did the respondent act in a procedurally fair manner?
g. Was the respondent's decision to dismiss within the range of reasonable responses?
h. What was the claimant's notice period?
i. Was the claimant paid for that notice period?
j. If not, was the claimant guilty of gross misconduct?
k. Did the respondent make unauthorized deductions from the claimant's pay during suspension, and if so how much was deducted?

12. Given the range of issues and evidence and time available for the hearing, I indicated that I proposed to focus on liability during the hearing, and that any evidence or submissions with regard to remedy would be heard during a separate hearing, should that be necessary. The parties agreed with this approach.

13. Once the list of issues for the hearing was agreed, I then sought submissions about the length of time each party anticipated spending in cross examination. The claimant was not calling any additional witnesses; the respondent had two witnesses as referred to above. I adjourned so that I had time to read the documents highlighted to me by the parties, and to allow Ms Akers to obtain instructions with regard to the claim for unauthorized deductions being based on the claimant having a separate role with the respondent as a support worker/carer. Prior to the adjournment, the claimant withdrew the claim for holiday pay with regard to the disputed 10 hours.

14. On returning from the adjournment, Ms Akers had not yet been able to obtain instructions. I allowed a further 10-minute adjournment, after which she was still without instructions. I indicated my concerns about further delaying the start of the hearing, and my wish to hear evidence from the respondent's witnesses before lunch. Ms Akers proposed that the hearing should start as the evidence of the respondent's witnesses would not be with regard to the unauthorized deductions claim, and she would endeavour to obtain instructions during the lunch break. Mr McNamee was content to start the hearing on this basis.

15. I heard oral evidence from Mr Barham, Ms Priestley, and the claimant.

Findings of fact

16. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed bundle of documents. Many of the facts in this case are not disputed, but the details are included here as relevant background to my decision. The parties presented a significant amount of evidence to the Tribunal during the hearing. If this judgment and the reasons are silent on some of those matters, it is not that they were not considered, but that they were not sufficiently relevant to the issues that the Tribunal had to decide to be included in the final decision

17. Much of the dispute in this case is related to the claimant's role as administrator, and her completion of the tasks she was required to perform as administrator. There are a number of terms used by the parties which it is helpful to explain briefly:
    a. Client Fund Account (CFA) - The CFA is used by the respondent as an internal bank account for service users, similar to online banking. Cash is kept in a tin, receipts are collated, and the information is inputted into the CFA. For example, if a service user spent £10, the receipt would be kept and the information inputted into that service user's CFA account; CFA is like a bank statement, with £10 spent deducted from the service user's balance. CFA is not the same as petty cash, which is kept separately from the CFA.
    b. Eroster – Eroster is the respondent's online staff rota management system, which holds all staff data, and it is where shifts worked are logged for payroll. Information is inputted to Eroster using timesheets completed by staff. Staff shifts may vary, and shifts are logged against the staff member and against the relevant week.
    c. Income Processing (IP) – The respondent's term for logging financial information online
    d. Petty cash - There is a card for petty cash, and spending is processed using receipts.
    e. Contractual amendments – The term used where there is a change for a member of staff, such as their rate of pay or home address. The nature of the change will dictate where that information is logged or submitted.

18. The claimant accepted that she was trained on CFA, Eroster, and petty cash, saying that the latter training was a long time ago. She agreed that she was an experienced administrator.

Respondent's concerns about claimant's work

19. I find that concerns began to arise about a backlog with the CFA in 2020. In an email addressed to the claimant and her manager CSS dated 28 January 2021 (page 62), the Administration Support Manager JS states "*The other main concern is CFA – is there a plan [in] place to get this updated? we are backlogged from July last year?".* The claimant accepted that the CFA was "*in a mess"* before the manager CSS joined the site in January 2021 (page 87). I find that the claimant knew that there were problems with CFA in 2020 as she knew she was not working on it as she should have been. I find that the claimant was performing other tasks rather than the CFA, as she was asked to by her then manager NJ asked her to (NJ became manager in September 2020). The claimant submitted that her difficulties began when CSS started work in January 2021, due to CSS' lack of managerial oversight and support. I find that this is not the case, as there is clear evidence of difficulties with CFA at least which pre-date January 2021 (page 62).

20. The claimant worked remotely from the end of December 2020 to April 2021 due to Covid19. An audit in January 2021 highlighted concerns that the CFA was not up to date with a 9 month backlog of data to be added. In her email to the claimant and CSS dated 28 January 2021 JS referred to "*your recent financial audit – I have added all the actions to an action*

plan that will need to be worked on and completed off. A lot of these actions were picked up on a previous audit so it's imperative that these actions are addressed asap and we are consistent with these processes moving forward". This supports the finding that the respondent identified problems before January 2021, given JS' reference to *"a lot of these actions being picked up on a previous audit"*. Contrary to the claimant's evidence, I find that she would have known that there had been an audit in January 2021 given the email from JS.

21. On 8 March 2021, JS emailed the claimant and CSS to ask about progress with the audit actions (pages 61-62). On 11 March 2021 SP, who was employed by the respondent in Systems Support, emailed the claimant and CSS but the salutation was addressed only to the claimant (page 61). SP referred to a conversation she had had with the claimant that day. SP asked for updates on actions, and also asked the claimant to "*spend half an hour a day getting the CFA receipts onto IP as conscious there is 9 months' worth and concerned there may be some discrepancies, the longer it is left the harder it is to fathom out what has gone wrong*." SP also referred to suggestions she had made to help the claimant perform her role and reminded her about support available "*We discussed a rolling rota which you said was near completion, when it is done send it over to Jen/myself, we can create this for you and create a new working roster as the current working roster is 5 years old and painfully slow, this should hopefully speed it up for you meaning you have to spend less time in it and giving you more time for other admin tasks Unsure when Jen has her next visit/call booked with you but please respond and get in touch with her if you have any queries or need support".* Given these emails, I find that the respondent was concerned by the issues with the claimant's work, and was trying to support the claimant to address the issues, offering her a strategy.

22. The claimant accepted that the emails had been sent to her but stated that she had never seen the documents attached to the emails dated 8 and 11 March 2021. I do not accept this. Given the importance of the emails, if the attachments had not been provided, I find that the claimant as an experienced administrator would have asked for them given the importance the respondent was clearly attaching to the need for the problems to be addressed. It is difficult to see how the claimant can have been working to address the problems if she was not aware of the list of actions she was required to complete and on which she was being asked to update the respondent. I find that the emails and actions were focused on assisting the claimant to perform her usual tasks, and helping her with a strategy to clear the backlog and correct errors.

