



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Osborne

**Respondent:** Salford City Council

**HELD AT:** Manchester **ON:** 16, 17, 23 and 25 January 2017

**BEFORE:** Employment Judge Ross

## REPRESENTATION:

**Claimant:** Mr Y Bakhsh, Lay Representative

**Respondent:** Ms A Smith, Counsel

## JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unfair dismissal is not well-founded and does not succeed.
2. The claimant's claim for wrongful dismissal is not well-founded and does not succeed.

## REASONS

1. The claimant was employed by the respondent as a Registered Care Manager from 5 January 2012 until she was dismissed by a letter dated 25 May 2016 for gross misconduct. The allegations were that she had failed in her duty to maintain the standards of care expected of a residential manager, that she failed to follow prescribed care plans resulting in a young person's safeguarding being compromised on two occasions and she failed to follow the medication procedure.
2. The claimant appealed but she was unsuccessful. She brought a claim for unfair dismissal to this Tribunal.

3. I heard evidence from the claimant and from her trade union representative, Mr Hadi. For the respondent I heard from Ms J Metcalfe, the investigating officer; Mr M Kelly, the dismissing officer; and in relation to the appeal from Ms J Finnerty. Ms Finnerty did not form part of the appeal panel. She was an HR adviser to the panel, present at the appeal hearing and during the panel's deliberations.

### The Relevant Law

4. The relevant law is found at section 95 and section 98(4) of the Employment Rights Act 1996. The respondent relied on conduct as a reason for dismissal or in the alternative "some other substantial reason", namely a breakdown in trust and confidence.

5. The case of **BHS v Burchell 1980 ICR 303** was relevant. The case of **Salford Royal NHS Foundation Trust v Roldan [2010] ICR 457** was also relevant given that a finding of unfair dismissal for a residential care manager, particularly of gross misconduct, means it is likely to affect the whole career of a claimant, particularly in a case where it was undisputed that the claimant's entire working life of 30 years had been spent in the care sector.

6. I was referred to and had regard to **Taylor v OCS Group Limited [2006] IRLR 613**; **Slater v Leicestershire Health Authority [1989] IRLR 16**; **Royal Society for the Protection of Bird v Croucher [1984] IRLR 425**; **Shrestha v Genesis Housing Association Limited [2015] IRLR 399**; **Trust House Forte Leisure Limited v Aquilar [1976] IRLR 251**; and **Siraj-Eldin v Campbell Middleton Burness & Dickson [1989] IRLR 208**.

7. The respondent, in relying on SOSR in the alternative, relied on **Eszias v North Glamorgan NHS Trust [2011] IRLR 550**.

### The Issues.

8. At the outset of the hearing it was agreed that the issues are as follows:

- (1) Has the respondent shown the reason for dismissal? The primary reason relied upon by the respondent is conduct.
- (2) Did the respondent have a genuine belief based on reasonable grounds following a reasonable investigation of the claimant's conduct?
- (3) Having regard to section 98(4), was the dismissal fair or unfair in all the circumstances of the case? In particular, was the dismissal procedurally fair and was it within the band of reasonable responses of a reasonable employer?

9. If the claimant succeeds then issues of **Polkey** and contributory fault were also relevant.

### Applying the law to the facts

10. I turned to consider the first issue: has the respondent shown the reason for dismissal? I am satisfied the respondent did. I find that the reason relied upon was conduct. The letter of invitation to the disciplinary hearing informed the claimant:

“You have failed in your duty to maintain the standards of care expected of a residential manager, failed to follow prescribed care plans resulting in a young person’s safeguarding being compromised on two occasions, and failed to follow the medication procedure.”

11. I find, relying on the evidence of Ms Metcalfe at paragraph 16 of her statement, that the integrity of a Registered Manager should be maintained at all times and if it is felt a Registered Manager does not act with integrity they cannot be deemed a fit person as required by the Children’s Homes Regulations including Quality Standards (pages 288-291).

