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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105422/2023

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**Held in Edinburgh Tribunal by CVP on 26-28 February 2024
and 12 March 2024**

Employment Judge Murphy

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Ms G Coupland

**Claimant
Represented by
Ms M Douglas –
Solicitor**

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Pebbles Care Ltd

**Respondent
Represented by
Mr A Sutherland -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant's claim of unfair dismissal does not succeed and is dismissed.

REASONS

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Introduction

1. A final hearing took place at the Edinburgh Tribunal by Cloud Video Conferencing.
2. An order was made on 27 January 2024 under Rule 50(3)(b) of the ET Rules 2013 to prevent disclosure of the identities of two young people E.T. Z4 (WR)

residing at a home run by the respondent where the claimant worked which is referred to in the Judgment as House X in accordance with the Order.

3. R led evidence from Maureen Cassidy, Senior Area Manager and Investigating Officer, and Mark Williams, Director of Operations and Dismissing Officer. On 28 February, Mr Sutherland mooted a provisional application to call J McLeish, R’s Appeal Manager, at any subsequent diet in the event the case went part heard (which it did). However, Ms Douglas clarified that the claimant takes no issue with the appeal process other than to dispute the fairness of the outcome. Based on this clarification, Mr Sutherland confirmed he did not insist on such application. The claimant gave evidence on her own behalf and led evidence from Kelsie Brown, Deputy Care Manager. Evidence was taken orally from the witnesses. The Tribunal was referred during the evidence to a joint set of productions running to approximately 530 pages. I was not referred to all documents in the file.
4. The following abbreviations are used in the judgment for witnesses and others referred to in the evidence and findings in fact.

The claimant, Registered Manager of House X	C
The respondent	R
Child A, young person residing at House X in R’s care (as per the R50 Order)	A
Child B, young person residing at House X in R’s care (as per the R50 Order)	B
Anita Hogg, Registered Child Care Worker (RCCW) at House X	AH
Ann Moffat, Compliance Officer and former Registered Manager	AM

of home(s) run by R (not House X)	
Annette Steedman, Area Manager and C's line manager	AS
Carol Vos, RCCW at House X	CV
Debbie Beck, RCCW at House X	DB
Eilidh Thin Smith, RCCW at House X	ETS
Gemma Turnbull, RCCW at House X	GT
Joanne Glen, HRBP who attended investigation meetings and disciplinary hearing	JG
Jo-Anne McCulloch, registered manager of Murraythwaite - another Home run by R (Registered Manager there since 2011; never Registered Manager at House X)	JMcC
Julie McLeish, Commercial Director and Appeal Manager	JMcL
Joe Smith, Depute Manager at Murraythwaite (another Home run by R) and appointed as Registered Manager of House X following's C's dismissal	JS
Kelsie Brown, Depute Manager at House X at the material times	KB

Katrina Murray, RCCW at House X	KM
Maureen Cassidy, Senior Area Manager and Investigating Officer	MC
Mark Williams, Director of Operations and Dismissing Officer	MW
Scott Glendinning, RCCW at House X	SG
Terry Grainger, RCCW at House X	TG

Issues to be determined

5. During the preliminary discussion on 26 February 2024, I identified the issues of liability to be determined in the case and set them out to the parties as indicated in the following paragraphs. The parties agreed with this characterization of the issues at the time of that discussion, and I therefore faithfully record the issues as then identified. They were as follows:

a. R admits dismissing C with effect from 11 May 2023. What was the reason or principal reason for C's dismissal? R says the reason was conduct.

b. Was the dismissal of C for the potentially fair reason of conduct?

c. If the reason was misconduct, did R act reasonably in all the circumstances in treating that as a sufficient reason to dismiss C? The Tribunal will usually decide, in particular, whether:

i. there were reasonable grounds for that belief;

- ii. at the time the belief was formed, R had carried out a reasonable investigation;
 - iii. R otherwise acted in a procedurally fair manner;
 - iv. dismissal was in the range of reasonable responses.
- 5 6. However, it should also be recorded that, when it came to submissions, Ms Douglas did not advance any submission:
- i. challenging R's reason for dismissing being conduct; or
 - ii. asserting that MW had no reasonable grounds for his belief in the conduct; or
 - 10 iii. asserting that R had, at the time MW's belief was formed, not carried out reasonable investigation; or
 - iv. asserting that R had otherwise acted in a procedurally unfair manner.
7. Therefore, although the issues discussed at the preliminaries on the morning of 26 February are faithfully recorded above, ultimately the argument which was the focus of C's case was that, in light of various matters, dismissal did not lie within the band of reasonable responses open to R. Ms Douglas's submission is more fully set out and considered in the 'Discussion and decision' section, as is Mr Sutherland's.

20 **Findings in Fact**

8. The following facts, and any further facts set out in the 'Discussion and Decision' section, are found to be proved on the balance of probabilities. The facts found are those relevant and necessary to my determination of the issues, as refined and focused in the representatives' submissions. They are not a full chronology of events.
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Background

9. R is a limited company which provides residential care for vulnerable children who have experienced trauma and adversity. Across Scotland and England, it operates 45 care homes in total of which 17 are located in

Scotland. C was employed in one such home called House X in a Scottish borders town where two young residents were cared for (Child A and Child B). At the material times, C was the Registered Manager of House X. She was responsible for a team of staff of approximately 8 individuals. She reported to Area Manager, AS.

10. Reporting to C at House X were Depute Manager, KB, and Registered Child Care Workers (RCCWs): CV, GT, ETS, SG, TG, DB and KM.

