



EMPLOYMENT TRIBUNALS

Claimant: Dr. S Dosanjh
Respondent: Nottinghamshire Healthcare NHS Trust
Heard at: Nottingham
On: 17th September 2018
25th September 2018 (In Chambers)
Before: Employment Judge Heap
Members: Mr. G Kingswood
Mr. W Dawson

Representation

Claimant: Miss. S Williams - Counsel
Respondent: Mr. T Sheppard - Counsel

JUDGMENT ON RECONSIDERATION

The Claimant's application for Reconsideration as remitted to the Tribunal by the Employment Appeal Tribunal is refused and the Reserved Judgment sent to the parties on 16th March 2016 is confirmed.

REASONS

BACKGROUND & THE ISSUES

1. This Judgment concerns an application for Reconsideration made by the Claimant following the dismissal by the Tribunal of her claim of unfair dismissal and wrongful dismissal by way of a Reserved Judgment sent to the parties on 16th March 2016 ("The Reserved Judgment").
2. That application was originally refused by way of a Judgment sent to the parties on 6th October 2016 ("The Reconsideration Judgment"). The Claimant appealed against that Judgment and the matter was determined by The Honourable Mrs. Justice Slade DBE by way of a Judgment handed down on 6th February 2018.

3. We were found to have erred in not taking into account material submitted by the Claimant from her professional body which dealt with her fitness to practice and by also failing to take into account an attachment to an email of 13th August 2009 which was relevant to the adequacy of the Respondent's investigation and the fairness of the decision to dismiss. The original application was therefore remitted to us for reconsideration.

THE EMPLOYMENT APPEAL TRIBUNAL ("EAT") DECISION

4. The relevant paragraphs of the Judgment of the Honourable Mrs, Justice Slade DBE sitting in the EAT said this:

"In my judgment the ET erred in holding they would not reconsider their decision in the light of the findings of the HPC for the reasons set out in paragraph 249 of the Liability Judgment. It was an error of law to reject evidence obtained at events after the decision to dismiss when considering the claim for wrongful dismissal. The issue to be determined by the ET in deciding the wrongful dismissal claim was whether the Claimant was in fundamental breach of contract, not whether at the time the decision was taken the Respondent had reasonable grounds for that belief.

Further, the criticisms the HPC made of the investigation by Linda Braithwaite which the Claimant drew to the attention of the ET in her reconsideration application could have been appreciated by the Respondent when they took their decision to dismiss. In my judgment the ET in relying upon the reasons they gave in paragraph 249 of the Liability Judgment erred in rejecting the application to reconsider their Judgment in the light of the HPC material upon which the Claimant referred to in her application for reconsideration.

Accordingly the challenge by the Claimant to paragraph 15 of the Reconsideration Judgment in which the ET refused her application to reconsider the Liability Judgment in the light of the HPC material upon which she relied in her application succeeds."

5. Paragraph 15 of the Reconsideration Judgment, as referred to within that section of the Judgment of the EAT, said this:

"The Claimant has submitted further documentation from/relating to the HPC and has also referred to findings that they made in the course of considering her fitness to practice. We have dealt within the Reserved Judgment as to the relevance of the HPC findings to the decision to dismiss the Claimant within paragraphs 247 to 250 (and particularly paragraph 249). There is nothing within the additional documentation or the points raised by the Claimant in her application that alters the position as we found it to be within those paragraphs."

6. That in turn of course referred to paragraph 249 of the Reserved Judgment which said this:

"The outcome of the HPC referral, after a hearing some considerable time after the termination of the Claimant's employment, was to suspend her from practice for a period of 12 months. However, given that the decision of the HPC had not taken place before the decision to dismiss (indeed it could not as the referral came off the back of that decision) we say no more about it as it was not relevant

to the information that was before either the disciplinary or appeal panels when making their determination on the Claimant's case."