12. The potential areas of conduct raised with the claimant in the invitation to disciplinary hearing included placing the signature of another staff member (not her own) on an internal document used to register medication; failing to follow the care plans of an individual resident (RB) on two occasions; failing to follow a policy in relation to locking the bathroom door; and failing to follow a policy in relation to gifts for young people in the Home.

13. I am satisfied that these are potentially, for a Care Home Manager, at a Care Home of a residential unit where the Local Authority is the statutory parent for a child whose parents are unable to look after the child themselves, are potentially matters of conduct.

14. I then turned to consider, following the guidance of **British Home Stores v Burchell**, whether the dismissing officer, Mr Kelly, had a genuine belief based on reasonable grounds following a reasonable investigation in relation to the allegations made against the claimant.

15. At this stage I noted that the documentation in this case is extensive, covering three lever arch files and over 1,000 documents. At the outset of the hearing there was a lack of clarity about which documents were before the dismissing officer and the appeal panel. It was clarified at the hearing that the investigating officer’s report at pages 809-864 together with the appendices with the page numbers as listed at pages 809-10 were before the dismissing officer. In addition the dismissing officer had evidence presented by the claimant at the disciplinary hearing namely the appendices A-Q and further documents as identified by the claimant in a document handed up at the hearing and which I appended to the claimant’s witness statement. (See witness statement bundle)

16. At the appeal stage the appeal panel had the dismissing officer’s report (pages 943-991); the claimant’s submissions (pages 993-1026) and the additional documents also listed by the claimant which I have attached to her statement. (See witness statement bundle)

17. Before I turn to the first allegation I reminded myself it is not for me to substitute my own view. It is not for me to decide whether or not I would have dismissed the claimant. It is whether a reasonable employer of this size and undertaking with this resource could have dismissed the claimant.

18. I turned to consider the “garden incident” in relation to the allegation that the claimant failed to follow prescribed care plans and failed in her duty to maintain the standards of care expected of a Residential Manager.

19. It was not disputed that The Grange Care Home where the claimant worked was a residential care home for particularly vulnerable young people as they were young people in care and who also suffered a disability. It was not disputed that the resident RB at the relevant time was a “14 year old girl with learning disabilities, autism, growths and tuberous sclerosis. She has epilepsy and challenging behaviour”. See the claimant’s own statement to Ms Metcalfe at page 726. It was not disputed therefore that she was a vulnerable young person with complex needs who had limited communication skills and understanding. It was also not disputed that she suffered from drop seizures in relation to her epilepsy.

20. I find that on 20 November 2015 a member of staff, Vinnie Hayes, contacted Ms Metcalfe with concerns he had relating to the claimant. One of his concerns was that:

“RB, a young person living at The Grange, was locked out in the garden for a few minutes by the manager Sara Osborne and that RB was grabbing at the door trying to get in.”

21. The record of his interview states:

“Mr Hayes felt there seemed to be no apparent reason for her to be locked out in the garden and he had concerns due to the door opening outwards and if she had a drop seizure no-one would be able to get her right away.”

22. I find that this statement at page 585 was before the dismissing officer. I find Ms Metcalfe had raised this matter with the claimant not only at an initial meeting (see pages 595-597) but at a detailed fact finding meeting also on 12 January 2016 (pages 707-708).

23. I find that the claimant agreed that for a short time she had locked or held the garden door. In answer to the question (see page 731) “it is alleged you put a young person out in the garden and locked or held the door handle to prevent her from coming back into the lounge area, is this true?” she answered:

“Yes, R became agitated quickly and went to come at me and another staff member and a young person who was terrified and ran. I opened the garden door and R went into the garden. I closed the glass door fully but she could see me and me her. She screamed once, pulled her pad down with the glass between us. She took a deep breath and said ‘I’m ok now’. I opened the door and she came back in.”