11. R's homes operate within regulatory frameworks set by the Care Inspectorate Quality Standards (Scotland). All R's employees who work in care, including C, were at the material times registered members of the Scottish Social Services Council (SSSC).

12. R is supported by a Human Resources service which is available to provide advice and support to managers in relation to staffing matters. R has published HR policies and procedures.

13. C was employed from 1 June 2015 until she was dismissed on 11 May 2023. She was issued a contract of employment which was updated / replaced from time to time. The most recent version was signed by C on 4 February 2021 and took effect from 1 March 2021.

14. C's contract of employment included the following clauses:

Professional Conduct

Employees are expected to maintain and adhere to professional conduct regulation and the Company Code of Conduct, employees who do not maintain or adhere to the required codes of conduct may face disciplinary action in accordance with the Company Disciplinary policy including up to the termination of employment.

15. The respondent published a Disciplinary Policy at the material time. It included the following text:

Gross Misconduct

The following offences will be viewed by the organisation as gross misconduct:

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Examples of gross misconduct.

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1. Any act of theft from the company, customers, employees or young people. Theft includes misappropriation of property and / or materials, unauthorised taking of company owned products, using company labour, facilities and services for personal gain without prior management permission, or fraudulent or deliberate financial irregularity involving the company's money.

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2. Any act of dishonesty or fraud, including the falsification of any company records, including reports, accounts, expenses, fuel or subsistence claims or self-certification forms relating to sickness absence notification and certification., employment, application details, etc.

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3. Any act of gross negligence or incompetence which results in actual or potential damage to Company property, injury, loss of company products., or services, or any other act of serious negligence by the employee in the performance of his duties.

...

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This list is not exhaustive, and we may add to or amend it at any time. Furthermore, this document does not imply that the company will not take action in accordance with its rights and duties under criminal or civil law.

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16. The SSSC Code of Practice includes the following:

2.1 Be truthful, open, honest and trustworthy.

2.2 Communicate in an appropriate, open, accurate and straightforward way.

2.3 ...

2.4 Be reliable and dependable.

...

17. Before the events from September 2022, C had no disciplinary record and she had received positive feedback on her performance from her line manager, AS, during the regular 'supervision' meetings they had together. AS had not raised any issue with C about her financial management of House X. AS was not based at House X.

Staff relationship issues at House X in 2022

18. In January 2022, C's colleagues at House X, ETS and SG, made allegations that two other members of staff in the team there were in a relationship. This was denied by those individuals. C and her manager did not conclude there was any truth in the allegations following their enquiries. ETS remained dissatisfied about the way in which the allegation was handled and unhappy with the outcome. The relationship between C and ETS deteriorated. A division emerged within the team. It was ETS's perception that C showed favouritism to other members of the team, including the Depute Manager, KB.

19. C conducted a supervision meeting with ETS on 14 June 2022 at which C raised a number of small matters that needed actioned by ETS following a Health and Safety visit which had taken place.

Events in September – December 2022

20. In or around September 2022, ETS approached JS, Depute Manager at another home run by R. JS had previously held the role of Depute Manager at House X. ETS raised concerns with JS about the way in which receipts were processed in the monthly spend report at House X. ETS and JS approached MC to raise these concerns. MC decided to investigate the matters raised.

21. On or about 15 September, MC obtained evidence from R's fleet manager that the cars allocated to House X were not used for fuelling on the dates and times of two fuel receipts which ETS had raised with her.

22. On 15 September 2022, C attended an investigatory meeting with MC. JG (HRBP) attended to take notes. The meeting lasted approximately 45 minutes. MC asked C about the financial procedures at House X. MC asked C about two fuel receipts which appeared not to have been used to fuel R's cars allocated to House X. MC confirmed that irregularities had been identified in relation to the two receipts each for £40 dating to the beginning of August 2022. MC explained that, according to R's log books on the material dates at the material times, the receipts could not relate to fuelling of R's cars allocated to the Home.
23. MC asked C about the use of the budget for House X to purchase gifts for members of staff there. C explained that contributions attributed to Child A and Child B were taken from the budget and put towards presents for staff members and recorded as 'Miscellaneous'.
24. MC asked C about a voucher for apparent expenditure at Mrs Howett's café. This was not a receipt from the café but a petty cash chitty filled out by an employee, recording the expenditure in the sum of almost £54. It related to 5 August 2023. C said that Child A, Child A's social worker and care worker, CV, had gone out to dinner on that date. MC pointed out it was £54 and it was a handwritten voucher and asked if C could see why it was an issue. C said it had been an issue for a long time and that staff would lose or forget the receipt. MC told C that staff were saying that the money wasn't spent on this. C said it was something to look into and that she knew Child A had taken the social worker on a tour of his volunteering workplace that day. C accepted it was her handwriting on the chitty.
25. On 16 September 2022, C sent a letter by email to JG, HR, who had attended her investigation meeting the day before with MC. In relation to the Mrs Howett voucher, C referred to an envelop with £60 for lunch for Child A and staff and his social worker. She said the envelop had no receipt but written on it was the amount spent and where. C said she was positive the envelop was written by CV. She did not produce the envelop to which she referred.
26. C said staff, including C herself, frequently purchased items for the children or House X when not on shift. She said that staff would often lose or forget

receipts, and some would then provide a receipt from their own purchases to ensure the amount was still accounted for. She said, "*In hindsight, it's probably the wrong way to process but it's always been my understanding that if a receipt was lost etc then you had to provide a receipt to cover the expenses rather than sitting with just no receipts.*" She said other managers and staff at other homes run by R continued to use this process.