7. The Honourable Mrs. Justice Slade DBE also dealt separately with the Claimant's challenge to paragraph 19 of the Reconsideration Judgment and in this regard she said this:

"In finding that there was nothing in her application for reconsideration which rendered it necessary to revisit their finding that the email did not put the Respondent on notice that the Claimant had files at home the ET relied upon paragraph 166 of the Liability Judgment. In paragraph 165 the ET set out the email of 13 August 2009 which omits the reference to an attachment. The ET does not set out the content of the attachment or make any reference to it in paragraphs 165 or 166. The attachment makes it clear that the Claimant informed Karen Hampson that she was behind with her reports. She listed those which still had to be written up.

In my judgment the ET erred in holding in paragraph 19 of the Reconsideration Judgment that there was nothing in the application which rendered it necessary to revisit their finding in paragraph 166 of the Liability Judgment."

8. Paragraph 19 of the Reconsideration Judgment said this:

"There are several references to the above email within the application. We made our findings as to the content of that email, and, particularly, whether it was such as to place the Respondent on notice that the Claimant had files at home, at paragraph 166 of the Reserved Judgment. There is nothing within the application which renders it necessary for us to revisit that finding."

9. There was of course a reference within that paragraph to paragraph 166 of the Liability Judgment, which said this:

"We accept the position of the Respondent that nothing within that email came close to putting Karen Hampson on notice that the Claimant was behind with her reports."

10. As is usual in such cases, the matter was listed for a Preliminary hearing for case management before Regional Employment Judge Swann ("REJ Swann") on 14th March 2018, REJ Swann made it clear to the parties that the only issues that we would be required to consider were paragraphs 15 and 19 of the Reconsideration Judgment and, in turn, paragraphs 166 and 249 of the Reserved Judgment which were affected by it.

THE RECONSIDERATION HEARING

11. REJ Swann thereafter listed a Reconsideration hearing which took place on 17th September 2018. Both the Claimant and Respondent were professionally represented and we take the opportunity to express our thanks to both of them for their helpful submissions.
12. We stressed to the parties at the outset that our reconsideration is to be limited to those matters identified above as it was clear from a Skeleton Argument prepared by Miss. Williams that the Claimant sought to challenge considerably

more paragraphs of the Reserved Decision than were remitted back to us for Reconsideration from the Employment Appeal Tribunal. Miss. Williams and the Claimant nevertheless urge us to reconsider the entirety of the decision to dismiss the unfair dismissal and wrongful dismissal claims, essentially whether they flow from the specific paragraphs referred to by the EAT or otherwise.

13. At the outset of the Reconsideration hearing, Miss. Williams who appeared on behalf of the Claimant made an application that we consider the whole of the transcript of the Healthcare Professions Council ("HPC") as part of the Reconsideration application. It was common ground that that document was never before this Tribunal as part of the original hearing bundle, the Claimant's Reconsideration application nor in any of the documents that she submitted thereafter. The Claimant sought to introduce it for the first time today.
14. Mr. Sheppard submitted that we should not consider that document as it was not before us when we made the decision which led to the Reconsideration Judgment. He submitted that the Claimant had had the opportunity to submit that documentation at both the original hearing and as part of the Reconsideration application but that she had specifically chosen not to do so.
15. We adjourned to consider that position and ultimately we determined that we would not allow that additional evidence to be adduced. We gave our reasons for that decision orally at the time but for completeness we reiterate them briefly here.
16. Firstly, the decision of the HPC was not before us at the original Tribunal hearing. There was no question that it could not have been. The solicitors acting for the Claimant before the HPC, Leigh Day & Co ("Leigh Day"), clearly had a copy as they referred to the findings in the correspondence to the Claimant, a redacted copy of which formed part of her Reconsideration application. The Claimant could clearly have obtained it and referred us to it at the original hearing. She elected not to do so (and she was of course professionally represented at that hearing) and it cannot be said to be evidence which could not have been adduced well before now.
17. Secondly, as a direct result of that we have heard no evidence from any witnesses as to the findings of the HPC as contained within their full decision. There has been no cross examination on such matters and no findings of fact made by us on the content.
18. Thirdly, and perhaps most importantly, the HPC decision was not a document placed before us even at the point of the Reconsideration Application made by the Claimant and to which her subsequent appeal and remission related. Again, there is no question that that document could have been adduced at that stage, particularly given the fact that the parties were specifically invited to provide anything else which was said to be of relevance before we took our decision. The reconsideration process in these circumstances is an opportunity to ask us to review the original decision that we made and that evidence played no part in that decision.
19. For all those reasons, we determined that we would not take into account the full decision of the HPC.