24. I find that this information was also before the dismissing officer.

25. I find that there was an individual risk assessment dated 1 April 2015 at page 446-454 of the bundle. I find that this was an assessment for the relevant young person, RB. I find that the strategies when there is a risk of physical assault are that RB is “reassured and then guided away from peers and is asked to calm down, sits on her beanbag until she is calm”.P448. On the same page it states in reaction to aggression that the staff should, “encourage her to calm down on her beanbag until she becomes calmer”. The residential care plan at pages 362-368 dated 20 September 2014 in relation to risks at page 366 suggests, “RB will be guarded to a safe place”. At page 367 it states, “...will redirect RB to a safe space for her own

safety and others around her". It later states, "If RB hits out at a member of staff or a young person staff would move away, still observing, and the young person would be asked to move away".

26. There is no dispute that the claimant did not adopt the strategies suggested in the risk assessment documents at the time of the "garden incident". It was the claimant's evidence that her action was a dynamic risk assessment and was appropriate in all the circumstances of the case.

27. I find that the dismissing officer found that the actions taken by the claimant in relation to the "garden incident" were unacceptable. He recorded:

"As the young person was in the garden alone, which has concrete paths and metal bars, and as this was not a recorded method of managing her behaviour in the risk assessment or care plan, it is reasonable to believe that her response to this could not have been predicted and should the young person have suffered a seizure, as she wasn't wearing a helmet this could have resulted in serious injury. In addition if this had occurred, or any other incident, you confirmed that the door could not have been opened if the young person was behind it at the time and it would have taken a minute to have reach her through the laundry room."p893

He goes on to state:

"Therefore I believe that your actions were contrary to those prescribed in the behaviour management plan for the young person. This was a mechanical restraint. Her physical safety was also at risk without proper measures in place and therefore her safeguarding was compromised by your actions."

28. I find the respondent also took into account that even at the disciplinary hearing the claimant stated that apart from writing on the medication sheet she stated she did not feel any of her actions in the incidents which were discussed were inappropriate.(p900)

29. I find that the respondent did have a genuine belief based on reasonable grounds following a reasonable investigation of the claimant's conduct. I find that the claimant admitted that she had allowed the vulnerable individual RB out of the door into the garden, locked the door and had her hand on the handle and did not let her in for a couple of minutes. It is not disputed that this is not in the risk assessment or residential plan.

30. Based on the evidence before him, I find that Mr Kelly had a genuine belief based on reasonable grounds following a reasonable investigation that this conduct had occurred and that given it was not in the claimant's care plan or risk assessment, that the claimant was the Manager of the Home and did not consider anything wrong in her action, this was misconduct.

31. I turn to the second incident where it is alleged that the claimant failed to follow a prescribed care plan resulting in a young person's safeguarding being compromised.

32. This is described as the “zip incident”. In his interview Mr Hayes told Ms Metcalfe that another member of staff, Carol Harper, told him she had taken an issue to supervision regarding the safe space where the resident RB had run into the safe space and Ms Osborne had locked her in by zipping it up.p585

33. There was no dispute that the safe space referred to was a tent like structure in the room of another resident’s bedroom which had been risk assessed for that young person’s use only so that he was secure and safe at night and could not self harm.

34. Ms Metcalfe interviewed Ms Harper on 3 December 2015 (page 632) and again on 6 January 2016 (see page 689). Ms Harper confirmed that:

“One evening R had run into M’s bedroom and Sara followed her down the corridor into the bedroom. I was at the table in the lounge dining room and Sara came back alone and said ‘she ran in and I zipped her in, she won’t do it again’. I said ‘what?’ so she went immediately back and let her out. Sara was in the bedroom for about 3 minutes (see page 689).”

I find this information was before the dismissing officer.