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27. On 29 September 2022, C attended a supervision meeting with SG, a care worker in her team. During that meeting she discussed criticisms of SG's performance and conduct. SG competed in body building competitions. C raised with him, among other matters, photos taken of him posing to show his physique at House X and advised him this would be part of a fact-finding investigation which would be conducted by another manager. Around that time, C reported concerns about SG to AS. An investigation took place by one of R's managers. The matter ultimately progressed to a disciplinary hearing when SG received a disciplinary sanction short of dismissal for his conduct.

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28. On 12 October 2022, C attended a supervision meeting with ETS. At that meeting, C raised with ETS issues regarding her professionalism. She told her that conversations between staff and management should not be shared and should not be discussed with Child A and Child B. ETS expressed unhappiness with C too during their meeting. She expressed concern that she had felt attacked in a group chat by a question C had asked which she felt undermined her in front of colleagues and suggested face to face direction or direct messaging. It was a difficult meeting. ETS expressed that she felt everyone would look at the supervision meeting and think she was 'shit at her job' and that she felt 'brought down ten pegs'.

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29. On 25 October 2022, MC conducted investigatory interviews in relation to the financial irregularities she had discussed with C on 29 September 2022 with other members of the team. On that date, MC met with and interviewed TG, KB, ETS, SG, GT and CV.

30. On 21 December 2022, MC had a further investigation meeting with C. JG was present. The purpose was said to be to follow up on the previous meeting and to talk about information that had come out of the

investigation that was ongoing. With respect to a JOMA bracelet C said she had purchased for Child A, MC put to C that A said they didn't remember getting the bracelet. The bracelet had been found in Child A's room some months after C said she had bought and given it to him. C
5 acknowledged this purchase had not been recorded on R's system, Access. MC also asked C about other allegations which had arisen from her interviews with some other members of the team at House X, that some of them were feeling 'targeted'.

31. MC asked more about the Mrs Howett's café chitty and put to C that the
10 activity (i.e. the café visit) did not happen. She told C that CV, who C claimed had gone with the child and social worker to the café, said this didn't happen. C maintained she'd written the chitty because of an envelop in which she had left £60 for the activity which she said later had written on it that the receipt was lost.

15 32. MC then returned to the issue of fuel receipts. C accepted she would say to staff to use their own receipt but to the same amount 'if something happened'. She said the staff sometimes forgot receipts. MC said "It's dishonest if the kids are elsewhere and the staff and kids are not there". C's response was 'I was always taught to balance the books'.

20 33. MC asked C about the purchase of alcohol for members of staff and C said it was for a big birthday and she had asked AS who had told her it was ok. C said the previous manager at House X used to buy Botox vouchers and alcohol. She said she wasn't making excuses; it wasn't right, but it was what she learned.

25 34. On 28 December 2022, MC telephoned C she told her words along the lines that the fact find had grown arms and legs. She advised that R had received allegations of bullying against C by some of her colleagues. She advised C that she was suspended.

Period of suspension: 28 December 2022 to 11 May 2023

30 35. On 17 January 2023, MC conducted further investigations interviews with AH, DB, ETS, GT, KM, SG and TG.

36. On 18 January 2023, MC conducted a further investigation interview with C. JG was present. The focus of this meeting was questions relating to team relationships, the culture in the Home and rapports and interactions between team members, including C, and with Child A and B. On 1
5 February 2023, C was sent the notes of the investigatory meeting which took place on 18 January 2023. In correspondence of 3 and 16 February, C challenged aspects of the notes. In her letter of 16 February, she discussed the allegations raised on 28 December and queried whether there was any evidence for this and, if not, why the matter could not be
10 concluded. JG replied on 17 February 2023. She treated C's letter as a grievance. JG advised that as the matters raised were closely linked to the ongoing investigation, R would aim to respond to the points as part of that process.

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37. On 19 April 2023, JG sent a letter to C via email in the following terms, so far as relevant:

Dear Gemma,

Requirement to attend Disciplinary Hearing

20 *We are writing to inform you that you are required to attend a disciplinary hearing to discuss the following matter(s) of concern:*

- *Allegation of financial mismanagement of [House X's] petty cash.*
- *Allegation of unprofessional conduct towards employees and young people; inappropriate / bullying relationship with young
25 person / people and employees.*

The allegation of breaching confidentiality by sharing employee personal sensitive data inappropriately is not being progressed to disciplinary following the internal investigation.

The hearing will take place at the following date and time and location.

30 ***Date:*** Monday 24th April 2023

Time: 12 noon

Location: Carlisle Station Hotel, Court Square, Carlisle, CA1 1QY

Disciplinary Hearing Chair: Mark Williams, Director of Operations

...

Copies of all evidence that will be used at the hearing are as follows

- *Associated petty cash receipts.*
- *Meeting notes*

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We must inform you that in the event that these matters of concern are substantiated, this may lead to disciplinary action, including up to dismissal in line with the company disciplinary procedures.

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You have the right to be accompanied at this meeting by a colleague or trade union official...

For your information, we have attached a copy of our disciplinary policy...

...

Yours sincerely

Joanne Glenn.

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38. C was provided with the notes of the interviews between MC and C and between MC and all the other individuals MC interviewed as part of her investigation. C also had sight of the relevant receipts, including the fuel receipts and log book entries and the petty cash chitty for the alleged visit to Mrs Howett's café. She had sight of the SSSC Code and of the Disciplinary policy and procedure.