23. The claimant stated that she was working from home on 11 March 2021 and did not have the CFA receipts because CSS said she could not take the CFA receipts off site as they were confidential. It is not clear why this is not referenced in SP's email, given that SP spoke to the claimant that day and then emailed to say the claimant should spent time each day logging CFA receipts onto IP. Given her experience, I find it highly unlikely that the claimant would have discussed actions with SP, including spending time working on CFA, without raising the issue of not having the

necessary receipts to do that work on CFA as she was working from home.

24. The claimant accepted that she was behind with the CFA. She said that there was a backlog of receipts she had to sort out and then upload before she could reconcile the CFA. I find that she knew no one else was working on the CFA when she was working from home as she said to Mr Barham when asked if anyone was doing the CFA "*I don't think so because I am the only one who knows how to put the receipts on Income Processing"* (page 88).

25. On 13 April 2021, JS emailed the claimant asking how she was getting on with updating the IP following a phone call they had had "*on Friday"*, and highlighting errors for the claimant to correct, including referring to "*a minus of £2521.84"* which JS thought was linked to the claimant *not adding your deposits* (pages 66-67). On 14 April 2021 JS sent a further email to the claimant and managers noting the claimant was off work that week, stating that she (JS) had "*made the below corrections on IP and also added all CFA withdrawals (bank to floats) from July last year until today as they had been missed. This has now bought your IP balance up to £1835.84 however we still seem to have a way to go with the receipts, there hasn't been any added since 15th March and I'm not too sure where you are at with the back log?"* (page 66). I find that this is further evidence of the respondent's efforts to support the claimant with the problems CFA, and evidence that the claimant was aware of the problems and the respondent's concerns.

26. On 23 April 2021, JS emailed the claimant to discuss problems with petty cash, stating "*there was a high amount of money unaccounted for due to a high volume of errors on previous claims. Site also had a temp increase of £2358.71 that needed to be paid back I have worked through all claims since July last year and managed to reduce this amount significantly however we still have money unaccounted for at site".* JS went on to say that after she had made corrections, there was still a cash write off of £782.59 and a bank write off of £33.14. JS asked the claimant "*Before I arrange this cash write off – have you got any previous receipts that have not been claimed for that would equate to the missing amount of money".* The money was written off, and Mr Barham stated the problem was due to poor receipts and record keeping. JS said that she would now be authorizing petty cash claims for the site, and set out a list of checks to be undertaken before a petty cash claim is made. There was significant discussion about when the claimant had access to the safe. Mr Barham said it was an expectation that administrators would reconcile the cash. The claimant's position was that she only had access to the safe in the two weeks prior to her suspension.

27. I find that this is evidence that the respondent was taking steps to support the claimant in her role, and that included petty cash. I find, and the claimant accepted that she was aware of the issues with petty cash; she gave conflicting evidence about when she took over the petty cash. At one point she said she did not take over the petty cash until April 2021, and the issues were linked to those who were previously responsible for the petty cash. She also said that she did not take over the petty cash

until June 2021. The claimant states that she was not involved in handling the petty cash until the last two weeks of her employment before suspension, although she also says that she took over petty cash in April/May under supervision of the deputy manager KA. She blames CSS for not ensuring staff submitted receipts, and for mixing up CFA and petty cash.

28. On 28 May 2021, JS visited the claimant at the site to review the CFA, leading to a number of actions, including for the claimant (pages 72-73). The claimant's joint actions with JS were in relation to receipts relating to a resident X and for the "*Marshlands E-roster template to be updated and set up - All corrections from the attached audit have been made on IP".* Actions for the claimant were "*to assign CFA training modules to all team leaders, to check all bank transactions and add all missing bank transactions to IP under the correct resident – "bank withdrawals".* I find that this site visit was further evidence of the attempts by the respondent to support the claimant with her work, and to help address and resolve the errors and inconsistencies in her work. I find that this is again evidence that the claimant was aware of the respondent's concerns.

29. There were concerns about overspending on staff, and it was discovered that staff hours had been incorrectly inputted 20 times. The errors included incorrect hours processing, incorrect processing of enhancements, and what was described as falsified recording of hours worked. Mr Barham explained that the concerns about falsification of hours were linked to the incorrect logging of information from paper rotas to Eroster. These tasks were all part of the claimant's role. The claimant accepted that she made mistakes on Eroster. One error discovered by the respondent included paying a member of staff £300 instead of £30. On 30 June 2021 CSS raised concerns with regional manager AW about CSS being "*underpaid by over 100 hours at least",* staff being paid for overtime and shifts they have not worked, a member of staff being overpaid by £1000, and "*contract amends"* not being completed for 29 staff (pages 76-77). CSS was concerned that this might be "*bigger than a potential performance issue"* and may be "*potential fraud".* On 2 July 2021 JS emailed SP, sharing CSS's email and referring to a discussion she had had with CSS (page 74-75). JS reported that she and *CSS "agreed it may be worth going back to basics with [the claimant] and starting her induction from scratch, from there we can put [the claimant] on a PIP if necessary"*. JS also referred to what she felt *showed a "poor culture"* at the site. With regard to the claimant and her claims, JS noted CSS's account that the claimant "*sent a text to all the staff team by mistake saying she had completed their training for them",* the claimant "*not recording sickness and absence on the roster (even her own)"* and the claimant "*point blank refuses to have anything to do with the money"*. JS formed the view that the relationship between CSS and the claimant had broken down. JS also formed the view that the claimant's omissions were not deliberate, but a "*process issue"*. SP's view was that one of the issues was "*an admin that doesn't do all admin tasks but other jobs, hence the ongoing issues"* (pages 74).

30. I find that by 2 July 2021 the respondent was very concerned about the claimant's errors and delays with her work. On Monday 5 July 2021 JS

emailed the claimant, telling her about work JS had completed to try to update the CFA, and giving the claimant step by step instructions about how she was to address outstanding issues using a spreadsheet (page 78). JS told the claimant the work was needed by Friday 9 July 2021. On Monday 12 July 2021 JS emailed the claimant asking about her progress with the work on CFA, and the claimant replied to JS the same day saying that she was in the process of collating information (pages 109-110). The claimant asked if JS had been able to complete the Eroster template as the one the claimant was using was slow. On 15 July 2021 JS emailed the claimant again asking if she had completed the CFA spreadsheet (pages 109).