35. The claimant was asked for her account on the first occasion on 25 November 2015 at page 595. She admitted the incident and said, “Yes, I did do it, but I didn’t consider her locking her in”. She was asked about it in greater detail at the investigatory interview on 21 January 2016:

“This was a situation over a year ago when M had just come to The Grange. Me and Carol Harper were on duty. R ran past the office followed by Carol and went into the safe space in M’s room. Carol was asking her to get out. R was hyper and her behaviour volatile. I asked R to come out. She laughed and wouldn’t so I decided to zip it up to encourage her to come to the door. She came to the door, I unzipped it and she came out. Carol stayed in the room.” P734

36. It was the claimant’s view that, “this was the quickest effective and most appropriate action”.

37. I find the fact that the claimant zipped RB into the safe space for a short period of time is not disputed by the claimant. It is the claimant’s evidence to the dismissing officer and to the investigating officer that it was an isolated incident and she acted in the quickest, effective and most appropriate way. I find that the dismissing officer had regard to the fact that there was no mention in the risk assessments (see the residential care plan at pages 362-368 and the individual risk assessment dated 1 April 2015 at page 446-454) of it being appropriate for RB to be zipped into someone else’s safe space. He found:

“A safe space is used as a sleeping area for young people who may need a safe environment at night-time to sleep and prevent them from harming themselves. The young person you zipped in, RB, does not require or have a safe space and it is not in her care plan or behaviour management plan and therefore has not been risk assessed for her. You stated that you asked the young person to come out of the safe space and she laughed and wouldn’t so you decided to zip it up to encourage her to come to the door. You stated you didn’t record doing it and it

was a quick response to the situation. At the hearing you stated you did this to avoid physical restraint and it was a reverse psychology to encourage the young person to come out of the tent as you prefer a hands off approach.

I asked if you understood that zipping the young person into the safe space in these circumstances is physical restraint and you stated that it isn't, it's a distraction technique. The young person is known to have an escalation in her behaviour prior to a seizure as described by yourself in your own signed statements and in all other witness statements made by staff at The Grange. Therefore when the young person was demonstrating such behaviours you chose to zip her into a safe space to encourage her to come out. I asked you whether you considered this course to be a deprivation of liberty for the young person during the two minutes she was zipped into the safe space and you stated you did not. You were clear that you felt you acted appropriately."

38. The dismissing officer went on to say that he believed that it was a deprivation of the liberty of the young person as described in the Department of Education's Guide to Children Homes Regulations including Quality Standards April 2015

39. The dismissing officer stated the risk assessments for the young person presented as evidence corroborated that the actions for RB's aggressive behaviour is that she is taken to the beanbag. Zipping the young person into the safe space had not been risk assessed and the young person could not open it from the inside. He found it reasonable to believe that her response to this could not have been predicted and should she had suffered a seizure in the two minutes she was zipped in this could have resulted in serious harm.

40. Accordingly he found that the claimant's actions were contrary to those prescribed in the behaviour management plan and risk assessment for the young person, that this was a mechanical restraint, her physical safety was also at risk without proper measures in place and therefore her safeguarding was compromised.

41. I am satisfied that the respondent had a genuine belief based on reasonable grounds following a reasonable investigation because firstly the claimant had admitted the facts of what had occurred and it was reasonable for the respondent to find those facts amounted to misconduct because it was undisputed that the risk assessment and residential care plan did not suggest that this was behaviour which was appropriate for the resident RB, that the claimant was the manager of the residential home and did not consider there was anything inappropriate in her actions in restraining the resident in that way.

42. I turn to the next incident which was the allegation that the claimant failed to follow the medication procedure. The dismissing officer found: "You could not provide a satisfactory explanation for falsifying a legal document" (see page 890). I find that the dismissing officer had a genuine belief based on reasonable grounds following a reasonable investigation that the claimant had falsified a legal document.

43. The dismissing officer had before him a statement from Lisa Miller dated 8 January 2016 at pages 696-699, a further statement dated 1 March 2016 at pages 749-51 and statement from when Lisa Miller was initially interviewed on 1 December 2015 at page 621.

44. On 8 January Lisa Miller stated that:

“My signature was forged and spelt wrong on a medication sheet by Sara Osborne. I took a photo of it to protect myself but haven’t kept it. It was made to look like my signature but spelt wrong.”p697

45. The statements show that Ms Miller was annoyed about it and raised it with her supervisor, Janet Carr. She viewed it as a serious matter (see page 698).