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39. The hearing took place on 24 April 2023. C was unaccompanied. MW chaired the hearing and JG attended as notetaker / HR adviser. It was a lengthy hearing. The allegations relating to both financial mismanagement and of unprofessional conduct (alleged inappropriate / bullying relationships) were discussed. In relation to the former, MW went through the allegations one by one. Regarding Mrs Howett's café, C repeated her position that CV had told her she had spent the money there. With respect to the use of personal fuel receipts as substitutes for 'missing' receipts, C repeated her claim that this "was the way it was always done". With regard to the JOMA bracelet Child A hadn't recalled receiving, C maintained she

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had bought it for A's Christmas in June or July time. MW pointed out the staff didn't recall A receiving his either. With regard to the use of budget towards staff gifts, C repeated that this had always been done and that it was known to AS. MW pointed out AS disputed sanctioning the purchase of alcohol with the funds. C said this and other aspects of AS's statement were lies.

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40. After the disciplinary hearing, MW reviewed all notes of the supervisions C had carried out with members of the team at House X in the previous 12 months. He also read all notes of supervision meetings which took place between C and AS in the previous 12 months. There was no negative feedback given to C in any of the supervision meetings by AS.

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41. On 28 April 2023, MW conducted an investigation meeting with JMcC. JG was present and took notes. JMcC was, at the material time, a Registered Manager of another of R's care homes, Murraythwaite. C had worked with JMcC at that Home at some point. MW asked JMcC what happened when a receipt was lost at the home. She told him a handwritten one would be prepared by the staff. He asked her if she would ever write a chitty if there was a shortfall. She is recorded as answering, "*No, if there is human error ... it is person of staff that put money in if it is not right.*" With respect to C, MW asked JMcC if JMcC had trained her that the most important thing was to balance the budget and receipts would be handwritten in order to do so. JMcC denied having told C this. Towards the end of the meeting, she said, "*I don't want to say I've never put a receipt through a shortfall, but it was different then.*" She explained that for a "*solid four years the processes are clear*".

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42. On 28 April 2023, MW also conducted an investigation meeting with AM. JG was present and took notes. AM, at the time of the interview was employed by R as a Compliance Officer but she had previously worked as a Depute Manager and as a Registered Manager of other homes. She had, for a four-week period, supported C at House X when a previous Registered Manager had left and the Depute Manager was off sick. AM discussed the process when a receipt was lost and said that on an occasion this had happened, and that she and the staff member

responsible had written a chitty explaining what had happened which they both signed. MW asked if AM would ever make a receipt up to cover for a staff member and AM denied this. MW asked whether, when AM was managing C, AM had advocated putting in receipts to cover a shortfall where one arose. AM denied this. MW asked about the practice of substituting a lost receipt with a substitute receipt and AM said this had not happened with her at House X.

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43. MW decided to dismiss C. He concluded C was guilty of the allegation of financial mismanagement of House X's petty cash and he concluded that this amounted to gross misconduct. Although he found the allegation of unprofessional conduct partially proven, this finding played no part in his decision to dismiss. Had this been the only allegation upheld, MW would not have considered a disciplinary sanction appropriate and would have sought to address the matter through mediation, training and supervision.
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44. On 11 May 2023, MW wrote to C in the following terms so far as relevant. The letter was a true reflection of MW's reasoning for his decision and sanction:
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Dear Gemma,

Re: Disciplinary Hearing Outcome

20 *Further to the Disciplinary Hearing held on Monday, 24th April 2023, I am writing to inform you of my decision. You were afforded the right to representation but declined the offer.*

The matters of concern were:

- 25
- *Allegation of financial mismanagement of [House X's] petty cash.*
 - *Allegation of unprofessional conduct towards employees and young people; Inappropriate / bullying relationship with young person / people and employees.*
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The explanation you gave at the hearing were as follows:

1: Allegation of financial mismanagement of [House X's] petty cash.

5 You explained that you managed the petty cash as you have been shown by colleagues including Joanna McCulloch, Registered Manager and Ann Moffet, Compliance Officer when you were initially appointed as Registered Manager for [House X]. The training you received was to ensure that the petty cash balanced at the end of the month. You further explained that you recorded the information based on the
10 receipts that you received each month, or you did not scrutinise the items on the receipts, rather you ensured that the monetary amount and dates were reflected correctly on petty cash spreadsheet.

15 You discussed that not all employees remember to hand in receipts, and that this was something that was discussed in team meetings and raised with individuals. Two fuel recordings on 3rd and 7th August 2022 were discussed, where the cars and employees were either at the home or out of the area on activities. You explained that often
20 receipts were lost or misplaced, employees would submit a receipt to the same value as the missing receipt. Employees would also write petty cash chitty's [sic] for the missing receipts.

25 In discussion around the purchasing of alcohol for gifts, you explained that this had been agreed with your area manager, Annette Steedman. It was also something that had been done at Christmas time when the home received additional money for small token gifts for each employee.

30 In relation to a meal with young person, [A], [their] social worker and an employee, you advised that you had left an envelope with money for the meal to take place. When you were updating the petty cash there was a balance of money remaining in the envelope, however there was no receipt. In

this instance you wrote a petty cash chitty for the expenditure and did not question this.

