



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Kenworthy

Respondent: Think Employment Limited

Heard at: Manchester (by CVP)

On: 16 November 2020
23 June 2021

Before: Employment Judge McDonald
(sitting alone)

REPRESENTATION:

Claimant: Mrs Davies (Friend and adviser)

Respondent: Mr Hallam (Managing Director)

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's complaint of unfair dismissal succeeds.
2. The claimant's claim that she was wrongfully dismissed in breach of contract succeeds.
3. Remedy will be decided at a hearing listed for 6 September 2021.

REASONS

Introduction

1. The claimant complains that she was unfairly dismissed by the respondent. She also says her dismissal without notice was a wrongful dismissal in breach of contract.
2. I heard the final hearing of this case over two days by CVP remote video link. A face to face hearing was not possible because of the COVID19 pandemic. I am satisfied that all parties were able to fully participate in the hearing.

Evidence

3. For the hearing I had an electronic bundle of documents consisting of 98 pages. This included evidential documents and the witness statements for the witnesses I heard from. Those witnesses were the claimant and (for the respondent) Richard Hallam, Debbie Kay and Angela Dennehy. Ms Kay is the respondent's Quality and Performance Manager and was the investigating officer in the disciplinary process which led to the claimant's dismissal. Mr Hallam is the Managing Director of the respondent and took the initial decision to dismiss the claimant. Mrs Dennehy is the respondent's Head of Central Support and Company Secretary and heard the appeal hearing. Each witness was cross examined and answered my questions.

4. During the hearing I was provided with the following further documents to which no objection was raised:

- a) Ms Kay's Investigation Report (provided on the first day of the hearing)
- b) A copy of the final written warning issued to the claimant in 2015 (provided on the second day of the hearing)
- c) An extract from Companies House records relating to the respondent (provided on the second day of the hearing).

Preliminary Matters

5. At the start of the hearing I identified that the claimant's claim was brought out of time having been filed with the Tribunal on 2 June 2020 when it should have been filed by 25 May 2020. As a result, I heard evidence from Mrs Davies and the claimant who were cross examined by Mr Hallam, and then submissions from Mrs Davies and Mr Hallam. Having done so, I decided it had not been reasonably practicable for the claimant to file her claim in time and I allowed it to proceed. I gave oral reasons at the hearing and the respondent requested those in writing. I have included them in the Annex to this Judgment.

6. Because of the time spent in dealing with that preliminary matter, it was only possible to hear evidence from two of the respondent's witnesses on the first day of the hearing. They were Ms Kay and Mr Hallam.

7. At the end of the first day I listed the second day for 30 November 2020 and also ordered that the claimant provide an updated Schedule of Loss by 23 November 2020. That was to bring her losses up-to-date and also to amend it to include those benefits, such as Universal Credit or Jobseeker's Allowance which she had received since she was dismissed.

8. Unfortunately, it was not possible due to limited judicial resources for the hearing of the second day to proceed on 30 November 2020. That meant that the second day did not take place until 23 June 2021. On that date I heard evidence from Mrs Dennehy and from the claimant. Each was cross examined and answered questions I put to them. I then heard submissions from the parties. Mr Hallam read out his written submissions and I asked him a few supplementary questions. Mrs Davies gave oral submissions for the claimant. I have not set those submissions out in this judgment but had regard to them in reaching my decisions.

Issues in the case

9. There had not been a preliminary hearing in the case but we discussed the issues at the start of the hearing. This was a conduct dismissal and therefore the issues to be determined include those set out in the case of **British Home Stores v Burchell [1980] ICR 303** Employment Appeal Tribunal (“EAT”). The issues were:

- (1) Did the respondent have a potentially fair reason for dismissing the claimant? The respondent says the potentially fair reason is her conduct.
- (2) Did the respondent act fairly in treating that reason as a reason for dismissal in this case? In deciding that issue, I need to ask the following questions:
 - (a) Did the respondent have a genuine belief that the claimant was guilty of the misconduct for which she was dismissed?
 - (b) At the time that belief was formed, did the respondent have reasonable grounds for it?
 - (c) Had the respondent carried out as much investigation as was reasonable in all the circumstances?
 - (d) Did the respondent follow a reasonably fair procedure;
 - (e) Dismissal was within the band of reasonable responses.

10. Mrs Davies confirmed that the claimant was also bringing a claim of wrongful dismissal. To decide whether the claimant was wrongfully dismissed without notice I need to decide whether in fact she had acted in fundamental breach of contract entitling the respondent to dismiss her without notice.

Relevant Law

Unfair Dismissal

11. Section 94 of the Employment Rights Act 1996 (“ERA”) sets out the right of an employee not to be unfairly dismissed.

12. If there has been a dismissal (as it was accepted there had been in this case) the first issue is whether the respondent has shown that the reason or principal reason for dismissal was a potentially fair one within the meaning of section 98(2) of the ERA. In this case the respondent alleged the reason for dismissal was conduct.

13. The second question is was the decision to dismiss fair or unfair in all the circumstances? When it comes to making that decision, there is a neutral burden of proof i.e. it is not for the employer to prove that it acted fairly. As this is a misconduct dismissal, the **Burchell** test set out in para 9 above applies. The question is whether the conduct of the respondent fell within what has been described as the “band of reasonable responses”. The question is not whether I would have reached the same decision as the respondent did but whether it acted within the range of reasonable responses to the employee’s conduct in deciding to dismiss.

14. The same approach applies to considering the respondent's conduct of the investigation into the claimant's alleged misconduct. The question is whether the investigation was within the range of reasonable responses which a reasonable employer might have adopted (**J Sainsbury PLC v Hitt [2003] ICR 111 Court of Appeal**).

15. A fair investigation requires the employer to follow a reasonably fair procedure. By section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 Tribunals must take into account any relevant parts of the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").

16. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613**.

17. If the three parts of the **Burchell** test (at (a), (b) and (c) of the list of issues above) are met, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee (instead of imposing a lesser sanction) was within the band of reasonable responses, or whether that band fell short of encompassing termination of employment.

Unfair Dismissal-remedy

18. S.118(1) ERA says that:

"Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of-

(a) a basic award (calculated in accordance with sections 119 to 122 and 126, and

(b) a compensatory award (calculated in accordance with sections 123, 124, 124A and 126)."

19. The basic award is calculated based on a week's pay, length of service and the age of the claimant.

20. The compensatory award is "such amount as the tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the claimant in consequence of the dismissal" (s.123(1) ERA).