31. The claimant relied heavily on her view that CSS did not support her and did not complete the appropriate financial training. The claimant accepted that she made mistakes in her work, blaming the busy office in which she worked which stopped her being able to concentrate. The claimant accepted that it was her responsibility to log receipts on IP, and that she knew cash and bank money had been written off. The claimant stated that she was unable to follow the steps as she did not have the necessary receipts to process the claims and log them on IP. She said she made errors as staff did not complete timesheets, and CSS did not reinforce the need to do so. The claimant stated that in theory if staff did not provide a timesheet they would not be paid. The claimant accepted that she had "paid" a member of staff overtime for training the staff member had not completed, but said this was because CSS told her she had to. I find that an experienced administrator such as the claimant would know that this was unacceptable. I further note that SP's email dated 11 March 2021 includes proposals to support the claimant with the roster. The claimant accepts that she made errors with financial processing and was behind with her work. She explains that she did not feel supported by CSS, staff were not recording their hours correctly, she did not have access to the safe and did not handle cash.

32. The claimant's argument was that the problems would not have happened if she had had support from management and if CSS had completed the necessary training. The claimant suggested that CSS was dishonest in the way she recorded her own shifts, and used agency staff so that she would not have to work at weekends. The relevant paperwork was not completed, so the claimant did not know who to pay. The claimant states that staff did not complete time sheets, and the staff rota was never correct. It was therefore difficult to complete Eroster, and this caused errors. The claimant wanted to move to a quieter work space, and states that she made errors as she could not concentrate, and due to the lack of evidence of hours recorded, lack of time sheets, lack of receipts, being given incorrect information, and poor management.

33. JS found, and I accept, that there was a poor working relationship between CSS and the claimant. I find that the fact that the claimant was working from home during the first months that CSS was in post may well have contributed to the difficulties, particularly with communication. However, I do not accept the claimant's submissions that CSS was responsible for her own failures and errors at work. I note that the claimant had had difficulties with a previous manager NJ asking her to do

things which were outside her role, and had fallen behind with the CFA during his time in post (page 87). I note that the claimant's own evidence was that she had worked with many managers during her employment with the respondent. I find that whilst the relationship with CSS may have been difficult, in itself this is insufficient to suggest that the respondent was wrong to proceed to a disciplinary hearing in the claimant's case. I find that the respondent took many steps to support the claimant from January 2021 to complete the tasks which were part of her role. I find that the concerns about the claimant's work in fact began to arise before CSS began to work for the respondent. I find that the claimant an experienced administrator who was very familiar with the respondent and its ways of working given the length of her employment and the time she had spent in the role of administrator. I find that the claimant will have known what steps to take should she be having difficulties, and that she did not take them. I cannot accept her submission that the claimant's errors and failures to complete her tasks were due to CSS' acts or omissions

34. Given the nature and number of emails from the respondent to the claimant between January and July 2021, and also the support provided (including in person support), as well as the claimant's responses to the respondent's emails, I find that the claimant was fully aware that the respondent was concerned about the financial processing at the site in so far as it related to her tasks. The claimant accepted that she was behind with her work and had made mistakes. I find that the financial processing was part of her role as administrator, a role she had been in since 2015. I find that the claimant was aware of a number of concerns related to her role prior to the investigation and disciplinary hearing. She was aware of the issues with the CFA backlog, and had been in discussion with JS about how to reduce it. I find that the claimant was also aware of the need to write off monies due to failure to keep proper records. In her witness statement she refers to staff not providing receipts (paragraphs 11, 26). She was fully aware of the errors in recording hours worked and staff payments as she gives explanations for how these happened (for example paragraphs 29, 31, 34, 40, 47, 48, 52, 60, 64 of her witness statement).

35. I also find that the respondent was making significant efforts to support the claimant to address the issues. I find, and the claimant accepts, that the claimant had the necessary training and skills to perform her tasks. I note and accept JS' view that the claimant's actions and omissions were not deliberate in terms of any attempts by the claimant to benefit personally or to enable colleagues to so benefit. There was discussion about the potential allegation of fraud and theft of cash. Mr Barham stated that the claimant would have become aware of the allegation of theft of cash during the fact-finding meeting. In the event, no allegation of theft was pursued, and no such allegation was relied on in the decision to dismiss.

36. In terms of the argument that the claimant could not work on the CFA whilst working from home, Ms Priestley said that she would expect an administrator to contact the service to enable her to receive the information she needed to do the job. She disagreed that confidentiality reasons meant that it was not possible to work on the CFA from home, stating that in her service the administrator worked on CFA whilst not working on the site. If a staff member feels that they are not being listened

to by their manager, as the claimant submits was the case with CSS, there are processes whereby the staff member can go to the operations manager. The claimant also had a support network of JS and SP, who she could call anytime if she has having trouble; they could take over her laptop or computer to log in and support her from a distance if needed. Both JS and SP were experienced regional administrators who knew the job far better than CSS. Ms Priestley said that the claimant had had ongoing support for 4 years.

37. At some point in July 2021 the respondent decided to take further action. Mr Barham carried out an initial review, and believed that given that the claimant was an experienced administrator, there were too many errors given her knowledge of the system. He decided that there needed to be an investigation, and he met with the claimant on 15 July 2021 and suspended her on full pay. The claimant was offered an alternative role as a support worker at a different site during suspension, which she declined.

Meeting on 15 July 2021

38. The claimant complained that she was not allowed to be accompanied at the meeting on 15 July 2021. The respondent's disciplinary policy is silent about any right to be accompanied at any investigatory meeting prior to a disciplinary hearing, at which there is a right to be accompanied (paragraphs 6.1 and 6.3 at pages 42-43). The ACAS Code of Practice at paragraph 7 states that "*although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right may be allowed under an employer's own procedure"*. Given this, I find that it was at the respondent's discretion whether to allow the claimant to be accompanied on 15 July 2021.

