



EMPLOYMENT TRIBUNALS

Claimant: Mr M Davies

Respondent: Wirral Borough Council

Heard at: Liverpool ET (remotely, by CVP)

**On: 27 and 28 January, 10
February and 25 March
2022 (in chambers)**

Before: Employment Judge McCarthy

REPRESENTATION:

Claimant: In person

Respondent: Mr P Jewell (Solicitor)

RESERVED JUDGMENT

The claimant's claim for unfair dismissal is not well founded. This means the respondent fairly dismissed the claimant.

The complaint of unfair dismissal is therefore dismissed.

REASONS

Introduction

1. By a claim form presented on 4 February 2021 (having entered early conciliation and having received a certificate against the respondent dated 5 January 2021), the claimant complained of unfair dismissal in relation to his dismissal for gross misconduct on 1 October 2020.
2. By a response form dated 12 March 2021 the respondent resisted the complaint. It says that the claimant was fairly dismissed for misconduct, and

it was entitled to terminate his employment without notice because of his gross misconduct.

Claims and Issues

3. The issues to be determined by me were discussed and agreed at the outset of the hearing.
4. The claim form did not include a complaint for breach of contract in respect of his notice entitlement, but I noted that the claimant had included a section in his schedule of loss headed "*Wrongful Dismissal Notice Pay*". This was discussed with the claimant, and he confirmed that unfair dismissal was his only complaint, and he did not wish to make an application to amend his claim to include a complaint of breach of contract.
5. Although the **Polkey** and contributory conduct issues concerned remedy and would only arise if the claimant's complaint of unfair dismissal succeeded, I agreed with the claimant and Mr Jewell that I would consider them at this stage and invited them to deal with these issues in evidence and submissions.
6. The Issues to be determined by the Tribunal were:
 - 6.1 What was the principal reason for the claimant's dismissal and was it a potentially fair reason under secs 98(1) and (2) of the Employment Rights Act 1996 (the "ERA")? The respondent asserted that it was 'conduct.' The claimant did not dispute that conduct was the reason for his dismissal but argued that his dismissal was unfair.
 - 6.2 If so, was the dismissal fair or unfair within section 98(4) and, in particular, did the respondent in all respects act within the band of reasonable responses? The claimant stated that the dismissal was unfair because the respondent followed an unfair process and the sanction was unreasonable:-
 - there were repeated delays in dealing with the disciplinary and appeal process;
 - the respondent failed to consider his evidence in relation to mitigation, around 90 percent of his mitigation was ignored;
 - the Nominated Officer was guiding the Investigations Officer;
 - the Nominated Officer undertook investigations post the disciplinary meeting;
 - The appeal panel ignored information that had been provided previously and asked for information from a manager (Ian Doig), who was not the claimant's line manager and didn't manage him;
 - He had been subjected to enforced isolation since he was suspended on 26 February 2019;
 - He shouldn't have been dismissed at all. He was doing what every single officer was doing for a decade but was singled out.

- 6.3 If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed, in accordance with the principles in **Polkey v AE Dayton Services Ltd [1987] UKHL 8; Software 2000 Ltd v Andrews [2007] ICR 825; W Devis & Sons Ltd v Atkins [1977] 3 All ER 40; and credit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604**. The respondent said that the claimant would have been dismissed in any event.
- 6.4 Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, as set out in section 122 (2) of the ERA, and if so, to what extent? The respondent said that if I decided that the claimant was unfairly dismissed any basic award should be substantially reduced.
- 6.5 Did the claimant, by his blameworthy or culpable conduct cause or contribute to his dismissal to any extent and, if so, by what proportion, if at all would it be just and equitable to reduce the amount of any compensatory award under section 123(6) ERA. The respondent said that if I decided that the claimant was unfairly dismissed any compensatory award should be substantially reduced.

Procedure/Documents and evidence heard

7. This was a hearing where the claimant, respondent's representative (Mr Jewell, Solicitor) and the Respondent's witnesses participated remotely via CVP.
8. I heard oral evidence from the claimant on his own behalf. In addition, the claimant relied on a short written statement of Mr David Jones (his union representative) without calling him to give oral evidence. I warned the claimant that because the respondent had not had an opportunity to test Mr Jones' evidence by questioning him, I was unable to attach any significant weight to its contents.
9. The respondent called Ms Lisa Newman (the Nominated Officer conducting the claimant's disciplinary hearing), Mr David Ball (the chair of the three-person appeal panel) and Ms Deeta Cooper (one of the claimant's colleagues, at the time of his suspension, but who was subsequently promoted to become his line manager).
10. During the hearing I was referred to documents within an agreed Bundle of documents which contained 520 pages. I was also provided with an agreed chronology and cast list.
11. At the conclusion of the evidence each party made oral submissions.