5 *In relation to a JOMA bracelet for young person, [A], this was purchased following [A] commenting on liking the bracelet that you and other members of the team had. This was bought as an incentive and was purchased in July 2022. You explained you had been on a personal trip to Carlisle and had seen this reduced in a shop and purchased this for [A].*

10 *When asked about the finances for the young people, you explained that monies spent should be updated on Access, however, that you were not good at ensuring that you did this consistently, and that you were still getting used to the system.*

...

15 *Allegation 1: This allegation is proven.*

20 *In relation to the financial management of House X petty cash, you have not fulfilled your role as registered manager to ensure that the monies were spent properly and rightly. You have falsified petty cash receipts to ensure that the petty cash balanced at the end of each month. I further investigated the training that you were provided by Joanna McCulloch, registered manager and Ann Moffet, Compliance Officer, both confirmed the use of chitty's to replace missing receipts, however, did not confirm or*

25 *advocate the use of personal fuel receipts in place of a missing fuel receipt, nor did they confirm or advocate the creation of false petty cash chitty's /receipts to balance a shortfall in petty cash.*

30 *Although, there is not enough evidence to prove that you have gained financially from the mismanagement of the finances, you have failed to robustly report and record the finances of the home accurately, which in turn does infer that*

you or other members of your team may have benefited personally and is ultimately a mismanagement of [House X's] petty cash.

5 *When I reviewed the Team Meeting minutes and Supervision notes, I noted there is mention of the changes to the petty cash procedures in the home following your initial investigation meeting on 15th September 2022. There is, however, no mention in the Team Meeting minutes or Staff Supervisions of your concerns about missing receipts.*
10 *Your actions have raised the risk of mismanagement of the homes' [sic] budget and the potential for staff or others to use funds inappropriately.*

...

15 *I do not feel that there is enough evidence to support the allegation that you bullied your staff or young people.*

...

20 *Having carefully reviewed the circumstances, I have decided that in relation to the allegation of financial mismanagement of [House X's] petty cash, that summary dismissal is the appropriate sanction as this amounts to gross misconduct. I have referred to our disciplinary procedure when making this decision. It states an act of misconduct of this nature warrants summary dismissal, however, I have considered whether, in the circumstances, a lesser sanction may be*
25 *appropriate. However, I am unable to apply a lesser sanction in this case because of the reasons given above.*

You are therefore dismissed with immediate effect. You are not entitled to notice., nor P in lieu of notice. Your last day of employment was therefore 11th May 2023.

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...

You have the right to appeal against my decision, and should you wish to do so, you should write to HR department... within seven days of receiving this letter, giving the full reasons why you believe the sanction of dismissal is too severe or inappropriate.

Yours sincerely

Mark Williams.

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45. MW took into account C's lack of disciplinary record, her length of service and the positive feedback given by her line manager, AS during supervision meetings. He considered the terms of R's disciplinary policy. He concluded C's conduct amounted to gross misconduct for the purposes of the Policy. He considered whether a lesser sanction should be imposed instead of dismissing C. He ultimately rejected this possibility because he felt C's conduct went to her integrity which, in his view, was a 'dealbreaker'.

15 *Appeal Process*

46. C appealed the dismissal on 16 May 2023. On 2 June 2023, an appeal hearing was held. It was chaired by J McLeish, Commercial Director. On 9 June 2023, an appeal outcome was issued. The appeal against dismissal was not upheld.

20 *The claimant's post-termination losses*

47. At the time of his dismissal, C had 8 complete years' service with the R. Throughout her service, she was over the age of 22 and under the age of 41. She was contracted to work 40 hours per week and her basic gross pay was £42,000 per annum, equating to £807.69 per week (gross), and £570.35 per week (net).

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48. In the period between 10 May and 3 November 2023, C applied for 18 posts. She was not successful. The posts included care positions as well as nursery nurse positions and administration and managerial positions.

49. The claimant has been certified as unfit for work since 3 November 2023. She has not applied for alternative work since that date. She has been in
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receipt of Universal Credit from 21 July 2023 to the date of the hearing, and she has received an Adult Disability Payment from 5 January 2024 to the hearing date.

Observations on the evidence

- 5 50. There is little evidence that is materially in dispute. There were a few factual conflicts between C's evidence and that of R's witnesses but these related to matters which are not ultimately relevant to the arguments advanced on C's behalf in submissions.
- 10 51. C maintains that other witnesses interviewed in R's investigation were not telling the truth. It is not necessary or relevant for me to make findings in fact to resolve these conflicts between the accounts of C, on the one hand, and the witnesses in the disciplinary investigation, on the other, having regard to the test I must apply in deciding C's unfair dismissal complaint. This is set out in the following section.
- 15 52. C also maintains that ETS was motivated to raise allegations of bullying in November 2022 because of her dissatisfaction with issues C had raised about her conduct / performance during her supervisions. MW accepted in his evidence that he did not believe this to be coincidental and indicated he believed this might have been part of ETS's motivation to raise bullying
- 20 allegations against C. Again, it is not relevant or necessary for me to make a finding about the nature of ETS's motivations.

Relevant Law

Unfair Dismissal

- 25 53. Section 94 of the Employment Rights Act 1996 (ERA) provides that an employee has the right not to be unfairly dismissed. It is for the employer to show the reason or the principal reason (if more than one) for the dismissal (s.98(1)(a) ERA). A reason that relates to the conduct of the employee is one of the 'potentially fair reasons' listed (s.98(2)(b) ERA). Where, as here, the employer relies upon a reason related to conduct, it
- 30 does not have to prove at this stage of the analysis that the conduct actually did justify the dismissal; the Tribunal will later assess the question of reasonableness for the purposes of section 98(4).