Length of suspension

39. The claimant states that suspension was unnecessary, and too long. The respondent's disciplinary policy provides at paragraph 3.1 (page 41) that an employee may be suspended "*prior to and during investigations"* where there is "*a potential risk to colleagues, service users, or to the business"*. Paragraph 3.2 states that suspension will be "*no longer than necessary to investigate the allegations of misconduct"* … or for "*so long as is otherwise reasonable while any disciplinary procedure against the colleague is outstanding".* Given that the claimant's role involved dealing with financial matters related to both colleagues and potentially vulnerable service users, the respondent submits that it was necessary to suspend her to protect colleagues, service users, and also the claimant herself. The claimant accepted that if she had not been suspended she would have had access to the petty cash, and she also accepted that it would not have been appropriate for her to remain on the site during the investigation. I accept the respondent's evidence that given the nature of the claimant's role, which involves financial matters linked to both staff and clients, as well as the need to protect the claimant from further allegations, it was necessary to suspend her during the investigation and disciplinary process, and I find that suspension was therefore necessary.

40. The respondent's disciplinary policy (page 42) states at paragraph 5.2 that "*the investigating manager will take steps to ensure that the allegations are investigated as soon as reasonably practicable, taking into account the availability of witnesses, evidence".* The claimant was unable to say why the suspension was too long and did not highlight any particular aspects of delay. The disciplinary process took just over 6 weeks, which would appear to be entirely reasonable given the need for interviews and investigations, the financially sensitive nature of the allegations, and the involvement of persons not working at Peacock House, as well as the fact the process took place during the summer where absence on annual leave might anticipated. The claimant did not suggest how the process might have been speeded up or why she felt it had taken too long.

Claimant's knowledge of the allegations

41. The claimant's position at the time of her claim was that she did not receive any written details of the allegations against her before the disciplinary hearing (paragraph 8, page 14a) or by the time of the outcome of her appeal (paragraph 12, page 15). She claimed that no allegations were put to her during the disciplinary hearing (paragraph 9, page 14a). She claims that she did not receive the Management Report dated 4 August 2021 (pages 85-93) until she received the hearing bundle.

42. Paragraph 3.1 of the disciplinary policy provides that employees will usually be suspended on "*full basic pay"* (page 41) and that "*the reasons for the suspension will be explained and confirmed in writing.* Mr Barham states that on 15 July 2021 he explained that there were concerns about how the claimant was logging information on Eroster and processing the CFA, and that she would be invited to a fact-finding meeting (page 166). Mr Barham wrote to the claimant on 19 July 2021 (pages 83-84) to confirm the suspension, noting that it was to enable an investigation of the "*allegations of incorrect financial processing and potential fraud"*. I find that the claimant was provided with the reason for her suspension in the meeting on 15 July 2021 and the letter dated 19 July 2021.

43. Paragraph 6 of the disciplinary policy (page 42) deals with the disciplinary procedure. Paragraph 6.1 states that *If it is decided that a formal disciplinary hearing is appropriate, a letter will be sent/given to the colleague setting out the allegations and confirming that the matter is being referred to a disciplinary hearing. Alongside this letter, a copy of any investigation summary notes, witness statements or additional documentation referred to in the management case which may be presented at the disciplinary hearing should be provided to the colleague, where appropriate.* A minimum of 48 hours' notice should be given for the disciplinary hearing.

44. The claimant accepted that she knew the general nature of the allegations from the suspension letter dated 19 July 2021. She also accepted that the purpose of the fact-finding meeting was to find facts on which any allegations might be based, and that she knew that she was under investigation due to the allegations of incorrect financial processing and potential fraud.

45. The claimant was invited to a fact-finding meeting on 29 July 2021. Mr Barham was unclear whether he set out the details of the allegations to the claimant at the start of the meeting on 29 July 2021. There is no reference to him doing so in the note of the meeting (pages 86-94). Whilst I find that it is likely that Mr Barham will have had the specific information he discovered during his investigation in mind when holding the fact-finding meeting with the claimant, I find that there is no requirement in the disciplinary policy that the claimant should be given full details of the allegations before the fact-finding meeting. The policy anticipates that the claimant's answers to Mr Barham's questions may have led him to conclude that no further action was needed. I find that the fact-finding meeting was conducted in accordance with the respondent's disciplinary policy, and that there was no requirement for the claimant to be given specific details of the allegations at that meeting, and indeed that this may not have been possible at the time of the meeting. I find no evidence that Mr Barham's investigation was biased, and the claimant has not provided any specific evidence to support that claim. I also note that after the fact finding meeting, Mr Barham held interviews with AW, CSS, and JS.

46. I find that the note of the fact-finding meeting was sent to the claimant. She provided comments on the note on 2 August 2021, raising concerns that Mr Barham did not provide specific details of the allegations in the fact-finding meeting, that the investigation was biased, and she had not been paid for her *overtime* whilst suspended (page 97). During the fact-finding meeting, time sheets and recording was discussed, as was petty cash.

47. The claimant's email dated 2 August 2021 (page 97) commenting on the notes of the meeting would suggest that he did not explain the allegations at the meeting. I find on balance that Mr Bahram did not set out the detail of the allegations against the claimant at the meeting. This is because to have done so would not then tally with his evidence that the fact-finding meeting was held to identify the detailed nature of the allegations. However, I find that the claimant was aware of the reasons for the fact-finding meeting (allegations of incorrect financial processing and potential fraud). I find that the claimant will have been aware that the purpose of the meeting was to find information in relation to those allegations, and that the topics discussed during the meeting will have related to those allegations. I do not find that this failure to set out the details of the allegations at the fact-finding meeting was a procedural failing, given Mr Barham's explanation that the purpose of the fact-finding meeting was to ascertain the facts which led to the allegations, and which would then lead to a decision on what action to take. I find that at the time of the fact-finding meeting, he did not have all the facts necessary to form the specifics of the allegations. I also find that nevertheless, he did discuss the claimant's work with her, the problems of which the claimant accepts she was aware, her errors, and her difficulties in performing her role.

48. Mr Barham prepared a Management Report dated 4 August 2021 (pages 85-93), setting out the allegations against the claimant and his findings. The Management Report provides specific details of the allegations against the claimant, listing them as

   a. *Inconsistency of processing CFA*

b. *Requesting additional top ups above impressed amount of £1000 each time*
c. *Receipts missing/unaccounted for for CFA spends*
d. *Incorrect hours processed on Eroster*
e. *Exceptions incorrectly processed*
f. *Enhancements incorrectly processed/claimed*
g. *Falsifying documents for times worked and adding these to eroster, generating payment for these.*

49. The claimant states that she was not given any paperwork prior to the disciplinary hearing. The claimant maintained in evidence that she did not receive a copy of the Management Report. She also said that she did not recall whether she received a copy of the disciplinary policy before the disciplinary hearing. On 19 August 2021, the claimant emailed MA, who was to chair the disciplinary hearing, expressing concern that she did not know the allegations against her and had not been provided with any documentation. The claimant cited the ACAS Code of Practice in her email. She states *"I can not go to the meeting until I am provided with the relevant paperwork"* (page 126). This email appears to have been sent before the letter dated 20 August 2021 inviting the claimant to the disciplinary hearing. In an email dated 23 August 2021 (page 131), the claimant refers to "*the documents you have sent me".* Clearly the claimant did receive documents prior to the disciplinary hearing, contrary to her own repeated evidence that she did not. Her concern in that email appears to relate to a lack of provision of signed witness statements.