Factfinding

12. The relevant facts are as follows. Where I have had to resolve any conflict of relevant evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed Bundle.
13. The claimant, Mr Davies, was employed by the respondent, Wirral Borough Council, from 6 April 2000 until his dismissal on 1 October 2020 on the grounds of gross misconduct. For the last 11 years of his employment, the claimant was employed as an Environmental Health Officer (EHO) in the respondent's Environmental Health Department.
14. At the time of the claimant's suspension, the Environmental Health Department was managed by Mr Ken Smith, the Environmental Health Operations Manager and his two Team Leaders, Mr Daniel Dawson and Mr Ian Doig. For the purposes of day to day management and guidance, the EHO's were split into two teams, with the claimant being on Mr Dawson's team. However, the claimant would still receive management instructions and guidance from the other team leader, Mr Doig, as illustrated by an email at page 232 in the bundle.
15. The respondent, Wirral Borough Council, is a local authority providing services to the population of the Borough of Wirral in Merseyside. It has a dedicated Human Resources department and in-house legal department.

Food Hygiene Inspections

16. Local authorities, like the respondent, are responsible for food hygiene and food standards law enforcement in relation to food establishments such as restaurants, takeaways, supermarkets and factories. Environmental Health officers (EHO) are appointed by local authorities to undertake food hygiene visits (i.e. inspections) on food premises in their area to ensure that they meet food hygiene and food standards legislation. Where appropriate, EHO's take enforcement action to ensure compliance with this legislation so food premises do not pose a risk to public health.
17. The respondent, in common with other local authorities in England and Wales, runs a hygiene rating scheme with the Food Safety Agency (whose role under the Food Safety Act is to safeguard public health in relation to food). Following an inspection, a food establishment is awarded one of six hygiene ratings ranging from 0 to 5 (with 5 being the top rating). However, the claimant explained that, in practice, if the rating was due to be less than 3 the confirmed rating it may not be given immediately after the initial inspection. Hygiene ratings are then recorded on the respondent's system and provided to the FSA so that the hygiene ratings can be published on the FSA's website. This allows the public to check the hygiene rating for a particular food establishment in their area. Food premises are also provided with a sticker for display showing their food hygiene rating, which are a common sight on the front windows of restaurants and takeaways.
18. The process followed by an EHO when undertaking a food hygiene visit was not in dispute. An EHO would attend the food premises, undertake the inspection, completing a handwritten carbon copy form entitled 'Summary of Food Hygiene Visit' (this form was also referred to as the Inspection Form or

Inspection Report by the parties). These comments would form the basis of the hygiene score awarded to the food business. A fresh Summary of Food Hygiene Visit form was used for each visit. At the end of the inspection, the form was signed and dated by the EHO undertaking the inspection and by the operator of the food business (FBO) or their chef. The top sheet of this form was then left with the FBO/chef and the EHO's copy of the form was then scanned and uploaded to the respondent's M3 computer system.

19. When an inspection was undertaken, a second word document proforma was also created or updated online for the premises. This proforma document is used to record background notes or information on the premises such the scope of the premises, the worksheet number, opening hours and any red flag issues.
20. Information about this process was provided to Mr Atkins by the claimant during the formal investigation (147) and to Ms Newman in response to her further investigations following the disciplinary hearing (280 and 284).

Claimant's role

21. As part of his role as an EHO, the claimant undertook food hygiene visits/ inspections on food establishments. He also had lead officer roles which included dealing with shellfish sampling, inspecting farms and exhumations (which the claimant admitted were infrequent). During the disciplinary and appeal process, the claimant disagreed with the respondent's evidence on how long he spent on these lead roles and how many lead roles he had. The evidence from the team leaders of his department (as provided during the disciplinary process) was that the majority of his time was spent undertaking food hygiene visits/ inspections on food establishments (285).