46. The dismissing officer had the relevant medical administration record (MAR) (see page 504). The third entry dated 9 August 2015 under “staff signature” has a signature on it which looks like L Millar. The dismissing officer also had document 505 which is a supervision record of Ms Miller with her supervisor, Ms Carr, on 19 August 2015, “Lisa is furious at S Osborne forging her signature on a legal document (medication sheet)”. The dismissing officer had the claimant’s account when she was interviewed on 21 January 2016 (see pages 735-736). The claimant’s explanation was:

“I transferred data from one form to another. I put L Millar initial in the box to show it was a true record of her having given the medication on that date at that time. The reason I changed data from one form to another was the MAR sheet was illegible...I took this action to avoid any confusion for staff when administering further medication.”

47. When asked “did you try to forge the signature or sign your own name?” she replied, “I wouldn’t sign it for Lisa as it is fraud. I initialled it. I explained to Lisa but she wasn’t happy. I realised when I was talking to Lisa that I shouldn’t have done it. I should have put it at the side. I haven’t done it since and I wasn’t trying to cover errors”.

48. At the disciplinary hearing the claimant accepted that she had written in the signature column “Lisa Millar” but disputed it was fraud. In cross examination at the hearing the dismissing officer stated that “falsify” was the correct word to use in relation to the claimant’s actions rather than “fraud”.

49. I find that the dismissing officer had a genuine belief based on reasonable grounds following a reasonable investigation that the claimant had falsified another employee’s signature on a legal document, the medical administration record.

50. I find that he found the claimant did not dispute that she had signed another member of staff’s name on a legal document, although her explanation was that the original document was illegible and that was why she had copied the employee’s signature having transferred all the data.

51. I am satisfied that based on the evidence of Lisa Miller and the documents at pages 504 and 505 and the claimant’s concession at the disciplinary hearing that it was her handwriting in the relevant column under the word “signature”, that he had a genuine belief based on reasonable grounds following a reasonable investigation of the claimant's conduct.



52. I turn to the next allegation, which was that the claimant had failed in her duty to maintain the standards of care expected of a Residential Manager with regard to the policy on gifts.

53. The dismissing officer relied on the safe care policy at pages 132-133 of the bundle. I find he relied on the evidence of Carol Harper on 3 December 2015 and 6 January 2016; Lisa Miller on 8 January 2016; Janet Brooks on 9 May 2016; Vinnie Hayes on 6 May 2016; Louise Cassidy on 6 January 2016; Debbie Ward on 19 January 2016; and Janet Carr on 6 January 2016. The dismissing officer found that the claimant (which she did not dispute) had bought gifts for the young people at The Grange.

54. The claimant's evidence (see page 856) was that she had a discussion with Janet Carr about it. She agreed it was a contentious issue as the deputy strongly disagreed with buying gifts for the young people. The claimant spoke to Janet Brooks, the service manager. The claimant said Janet Brooks informed her that the policy was correct so long as she bought gifts for all the young people, which she said she did.

55. The dismissing officer relied on an email from Janet Brooks which stated she advised the claimant to take the issue to a staff meeting and get the Home's consensus on it, and whether there was an agreed policy (see page 755). The dismissing officer relied on the evidence of the claimant and the staff that there was no such discussion. In his dismissing letter he said:

“Evidence was presented from Janet that she stated she had instructed you to raise this with the staff in order to reach a consensus on it at The Grange as some staff members strongly disagreed with it.”

56. In cross examination the dismissing officer agreed that “instructed” was a stronger word than had actually been used in the email, which said “advise”. (p755)

57. I am not satisfied that the respondent has shown that failure to discuss a policy in relation to gifts at a staff meeting when advised to do so is a potential conduct issue.

58. I turn to the final issue in relation to the allegation that the claimant had failed to maintain the standards of care expected of a Residential Manager, which was the issue of locking the bathroom door.

59. The dismissing officer had information before him from a number of staff about the policy of locking the bathroom when undertaking the personal care of the same young person (RB).