21. A just and equitable reduction can be made to the compensatory award where the unfairly dismissed employee could have been dismissed at a later date or if a proper procedure had been followed (the so-called **Polkey** reduction named after the House of Lords decision in **Polkey v A E Dayton Services Limited [1987] IRLR 503**).

22. Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant it shall reduce the compensatory award by such proportion as it considers just and equitable having regard to that finding (s.123(6) ERA).

23. Where the tribunal considers that any conduct of the claimant before the dismissal (or, where the dismissal was with notice, before the notice was given) was

such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly (s122(2) ERA).

Wrongful dismissal

24. When it comes to wrongful dismissal the Tribunal is not concerned with the reasonableness of the employer's decision to dismiss, but the factual question, was the employee guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract? (**Enable Care & Home Support Ltd v Mrs J A Pearson** **UKEAT/0366/09/SM**).

25. In **Laws v London Chronicle (Indicator Newspapers) Ltd 1959 1 WLR 698**, the Court of Appeal said that in order to amount to a repudiatory breach, the employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract. I must therefore decide whether or not the claimant was guilty of a repudiatory breach. If she was then that would justify the respondent terminating her contract of employment without notice and her claim of wrongful dismissal will fail. Otherwise the respondent would be in breach of contract and would be required to provide compensation equivalent to the notice pay which the claimant should have received under her contract (less any earnings for which she is required to give credit during the notice period).

Findings of Fact

Background facts

26. The claimant was employed by the respondent as a Learner Engagement Manager from 7 October 2013. She was based in the Greater Manchester area, working primarily across the respondent's offices in Stockport and Ashton.

27. The respondent provides adult educational services to clients (referred to as "learners") looking to upskill to improve their employment opportunities. Some clients come to the respondent online but most are referred by jobcentres. The income stream for the respondent depends on the number of learners they have on their books. A drop in the number of learners referred by a Job Centre would have a direct impact on the income of the respondent and, ultimately, its survival. The respondent employs 35 people in 5 locations – Hull, Grimsby, Leeds, Ashton Under Lyne and Stockport.

28. In the Stockport area there is a competitive market for the services provided by the respondent which means that losing the confidence of a Job Centre as a referrer would be extremely damaging to the respondent. There were three or four other learning providers who learners could be referred to instead. Evidence that learners were having a bad experience at a particular service provider like the respondent could be very damaging.

29. The learners who use the respondent's services often come from a background of homelessness, low educational attainment, language problems or other issues which mean that they can be vulnerable people. That, and the need to ensure it retains the confidence of its referrers, means the respondent puts a great emphasis on the way learners are treated by its employees.

30. The respondent's Code of Conduct (p.71) sets out what learners can expect from the respondent and its staff and what it expects from them in return. In terms of the former, the parts of the Code of Conduct of particular relevance to this case are that the learner can expect that the respondent and its employees will:

- Listen carefully to them and help them to find the right learning, qualification or support to achieve their goals
- Understand their needs and circumstances to make sure they get the most out of their time with the respondent.
- Treat them fairly, politely and with respect
- Ensure its staff are professional and have the skills and knowledge to support them
- Provide help and support if they have a problem, question or complaint.

31. In return the client is expected to also comply with the Code of Conduct, including:

- Completing the activities and work they agree with the respondent
- Participate fully and actively in their programme.

32. The respondent also has an "IAG policy" (pp.72-75) which sets out how it will provide Information, Advice and Guidance services to its clients. It sets out various objectives, including reflecting the equality and diversity of clients' needs (2.4) and encouraging clients to engage successfully with the service by being friendly and welcoming (2.5 under "duty of care"). The IAG Policy does not suggest that a breach of the objectives set out in it by an employee would be gross misconduct.

33. The claimant's Job Description (pp.84-85) also emphasised the importance of behaviours. The main purpose of the role was to provide "first class careers IAG to adults with arrange of communication methods and styles to suit the individuals needs". It requires the jobholder to "provide excellent customer services", work with clients to "develop a positive attitude to learning and life" and to "act as an ambassador for [the respondent] modelling company values".

34. The bundle included the respondent's disciplinary procedure (pp.67-70). Under the heading "Gross Misconduct", the policy states that the respondent may dismiss with immediate effect in the case of gross misconduct. That is followed by a non-exhaustive list of examples of gross misconduct. They include:

- Failure to observe a health and safety requirement;
- Wilful refusal to comply with reasonable orders or instructions.
- Conduct detrimental to the interest of the company or bringing the company into disrepute whether during working hours, at company events or in own time.
- Serious breach of security or financial procedures.

- Breach of confidentiality.

35. That list (although admittedly non-exhaustive) does not say that a breach of the IAG Policy or the Code of Conduct in itself amounts to gross misconduct.

36. The disciplinary procedure also sets out the disciplinary process. That process includes:

- Step 1: The company setting out in writing the reasons why dismissal/disciplinary action is being considered. A statement will be sent to the employee and they will be invited to a meeting to discuss the matter.
- Step 2: A meeting will take place before action is taken unless suspension is involved. A meeting will not take place unless the employer has explained the basis for the meeting and the employee has had a reasonable opportunity to consider his or her response to that information. After the meeting the employer will inform the employee of the decision and notify the employee of their right to appeal.
- Step 3: If the employee wishes to appeal he must inform the employer within the timescale on the letter, usually ten working days. There will then be a further meeting.

37. In terms of the appeal procedure, the disciplinary procedure confirms that an employee who wishes to appeal against a decision should write to the person advised in their letter within ten working days setting out the grounds of appeal. The policy says that:

“Appeal will normally be held by an independent manager (one who has not previously been involved in disciplinary action against the employee) at the same level or senior to the manager who decided upon the sanction. Decisions by managers hearing appeals are final.”

38. In this case it is accepted that the appeal was carried out by Mrs Dennehy, who was not at the same level or more senior than Mr Hallam who had made the original decision to dismiss. Mr Hallam was the Managing Director and (as the extract from Companies’ House provided on the second day of the hearing showed) at the time the sole director of the respondent. Once he had carried out the disciplinary hearing there was no one more senior than him in the respondent’s managerial structure who could hear the appeal.