Disciplinary and Appeal Policy and Procedure

22. The respondent has a well defined disciplinary policy and procedure (47-64) and appeal procedure (65-66). Section 2.3 of the respondent's disciplinary policy contains a non-exhaustive list of examples of gross misconduct (48). This list includes:
 - a. Falsification of time sheets, bonus sheets, subsistence or expense claims etc;
 - b. Stealing from the Counciland other offences of dishonesty;
 - c. Breaching the Council's Employee Code of Conduct;
 - d. Neglect of duty;
 - e. Failure to maintain proper and professional regard for the ethos, policies and practices of the Council;
 - f. Failure to uphold public trust and maintain high standards of ethics and behaviour within and outside of work.
23. In section 2 of the respondent's disciplinary policy (49) the respondent reserves the right to suspend employees on full pay where appropriate. "*Suspension is not an automatic response to a gross misconduct allegation, but may be appropriate in circumstances were a preliminary examination*

suggests there is some credible evidence to support the allegation". Suspension is also dealt with at section 5.2 and 5.4 of the disciplinary procedure (57). The procedure states that where an employee is suspended, the Council will appoint a Support Officer whose role is to provide a link between the employee and the Council during the suspension, to ensure any practical issues are dealt with during this time.

24. Section 2.4 of the respondent's disciplinary policy (49) states that *"in the case of gross misconduct the employee may be summarily dismissed i.e. dismissed without notice or pay in lieu of notice. To justify summary dismissal, the misconduct must be so grave as to go to the root of the contract and be such that no reasonable employer could tolerate the continued employment of the employee".* Section 5.10 of the disciplinary procedure also states that at the conclusion of a disciplinary hearing an employee may be dismissed if it is reasonably believed that they have committed an act of gross misconduct (61).

25. Section 2.6 of the respondent's disciplinary policy defines the roles of the Nominated Officer and Investigating Officer (50).

Nominated Officer – "Disciplinary hearings for gross misconduct hearings where the outcome may be dismissal will only be conducted by a Nominated Officer, i.e. Strategic Director, Director, Head of Service or most senior manager in service area."

Investigating Officer- "to gather information and/ or take statements to establish the facts surrounding any allegations, produce a fair, balanced and objective report with recommendations as to suitable actions. They will present or support the presentation of any disciplinary case to a Nominated Officer. They should ensure that the employee is updated on the progress of the investigation.

NB the Investigating Officer should undertake the investigation without any unreasonable delays."

26. Sections 5.5-5.7 of the disciplinary procedure deals with investigations (58-60) and states that *"the nature and extent of the investigation will depend on the seriousness of the matter".* It sets out how *"investigations should be conducted as quickly as possible. That time scales may vary depending on circumstances but will normally be completed within 20 working days. Where it is not possible to complete the investigation within this time scale the nominated manager will inform the employee and their representative in writing when the investigation is expected to be completed and should keep the employee informed of progress".*

27. Section 6 of the disciplinary procedure details how appeals against dismissal will be heard by a panel chaired by a strategic director and that time scales for dealing with the appeal may vary depending on circumstances but will normally be completed within 20 working days. It states that if it is not possible to complete the appeal within 20 working days, the claimant will be informed of progress and when completion is expected.