60. The claimant admitted to locking the door. She stated the door could always be opened from the outside with a coin and the young person could open it from the inside, and this preserved their dignity.p729

61. The dismissing officer had before him a statement from Carol Harper dated 6 January 2016 where she stated it was not appropriate except in exceptional circumstances to lock the door. Mr Hayes said on 6 January 2016 it was not appropriate to lock the door. The issue of locking the bathroom door was discussed

at a team meeting on 3 December 2015. It was recorded "Staff members are not to lock the doors when in the bathroom with young people. The curtain screen is to be pulled across" P629. These minutes were before the dismissing officer.

62. I find the dismissing officer relied on the statements of Louise Cassidy where she stated on 6 January 2016 it was not appropriate to lock the door, and the statement of Lisa Miller on 8 January 2016. I find he relied on the statement of Debbie Ward who said it was not appropriate to lock the door except in particular circumstances. I find he relied on the statement of Janet Carr who said it was only appropriate to lock the door in exceptional circumstances (see page 859).

63. The dismissing officer erroneously stated in the dismissal letter at page 900 that "the issue of locking the bathroom door is written in the safe care policy". The dismissing officer accepted at the Tribunal hearing that the safe care policy (see page 147) specifically states:

"The provision of any personal care will be appropriate to the needs and age of the young person and staff will give full consideration and respect to a young person's rights to privacy and dignity when supporting is needed. Privacy curtains can be used in bathrooms and a screen used in bedrooms where for safety reasons it is necessary for staff to remain in the room."

64. It is not disputed that the resident RB needed a member of staff to assist her.

65. Although the dismissing officer erroneously stated that policy specifically said the door should be locked I find that he reasonably concluded that there was an issue of conduct in relation to the policy of locking the door based on the reference to the privacy curtain in the safe care policy and the note of the team meeting which stated that normally a privacy curtain would be used rather than the door locked and the majority of staff interviewed stating that locking the bathroom door was not normally appropriate, unless there were exceptional circumstances.

66. Having found that the dismissing officer had a genuine belief based on reasonable grounds following a reasonable investigation in relation to the conduct of the claimant in relation to the garden incident, the zip incident, the signature on the medication sheet and locking the bathroom door, I turned to consider the next issue: whether the dismissal was fair or unfair within the meaning of section 98(4) ERA 1996.

67. Once again I reminded myself it is not for me to substitute my own view. It is whether a reasonable employer of this size and undertaking, having regard to equity and the substantial merits of the case, could dismiss this claimant.

68. I turned first to the issue raised by the claimant that the dismissal was unfair because the dismissing officer was biased against the claimant because he was aware of the allegations made against her at an early stage and was present at two strategy meetings.

69. I find that where an allegation is made against a child, the Local Authority Designated Officer ("LADO") is obliged to hold a meeting to identify a course of action. This process takes place whether the person about whom the concern has been raised is a teacher, a scout leader, a care worker or any other individual.

70. I accept the evidence of Mr Kelly whom I found to be an honest witness that the LADO held three strategy meetings on 25 November 2015, 8 December 2015 and 10 February 2016. I accept his evidence he was not present at all of those meetings. I accept his evidence and find he was present at the meeting on 25 November 2015 and for part of the meeting on 8 December. I find that it was in his role as Head of Integrated Looked After Children's Service that he was present at that meeting.

71. At the Tribunal hearing the claimant's representative relied on a draft version of the investigation officer's report (pages 765--798) and in particular to references to the strategy meeting on pages 768, 770 and 771. This document was not before the dismissing officer but it was before the appeal panel. I accept the evidence of the investigating officer that it was an early working document and her final investigating officer's report did not include the references in detail to the strategy meetings because these were separate meetings with a separate purpose to the disciplinary procedure.

72. The claimant's representative relied on the words stating that the allegation was "substantiated" (pages 770 and 771) as suggesting that Mr Kelly was biased because he had pre-judged the case. He suggested substantiated suggested a decision had already been made to dismiss the claimant.

73. Firstly I accept Mr Kelly's evidence that he was present at only part of the meeting of 8 December, Secondly, I accept that the LADO process is an entirely separate process and just because Mr Kelly was aware of the basic allegations against the claimant that did not mean he had prejudged the claimant's case.