54. At this stage, the burden on the respondent is not a heavy one. A “reason for dismissal” has been described as a “*set of facts known to the employer or it may be of beliefs held by him which cause him to dismiss the employee.*” (**Abernethy v Mott Hay and Anderson** [1974] ICR 323).

5 55. Once a potentially fair reason for dismissal is shown, the Tribunal must be satisfied that in all the circumstances the employer acted fairly in dismissing for that reason (Section 98(4) of ERA). There is no burden of proof on either party when it comes to the application of section 98(4).

10 56. The Tribunal must not substitute its own decision for that of the employer in this respect. Rather, I must decide whether the respondent’s response fell within the range of reasonable responses open to a reasonable employer in the circumstances of the case (**Iceland Frozen Foods Limited v Jones** [1982] IRLR 439). In a given set of circumstances one employer may reasonably decide to dismiss, while another in the same
15 circumstances may reasonably decide to impose a less severe sanction. Both decisions may fall within the band of reasonable responses. The test of reasonableness is an objective one.

57. In a case concerned with conduct, regard should be had to the test set out by the EAT in **British Home Stores v Burchell** [1978] IRLR 379 in
20 considering section 98(4) of ERA:

*What the Tribunal have to decide whether the employer ... entertained a reasonable suspicion amounting to a belief in guilt of the employee of that misconduct at that time ... First of all there must be established by the employer the fact of that belief, that the
25 employers did believe it. Secondly that the employer had in his mind reasonable grounds upon which to sustain that belief. Thirdly, we think that the employer at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much
30 investigation into the matter as was reasonable in all the circumstances of the case.*

58. This well-established guidance was endorsed and summarized by Mummery LJ in **London Ambulance Service NHS Trust v Small** [2009]

IRLR 536 where he said the essential enquiry for Employment Tribunals in such cases is whether, in all the circumstances, the employer carried out a reasonable investigation and at the time of dismissal genuinely believed on reasonable grounds that employee is guilty of misconduct. If satisfied in those respects, the Tribunal then must decide whether dismissal lay in the range of reasonable responses.

59. Single breaches of a company rule may found a fair dismissal (e.g., **The Post Office t/a Royal Mail v Gallagher** EAT/21/99). Exactly what type of behaviour amounts to gross misconduct will depend on the facts of the individual case. However, it is generally accepted that it must be an act which fundamentally undermines the contract of employment (i.e., it must be repudiatory conduct by the employee going to the root of the contract – **Wilson v Racher** 1974 ICR 428, CA). Moreover, the conduct must be a deliberate and willful contradiction of the contractual terms or amount to gross negligence (**Sandwell and West Birmingham Hospitals NHS Trust v Westwood** EAT 0032/009). Even if an employee has admitted to committing the acts of which he is accused, it may not always be the case that he acted willfully or in a way that was grossly negligent (e.g., **Burdett v Aviva Employment Services Ltd** EAT 0439/13).

20 **Submissions**

60. Mr Sutherland spoke to a brief written skeletal submission. Ms Douglas gave an oral submission. The entire content of both submissions has been carefully considered and taken into account in making the decisions in this judgment. Failure to mention any part of these submissions in this judgment does not reflect their lack of consideration. The submissions are addressed in the decision section below, which sets out where the submissions were accepted, and where they are not, and the reasons for this.

Discussion and Decision

30 *Was the dismissal of C by R for the potentially fair reason of conduct?*

61. I accept that R dismissed C for a reason relating to her conduct for the purposes of s.98(2)(b) of ERA. There was no dispute that was the reason

for dismissal and no other reason was put forward by C. MW concluded C was guilty of financial mismanagement of House X's petty cash.

Were there reasonable grounds for MW's belief?

5 62. No argument was advanced by Ms Douglas that MW lacked reasonable grounds for his belief in C's guilt. MW found that C had falsified petty cash receipts to ensure the petty cash balanced. MW found that C had done so, for example, in relation to the receipt for Mrs Howett's café. C accepted she had written a chitty for £53.97 of expenditure at this venue on 5 August
10 2022. Though C insisted she believed CV had told her this took place, it was open to MW reasonably to conclude on the evidence before him (which included CV's contrary account) that this was not so.

15 63. MW found that C endorsed the practice of using personal fuel receipts in place of a lost fuel receipt for the cars allocated to the House. C accepted she knew of this practice by members of her team. She said she had been trained to approach the petty cash in this manner including by JMcC and AM. Based on the evidence before him, it was open to MW to reasonably conclude that C permitted the practice by her staff and, based on AM's
20 evidence and JMcC's evidence, that she had not been trained or instructed to adopt this practice. Ms Douglas sought to rely upon a comment by JMcC in her interview with MW when she said "*I don't want to say I've never put a receipt through a shortfall...*". This submission is discussed in more detail at paragraphs **81-83** below in the section on whether dismissal lay in the
25 band of reasonable responses. The reasoning set out in those paragraphs is also adopted at this stage of the analysis in support of my finding that there were reasonable grounds for MW's belief in C's guilt.

Did the respondent conduct a reasonable investigation?

30 64. No argument was advanced by Ms Douglas in her submissions that R had not conducted a reasonable investigation at the time when MW formed his belief in C's guilt. Mr Sutherland said there had been a full and thorough investigation.