50. In evidence, the claimant denied receiving the fact-finding meeting report, saying she only saw it when she received the bundle. I do not accept this submission, given her email in particular dated 23 August 2021 (page 131). I cannot how see how she can have made the points that she did about not having written statements from the respondent's witnesses without having read the notes of the meetings. She said in evidence that she had wanted CSS to be at the disciplinary hearing so that she "*could question her [CSS] about incorrect statements".* During questioning the claimant then accepted that she had seen "*statements"* from CSS, AW, and JS. I have taken this as meaning that the claimant accepted that she had the notes of Mr Barham's interviews with those three people (pages 97-100). She also then accepted that she had the minutes of Mr Barham's fact-finding meeting with herself.

51. I have considered these inconsistences, including in terms of the impact of giving evidence during a hearing. However, a central pillar of the claimant's case has always been that she did not receive written documents from the respondent despite making repeated requests. She has been legally assisted since making her claim. On this basis, I find that the claimant will have been particularly focused in preparing for her claim and this hearing on which documents she had and had not received. Given this and her inconsistency, I do not accept the claimant's evidence about not receiving documents from the respondent. I find that she had seen the minutes of the fact-finding given her comments on 2 August 2021. I find that she saw the notes of the interviews.

52. The claimant's evidence was that she only received a copy of the Management Report when she received the bundle. She also said she had not received the minutes of Mr Barham's interviews with staff before the disciplinary hearing. The respondent states that the Management Report by Mr Barham was provided to the claimant. However, in evidence the claimant said firstly that Ms Priestley read out the Management Report to her during the appeal hearing. When asked further, the claimant said that the Management Report was read out to her either by MA during the disciplinary hearing or by Ms Priestley at the appeal hearing. She then said that MA read the Management Report to her in the disciplinary hearing, referring to MA reading out the matters which were set out in the dismissal letter. The claimant accepted in evidence that the seven allegations in the letter dated 31 August 2021 (pages 143-147) providing the outcome of the disciplinary hearing were the same as the seven allegations set out in the Management Report.

53. The claimant's own evidence to the Tribunal about the documents she had and had not received was inconsistent. She started from a position of denying she had any documentation prior to the Tribunal hearing, to then accepting that she had received copies of the fact-finding meeting minutes, and Mr Barham's interviews with staff. She also accepted that the Management Report had been read to her by MA at the disciplinary hearing. I am concerned by the way that the claimant gradually eroded her initial clear and strongly affirmed position that she was provided with no documentation prior to the disciplinary hearing. For that reason, given the totality of the evidence before me and the claimant's inconsistencies in her evidence, on the balance of probabilities I find that the claimant was provided with the relevant documentation prior to the disciplinary hearing.

54. Given her statements, I find that if the claimant had not had the necessary document, she would not have proceeded with the disciplinary hearing. I find that she would have objected strongly if she did not have all the documentation. I also find that the claimant would have objected if she had not been permitted to call witnesses whom she wished to call at the hearing. There is no record of any such objections being made by the claimant at the disciplinary hearing.

<u>Grievance and disciplinary hearing</u>

55. The claimant raised a grievance on 17 August 2021 about the time she had been suspended, concerns her line manager said she was no longer employed by the respondent, and non-payment of the disputed 10 hours. The grievance was heard concurrently with the disciplinary process. On 10 September 2021 it was decided that the claimant's grievance was without merit (pages 122-123). I note that the claimant did not provide MA with information in support of grievances.

56. The letter from MA inviting the claimant to a disciplinary hearing is dated 20 August 2021. The hearing was to take place remotely on 24 August 2021. MA's letter describes the purpose of the disciplinary hearing as "*to discuss and review the fact-finding information concerning your role as administrator, Fact Finding meeting held 29.07.2021* and *Contracted duties of the Administrator Eroster, Petty Cash, CFA, recording of agency*

hours, staff overtime hours". The letter indicated that the respondent viewed the matters as potentially gross misconduct. The letter also refers to the documents to be used in the hearing being enclosed (pages 128-129).

57. On 20 August 2021 the claimant emailed MA, complaining that she was unable to prepare for the hearing as she had no documents, and that it was unfair as she does not know the allegations against her (page 127). On 23 August 2021 (page 131) the claimant emailed MA, indicating that her representative was not available. She also complained that CSS would not be a witness for the hearing, and that she only had "*the minutes from a fact-finding meeting and not statement signed by the individuals… I am still unclear what it is that you are accusing me of. Your letter dated 20th of August is not clear as to what the allegations are. It is far too vague…".*

58. On 26 August 2021 the disciplinary hearing was held remotely. The claimant states that she was not provided with any documents and was not allowed to call witnesses. Clearly it is not the case that she had no documents as she states in her email dated 23 August 2021 that she had the fact-finding meeting minutes, and she has accepted in evidence that she had the minutes and the notes of the 3 meetings.

59. I find that the claimant could have called witnesses if she had wished; MA's letter asks the claimant to contact her if there is any employee the claimant believes could assist in preparing an explanation for the allegations, "*in order that arrangements can be made for them to be available for interview"*. I find that the claimant could have sought to call witnesses if she had so wished. The disciplinary policy, paragraph 6.2.1, provides that employees should give notice of any proposed witnesses 24 hours before the hearing, and that it is ultimately the hearing chair's decision as to whether the witness will be called. The claimant provided four witness statements for the disciplinary hearing. The claimant did not provide any evidence of requests made to call witnesses which were then refused.