74. In any event I also find the issue of an allegation being "substantiated" for the purposes of the LADO is something of a red herring because the two allegations which have the word "substantiated" next to them are the "garden door" incident and the "zip" incident and in relation to both of those incidents there was no dispute as to the facts of what occurred. The claimant accepted that she had zipped the child, RB, into the tent for a very short period of time and that RB was outside in the garden and unable to get back in because she had locked the door, again for a very short period of time. It was not the facts that were disputed; it was whether or not the conduct amounted to gross misconduct and whether or not dismissal was an appropriate penalty. Those issues had not been determined at the meeting of 8 December 2015.

75. Accordingly I am not satisfied there was a procedural irregularity in relation to Mr Kelly being the dismissing officer. I find a reasonable employer of this size and undertaking could reasonably have had an individual at the safeguarding meeting and go on and hear the detailed evidence and decide whether or not the dismissal was fair or unfair.

76. The claimant complained about a delay in the process. I am not satisfied there was any significant delay in the process. There was a very extensive volume of documentation in this case and many witnesses were interviewed, some twice or 3 times. Accordingly a reasonable employer of this size and undertaking, given the claimant's livelihood was at stake, needed to take time to investigate thoroughly. I find that any delays in the process were not significant and did not impact upon the fairness of the hearing.

77. I accept the evidence of Mr Kelly who was a genuine witness who made concessions where necessary that there are some factual inaccuracies in his dismissing letter. In particular he accepted that the safe care policy does not specifically state that the bathroom door should not be locked. He also said that "falsify" was a better word to use than "fraud" in relation to the claimant writing another employee's signature in the box marked "signature" on the MAR form.

78. The claimant's representative raised the issue of any lack of harm coming to the young person RB in the "garden" or "zip" incident.. I am satisfied that this is not relevant in terms of procedural irregularity or unfairness. A reasonable employer of this type namely a local authority responsible for vulnerable children may reasonably have regard to the potential risk to a child if a form of restraint which is not sanctioned by the risk assessment or care plan is used.

79. No minutes were taken of the disciplinary hearing or the appeal hearing. I am informed by the respondent this is there standard procedure. The parties had the detailed investigation report and appendices, the documents produced by the claimant and there was a very detailed letter of dismissal. In these circumstances I am satisfied that the respondent has shown that failure to prepare minutes does not amount to an irregularity rendering the dismissal unfair.

80. I turn to consider whether dismissal was within the band of reasonable responses of a reasonable employer.

81. I have taken into account that the claimant was the Care Home Manager. I have taken into account she was required to be a person of integrity. I have taken into account that the respondent's disciplinary rules state at page 261 that:

"Gross misconduct is generally seen as misconduct serious enough to destroy the employment contract between the employer and employee and to make any further working relationship and trust impossible. Such an act will render it inadvisable for the employee to be allowed to remain at work. It is normally restricted to very serious offences such as physical violence, theft or fraud or a serious breach of Council policy but judgments may vary according to the circumstances."

82. I find the dismissing officer reasonably believed based on the claimant's own account that she had not acted in accordance with the risk assessment/residential care plan for the vulnerable individual on two occasions. Crucially I find he took into account when considering the appropriate penalty that the Registered Manager, the claimant, did not accept there was anything wrong with her behaviour on those occasions.

83. I have taken into account that he found that she also did not seem to appreciate the seriousness of handwriting another employee's name in a box marked "signature" without any note or record to indicate what she was doing, why nor retaining the original record. I find the dismissing officer properly relied on the position of trust the claimant held with the respondent, particularly with regard to these three matters. I find he also took into account but to a lesser extent the issue of the locking of the bathroom door.

84. I find he considered alternative penalties and took into account the claimant's unblemished record with the respondent since 2012 and the fact that her career had been in care. I find he considered the high standards the respondent expects of its Care Managers, the fact that the claimant did not accept there had been anything inappropriate in her behaviour (apart from the MAR record) and the fact the respondent is the statutory parent for very vulnerable young people. I find that he considered in these circumstances a lesser sanction such as a final written warning was not appropriate. I find given these facts the respondent has shown dismissal was within the band of reasonable responses of a reasonable employer.