Initial Fact finding Investigation

28. The event that led to the instigation of a formal disciplinary process under the respondent's disciplinary procedure is not in dispute. On 21 February 2019, an operating restaurant (the Refreshment Rooms) contacted the respondent's Environmental Health Department for advice regarding a customer complaint. Mr Doig took this call. During the call, the food business operator (the 'FBO') mentioned that the FSA's hygiene ratings website was showing that Refreshment Rooms had a hygiene rating of 4 (Good), with an inspection date of 18 December 2018, but the FBO was not aware of any such inspection taking place. (95)
29. Mr Doig established that, according to the respondent's M3 system, the claimant had undertaken an inspection of the Refreshment Rooms on 18 December 2018. A handwritten Summary of Food Hygiene Visit form, signed by the restaurant's chef and the claimant (dated 18 December 2018) had been inputted into the respondent's M3 system. There was also an accompanying completed electronic proforma document for the restaurant.
30. Mr Doig raised his concerns with the claimant's line manager, Mr Dawson who carried out some further investigations which included visiting the Refreshment Rooms and speaking with its FBO and the chef whose signature was on the Summary of Food Hygiene Visit form. The FBO and chef had no recollection of an inspection on 18 December 2018 and were adamant it had not taken place.
31. On being shown a copy of the Summary of Food Hygiene Visit form, the chef confirmed that it was a copy of his signature on the form, but he had no recollection of signing it. He stated that he would clearly remember an EHO visit and said he had not actually been at work on Tuesday, 18 December 2018, as Tuesdays were his day off. The FBO confirmed they did not have a copy of the top sheet of the Summary of Food Hygiene visit' form (which EHO were required to provide at the end of the visit/inspection).
32. The FBO mentioned that he had CCTV installed and offered to extract and send Mr Dawson footage from the main entrance (covering approach to the building) for 18 December 2018. Mr Dawson agreed but said he would need to take advice on data handling first. He later contacted the FBO to request CCTV footage for 18 December 2018, but limited to just the hours surrounding the inspection. The CCTV footage was never received by the Council.
33. Given what the chef had told him, Mr Dawson considered the chef's signature and printed name on the 2018 Summary of Food Hygiene Visit form again and noticed faint lines around the signature and his printed name. When he compared the chef's signature and printed name on the previous Summary of Food Hygiene Visit form on the file (from 2015) he noted it was

an exact match to the signature and printed name on the 2018 Summary of Food Hygiene Visit form (101).

34. Mr Dawson escalated his concerns to Mr Kenneth Smith, Environmental Health Operations Manager, and sent an email to him summarising his findings on 25 February 2019 (96-99). Mr Dawson informed Mr Smith he saw no obvious reason or motive for why the restaurant would disregard or deny the existence of any inspection. He referred to how the hygiene rating given at the 2018 inspection was better than that given in 2015.
35. Mr Smith met with the claimant on 26 February 2019 to establish the facts and determine whether there was a reasonable explanation, he took a note of this meeting (107-110). The claimant was sure he had visited the Refreshment Rooms. He said he remembered introducing himself, was shown the kitchen, looked at the documentation. He said that the premises were “*generally good*” and there were no alarm bells, nothing unusual. The claimant said he was “*pretty sure that he had left a copy of the Summary of Food Hygiene Visit form with the FBO*” of the Refreshment Rooms but confirmed that if he had forgotten his pad he might copy and post the original to the FBO. There was a reference to 13.55pm on the Summary of Food Hygiene Visit form and the claimant confirmed that 13.55pm would be the time he arrived at the premises. During the meeting, the claimant retrieved his ‘Pocket Book’ and the claimant’s entry for 18 December 2018 was examined. It stated:

*“Arrived work – office duties
Refresh RF
15.15 left work”*

36. Toward the end of the meeting the claimant said that he was now questioning himself. He wondered whether he had left after getting a call from his wife, who had recently had an operation, with the intention of going back but had then forgotten. He felt that this “*seemed to be the only rational explanation*” as the time frame fitted with his wife’s wound opening up and he questioned why the Refreshment Rooms would make it up [that he had not undertaken an inspection]. He wondered whether his memory of being at the Refreshment Rooms was from 2017, his previous inspection.

Suspension

37. After taking advice, Mr Smith met again with the claimant on 26 February 2019 and informed him that he was being suspended to allow a full investigation into the allegation of

“You falsified documents relating to a food hygiene visit for the business The Refreshment Rooms on 18/12/18.”

The claimant was warned that this allegation may, if proven, be considered to be gross misconduct.