Appeal

60. The claimant appealed against her dismissal on 3 September 2021 (pages 143-150). Ms Priestley heard the appeal. The claimant appealed on the basis that she was not clear why she was suspended, that CSS told staff she had been dismissed before the disciplinary hearing, that she was being held responsible for CSS' shortcomings, that the decision to dismiss her was pre-determined, that the investigation was flawed as her witnesses were not interviewed, that she did not have the opportunity to present or question witnesses, and that she only knew the details of the allegations in the dismissal letter. On 9 September 2021 she added the ground that the appeal was pre-determined as her job was already being advertised (page 153).

61. The appeal was heard on 22 September 2021. The claimant was accompanied by a colleague ST. The claimant submits that ST was told that he could not speak on her behalf at the appeal. Ms Priestley

disagreed, and said that she explained ST could call an adjournment, ask questions on the claimant's behalf, or interject. She said that she told the claimant that ST could not answer questions on her behalf. Ms Priestley said that ST had technical issues, and that she asked the claimant a couple of times whether she wanted to adjourn. Ms Priestley considered that there was possibly a misunderstanding about ST's role. I find that this is what happened. I find it highly unlikely that Ms Priestley told the claimant and ST that he could not speak at all during the appeal hearing. The disciplinary policy at paragraph 6.3.4 is clear about the role of the companion, and Ms Priestley's evidence was that she explained the scope of ST's role at the appeal hearing. I find that there was a misunderstanding by the claimant about what ST could do. I find it surprising that the claimant did not ask Ms Priestley why ST was at the hearing if Ms Priestley had said that he was not allowed to speak at all.

62. With regard to the administrator role being advertised on 8 September 2021 after the disciplinary hearing was concluded and before the appeal hearing had been held, Ms Priestley accepted that it was advertised, explaining that this sometimes happened where a role is vital to the running of the service. Ms Priestley said that no interviews were booked whilst the appeal was ongoing, and it was possible to take down the advertisement at any time, presumably if the appeal was upheld. Ms Priestley said that she was satisfied that no interviews had been booked or held during the appeal. In the absence of any evidence to the contrary, I accept her evidence on this point. I find that whilst the claimant's role was advertised on 8 September 2021, the respondent did not arrange or hold any interviews whilst the appeal was ongoing. I do not find that the advertising of the claimant's role was evidence that the outcome of the disciplinary process was pre-determined.

63. The claimant states that a colleague told her that staff were told she had left the respondent prior to the finalization of the appeal process. The respondent denies this. Ms Priestley said that as part of the appeal process she had spoken to the deputy manager KA as CSS was away; the deputy manager said that staff had asked about the claimant, but that the service did not say why she was absent. Ms Priestley said that staff were not to be told until the process was finalized; normal policy was not to say why an employee had left the respondent. Given this, and in the absence of any clear evidence to the contrary, on balance I find that the respondent did not tell staff at the site that the claimant had been dismissed before the outcome of the appeal was finalized.

64. Ms Priestley accepted that she was provided with the supporting statements provided by the claimant's colleagues, and explained that she considered that they were *testimonies* which the claimant had asked her colleagues to write. She considered that the testimonies had been obtained by the claimant in breach of the terms of her suspension. The suspension letter (pages 83-84) provided that "*During the course of your suspension you are instructed not to contact or to attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or client of the company. However, should you wish to contact any employee who you feel could assist you in preparing an explanation for the allegations made against you, then*

please contact me in order that arrangements can be made for them to be available for interview". The claimant did not make any such requests. Ms Priestley believed that the claimant had contacted staff directly for their supporting statements, and she therefore decided not to interview those members of staff.

65. The claimant's case was that she did not contact any of the individuals who provided testimonies. The claimant stated that the four statements were unsolicited by her, and sent to her by the authors. When she received them, she printed them and sent them to MA. She said that there was talk amongst staff that she had been suspended and why. When asked how she knew this if she was not meant to speak to colleagues whilst suspended, the claimant said that she had met a colleague in town by chance who said he was sorry the claimant had left the respondent, and that CSS had told everyone that the claimant had left. She said in evidence that *everyone knew the CFA and petty cash was in a mess. I was always asking for receipts or looking for them.* When asked how the colleagues were able to comment specifically about the allegations against her if she herself did not know the allegations, the claimant said that her colleagues knew how bad the process was and that she had no support from CSS.

66. I find that on the balance of probabilities the statements were solicited by the claimant. The statements are dated 19 August, 22 August and two on 23 August 2021. One author stated *I have been requested to write a statement in regard to disciplinary proceedings relating to [the claimant] administrator.* I find on the balance of probabilities that it was the claimant who asked for the statement, as it is difficult to see who else might have done so or been aware of the disciplinary proceedings. I note that the statements all refer to the problems with CFA and petty cash, one also referring to problems with *hours*. The authors state that the claimant did not have access to cash or the safe. They refer to poor systems, poor record keeping, and lack of managerial oversight. I find that on balance it is highly unlikely that four colleagues would have submitted unsolicited statements in support of the claimant within the space of 5 days, and all just before the disciplinary hearing, all addressing similar issues.

67. Ms Priestley wrote to the claimant to confirm the decision not to allow her appeal against her dismissal on 28 September 2021 (pages 154-157), although she did uphold parts of the appeal. I note that as part of her consideration of the appeal, Ms Priestley spoke to JS, SP, KA, and MA (pages 155-156).

<u>Unauthorised deductions</u>

68. Paragraph 3.1 of the disciplinary policy provides that employees will usually be suspended on "*full basic pay"* (page 41) and that "*the reasons for the suspension will be explained and confirmed in writing".*

69. I was provided with a number of payslips on the day of the hearing, dating back to 2017. There appeared to be no consistency in the way that the claimant's pay was described on the payslips, and I was not directed to any helpful explanation. Sometimes there are references to: *"WD basic*

and also to overtime"; sometimes "*WD basic, 2nd job basic and 2nd job overtime"*; sometimes only WD basic is referenced; sometimes only WD basic and 2nd job basic; sometimes WD basic is referenced twice with different payments and no reference to overtime; some payments refer only to WD basic with no mention of overtime. I note that the references to 2nd job only appear on 3 of the payslips provided to me, from 8/2020, 12/2020, and 1/2021 (1/2021 also includes the only reference to 3rd job).

70. The claimant's case is that the disputed 10 hours a week were performed under a separate contract, and were not overtime. The claimant submits that she worked two hours in the morning as a support worker prior to starting her role as an administrator. She also said that she might do some work as an administrator during that time, for example if staff rang in sick and cover was needed. She said that if support staff cover was needed when she was working as an administrator she would go and help. The claimant submits that the disputed 10 hours were part of her expected pay, and therefore properly payable. It is agreed that the claimant did not work the disputed 10 hours during her suspension.