20. At the close of submissions on 17th September 2018 we did not have time to read the entirety of the transcripts of the HPC hearing (which in contrast to the HPC decision were before us at the original liability hearing) and which both Counsel agreed that we should read. They amounted of themselves to almost 300 pages out of a bundle running to over 650 pages. We therefore proceeded on 25th September 2018 in Chambers to consider those transcripts and to reach our decision.

THE LAW

21. We remind ourselves here of the relevant provisions of the Regulations which deal with Reconsideration applications and which are set out at Rules 70 to 73 of the Regulations. Those sections of the Regulations provide as follows:

“RECONSIDERATION OF JUDGMENTS

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice

provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Reconsideration by the Tribunal on its own initiative

73. *Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused)."*

CONCLUSIONS

22. We consider firstly the issue of the Health and Care Professions Council ("HPC") investigation and all of the extracts to which we have been taken by Miss. Williams during the course of her submissions. As we have already observed, we have also read the entirety of the transcripts of evidence. We do not set out the extracts relied upon by Miss. Williams in this regard because, ultimately, other findings and conclusions that we reached and which we were not directed by the EAT to reconsider have, in our view, rendered it unnecessary to do so. The parties may be assured however that we have carefully considered all that they have said to us, both orally and in their helpful Skeleton Arguments.

The HPC material and the wrongful dismissal claim

23. We deal firstly with whether we should reconsider our decision on the wrongful dismissal claim having regard to the additional HPC material supplied by the Claimant in her original Reconsideration application.
24. We accept of course that the wrongful dismissal claim was not parasitic upon the complaint of unfair dismissal and that there was a different test to be applied. That would include consideration of material that was before the HPC but that was not before the disciplinary and appeal panels.
25. The Claimant provided us at the point of seeking Reconsideration originally with only an extract from a redacted letter from Leigh Day & Co who acted for her in

the HPC proceedings. The extract upon which the Claimant wishes to rely, set out that the HPC had decided to suspend her on the ground that her fitness to practice as a Clinical Psychologist was (as at November 2012) impaired by reason of her mental health.

26. The relevant extracts of the Leigh Day letter said this:

“The Panel stated clearly that the sanction it imposed was not intended to be punitive. It stated that it imposed a sanction because it was clear by reason of your mental health you are currently not fit to practice, there was no clear timescale within which your current unfitness to practice would be remedied, and for reasons of maintaining public confidence in the profession and in the regulatory process.

The Panel said that although the shortcomings identified in your clinical performance related to two core areas of professional practice, it did not consider them to be particularly serious lapses. The Panel also found mitigation in terms of the very difficult and unfamiliar environment in which you were working.

With regard to Linda Braithwaite, the Panel found significant weaknesses in the Trust investigation. These are outlined in the Panel’s decision. The Panel stated that it was not able to attach any weight to any of the investigation’s findings which were not substantially corroborated or confirmed by other evidence.

The Panel found Dr David Connelly to be a truthful witness. However, the Panel formed the view that the impact of his evidence was limited because he did not have all the information, namely all the patient notes. The Panel also stated that he did not comprehend fully the nature and operation of the multi disciplinary team”.