65. MC discussed the allegations with C at three separate investigation meetings before the matter was progressed to a disciplinary hearing before MW. MC also obtained evidence from numerous other witnesses. C was sighted on all of the evidence relied upon by R and she had an opportunity to, and did, comment upon it. She told both MC and MW of aspects of the evidence which were disputed. At the final hearing she had the opportunity to put forward any representations she wished in relation to the allegations.

66. I find that R's investigation fell within the range of reasonable responses open to it.

10 *Did R otherwise act in a procedurally fair manner?*

67. As to the question of a reasonable procedure, Mr Sutherland made no submissions about the fairness of the procedure though he expressly reserved his right to reply if Ms Douglas were to assert an unreasonable procedure. Ms Douglas did not advance any argument in submissions that R followed an unfair procedure, and so Mr Douglas made no reply.

68. I do not find that there were flaws in the procedure such as would render it to be outside the range of reasonable responses open to R.

20 *Was the decision to dismiss within the band of reasonable responses?*

69. Essentially, it is the claimant's case that dismissal did not fall in the range of reasonable responses. The representatives made various submissions that go to this issue. I have set these out below, grouped under three broad headings, and my discussion and conclusions on the arguments made follow thereafter.

Submissions: Seriousness of offense and C's length of service & good record

70. Mr Sutherland said that MW's conclusion that dismissal was an appropriate sanction was not irrational or perverse in any way. Indeed, he said, "*the falsification of any Company records including reports, accounts, expenses, fuel or subsistence claims ...*" was an express example of gross

misconduct in R's Disciplinary Procedure. He observed that MW had considered if a lesser sanction was appropriate in the circumstances, including the Claimant's length of service. He couldn't get away from the fact that this went to the Claimant's integrity, and that was a "dealbreaker".
5 According to Mr Sutherland, MW was entitled to come to that conclusion.

71. Mr Sutherland said C, as Registered Manager of House X, was responsible for systems and processes undertaken, including financial systems. Under her management, personal fuel receipts were submitted in lieu of missing
10 fuel receipts. He noted employees, including C herself, would write petty cash chitties for missing receipts. According to Mr Sutherland, permitting the petty cash system to operate in this way exposed R to fraud and abuse.

72. Ms Douglas, on the other hand, said that in all of the circumstances, C's
15 conduct did not amount to gross misconduct. C was made an example of. She had no disciplinary record and no concerns had been raised by AS during supervision meetings. Indeed, she had been praised for House X being 'inspection ready'. She was a caring manager who was supportive of her staff and celebrated their birthdays. As was accepted by R, Ms
20 Douglas asserted that C did not personally benefit from any irregularities at House X. C had worked her way up through R's ranks and the spend at House X was kept below the monthly budget under her watch. In Ms Douglas's submission, the conduct was not gross misconduct and dismissal did not lie in the range of reasonable responses.

25 *Submissions: Training / clarity of process*

73. With respect to C's anticipated argument that she was insufficiently trained, or that she was trained by JMcC and AM to operate the petty cash system in the way she did, Mr Sutherland pointed out that neither of those two
30 individuals accepted that they advocated this operation. In any event, he submitted that it was a matter of straightforward commonsense that more scrutiny should be applied and no training on that specifically should be necessary.

74. Ms Douglas alluded to a lack of clarity surrounding the petty cash process when a receipt was missing. She said there was no policy or training on this and that neither MC nor MW had been able to set out an exact process for this circumstance. An employee like C could only hazard a mere guess at what was expected, said Ms Douglas. She referred to evidence given to the Tribunal by C and by KB that this was how they had been trained to deal with matters. Ms Douglas drew attention to JMcC's comment in her interview with MW when she said, "*I don't want to say I've never put a receipt through a shortfall, but it was different then.*" In Ms Douglas's submission, the process was sloppy throughout by all employees of R, and C simply did what she was taught to do.

Submissions: Motivation for the complaints

75. Mr Sutherland anticipated that C would argue there had been a 'witch hunt'. He said there was not. In Mr Sutherland's submission, there was absolutely no conspiracy. He observed there would have to have been a lot of moving parts for it to be an effective argument, including that MW, as the decision-maker, would have had to have been complicit.

76. Ms Douglas referred to a breakdown in C's relationship with members of her team at House X and also mentioned that concerns were raised by employees who were frustrated with their supervisions. She didn't explicitly spell it out in her submission, but I understood her suggestion to be that the employees were motivated to raise allegations because of these frustrations.

Discussion and conclusions

77. What must be determined is whether dismissal lay within the range of reasonable responses open to an employer of the respondent's scale and nature. It is not relevant whether I would have imposed a lesser sanction in the circumstances.

78. I accepted MW's evidence that he had read and considered all of the notes of C's supervision meetings with her manager, AS, which were positive. I accept he knew that C had no disciplinary record when he took his

decision. I accept he took these matters into account when considering his decision and gave thought to whether a lesser sanction might be imposed. There was no challenge to MW's assertions that he took this into account; Ms Douglas instead challenged the conclusions which he drew.

5 79. MW ultimately decided dismissal was an appropriate sanction because he
‘couldn't get away from the fact this went to C's integrity'. R operates in a
regulated environment. The SSSC Code requires those working in the
sector to be truthful, open, honest and trustworthy and to communicate
information in an accurate way. It is, I find, objectively reasonable that an
10 employer operating in the care sector, with responsibilities to vulnerable
young residents, would place a high premium on trust and integrity.
Accounting for petty cash and budget expenditure generally is a process
in place to protect not only R from risks of financial fraud but to protect the
residents in its care from the scope for financial exploitation or misuse of
15 budget intended for their benefit. MW acknowledged that there is no
finding that C herself gained financially from the practices, but noted that
C had failed to *“robustly report and record the finances of the home
accurately, which in turn does infer that you or others ... may have
benefited personally and is ultimately a mismanagement of [House X's]
20 petty cash”*

80. In the sector in which R operates, and given the scope for abuses of the
petty cash system wrought by the practices uncovered by the investigation,
I accept that treating the matter as gross misconduct fell within the range
of reasonable responses. A lack of straightforwardness and integrity in
25 relation to House finances by its Registered Manager could reasonably be
regarded as – at best - negligence which is so gross as to be repudiatory,
going to the root of the contract.