71. In her witness statement, at paragraph 80, the claimant describes the disputed 10 hours as *overtime* payments. In the fact-finding interview, she describes the disputed 10 hours as *overtime payments* (page ???). In evidence the claimant submitted that where 2nd job is not referenced in the payslips, the 10 hours may have been included in a payment for overtime. The claimant said that the 3rd job referred to a one-off payment of 20 hours at deputy manager's rate.

72. The respondent submits that the claimant was in a casual position with regard to the support worker role, to which the disciplinary policy does not apply (paragraph 1.1 page 40). There is an unsigned bank worker contract in the bundle (pages 48-51), and the respondent submits that the claimant was working as a bank worker under similar terms for the disputed 10 hours. This contract provides that bank worker hours are not guaranteed, and offered at the respondent's sole discretion (clauses 1 and 2, page 50). The respondent submits that during her suspension, the claimant was not entitled to be offered any such working hours, nor obliged to accept any such hours offered, and no such hours were offered. Referring to the disputed 10 hours, Mr Barham said in evidence that the claimant's shifts were on Eroster as overtime in the mornings.

73. It was submitted that the claimant was suspended with regard to two contracts, the contract for the administrator, and the alleged contract as a support worker. I cannot accept this submission. There is no reference anywhere in the documentation to the claimant being suspended as a support worker. I find that there is no evidence that the claimant was working pursuant to a separate contract of employment which entitled her to be paid for the disputed 10 hours during her suspension. I find that the disputed 10 hours were seen by the claimant herself as overtime, and described as such by the respondent. I find the payslips do not give any assistance to support her claim that she had a second contract of employment for the disputed 10 hours. I find that the claimant worked the disputed 10 hours when the respondent required her to do so as part of what might be described as bank working. I find that the respondent's

disciplinary policy did not provide that she should be paid for any bank work whilst suspended.

Relevant law

74. Section 94 ERA confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under Section 111 ERA. The claimant must show that she was dismissed by the respondent under Section 95; in this case the respondent accepts that it dismissed the claimant on 1 September 2021.

75. Section 98 ERA deals with the fairness of dismissals. There are two stages within Section 98. First, Section 98(1) provides that the employer must show that it had a potentially fair reason for the dismissal within section 98(2) or some other substantial reason. Second, if the employer shows that it had a potentially fair reason for the dismissal under Section 98(2), the Tribunal must consider, without there being any burden of proof on either party, whether the employer acted fairly or unfairly in dismissing for that reason.

76. In this case the respondent submits that it dismissed the claimant because it believed she was guilty of misconduct. Misconduct is a potentially fair reason for dismissal under Section 98(2)(b) ERA.

77. If the employer satisfies the requirements of Section 98(1), Section 98(4) ERA then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend (Section 98(4)(a) ERA 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 (Section 98(4)(b) ERA) shall be determined in accordance with equity and the substantial merits of the case.

78. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within Section 98(4) ERA in the decisions in *Burchell 1978 IRLR 379* and *Post Office v Foley 2000 IRLR 827*. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (*Iceland Frozen Foods Limited v Jones 1982 IRLR 439, Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23*, and *London Ambulance Service NHS Trust v Small 2009 IRLR 563).*

79. Section 13(1) ERA confers on employees the right not to have sums unlawfully deducted from their wages. Section 27(1) ERA defines wages as *any sums payable to the worker in connection with his employment*. The issue in this case is the question of what wages are *properly payable* to the claimant. If what was paid by the employer to the worker on the relevant occasion was less than the amount properly payable (applying common law and contractual principles), then there has been a deduction for the purposes of Section 13(3) ERA. It is well established by *New Century Cleaning Co Ltd v Church 2000 IRLR 27, CA* that for a sum to be properly payable, there must be some legal entitlement to that sum.

80. Relevant to this particular case is the decision in *Agbeze v Barnet, Enfield and Haringey Mental Health NHS Trust 2022 IRLR 115, EAT*, where a healthcare worker with a zero-hours contract who provided his services as a 'bank worker' had no right to be paid during a disciplinary suspension. Under the express terms of his contract, the Trust was not obliged to offer him any work and he was not obliged to accept any assignment offered to him.

81. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the Order) gave employment tribunals the power to deal with breach of contract claims. Jurisdiction under the Order is limited to breaches of contract outstanding on the termination of employment.

Conclusions – application of law to the facts

Potentially fair reason/genuine belief

82. I find that the respondent in this case had a potentially fair reason for dismissal in accordance with Section 98(2) ERA. That reason was the claimant's misconduct. I found no evidence that there was any other reason for dismissal, despite the claimant's belief that the decision was pre-determined; I find no evidence to support that claim (paragraph 62 above). I find that over a period of at least 6 months and at least from January to July 2021, the respondent had increasing concerns about the claimant's conduct related to her role as administrator, one she had performed since 2015 (paragraphs 19, 30, and 35 above). I find, and the claimant accepts that she was fully trained and experienced in the role of administrator (paragraphs 18 and 33 above). I find that the respondent took extensive steps to support the claimant to carry out her role (paragraphs 21, 25, 27, 28, and 35 above), but she continued to make errors and not to perform her assigned tasks. I find that the claimant was aware of the respondent's concerns about her conduct (paragraphs 22, 25, 27, 28, and 34 above) and note that she accepts that she made mistakes and was not performing her tasks as administrator (paragraphs 24, 29, and 31 above). I do not accept the claimant's explanations that others were responsible for those mistakes and failures to perform her tasks as administrator (paragraph 33 above).

83. I find that the respondent, in the persons of MA and Ms Priestley, held a genuine belief that the claimant was guilty of misconduct, and that the relevant misconduct fell within the scope of the respondent's permissible reasons for dismissal. The written and oral evidence was clear about why

they dismissed, and included repeated references to the respondent's disciplinary policy. I find that they formed the genuine belief that the claimant breached the respondent's disciplinary policy by inconsistent processing of CFA; requesting additional financial top ups above the impressed amount of £1000; incorrectly processing hours worked on Eroster; incorrectly processing exceptions; incorrectly processing/claiming enhancements; and falsifying documents for times worked and adding these to Eroster generating payment for these times/hours. I find that the respondent's disciplinary policy (paragraph 7.1 pages 44-45) entitled it to dismiss the claimant for those reasons.