38. A note of what was said at the suspension meeting is at 110-114 of the Bundle. It is not disputed that Mr Smith told the claimant that he should not contact any of his colleagues whilst on suspension.
39. A Support Officer for the claimant, Ms Gill Vickery, was appointed on the same day to provide support to the claimant during his suspension. She contacted the claimant on 28 February 2019 to explain her role, provided clarification as to whom he could discuss the allegations and investigation and provided him with details of the respondent's Employee Assistance programme. Ms Vickery clarified who the claimant could discuss the allegations and investigation with during his suspension and confirming that he was permitted to maintain social contact with colleagues and did not need to block colleagues on social media. The claimant responded to Ms Vickery that same day thanking her for confirming he could communicate with friends, as long as he did not talk about why he was not in work. (69)
40. The claimant stated that he had been put in enforced isolation during the whole of the disciplinary process. He said that he had not been able to contact his colleagues in a social capacity and that Mr Smith had told his colleagues that he did not want to be contacted under any circumstances. The respondent disputed this. The Claimant also alleged that his then line manager, Ms Deeta Cooper (Environmental Health Operations Manager), had confirmed to him at a meeting in October 2019 that such an 'instruction' was still in place. Ms Cooper gave evidence at the hearing, she had been a colleague of the claimant when he was suspended and had subsequently become his line manager. Ms Cooper stated that she had never been told by Mr Smith not to contact the claimant or that the claimant did not want to be contacted. Nor was she aware of anything of that kind being communicated to other staff. In fact, it was her understanding that members of the team were in contact with the claimant and referred to Jon Hardwick and Paul Bratley. She explained how a get well card was circulated around the team and delivered to the claimant by Mr Bratley after the claimant's accident. The claimant admitted that he was in touch with Mr Hardwick and referred to speaking to Mr Bradley in an email to Ms Cooper in December 2019.
41. Ms Cooper explained how she had undertaken a welfare visit in October 2019 as the claimant had had a very serious accident. She denied saying, at that visit, that members of the team had been advised by Mr Smith not to contact the claimant. She had no recollection of the claimant speaking about being in "enforced isolation" at this meeting but recalled how they discussed his mental health and pain relief (as he was clearly in pain) and whether he was happy for her to let the team know he had had an accident.

Formal Investigation

42. Given the nature of the allegations, before the investigation proceeded, the respondent contacted the police to establish if the incident should be reported to them. As there was no evidence at this stage that the claimant was financially advantaged by his actions, the police confirmed it did not need to be reported to the police at this stage.
43. Following the claimant's suspension, Ms Lisa Newman (Head of Operational Housing Services) was appointed as the Nominated Officer, under the respondent's disciplinary procedure to deal with the alleged misconduct. Ms Newman appointed Mr Steve Atkins (Assistant Director for Highways) as Investigating Officer on 13 March 2019 and the claimant was advised in writing of his appointment. The terms of reference for Mr Atkins' investigation were discussed and agreed on 20 March 2019. At this stage, Mr Atkins investigation related to one allegation only- whether the claimant had falsified documents relating to a food hygiene visit of the Refreshment Rooms on 18 December 2018.
44. Mr Atkins began his investigation by collating relevant documents from the initial fact-finding investigations conducted by Mr Smith and Mr Dawson. These documents included a copy of the Summary of Food Hygiene Visit form dated 18 December 2018 (102-103) uploaded to the respondent's M3 system and a copy of the Refreshment Rooms chef's signature from a 2015 Summary of Food Hygiene Visit form (101). He also requested a full statement from Mr Smith (104-114) and a copy of the claimant's job description, the Environmental Health team structure and a copy of the rules/procedures in regard to processes for carrying out Food Hygiene visits.
45. Mr Atkins interviewed Mr Dawson on 5 April 2019 to discuss the incident and gain a working perspective of the claimant and his role. The notes of this meeting are at pages 134-137 in the bundle. During this interview, Mr Dawson explained that the claimant had been undertaking his current role for around five years. He confirmed that the claimant was competent in his role and undertaking inspections. He mentioned how he had been impressed and pleased with the claimant when accompanying him on an inspection of a large establishment (137). However, he stated that the claimant had been informally managed for a number of years but had not entered any formal capability process "*as he had shown general improvement in the number of inspections over the past year.*" (135) He stated that the claimant had stated that he "*felt overwhelmed with the volume of work at times*" but "*he was not given more work than any of the other officers in the team.*" (136)
46. At the end of the interview Mr Dawson said that he had a concern that the claimant may have also falsified documents relating to a food hygiene visit of a closed food premises (Girtrell Court) as he had a feeling that the date of the inspection was after it had been demolished. However, he was not certain of the date on which it had been demolished. Mr Atkins stuck to the agreed terms of reference that had been agreed with Ms Newman and did not investigate

this concern until he had had an opportunity to discuss this new concern with Ms Newman.