27. As we raised with the parties, and as detailed in Mr. Sheppard’s Skeleton Argument, we concluded within the Reserved Judgment that on the files at home issue alone, the Claimant had been in repudiatory breach of contract.
28. There is nothing within the findings of the HPC which the Claimant supplied to us in the course of the Reconsideration application which alters that position or causes us to cast doubt on the findings or conclusions that we had made at paragraphs 271, 272 and 292 of the Reserved Judgment (which we were not directed by the Employment Appeal Tribunal to revisit) and we remind ourselves here that the Claimant had made a direct admission to having patient files at home. That is clear from both the evidence before us and also a number of the pages within the HPC transcript (see for example pages 501, 572 and 573).
29. The Claimant relies upon extracts from the evidence of Andrea Ward to the HPC at pages 566, 567 and 580 of the Reconsideration bundle which related to the fact that it was put to her in cross examination at the HPC hearing that she had proceeded on the understanding that the Claimant had MDT files at home rather than process notes and that the latter were a less serious matter. Andrea Ward had accepted that to be the case at the HPC hearing. We deal further below with that issue in the context of the unfair dismissal claim but we observe that the evidence of Andrea Ward to the HPC was given over two years after the events in question and at a time when she was suffering from considerable health issues. The extracts to which we have been taken by Miss. Williams in this

regard do not lead us to alter our views as to the evidence of Andrea Ward before this Tribunal. We deal with that further below.

30. Miss. Williams also relies on the evidence given to the HPC by Barbra Jones at page 618 of the Reconsideration bundle. That evidence did not differ any to the evidence given by Ms. Jones at the hearing before us and which we took into account in reaching our decision in the Reserved Judgment. The process to which Ms. Jones was referring was the taking of notes home for a brief period over the weekend to write up. Notes could be taken off site under the Respondent's Clinical Records Management Policy but the circumstances and length of time that the Claimant held the notes at home was quite different.
31. In our view, and it is our findings and conclusions that are important for the purposes of the wrongful dismissal claim, it matters not whether the notes were process notes or MDT files that the Claimant had at home. She had patient notes and records, containing sensitive personal data of identifiable individuals, at her home address for a period of many months. Aside from the importance of records being complete and the fact that the Claimant's actions were in clear breach of the Respondent's Clinical Records Management Policy and, as we set out at paragraph 292 of the Reserved Judgment, there were also patient confidentiality and data protection issues.
32. Whilst we have therefore considered carefully all that is said in the HPC documentation to which we have been referred (including all of the transcripts) there is nothing contained therein which leads us to reconsider the decision to dismiss the wrongful dismissal claim as a result of the findings and conclusions reached at paragraphs 271, 272 and 292 of the Reserved Judgment.

The HPC material and the unfair dismissal claim

33. We turn then to the question of the unfair dismissal claim.
34. As we have already said above, the Claimant did not furnish us with a copy of the full decision of the HPC at either the original liability hearing nor for the purposes of the original Reconsideration application. It was not contained within the agreed bundle prepared for the Reconsideration hearing either. We have no supporting evidence provided in that regard as to what aspects of the evidence before them the HPC relied upon in reaching their conclusions. It is also perhaps notable that significant portions of the letter from Leigh Day have been redacted before the Claimant provided it to us. It also appears to us that the HPC may well have formed a different view as to the Claimant's credibility than we formed and as we set out at paragraphs 23 to 32 of the Reserved Judgment.
35. We therefore do not know what the "significant weaknesses" that Leigh Day set out in their letter that the HPC had found actually were because the Claimant did not provide a full copy of the decision which outlined them at the original hearing or within the original Reconsideration application. However, we found no such weaknesses in respect of our assessment of the evidence before us.
36. Miss. Williams takes matters further than reliance on only the material supplied by the Claimant for the Reconsideration application and she has taken us to a number of extracts in the HPC transcripts (which were before us at the original hearing) and which she relies upon as perhaps substantiating the conclusions