Credibility of witnesses and the reliability of their evidence

39. On the first day I heard evidence from Ms Kay and from Mr Hallam. I found Ms Kay to be a credible witness and her evidence reliable. When it comes to Mr Hallam, his evidence was at times hesitant. He frequently referred back to the notes of the meetings before answering questions. I am conscious that there has been a significant amount of time since the events giving rise to this claim. All in all, however, where there was a conflict between the evidence of the other witnesses and Mr Hallam, I preferred their evidence to his. Mrs Dennehy was a credible witness and I found her evidence to be reliable. She was honest about matters

such as her lack of knowledge of the ACAS Code. When it comes to the claimant, I found her a credible witness and her evidence to be reliable in general but less so when it came to the incident involving Margaret discussed at 44(e) below.

What happened on the 4 December 2019

40. To decide the wrongful dismissal case, I have to make findings of fact about what happened on 4 December 2019. My findings are based on the claimant's evidence at the Tribunal and the documents in the Bundle. They included complaint forms filed by two clients (Ms Ali and Mr Walton)(pp.30-32), statements and interview notes from the respondent's employees who provided evidence to the disciplinary investigation (including the claimant's investigation meeting notes)(pp. 28-29, 33-34 and 37-47) and the notes of the disciplinary hearing and appeal (pp.52-56 and 62-64).

41. The disciplinary investigation into events on the 4 December 2019 was triggered by an email to the respondent's management from Nicol Carruthers, a Learning Engagement Manager who had recently joined the respondent. In her email dated 5 December 2019 she set out brief details in bullet point form of five incidents which she had witnessed at the Stockport centre on the previous day. She said she was "appalled and embarrassed as most of the learners met with a frosty welcome. No eye contact was given, questions ignored and judgments made".

42. The five incidents she described were:

- a) A learner being shouted at because he did not understand the term "next of kin". He was made to feel uncomfortable and voices were raised and no patience shown when he struggled to understand the questions on the initial assessment questions
- b) One learner reduced to tears as her first language was not English and she could not keep up with the pace of questions being asked. There was no compassion shown and questions were fired at her.
- c) One learner would not commit to starting the course due to the manner he was presented with - he asked why the Learning Engagement Manager (i.e. the claimant) was so angry.
- d) One learner was aggressively asked to abstain from smoking cannabis before coming into the centre. It was the manner in which this was addressed which was Ms Carruthers felt was inappropriate
- e) One learner (Margaret) was shouted at in front of 3 other learners which she found inappropriate

43. On the balance of probabilities, I find that the claimant could be unfriendly, unapproachable and impatient in her dealings with learners which some of them found sufficiently off-putting to make them decide not commit to starting courses with the respondent. To put it in the terms used by Mr Berry in his email to Ms Kay on 13 December 2019 (p.37), the claimant's approach to learners was more a "passport control" approach rather than the "friendly, approachable "bend over backwards for learners" approach" envisaged by the respondent's Code of Conduct.

44. When it comes to five specific incidents described by Nicol Carruthers, my findings are as follows:

- a) On the balance of probabilities, I accept that the claimant became impatient with a learner who struggled to understand the term "next of kin" and to understand the initial assessment questions because English was not his first language. I do not accept that the claimant "shouted" at him. Meghan Dyer, a Vocational Tutor for the respondent and the only other witness to that incident, did not in her email statement (p.33) or her investigatory interview (pp.44-45) give evidence that she did so. Ms Carruthers was not interviewed as part of the disciplinary investigation so gave no further evidence about this incident.
- b) The claimant accepted that one learner she spoke to did cry. She said she did so at the end of the interview when she was told the timescale for her course beginning. On the balance of probabilities, I do not accept that it was the claimant who reduced her to tears. However, I do find (based on the statement from Ms Carruthers and Ms Dyer's email statement) that the claimant could have shown more compassion towards the learner concerns and altered her approach to the pace and tone of the interview.
- c) On the balance of probabilities, I find that one learner would not commit to starting the course due to the manner he was presented with - he asked why the Learning Engagement Manager (i.e. the claimant) was so angry. This was not an incident the claimant could give evidence about (because it was not said to her by the learner) but I find it consistent with evidence given to the disciplinary investigation about other similar incidents.
- d) The claimant accepted that she asked one learner to abstain from smoking cannabis before coming into the centre. She denied that she did so aggressively. None of the witness statements referred to this incident and Ms Carruthers was not interviewed as part of the disciplinary investigation so there is no further evidence about that to contradict the claimant's version of events.
- e) On the balance of probabilities, I find that the claimant did shout at a learner called Margaret and that this did happen in an open area in front of other learners. There was evidence about this incident from two learners present, Ms Ali and Mr Walton. They completed complaint forms about the incident on 5 December 2019 (pp.30-32). Neither referred to the claimant "shouting" but it is clear from Ms Ali's statement that the claimant's voice was raised - it was loud enough for Ms Ali to hear despite having her headphones on. Ms Dyer provided detailed evidence about the incident in her email statement (pp.33-34) which corroborated Ms Carruthers' allegation that the claimant shouted at Margaret. Margaret was enrolled onto a course and should therefore have attended the centre for the whole day but arrived at the centre in mid-afternoon. I find that the claimant shouted at her that her course required all day attendance so she could not simply turn up mid-afternoon. I find that Margaret challenged the claimant about the way

she had spoken to her and they continued having an altercation with raised voices with the claimant saying Margaret could not turn up late and Margaret defending herself. In making this finding I have taken into account the claimant's submission that the similarity between Ms Carruthers's and Ms Dyer's emailed statements suggest they colluded on their wording. I find it more plausible that their statements are similar because they were giving consistent evidence about what happened.

45. In relation to those five incidents, I find that the most serious was the last, when the claimant shouted at Margaret. I find that the other three incidents which I found happened involved the claimant behaving in a manner which was not in accordance with the respondent's Code of Conduct.

The claimant's suspension and the disciplinary investigation process

46. The claimant was on leave on Friday 6 December 2019. She was told over the phone by Mr Hallam that she was suspended pending an investigation into allegations against her. She was not told at that point what the allegations were.

47. On Monday 9 December 2019 Mr Hallam wrote to the claimant to confirm her suspension "pending investigation into an allegation of failing to adhere to the respondent's Code of Conduct and acting in an unprofessional and unacceptable manner within the Centre" (pp.35-36). It explained that an investigation would be carried out and she would be informed if it was decided to hold a disciplinary hearing. The letter said she should not contact any colleagues except with the specific authority of Mr Hallam. She was asked to let Mr Hallam know as soon as possible of any documents, witnesses or information that she thought would be relevant to the matters under investigation. However, the letter did not give any details of the specific "matters under investigation". It did not refer to the 5 incidents set out in Ms Carruthers' email nor did it say on what date the incidents giving rise to the allegations had happened. The claimant was due to be on annual leave until 11 December. She was told that she should remain on annual leave and that her access to emails and the respondent's systems would be blocked.