81. As set out above, a key strand in Ms Douglas's submission was that the
training on the petty cash process provided to her was inadequate and that
30 C was simply doing what she had been taught to do. Ms Douglas focused
on a sentence of JMcC's evidence when she said, *“I don't want to say I've
never put a receipt through a shortfall, but it was different then.”* I
understood Ms Douglas to be suggesting this was evidence that this was

what JMcC had taught C to do, to which MW ought to have attached greater weight.

5 82. However, that is not what JMcC said. After the remark quoted, JMcC followed up by acknowledging that the process had been clear for a solid 4 years. Importantly, JMcC denied having trained C that the most important thing was to balance the budget and receipts would be handwritten in order to do so. She had said if a receipt was lost the member of staff would write a chitty; she had not suggested putting through substitute receipts.

10 83. Having regard to the totality of AM and JMcC's evidence to MW, I find that MW was entitled, reasonably, to prefer their evidence to that of C and to disbelieve that she had been trained in the way she asserted by these managers. It matters not whether I would have reached the same conclusions. There was a reasonable evidential basis for MW's findings on the facts he found established.

15 84. Ms Douglas also challenged a lack of training and clarity of process more generally. MW expressed the view in his evidence that it was a matter of common sense that falsifying chitties or uploading personal receipts that were not truly in respect of purchases from the House budget was not acceptable practice. He suggested he did not consider these to be matters
20 on which one would expect to have to provide staff training. There is considerable force in this viewpoint. I find his assessment in this respect to be an objectively reasonable one. C was the Registered Manager of the House with overall budgetary responsibility. It might reasonably be regarded as commonsense that a Manager would be expected to apply
25 proper scrutiny to the vouching for expenditure and not to knowingly accept 'substitute receipts' (meaning false personal receipts). Likewise, a Manager might reasonably be expected not to write or accept handwritten chitties without receipts, unquestioned.

30 85. I am not persuaded that R's 'failure' to spell out in training the inappropriateness of such conduct renders the conduct R found established to be significantly less culpable, so as to remove the penalty of dismissal from the band of reasonable responses. R's published Disciplinary Policy expressly included as examples of gross misconduct

the following: *'deliberate financial irregularity involving the company's money'* and *'falsification of any company records, including ... expenses'* as well as *'any other serious act of negligence by the employee in the performance of his duties.'*

5 86. In relation to ETS's motivations for bringing the allegations, no argument was developed by Ms Douglas that MW himself was complicit in any conspiracy or witch hunt with an agenda to exit C. There was no evidence to sustain a finding of that nature, and indeed it was not put to MW in cross-examination. Ms Douglas, sensibly, did not advance a submission to this effect. Her submission instead was a more subtle one, namely, that certain employees (by whom I understood she meant ETS and potentially SG) were motivated to raise concerns about C to management because of their unhappiness at issues C had raised with them regarding their performance or conduct. This was put to MW in relation to ETS and he was accepting it might be so in relation to some of the concerns ETS had raised with R about C.

10 87. Even assuming it were established that ETS's deteriorating relationship with C contributed to her decision to raise the issue of financial irregularities and the bullying claims, I am not persuaded that this would undermine the reasonableness of the dismissal sanction. When a concern about financial irregularities was raised with R, it was within the range of reasonable responses to probe and investigate the concerns. Indeed, given the nature of R's operation, it is difficult to see that R could do otherwise than investigate the matters. The same goes for the allegations of bullying and unprofessional conduct. The decision to investigate was a reasonable one for an employer of R's type, even if R was aware or suspected the source of the allegations was a disgruntled or embittered employee.

25 88. Having investigated the matters, R found evidence it could reasonably regard as substantiating the financial mismanagement allegations. That evidence included an admission by C that she knowingly permitted a practice of staff using personal receipts to vouch for spending when they had lost or failed to get a genuine receipt for the expenditure. It also included evidence that she wrote a chitty for a significant sum in the absence of a receipt for expenditure she didn't personally incur (the Mrs

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Howett's café chitty). The evidence R ultimately relied upon for these matters did not come exclusively from ETS or SG. Whether or not ETS had an axe to grind with C, R's investigations identified a factual basis for that individual's concerns about the financial practices. I am satisfied that the objective reasonableness of MW's ultimate decision to dismiss C is not tarnished or undermined by the fact that ETS felt aggrieved towards C for other matters when she originally decided to raise the issues.

89. Having considered all the facts and circumstances of the case, I am satisfied that the decision to dismiss in response to the conduct of which R found C guilty fell within the band of reasonable responses open to R.

Conclusion

90. R dismissed C for a potentially fair reason relating to his conduct. Applying section 98(4), in all the circumstances of the case, it acted reasonably in treating that conduct as a sufficient reason to dismiss C. C was not unfairly dismissed.

L Murphy

Employment Judge

28 March 2024

Date of Judgment

02/04/2024

Date sent to parties