that the HPC came to. We have considered each of those entries carefully but ultimately the cherry-picked extracts relied upon do not alter our views, or our findings, that the Respondent carried out a reasonable investigation from which they were able to form a reasonable belief, on reasonable grounds that the Claimant had committed acts of gross misconduct. We considered all evidence to which we were taken at the original hearing before us in that regard. The fact that the HPC concluded differently (the basis for which we are not of course aware of) and when considering a different test as to the Claimant's fitness to practice does not in these circumstances lead us to change the conclusions that we reached at paragraphs 263 to 272 of the Reserved Judgment.

37. We remind ourselves in this regard that the HPC were considering a different test to that of the Tribunal. They were considering the fitness to practice of the Claimant; a much higher threshold than the band of reasonable responses test. The attempts to cherry pick comments made in the HPC proceedings some two years after dismissal and which might have led to the conclusion of the HPC as to there being "significant weaknesses" in the investigation does not lead us to alter our overall views as to the fairness of the dismissal.
38. In all events, even had we concluded that we should revisit findings that we had made in respect of the "shortcomings" of the Claimant relating to clinical practices (a matter which we make it clear that we did not) then this still leaves the fact of the files at home issue. Again, Miss. Williams relies on the evidence of Andrea Ward at page 567 of the Reconsideration bundle to which we have already referred in the context of the wrongful dismissal claim.
39. We have revisited our notes of cross examination of Mrs. Ward on this issue from the original liability hearing.
40. Mrs. Ward was initially asked whether it was MDT notes or process notes that the Claimant had at home. Her reply from our notes was "*Oh, I don't know, patient clinical records*".
41. The evidence of Mrs. Ward when it was put to her by Miss. Williams that she did not know that she was correct that the Claimant had MDT files at home was "*Hang on, I didn't say that. All I knew was there were patient files at home. Blue or orange files, it makes no odds. They were patient files.*" It should be noted here that blue files are MDT files and orange files are the process notes.
42. Mrs. Ward was also asked by Miss. Williams in cross examination whether she thought that having blue files (i.e. MDT files) at home was a more serious matter than process notes.
43. The extract from the cross examination of Mrs. Ward at the HPC was referred to in the context of that questioning. Mrs. Ward did not detract from her evidence before us that both sets of notes were equally important, albeit for different reasons, and that she had been unwell at the time of the HPC hearing – a matter that we remarked upon within the Reserved Judgment.
44. She was later again asked in cross examination the following day that it was not in dispute that the Claimant had process notes at home. The answer given was "*No, it makes no difference*". That accorded with her earlier evidence that it made no difference whether it was blue or orange notes that the Claimant had

retained at home. We accepted that evidence in reaching our relevant conclusions within the Reserved Judgment at paragraphs 271 to 273 of the Reserved Judgment.

45. The evidence of Andrea Ward in cross examination informed our findings about the severity by which she saw each of the allegations against the Claimant.
46. Those findings are as recorded at paragraph 225 of the Reserved Judgment. We were not directed to reconsider that part of our Judgment nor, as we have said above, was it Mrs. Ward's evidence before us that having process notes at home would be a less serious matter than having MDT files. She viewed the notes at home issue as constituting gross misconduct of itself for which she would have dismissed the Claimant. We accept that her evidence at the HPC was at a time when her health was poor and was of course some two years after the events in question (see paragraph 250 of the Reserved Judgment).
47. Having regard to that evidence, the fact that the Claimant had admitted having patient notes – of whatever description - at home and the requirements of the Respondent's Clinical Records Management Policy, we do not reach a different conclusion to that which we reached at paragraphs 271 to 273 of the Reserved Judgment in respect of the unfair dismissal claim. Any deficiencies which the HPC did find in relation to Linda Braithwaite's investigation (and we know not of course what they were) were not relevant to this particular allegation given the Claimant's admission that she had patient notes at home and that she had retained them at home for some length of time. The dismissal of the Claimant for that issue alone was one which fell squarely within the range of reasonable responses open to the Respondent. The evidence of Andrea Ward was that that was an act of gross misconduct and there can therefore be no suggestion that the Claimant would not have been dismissed if that had been the only finding against her during the disciplinary process.
48. To put that matter in context, process notes were an ongoing clinical record which were regularly merged into the MDT file so that there was a complete central patient treatment record. It matters not whether the Claimant had taken process notes or MDT notes home – and we accepted the evidence of Andrea Ward as to her views in that regard as we have set out above – she had confidential notes at home for a significantly protracted period of time which was not only against the Clinical Records Management Policy but also resulted in the Respondent holding an incomplete patient file. The seriousness of that issue speaks for itself, particularly in the context of the vulnerable patients who the Claimant had been treating.
49. We therefore confirm our finding that the Claimant's dismissal was not unfair in respect of the files at home issue alone.