48. Mr Hallam appointed Ms Kay to carry out the investigation. She had the emails from Ms Carruthers (p.31-32) and Ms Dyer (p.33-34) and the complaint forms from Ms Ali and Mr Walton (pp.30-32). She attempted to contact Margaret to get her evidence about what had happened but was unsuccessful.

49. On 12 December 2019, Ms Kay emailed Andy Berry who had worked with the client for 6 years at the Stockport centre (p.37). I accept Ms Kay's evidence that she emailed Mr Berry because he was an experienced member of staff who had worked with the claimant for a number of years and she wanted to get his perspective on the claimant's conduct. Ms Kay's email said that the respondent was currently conducting an investigation into "the allegation of the unprofessional and unsupportive conduct of [the claimant]". She asked for Mr Berry's thoughts about the claimant's conduct recently. She asked him to keep the contents of the email confidential and confirmed he could give evidence on an anonymous basis if he preferred.

50. Mr Berry responded on the morning of 13 December 2019 (p.37). Although the claimant suggested the email was sent suspiciously early in the day for Mr Berry

there was no real evidence that it was fabricated, and I accept it as setting out Mr Berry's genuine views. He said he was aware of the incident involving Margaret and felt it "could have been handled more appropriately". He said he had heard of other incidents involving the claimant but was careful not to comment as he had not himself witnessed them. In summary his email supported the view that the claimant did not always behave in the friendly and approachable way envisaged by the Code of Conduct. In mitigation he said that a recent attempted theft experienced by the claimant might have had an impact on her, though he acknowledged the importance of maintaining professionalism with learners whatever was going in one's personal life.

51. On 13 December 2019 the claimant attended an investigation meeting with Ms Kay. There were agreed notes of that meeting at pp.38-42. During the meeting the claimant confirmed she was aware of the Code of Conduct but not of the IAG Policy. Ms Kay read out the allegations set out in Ms Carruthers' email and then those set out in the other statements. The claimant denied that the session on the 4 December 2019 was "unprofessional, unhelpful and conducted in an unsupportive manner". In relation to the "next of kin" incident (the allegation in para 42(a)) she made no comment. In response to the allegation at 42(b) above she acknowledged that a learner had cried but said the disagreement was about when she could start the course. In response to the allegation that she had shown no compassion she said she had asked the learner whether she was ok, that she hadn't talked at a fast pace and that the learner had accused her of lying. She confirmed she knew nothing about a learner not committing to a course because of her manner towards him (the allegation in para 42(c)). She denied being aggressive when asking the learner to abstain from smoking cannabis (the allegation in para 42(d)). In relation to the incident at para 42(e), the claimant confirmed she had spoken to Margaret about being late but denied doing so aggressively. She said that she did not raise her voice to Margaret but Margaret had raised her voice to her.

52. On 20 December 2019 as part of her investigation Ms Kay held face to face interviews at the Stockport centre with Mr Berry (p.43), Ms Dyer (p.44-45) and India Lomos (pp.46-47). None were asked about the incidents on the 4 December 2019. Instead, each was asked about the claimant's conduct and attitude to learners. Each was asked whether in their view the claimant followed the Code of Conduct. The view from all three was that the claimant's behaviour was not consistent with those set out for the respondent's employees in the Code of Conduct and that she had a poor attitude towards learners. They said she did not listen to learners and was inflexible in her approach. They each gave examples of learners who had been put off by her attitude. The notes of those interviews were unsigned apart from Ms Lomos's.

53. In cross-examination Ms Kay was challenged about why she had taken these three statements. Mrs Davies put it to her that she had engaged in a fishing expedition to try and find evidence against the claimant. Ms Kay's answer was that she was intent on discovering whether the incidents on 4 December were a one-off (perhaps promoted by issues at home) or whether they represented normal day-to-day behaviour on the part of the claimant. The way she put it was that she was seeking to be fair to the claimant by putting the incidents on that day in context. She had approached Mr Berry and Ms Dyer because they were experienced employees. She had interviewed India Lomos because she had worked often with the claimant and again she wanted to get a perspective on behaviour more widely. Asked why

she had not interviewed other members of staff, including those at other offices who had worked with the claimant, Ms Kay said that the claimant was very rarely at the Leeds office the Ashton office had only recently opened.

54. On 20 December 2019 Ms Kay wrote to the claimant to explain that because of the impending Christmas break, she would pick the investigation back up in January 2020 (p.48).

55. Ms Kay prepared a written Investigation Report. It set out the evidence collected during the investigation process. Under "Facts Established" the Report in summary concluded that:

- a) The IAG sessions on the 4 December 2019 were conducted in an un-supportive and un-professional manner "therefore not adhering to the Code of Conduct"
- b) Learners were made to feel uncomfortable while hearing raised voices from a staff member to a learner
- c) 2 of the staff and 1 of the learners who submitted evidence wanted to remain anonymous because they feared "repercussions"
- d) The above had a detrimental effect on the business because those attending the IAG did not start
- e) The claimant was not aware of the IAG Policy even though it was part of her job description's requirements to keep up to date with the respondent's policies.

56. Under "Mitigating Factors" the Report said, "none established" and recommended that a formal disciplinary meeting should be undertaken, the IAG Policy be re-issued and that the company mission statement be re-issued to all staff as a reminder.

The Disciplinary Hearing

57. After she had written the Investigation Report, I find that Ms Kay discussed her findings and recommendation with Mr Hallam. That discussion included Ms Kay telling Mr Hallam that it was clear to her that what happened on 4 December 2019 was not an isolated incident and that staff had felt afraid to report anything previously for fear of the claimant's reaction. Mr Hallam in his evidence said that Ms Kay had concluded that younger members of staff appear to be intimidated and it was only upon appointment of a more mature member of staff with a good deal of experience (i.e. Ms Carruthers) that the claimant's conduct towards staff and learners was brought to light.

58. Mr Hallam's evidence was that, "having been told this by Debbie I felt that the incident was now potentially an issue of gross misconduct, and a disciplinary hearing should be convened".