47. The Claimant was interviewed by Mr Atkins for the first time on 20 May 2019 and a note was taken of this meeting (143-151). There was a delay in this interview taking place so that the claimant's union representative could accompany him. The claimant provided both written and verbal representations. Due to the agreed terms of reference for the investigation, Mr Atkins only discussed the allegation concerning the Refreshment Rooms with the claimant at this interview.
48. During the interview the claimant admitted to having not undertaken an inspection at the Refreshment Rooms on 18 December 2018. He could not recall when and where he had completed the Summary of Food Hygiene Visit form and said he was guessing. He accepted it looked "*as though [he had] photocopied the [Summary of Food Hygiene Visit form] and put it on the system*" but "*didn't know what I have actually done.*" He said he could not remember the majority of 18 December 2018 and had had to check most of the details with his wife. He said, therefore, he could not offer any reason or certainty as to why he had not undertaken the inspection or how a handwritten and signed Summary of Food Hygiene Visit form had been completed for the inspection.
49. He said a number of personal issues and a work-related accident had led to him struggling with mental and physical exhaustion, stress and anxiety in November and December 2018 and he was not thinking or functioning properly at this time. When asked whether he felt under pressure at work in the lead up to 18 December 2018, he said "*not particularly because around that time everything was a blur, I was just trying to get through to Christmas and recharge. Although we had FSA targets to achieve following the audit, it looked like we would hit our targets without too much trouble.*" The claimant also provided a written statement detailing these issues by way of mitigation (139-142).
50. Following the interview with the claimant, Mr Atkins requested further information from Mr Dawson as the interview had raised further queries for him.
51. On 21 May 2019, Mr Atkins presented his initial findings to Ms Newman and that there was likely to be a case to answer. He also discussed with Ms Newman how Mr Dawson had raised the possible falsification of another Food Hygiene Visit form in relation to Girtrell Court in August 2018. It was agreed that Mr Atkins would expand his investigation to consider this allegation. Ms Newman wrote to the claimant informing him of this further allegation and that it was to be investigated (165).
52. It was established that Girtrell Court had been demolished shortly after 8 May 2018 but the respondent's M3 system indicated that the Claimant had conducted a Food Hygiene Visit on 21 August 2018. Mr Atkins was provided with a copy of the records for this visit by Mr Dawson (158-162). The respondent's system recorded that the claimant had conducted a Food

Hygiene Visit in 2017 and 2018. There were no documents uploaded to the respondent's system for the 2017 visit – no proforma or handwritten Food Hygiene Visit form. There was a completed proforma uploaded for the 2018 visit and pasted into it was the second page of a handwritten Summary of Food Hygiene Visit form for 21 August 2018 signed by the claimant and a Mr J Smith on behalf of Girtrell Court. Mr Dawson stated that the pasting of the second page of the form into the proforma was in line with the standard process undertaken following an actual inspection. However, the full two-page handwritten Summary of Food Hygiene Visit form had not been uploaded to the system. There was no indication on either the proforma or the pasted second page of the handwritten form Summary of Food Hygiene Visit form that the premises had been demolished or that an inspection/visit was no longer required. This food establishment had also not been closed on the respondent's system.

53. The Claimant was interviewed for the second time by Mr Atkins on 20 June 2019 (167-175). He was again accompanied by his union representative and provided written representations (167). The claimant confirmed that he did not undertake a Food Hygiene visit at Girtrell Court on 21 August 2018 as it was closed. In his written representations the claimant said *“I remembered from local media/protests that it was permanently closed. I checked the internet which confirm this was the case. I then checked our database to see if there was a new food registration in place and there wasn't so I completed the worksheet and put the previous inspection report against it with the relevant date and worksheet number on it to prevent it coming up in a report. I didn't think anything of this as the premises was permanently closed”* (167).
54. At his interview with Mr Atkins, the claimant gave the same explanation and confirmed that the handwriting on the pasted second page of the Summary of Hygiene Visit form was his. *“It looked to be permanently closed, phone number not working, no new food registration for the business as well, so at that point in time I dragged what probably had been a previous worksheet on to it, completed it and closed it down. So at no point did I actually go and visit on site because through social media checks and database checks it was definitely closed.”* (169).
55. Later in the interview the claimant was asked by Mr Atkins – *“Just confirmation then you didn't actually go to site to Girtrell Court.”* The claimant answered *“no”* (173).
56. Mr Atkins asked the claimant where he had got the completed proforma from that he “dragged over” and then amended the date of. The claimant said it should normally be on the previous inspection. Mr Atkins informed the claimant that there were no records or documents against the previous inspection he had undertaken. The claimant responded *“admin errors do occur and obviously this is one of them”*. At the hearing, the Claimant stated that he did not have the permissions to delete any such records.