84. The dismissal and appeal letters were clear in setting out the reasons for the claimant's dismissal and its belief that she was guilty of misconduct and also the policies she had breached (page 145).

Reasonable grounds for belief

85. I find that the genuine belief that the claimant was guilty of misconduct was formed by the respondent after a detailed investigation, and two hearings. The claimant admits that she was making errors in her work and was not performing her allotted tasks as administrator (paragraphs 24, 29, and 31 above). Prior to forming its belief, I find that the respondent had taken extensive steps to support the claimant to perform her role as an administrator (paragraphs 21, 25, 27, 28, and 35 above). I find that the claimant was aware of the respondent's concerns about her performance of her role as administrator before the respondent decided to take disciplinary action (paragraphs 22, 25, 27, 28, and 34 above).

Reasonable investigation

86. The claimant contends that the respondent did not carry out a reasonable investigation Her claims include that she did not know the detail of the allegations against her before she received the dismissal letter, that she was not allowed to call witnesses at the disciplinary hearing, that her witnesses' evidence was not taken into account, that no allegations were put to her during the disciplinary hearing, that her representative was not allowed to speak at the appeal hearing, that the outcome of the investigation was pre-determined, and the period of her suspension was unnecessary and/or too long. The respondent contends that its investigation was reasonable.

87. I find that the respondent's policy not to provide a right to be accompanied at investigatory meetings is within the band of reasonable responses (paragraph 38 above).

88. I find that the respondent formed its genuine belief that the claimant was guilty of misconduct after carrying out a reasonable investigation. In reaching this finding, I find that suspension was within the band of reasonable responses for the respondent, given the nature of the claimant' role which included dealing with financial matters related to colleagues and service users (paragraph 39 above). Given the nature of the investigations carried out by Mr Barham, the time to produce and consider the Management Report, appoint appropriate staff to conduct the

disciplinary hearing, and in the absence of any clear evidence as to why the claimant submitted it was too long or how it should have been carried out more quickly, I do not find that the suspension was too long, and find that the length of the suspension was within the band of reasonable responses (paragraph 40 above).

89. I find that the claimant knew the general nature of the allegations from the suspension letter (paragraphs 43 and 44 above) and that she was told why she was suspended in the meeting on 15 July 2021 as well as in the suspension letter (paragraph 42 above). I find that the respondent's procedure, in terms of the fact-finding meeting, was within the band of reasonable responses (paragraph 45 above). Mr Barham did not set out in in specific detail the respondent's concerns at that meeting, because at that point he was still gathering information (paragraphs 45 and 47 above). I also find that, given the respondent's contact with the claimant between January and July 2021, the claimant was aware that the respondent had concerns in relation to her performance of her tasks as administrator, in particular regarding CFA, Eroster, and petty cash.

90. I find that the claimant was aware of the details of the allegations against her before she received the dismissal letter. In reaching this finding, I note that the claimant has provided conflicting accounts of the information provided to her by the respondent about the detail of the allegations against her. Her original account was that the respondent did not provide her with any documentation prior to the dismissal letter (paragraph 49 above). She denied and then accepted that she had received the notes of the fact-finding meeting (paragraphs 46 and 50 above). She denied (paragraph 52 above) and then accepted she had received Mr Barham's notes of his interviews with witnesses (paragraph 50 above). I find that she received both (paragraph 51 above). She denied that she had received the Management Report, stating that she only received it when she received the hearing bundle, and could not recall if she had received the disciplinary policy (paragraphs 49 and 52 above). I find that the claimant's evidence about when she received and her knowledge of the Management Report is inconsistent. From a starting point that she had not received it, she then said that it was read out to her, firstly in the appeal hearing but finally she said that it was read out to her in the disciplinary hearing (paragraph 52 above). I find therefore that the claimant would have been aware by the disciplinary hearing at the latest of the specific details of the allegations against her (paragraph 52 above) and that the allegations were therefore put to her at the disciplinary hearing. Given her inconsistencies as well as her repeated contact with the respondent prior to the disciplinary hearing between 19 and 23 August 2021, I find on the balance of probabilities, that the respondent did provide her with the relevant documentation before the disciplinary hearing (paragraphs 53 and 54 above) and that there was no related procedural unfairness by the respondent.

91. I find that the claimant could have asked to call witnesses at the disciplinary hearing if she had so wished (paragraph 59 above). I find that the respondent had informed the claimant of the relevant procedure, and that the claimant made no such requests, and that the disciplinary policy sets out that procedure (paragraph 59 above). I find no evidence that the

claimant made any requests to call witnesses which were then refused. I find no evidence of any related procedural unfairness by the respondent and I find that the respondent's related process is within the range of reasonable responses.

92. Whilst I find that the respondent did not take the statements provided by the claimant's witnesses into account at the disciplinary or the appeal hearings, I find that this decision by the respondent was within the band of reasonable responses. In reaching this view, I find that the claimant had breached the terms of her suspension by soliciting the witness statements (paragraphs 64-66 above). I therefore find that the respondent's decision to treat the statements as testimonials was within the range of reasonable responses (paragraph 64 above).

93. I do not accept that Ms Priestley told the claimant that her representative could not speak during the appeal hearing (paragraph 61 above), and I therefore find that there was no related procedural unfairness.

94. I do not find that there is evidence to support the claim that the outcome of the disciplinary process was pre-determined (paragraphs 62 and 63 above). I find that there was no related procedural unfairness.

95. I find that dismissal was within the band of reasonable responses for the respondent. The respondent genuinely believed that the claimant was guilty of gross misconduct, and it formed that genuine belief after carrying out a reasonable investigation.

Breach of contract

96. Given my finding that the claim for unfair dismissal is not well founded and fails, I find that the respondent was entitled to dismiss the claimant without notice due to its belief that she was guilty of gross misconduct in accordance with paragraphs 6.4.4 and 7.1 of its disciplinary policy (pages 44 and 45).

Unauthorised deductions

97. I do not find that the amounts claimed for the disputed 10 hours were properly payable by the respondent to the claimant, as required under Sections 13(3). I find no evidence that the claimant was legally entitled to be paid for the disputed 10 hours during her suspension. The claimant has not proven that she was employed under a separate contract which entitled her to be paid for the disputed 10 hours whilst she was suspended (paragraph 73 above).

Employment Judge **Swaffer**

1 March 2023