59. On 3 January 2020 Mr Hallam wrote to the claimant inviting her to a disciplinary hearing on 8 January 2020 (pp.49-50). The letter warned that since the allegation was of a failure to adhere to the respondent's Code of Conduct and acting

in an unprofessional manner, the outcome of the meeting might be dismissal. That was because “failure to comply with company policies is viewed by the company to be gross misconduct”. That invitation letter included the notes of the investigation meeting on 13 December, the supporting evidential documents and the respondent’s disciplinary procedure.

60. That meeting was postponed and on 30 January 2020 a new disciplinary meeting invitation was sent to the claimant, with the meeting to be held on 3 February 2020 at 3.00pm (p.51).

61. The disciplinary meeting was held at the Ashton Learning Centre and was chaired by Mr Hallam. Mrs Davies attended with the claimant and Sarah Qazi of the respondent took notes.

62. The meeting (notes at pp.52-56) was a relatively short one, starting at 3.08pm and ending at 3.29pm. Mr Hallam explained the procedure for the disciplinary hearing and then asked the claimant whether she had new evidence she would like to present. The claimant said “no” and Mr Hallam then went on to summarise the case being investigated and the allegation that the claimant had failed to adhere to the respondent’s Code of Conduct and for acting in an unprofessional manner. He did so primarily by reading out Ms Kay’s Investigation Report. Mr Hallam referred to the events on 4 December and said that there had been an investigation into whether that had been an isolated case. Mr Hallam accepted that he did not put the allegations about each of the specific incidents said to have occurred on the 4 December 2019 to the claimant. He said that as a result of the investigation the respondent was confident that the claimant had failed to adhere to the Code of Conduct during the events on 4 December but also on several other evidenced occasions. He also said the claimant had not adhered to her own job description during the events of 4 December and on several other evidenced occasions. Mr Hallam then handed over to the claimant and said, “over to you to add any additional comments or present further evidence”.

63. The claimant and Mrs Davies then made the following points:

- the wording of some of the evidence from the witnesses were similar, which the claimant suggested meant everything had been “coerced”.
- there was a statement from India Lomos dated 20 December but she was not even at the Stockport Centre on 4 December 2019 (she was in Ashton that day). Mrs Davies asked that the evidence from India Lomos be removed.
- the “statements” provided were not actually in the form of witness statements which would be acceptable in an Employment Tribunal.
- the email from Andy Berry was sent by him at 8.15am but that he never gets into the Centre before 9.00am. Mrs Davies said that email was sent prior to the meeting with the claimant later that day. She said this contradicted what Ms Kay had said, which is that staff had not been told about the investigation.
- the claimant had not been asked for further evidence in response to the further statements taken by the respondent on 20 December 2019.

- Ms Kay had asked leading questions of staff.
- the disciplinary invitation letter dated 3 January 2019 (pp49-50) pre-empted the decision to be made at the disciplinary hearing by stating that the respondent was considering “dismissing or taking disciplinary action against the claimant”.
- statements had been taken from witnesses who were irrelevant or who were merely giving opinions. In particular, the statement from Ms Ali (p30) was irrelevant because she confirmed in it that she was working with headphones on and therefore could not have overheard the conversation between Margaret and the claimant.

64. In terms of past employment history, the claimant pointed out that she had a clean employment record. There had been a final written warning for her conduct in 2015 but that had now expired. The respondent accepted that that was the case. I accept Mr Hallam’s evidence that that previous warning was not taken into account in reaching his decision to dismiss.

65. On 7 February 2020 Mr Hallam wrote to the claimant to confirm that the outcome of the disciplinary meeting was a decision to dismiss her on grounds of gross misconduct (pp.57-58). In the letter Mr Hallam said he “firmly believes that the incidents which took place on the day in question are of sufficient gravity, especially bearing in mind your experience of being in the role. I therefore have no option but to dismiss you on the grounds of gross misconduct”.

66. The letter does not refer to the specific incidents on 4 December 2019 or reference that date. It says that the disciplinary meeting was to consider the allegation that the claimant “had acted in an unprofessional and unacceptable manner within the Centre and failed to follow company policy and procedures”. The bulk of the letter is taken up with refuting the points made by Mrs Davies and the claimant about procedure and evidence. In particular:

- Mr Hallam was satisfied that staff and learner witnesses had not been coerced into giving evidence.
- The format of the statements was acceptable in the context of an investigatory meeting.
- India Lomos’s statement could form part of his considerations because although she was not at the Stockport Centre on 4 December her evidence was part of gaining “an overview” of the claimant’s conduct.
- That although Andy Berry initially wished to remain anonymous he subsequently waived that requirement (this seems to be a reference to an allegation made that Mr Berry had not consented to his name being disclosed).
- that there were no statements from learners directly involved because they were not prepared to give the statements or had not returned to the Learning Centres.

67. The letter told the claimant that she had a right to appeal within ten working days to Mrs Dennehy.

The appeal against dismissal

68. On 12 February 2020 the claimant wrote to Mrs Dennehy to appeal against the decision to dismiss her (p.60). The grounds for appeal were that:

- The respondent did not follow its disciplinary policy correctly;
- The disciplinary hearing itself was not conducted in an appropriate manner;
- Witness statements were not signed or dated (and that the respondent had only spoken to a select number of work colleagues to form an opinion with nothing being fact based);
- That at the disciplinary hearing a statement was read out from Ms Kay which was used against the claimant. However, as Ms Kay was the investigation officer any evidence from her should not have been put forward.
- The initial email from Andy Berry on 13 December 2019 (p.37) showed that the investigation was discussed with colleagues before the claimant was informed and brought in for her own investigation meeting. The claimant said that she was told that colleagues had been informed she was on annual leave but that the email from Andy Berry shows otherwise.
- Witness statements from learners were not signed or dated or relevant to the allegations made against her (I find this refers to Ms Ali and Mr Walton's complaint forms (pp.30-32)).

69. On 18 February 2020 Mr Hallam wrote to the claimant to confirm the appeal would be heard by Mrs Dennehy at the respondent's Leeds Centre the following week (p.61). He offered dates on 25-27 February for the meeting and it was set for 3 March 2020. The letter confirmed that the claimant could be accompanied by a colleague or trade union representative at that meeting.

70. The meeting took place on 3 March 2020 and Mrs Davies again accompanied the claimant. The meeting started at 10.50am and concluded at 11.32am. The focus was on the way the disciplinary hearing was conducted by Mr Hallam and the evidence relied on. The criticism was that he had simply read out the Investigation Report and then put the onus on the claimant. During the appeal hearing Mrs Davies also made the following procedural points on behalf of the claimant:

- That what Mr Hallam had read out was the procedure followed in investigating and not a statement of the case against the claimant.
- That Ms Kay should not have been allowed to give a statement and conduct the investigation. Mrs Dennehy said that she did not see the document from Ms Kay as a statement.
- The outcome was pre-determined.