85. I turn to consider the matter at the appeal stage. There was no dispute that the appeal was a re-hearing. I rely on the evidence of Ms Finnerty who guided the appeal panel and the notes of what was considered by the panel to find that matters which had not been raised before Mr Kelly, such as the claimant's issue in relation to the working version of the investigation report, were raised at the appeal stage. I find that although at the appeal stage Ms Finnerty conceded that the panel did not specifically consider whether to issue an alternative penalty to the claimant they did have regard to the report of Mr Kelly as to why in all the circumstances of the case dismissal was the appropriate penalty.

86. I find it was reasonable for the appeal panel to have little regard to the report of the expert, Mr Trevor Henry. Mr Henry's report shows that he had no specialist knowledge of restraint of children. His expertise was in relation to restraint related to the police and that is a very different scenario. In this case the claimant was working in a specialist children's home for children with disabilities.

87. I find that at the appeal stage the claimant had opportunities to bring witnesses and to cross examine them. I find that the LADO Patsy Molloy attended the appeal hearing and gave evidence. I found the appeal panel considered and dismissed the suggestion that Mr Kelly had prejudged the issue. I find the issue of short staffing which was raised by the claimant was considered and dismissed by the appeal panel. Ms Finnerty explained:

"The panel did not consider demotion as an option. They felt the allegations were proven and the decision to dismiss was therefore fair."

88. When asked why they did not consider any other option she stated:

"Mr Kelly had explained his rationale why it was not appropriate and the panel accepted that. There was no consideration of it because they accepted what he said."

89. In these circumstances, although the panel did not actively consider demotion as an option, I accept the evidence of Ms Finnerty that they had found the actions of the claimant totally unacceptable because she had put a child at risk, and that they had accepted the rationale of Mr Kelly as to why a lesser sanction was not appropriate, and in those circumstances I find there was no procedural unfairness in not specifically considering a lesser sanction. I find the reality was by accepting the rationale Mr Kelly had advanced in his report as to why a lower sanction was not appropriate the panel had regard to the matter and accordingly there was no procedural unfairness in relation to this point.

90. I reminded myself throughout of the guidance of **Roldan v Salford Royal Hospital NHS Trust** that where the outcome of a disciplinary process is dismissal and that can have life changing consequences for the claimant's career there is an extra duty on an employer to ensure that the process is conducted properly and fairly.

91. I am satisfied that the respondent conducted a very detailed investigation. The claimant had a number of opportunities to give her version of events. The respondent investigated the matter by speaking to many witnesses. All their statements were made available to the claimant both at the dismissal hearing and at the appeal hearing. There was an opportunity for the claimant to examine witnesses including those she asked to be interviewed. The claimant had lengthy unblemished service with other employers and several years' unblemished service with this employer. I am satisfied that the respondent weighed that up but that dismissal was within the band of reasonable responses of a reasonable employer. Accordingly the claimant's claims fail.

92. Having determined that the claimant was fairly dismissed for the reason of conduct, there is no requirement for me to consider the respondent's alternative submission that the reason for dismissal was "some other substantial reason"

93. I turn to consider the claimant's claim for wrongful dismissal.

94. Was the respondent entitled to summarily dismiss the claimant? The claimant was a Registered Care Home Manager. It was important she acted with integrity. Even though it was undisputed there was no pecuniary advantage to her to sign another person's name in a column marked "signature", it was an extremely serious error of judgment for her to hand write another employee's name in a column marked "signature" without asking their permission, even if it was only transferring data, particularly in circumstances where the original document has not been retained. I find that conduct is of itself amounts to repudiatory contract by the employee justifying summary dismissal. Accordingly that claim also fails.

Employment Judge Ross

13 February 2017

RESERVED JUDGMENT AND REASONS SENT TO THE PARTIES ON

14 February 2017

FOR THE TRIBUNAL OFFICE

[AF]