The 13th August 2009 email attachment

50. We turn then to consider the position in respect of the attachment to the 13th August 2009 email as referred to at paragraphs 68 and 69 of the Judgment of the EAT.
51. One of the issues relied upon by the Claimant is that the testimony of Karen Hampson at the HPC hearing was such that the email of 13th August 2009 and

attachment put her on notice of the Claimant's case load and she contends by implication the fact that she was behind on reports (see paragraphs 24 and 26 of Miss Williams' Skeleton Argument). We have considered that part of the evidence and even assuming that Karen Hampson had answered in the affirmative (which she did not as she indicated that she did not know) that answer came in response to the question as to whether that email put her on notice of the totality of the Claimant's caseload. It made no mention whatsoever of putting her on notice that the Claimant was behind with her reports (or indeed that she had files at home) and the two matters are entirely different. One cannot be inferred from the other.

52. We turn then to the attachment to the email of 13th August 2009. Miss. Williams had helpfully appended a copy of the attachment to her Skeleton Argument. It is a list of 21 patients which, next to each, deal with the state of play in respect of the patient in question. For 8 of those 21 patients there is a remark made by the Claimant that the report is outstanding. In some cases, that is accompanied by an explanation as to why that is the case – for example that there is work in progress or that a neuropsychiatric assessment is being awaited.
53. Whilst it is clear that the Claimant had set out that reports were outstanding, there is in our view a distinct difference between the Claimant reporting the current state of play on files to saying that she was behind with her reports or that she had difficulties with her case load or the work load placed upon her. We accept the submissions of Mr. Shepherd that at some stage, it is inevitable that there will always be something that is outstanding.
54. We remain satisfied that when viewed against the backdrop of the Claimant's otherwise innocuous email of 13th August 2009, there was nothing within that email or the attachment that caused Karen Hampson to be on notice that the Claimant was struggling with her workload or to complete her reports. She did not accept that that was the case in her evidence before the HPC as we have already referred to above.
55. The attachment must also be viewed against the backdrop that the Claimant accepted during an interview with Linda Braithwaite on 25th February 2010 (and which was information before the dismissing officer) that there was no evidence to support her contentions that her Supervisors were aware of the fact that she was falling behind with reports and the evidence of both Karen Hampson and of Dr. David Connolly was that neither of them had been told by the Claimant that she was struggling (see paragraph 164 of the Reserved Judgment). Neither the email nor the attachment showed that the Claimant was struggling to complete her reports or had problems with her workload as we have already observed above. It merely showed that she had reports outstanding and, as we have said, that would not have been unusual. It did not show that she was struggling nor did it show or suggest that she had files at home.
56. We simply do not know why Linda Braithwaite did not include the attachment in her report – by the time of the HPC hearing some two years later she was not able to give an answer for that and so the HPC documents that the Claimant relies upon cannot assist us in that regard.
57. Moreover, even if we had formed the view that the email and attachment were sufficient to place Karen Hampson on notice that the Claimant was struggling to

complete reports, then that was only one of a number of reasons for which the Claimant was dismissed. Those matters were, in totality:

- Failure to document process notes to Trust's standards (allegation one);
- Failure to complete core assessment paperwork, CPA and risk assessment (allegation two);
- Failure to document adequate treatment plans within process notes (allegation three);
- Frequent failure to comment upon and attend to risk issues of specific cases (allegation four);
- Failure to produce assessment letters, treatment summaries and discharge letters (allegation five);
- Failure to safely hand over cases when psychological input is no longer indicated (allegation six); and
- Patient records held at home were not closed potentially placing patients at risk (allegation seven).

(See paragraph 262 of the Reserved Judgment).

58. We remind ourselves again that the evidence of Andrea Ward, which we accepted, was that she viewed each of allegations 1, 2, 6 and 7 of themselves potentially constituting gross misconduct; allegations 3 and 4 of themselves definitely having the potential to be gross misconduct and allegation 5 "may or may not be" of itself an act of gross misconduct (see paragraph 225 of the Reserved Judgment). Allegation 5 was the allegation that related to the failure to complete the reports and thus the only allegation to which the email and attachment of 13th August 2009 related. It was the least serious of all of the allegations against the Claimant insofar as Mrs. Ward, as the dismissing officer, was concerned.
59. We set out at paragraphs 265 to 271 our conclusions that the Respondent had reasonable grounds upon which to form a reasonable belief after reasonable investigation of the Claimant's "guilt" in each of the seven allegations. Paragraph 269 was the only paragraph that related to the issue of the reports.
60. Had we therefore concluded (which for the avoidance of doubt we do not) that the Claimant's email and attachment had been sufficient to draw to the attention of Karen Hampson that she was struggling with reports and that therefore should have been taken into account in relation to allegation five, that would nevertheless not have made any difference to our conclusions on the unfair dismissal claim. Paragraphs 265 to 268 and 270 to 272 set out our conclusions (which we were not directed by the EAT to revisit) on the remainder of the allegations and it was clear from the evidence of Andrea Ward to which we have referred above that she saw each of those remaining matters as being either acts of gross misconduct of themselves or having the potential to be gross misconduct.
61. The Claimant would have been dismissed for gross misconduct even without allegation five being taken into account and for the reasons given at paragraphs 273 to 289 of the Reserved Judgment we are satisfied that dismissal would still

have occurred and, moreover, that that decision would have still fallen squarely within the band of reasonable responses open to a reasonable employer.

62. Again, we would also repeat in all events our conclusions at paragraphs 45 to 48 above on the files at home issue. That issue alone was sufficient to warrant the Claimant's dismissal for gross misconduct and had the decision proceeded on allegation seven alone, we would still have found the dismissal to fall squarely within the band of reasonable responses open to a reasonable employer.
63. Moreover, insofar as the wrongful dismissal claim is concerned, again we can do no better than to repeat our conclusions above at paragraphs 31 and 32 above. It was accepted by the Claimant that she had patient notes at home. On that basis alone, we found her to have committed an act of gross misconduct (see again paragraphs 271, 272 and 292 - which are not paragraphs that we are directed to reconsider by the EAT).
64. There remains, in our view, nothing in the attachment to the email of 13th August 2009 which would have put Karen Hampson or anyone else on notice that the Claimant had files at home but, even if it had, the Claimant was still in clear breach of the Clinical Records Management Policy. She had not sought any permission to have files at home and certainly not for the extended period of time that she did.
65. For the reasons that we have given, we are therefore entirely satisfied that it is not in the interests of justice to revoke the Reserved Judgment. The application for Reconsideration is therefore refused and the Reserved Judgment is confirmed. For the avoidance of doubt, that is the unanimous decision of the Employment Tribunal Judge and both very experienced members.

Employment Judge Heap

Date 14th December 2018
RESERVED JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.