- In relation to the witness statements, Mrs Davies said that Ms Ali's "statement" was irrelevant and should be removed because she had her headphones on and therefore could not have heard the conversation between the claimant and Margaret. Although Mr Walton's "statement" did deal with the allegation, there was a suggestion that there were five other learners present and yet there were no witness statements from any of those five learners.
- Mrs Davies suggested that there was a contradiction with Mr Hallam saying that the allegation was based on recent events i.e. 4 December 2019, but also that the claimant had not adhered to her job description. There was not enough investigation done on these points.

71. Further points had been raised in a written document which Mrs Davies and the claimant handed over at the meeting:

- That India Lomos was Richard Hallam's stepdaughter and her interview on 20 December 2019 took 20 minutes longer than other staff.
- That the wording of the allegations made by Ms Carruthers and Ms Dyer were very similar. They were both at a meeting with Stockport Homes together on 5 December 2019, suggesting that they may have discussed the matter. Ms Carruthers' email was sent at 10.41am and Ms Dyer's at 12.51pm. Mrs Davies suggested that they had discussed the content of their emails before sending them.
- The claimant re-raised the issue of Mr Berry sending his email at 8.15am.
- Mrs Davies said that the only person who should have been interviewed was Ms Carruthers. Any interviews with other employees about the claimant's conduct generally should have been "all or nothing" rather than cherry picking employees to be interviewed.
- Finally, Mrs Davies said that it was not appropriate for Mrs Dennehy to hear an appeal from Mr Hallam because Mr Hallam was (as Mrs Dennehy accepted) her line manager.

72. On 12 March 2020 Mrs Dennehy wrote to the claimant to confirm her decision to reject the appeal and uphold the gross misconduct dismissal (p.66). In evidence she explained that she did not feel that the claimant or Mrs Davies on her behalf presented any evidence to cast doubt in her mind on the correctness of the decision to dismiss or the process followed.

Discussion and Conclusions

Unfair Dismissal

- (1) *Did the respondent have a potentially fair reason for dismissing the claimant?
The respondent says the potentially fair reason is her conduct.*

73. I find that the respondent has established that it had a potentially fair reason for dismissing the claimant, namely her conduct on 4 December 2019. The claimant

suggested that the disciplinary action was a smokescreen to conceal the real reason why she was dismissed, namely that the respondent wanted to replace her. There was no convincing evidence to support that allegation. On the other hand, I found that there were incidents on 4 December 2019 which caused sufficient concern to the claimant's colleagues to cause them to report them to the respondent's management. I find, therefore, that in this case conduct was the reason for dismissal and a potentially fair reason.

(2) *Did the respondent act fairly in treating that reason as a reason for dismissal in this case? In deciding that issue, I need to ask the following questions:*

(a) *Did the respondent have a genuine belief that the claimant was guilty of the misconduct for which she was dismissed?*

74. Part of the difficulty with this case is that the "misconduct" on which the decision to dismiss was based was not clear. The disciplinary proceedings were, I find, triggered by the five specific incidents set out in Ms Carruthers' email. However, by the time Mr Hallam made his decision, the "misconduct" seems to me to have widened to encompass a broader consideration of whether the claimant conducted herself in a way that was in breach of the Code of Conduct on 4 December 2019 and beyond. I do find that Mr Hallam, who made the decision to dismiss, did genuinely believe that the claimant was guilty of the misconduct alleged both in terms of the specific alleged conduct on 4 December 2019 set out in Ms Carruthers's email and her failure to adhere to the Code of Conduct more generally. I found his evidence on this point to be reliable.

(b) *At the time that belief was formed, did the respondent have reasonable grounds for it?*

75. I do find that the respondent had reasonable grounds for believing the claimant was guilty of misconduct, whether that was in terms of the five specific incidents set out in Ms Carruthers' email or the broader consideration of whether the claimant conducted herself in a way that was in breach of the Code of Conduct on 4 December 2019 and beyond. Specifically, in relation to the incident involving Margaret, there was evidence in the form of the complaints from Ms Ali and Mr Walton and the emails from Ms Carruthers and Ms Dyer. In addition to those there was evidence from the interviews on 20 December 2019 of the claimant's conduct more generally not being in accordance with the Code of Conduct.

(c) *Had the respondent carried out as much investigation as was reasonable in all the circumstances?*

76. Mrs Davies was particularly critical of the investigation carried out. I do not find any merit in the submission that the witness statements were not signed or dated (or often not in statement form). So long as the respondent could be confident who had provided the evidence and the date it was provided then that would be sufficient. I do not accept the submissions made that there was evidence of collusion in the statements provided or that there was anything unfair in principle in obtaining evidence from Ms Lomas because she was Mr Hallam's stepdaughter.

77. When it came to the specific incidents, Mrs Davies submitted that the investigation was not reasonable because Ms Kay did not speak to direct witnesses of the incidents complained of, specifically the learners who were present on the 4

December 2019. The evidence, however, was that attempts had been made to contact those learners and that had been unsuccessful. I do not find it was outside the band of reasonableness for the respondent to decide not to continue to chase those witnesses given the nature of the respondent's relationship with those learners.

78. When it comes to the specific incidents, however, I do find that elements of the investigation fell outside the band of reasonableness. In particular, given that the claimant denied most of the specific allegations at her investigation meeting on 13 December 2019, I find it was unreasonable not to have then interviewed those members of staff who had witnessed them about those incidents. Ms Dyer was interviewed on 20 December 2019 but not asked about the specific incidents. Ms Carruthers was not interviewed at all.

79. As I explain below, I also find that it was beyond the band of reasonableness to expand the scope of the investigation to encompass the claimant's conduct more generally as was done in the interviews on the 20 December 2019. Although Ms Kay suggested that was done to put incidents on 4 December 2019 in context which might benefit the claimant, the effect was to bring in more criticism of her which was then itself not investigated or put to the claimant except in the most general terms. It also did not assist the respondent in deciding whether in fact the specific incidents on the 4 December 2019 had occurred.

80. Had there been legitimate grounds for expanding the investigation I would have accepted that it was reasonable (or certainly within the range of reasonable responses) for the investigation to talk to those who normally worked at the Stockport Centre rather than at all the respondent's venues. I do not accept Mrs Davies's suggestion that it had to be "all or nothing" when it came to witnesses if that approach was taken.

(d) Did the respondent follow a reasonably fair procedure;

81. I find that the respondent did not follow a reasonably fair procedure. As I have mentioned above, there was a failure to be clear about what allegations the disciplinary procedure was dealing with. At the investigatory meeting on 13 December 2019, the specific allegations were orally put to the claimant. However, they were never set out in any of the suspension or disciplinary hearing invitation letters nor in the letter of dismissal. Mr Hallam did not go through the specific allegations at the disciplinary hearing. At some point in the process there seems to me to have been a loss of focus which led to the misconduct being seen as the claimant's conduct in general as opposed to her behaviour in relation to the specific incidents identified by Ms Carruthers and put to her at the investigation meeting. I am not suggesting it would be beyond the band of reasonableness for an employer to decide to expand the scope of a misconduct investigation. However, I do think it was beyond the band of reasonableness for the respondent to do so without being clearer with the claimant what the allegations she had to answer were. It was not reasonably fair to expect her to answer generalised allegations about her conduct.

82. I also accept Mrs Davies's submission that Mr Hallam's conduct of the disciplinary hearing itself was not reasonably fair. The ACAS Guide on Discipline and Grievance at Work which supports the ACAS Code on that topic says that an employer should "state precisely what the complaint is and outline the case briefly by going through the evidence that has been gathered." Reviewing Mr Hallam's

conduct of the disciplinary meeting in light of that guidance, I find that he did not clearly set out the case against the claimant nor did he provide her with an opportunity to respond in a neutral way. Instead, he appears to have read out the Investigation Report, taken its conclusion as the starting point and put the onus on the claimant to disprove that conclusion. The best Mr Hallam could say in response when this was put to him in cross examination was that he had twice during the disciplinary hearing given an opportunity for the claimant to provide further information or submissions. He accepted he had not specifically put the allegations to her. His explanation was that he had thought there was no need to do that because it was clear to everyone why they were there, the allegations having previously been spelled out. However, when I asked him where in the investigation or disciplinary hearing letters the allegations had specifically been spelled out he conceded they had not been. I find that conducting the disciplinary hearing in that way was not within the band of reasonableness.

83. I also find that there is merit in Mrs Davies's submission that the way Mr Hallam conducted the hearing showed that he had pre-determined the outcome of the hearing as a result of his discussions with Ms Kay. I take into account that in deciding whether the respondent's conduct was fair I have to have regard to the size and administrative resources of the organisation. I take into account that the respondent is at management level a relatively small organisation and that Mr Hallam was therefore involved in most decisions. Given that, it does not seem to me that his discussing the matter with Ms Kay prior to the disciplinary hearing per se would be outside the band of reasonable investigations. However, I am satisfied that through his discussion with Ms Kay he had decided not only that there was a case to answer but that the claimant was guilty of gross misconduct and put the burden on the claimant to "prove her innocence" rather than adopting a more neutral approach to the disciplinary hearing.

84. Dealing briefly with Mrs Davies's other criticisms:

- a) I do not accept that at the disciplinary hearing a statement was read out from Ms Kay which was used against the claimant. It seems to me that the only matter in writing from Ms Kay which was referred to at the disciplinary hearing was her investigation report.
- b) The claimant criticised the fact that the initial email from Andy Berry showed that the investigation against her was being discussed with colleagues while she had been told that colleagues would be told that she was on annual leave. I did not fully understand the claimant's point here. It did not seem to me that the respondent could approach witnesses without telling them what the purpose of doing so was. I do not think this is a valid criticism of the process.

85. For the reasons given above I find that the process followed by the respondent was not within the band of reasonableness.

86. I have considered whether the defects in the process were cured by the appeal. I do not consider that the breach of the respondent's procedure by the appeal being heard by someone more junior than the dismissing officer would automatically render that appeal invalid. It would do so if the evidence showed the appeal officer did not feel able to overturn the decision of the dismissing officer.

Having heard from Ms Kay I am satisfied she would have felt able to overturn Mr Hallam's decision.

87. However, I find that Mrs Dennehy was not herself clear as to what her role was. She was to hear the appeal but it is not clear whether she regarded that as a re-hearing or a review of Mr Hallam's decision. She says that she read all the evidence but also said in cross examination that she viewed it as a review. She said in cross examination that she took the view that Mr Hallam had conducted matters properly and therefore the appeal was rejected. She did not accept the point made that Mr Hallam had conducted the disciplinary meeting in a way which seemed to put the onus on the claimant to disprove the allegations against her. On that basis I find that the appeal hearing did not cure the defects in the disciplinary process I identify above.

(e) *Was dismissal was within the band of reasonable responses.*

88. Although I found that the claimant was wrongfully dismissed, it does seem to me that it would have been within the band of reasonable responses for the respondent to decide that summary dismissal was an appropriate sanction for the claimant shouting at Margaret. I accept that could reasonably have been viewed as conduct bringing the respondent into disrepute, given the direct link between the treatment of learners and the respondent's reputation with its referrers.

89. I do not accept that (absent the Margaret incident) dismissal for a general failure to behave consistently with the Code of Conduct would be within the band of reasonable responses. Ms Kay suggested that such behaviour was a breach of the bullet point at the bottom of page 68 in the bundle (page 2 of the four page disciplinary procedure), namely "any form of discrimination which is unlawful and/or conflicts with the company's policies and procedures". Mr Hallam in turn suggested that it was "either a serious breach of contract or conduct detrimental to the interests of the company or bringing the company into disrepute whether during working hours, at company events or in own time".

90. Mr Hallam conceded that the dismissal letter did not refer to the conduct as falling within this head in the disciplinary procedure gross misconduct section. I accept that the gross misconduct list is a non-exhaustive list. However, it is hard to equate a breach of the Code of Conduct in the way the claimant conducted herself with learners generally (as opposed to the specific incident of shouting at Margaret) with the kind of conduct listed in that gross misconduct list, i.e. theft, disseminating obscene or pornographic material, serious breach of security or financial procedures or drunkenness.

91. I note that when the claimant had been found to have had a poor attitude to learners on a previous occasion in 2015 the appropriate sanction had been a final written warning. In deciding the appropriate sanction in this case, the claimant was to be treated as though she had never been issued with a warning. That bolsters my finding that the starting point is that a decision to dismiss for a breach of the Code of Conduct without more would not be within the band of reasonable responses (though a final written warning would have been).

92. For the reasons set out above, I find that the claimant was unfairly dismissed.

Wrongful Dismissal

93. When it comes to wrongful dismissal what I need to find is what actually happened, and whether what actually happened justified the claimant being dismissed for gross misconduct. I found that the claimant did not behave in accordance with the Code of Conduct. However, I do not find that that in itself would amount to a repudiatory breach of the contract entitling summary dismissal. I also found, however, that the claimant shouted at Margaret and did so in front of other learners.

94. In terms of whether the behaviour, even if inappropriate, was enough to amount to a fundamental breach of contract, Mr Hallam submitted that the treatment of clients was so fundamental that any inappropriate treatment would amount to gross misconduct. He said that both in relation to the vulnerability of the learners but also because of the risks it posed to the respondent's business. I have referred to his evidence (which I accept) that it is dependent on a relatively small number of referrers. In order to keep going as a business it needs the feedback that learners provide to those referrers to be good. Any incident involving inappropriate behaviour towards a learner could therefore fundamentally damage the business. For that reason, Mr Hallam submitted, the claimant's behaviour did go to the root of the contract.

95. I bear in mind that **Laws** equates a fundamental breach with conduct which discloses a deliberate intention to disregard the essential requirements of the contract. I fully accept the importance of the treatment of learners to the respondent's business. Even so, I cannot say that the inappropriate behaviour on this one occasion (which is the only occasion on which the respondent relied in terms of dismissing) in circumstances where the claimant was being challenged by the learner was in itself sufficient to amount to a fundamental breach of contract by the claimant justifying a summary dismissal. I accept that it may well have justified dismissal, but only dismissal with notice.

96. I find that the claimant was wrongfully dismissed.

The claimant's contribution towards her dismissal and **Polkey** reduction

97. I have listed a remedy hearing for 6 September 2021. However, as is customary, I record here my findings in relation to contribution and on the issue of any **Polkey** reduction i.e. whether the employer could have fairly dismissed the claimant in any event had it followed a fair procedure.

98. In terms of contribution, I do find that the claimant did shout and behave inappropriately in relation to a learner. I do therefore find that she contributed to her own dismissal. I will hear submissions on the percentage reduction in compensation which should be awarded at the remedy hearing since the parties did not have the opportunity to address me on that at the liability hearing.

99. In relation to **Polkey**, I find is that had the respondent carried out a fair procedure and a fair investigation there was evidence which could have led to the respondent fairly dismissing the claimant. I will hear submissions on the percentage reduction in compensation which should be awarded at the remedy hearing since the parties did not have the opportunity to address me on that at the liability hearing.

Employment Judge McDonald

Date: 17 August 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

18 August 2021

FOR THE TRIBUNAL OFFICE

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ANNEX

1. This is my decision on the issue of whether the claimant's claim should be allowed to proceed even though it was filed outside the usual time limit.
2. Briefly, the claimant's employment in this case ended on 7 February 2020 which would mean that the usual time limit for bringing her unfair dismissal and wrongful dismissal claims would be 6 May 2020. Because the early conciliation rules apply, that time limit is extended by the period for which early conciliation took place. In this case the early conciliation process started on 19 March 2020 and ended on 7 April 2020. That means that I add 19 days onto the usual time limit. That brings us to 25 May 2020. In this case it is accepted that the claim form was filed on 2 June 2020, therefore it is filed out of time.
3. In terms of the test I need to apply, it is whether or not it was reasonably practicable for the claimant to file her claim in time. In deciding that, the case-law authorities, including the leading case of **Dedman v British Building and Engineering Appliances [1973] IRLR 379**, tell me that the rules need to be interpreted liberally in favour of the employee but on the other hand the test is not reasonableness but reasonable practicability. One of the reasons which is accepted as making it not reasonably practicable to file a claim in time is ignorance of the relevant time limit. However, where a claimant is advised then the failure by a skilled adviser to file within time or a mistake by a skilled adviser about the time limit is attributed to the claimant. What that means in basic terms is that if I find that in this case the claimant's adviser was a skilled adviser in that sense, and she failed to file the claim in time because she got the time limit wrong, the claim will not be allowed to proceed.
4. In reaching my decision I heard evidence from Mrs Davies and from Mrs Kenworthy. They were cross examined by Mr Hallam and also answered my questions.
5. Based on that I find that Mrs Kenworthy relied on Mrs Davies to file the claim on her behalf and indeed to contact ACAS on her behalf. As to whether or not Mrs Davies is a skilled adviser in the sense that the cases refer to, I accept her evidence that she is a volunteer representative at work. She is paid by her union to carry out that representation but she is not a paid union official.
6. In terms of the training and her knowledge of Tribunal processes she told me, and I accept, that her training was about internal workplace processes such as disciplinary procedures and processes and how to put forward mitigation in workplace disciplinary matters. She has not received training from USDAW about Employment Tribunal procedures and time limits. Mrs Davies has had her own Tribunal claim but I accept her evidence that in that case it was handled on her behalf by union officials which mean that she did not need to have knowledge of the time limit rule.
7. The other factor in this case is that Mrs Davies told me in evidence that ACAS had advised her that the time limit for bringing a claim is three months minus one day from the date the EC certificate is issued. That is clearly not correct. Mr Hallam submitted that it was not plausible that an ACAS adviser would give that advice. I

think there is merit in that submission. On the other hand, there have been cases in the past where an ACAS adviser has given wrong advice. What I am satisfied of in this case is that Mrs Davies understood the time limit to be three months less one day from the EC certificate date.

8. In terms of the delay from the EC certificate on 7 April until the claim was filed on 2 June, Mrs Davies and Mrs Kenworthy confirmed that during that period they were only able to converse by phone because it was during the time of lockdown. Mrs Kenworthy's evidence is that she does not have internet access. The two were not able to meet in person and Mrs Davies told me that when completing the claim form she did so over the phone with Mrs Kenworthy.

9. Looking at all those factors in the round, which is what I am required to do, I have decided it was not reasonably practicable for Mrs Kenworthy to file her claim in time. I accept that Mrs Davies, albeit mistakenly, understood the time limit to be three months minus one day from the early certificate date. I do not take the view that this is a case where Mrs Davies was a skilled adviser like a professional or other professional adviser whose actions should be attributed to Mrs Kenworthy.

10. On that basis I find that the ignorance of the time limit in this case was a factor which made it not reasonably practicable for the claim to be filed in time. My decision ultimately therefore is that the claim should be allowed to proceed.