57. When asked who had completed the signature for the FBO (Mr J Smith) the claimant said that he had copied it from the previous inspection report.
58. The claimant later referred to this process as “dummy scoring”. The claimant alleged that he had not known what to do when he came across a premise that was closed. He had therefore asked a senior food officer, a couple of years before, what to do but said he had been given incorrect advice regarding the procedure to follow -so he had done it wrong. He said he was advised of the correct procedure when, a couple of weeks after dealing with Girtrell Court, he spoke to Mr Dawson about the procedure he had followed with Girtrell Court (without naming Girtrell Court). He was told that this was the wrong process for dealing with closed premises, not to do it again and told the correct procedure for dealing with closed premises.
59. The claimant said that he thought he may have also dummy scored the Refreshment Rooms.
60. Mr Atkins again contacted Mr Dawson. He asked for further information regarding the “dummy scoring” process, mileage claims made by the claimant and matters raised by the claimant in mitigation (180). Mr Dawson did not recall any conversation with the claimant about Girtrell Court and explained that he had *“had some problems with [the claimant] dummy scoring business when they had closed and had to remind him on more than one occasion in recent years. This is an outdated practice that we had to stop.”* (185)
61. Mr Dawson said that dummy scoring meant that the EHO put a score in the proforma and closed it, but they changed this to just close the premises. He said EHO’s (including the Claimant) had been instructed not to use dummy scoring and were informed of the correct procedure for dealing with closed premises. Mr Dawson provided Mr Atkins with three emails regarding this (229-232). Two of these emails were sent in 2018 and predated when the claimant said he dummy scored Girtrell Court.
62. The EHO’s, including the claimant were sent an email by Mr Dawson on 29 March 2018 (229) stating:

“If a premises you planned to inspect is closed and you are confident is no longer trading, please don't dummy score it and close the worksheet. This is still happening and causes problems in terms of ratings... Instead simply email the details to Ian or I and we will close the Property Index (PI).

If it was difficult to ascertain if the business was trading and therefore you have had to take additional steps/visits and collected a good amount of evidence (visits/emails/phone calls) to demonstrate its closed, we need to transfer those actions to a VSCN worksheet so they are held on file, as because when we closed the property index your outstanding inspection will disappear along with those actions. As above dummy

closing the VSEF to “preserve” your efforts and evidence causes problems.”

63. The claimant responded to this email on 4 April 2018 (229) saying:

“Hi Dan

I have definitely done this a few times over the last couple of years on the advice of a colleague (knew I should have double checked though, so that is no excuse). Will do the below mentioned procedure in future! Mark”

64. Mr Doig sent a further email to the claimant on 15 August 2018 (a few days before the claimant alleged he had dummy scored Girtrell Court):

“Hi Mark

The above worksheet has been put on EH2 relating to... I normally allocate these to the last inspecting officer but on checking it has been dummy scored by you and the premises closed.

Firstly as per the food meeting please can premises not be dummy scored as this affects the FSA audit report and FHRS uploads. If when you visit, the premises are no longer operating then create a VSEN to account for your visit and the VSEF will be deleted on closing the property. It also gives a false reading for Colin’s quarterly report on numbers of inspections done...

The claimant responded to this email on 16 August 2018 (upon his return from holiday)

“Hi Ian

Sorry about that... as far as I know that will be the only one I’m aware of that I dummy scored since this meeting....”

65. Mr Atkins updated Ms Newman on his Investigation on 15 August 2019 and raised with her that there were further allegations that had come to light during his investigation – that the claimant had *“falsely claimed mileage allowance for visits not undertaken to the business ‘The Refreshment Rooms’ on 18 December 2018 and Girtrell Court on 21 August 2018”*. Ms Newman confirmed that the terms of reference for the investigation should be further expanded to include these further allegations.
66. Mr Atkins wrote to the Claimant on 16 August 2019 informing him of these further allegations and asking for his representations. *“It came to light that you have claimed your mileage allowance for trips to both Girtrell Court and the Refreshment Rooms despite not making these visits as confirmed by you during our interviews. Do you have anything you wish to submit to me in answer to these allegations which will form part of my final report.”* (243)

67. The claimant sent an email to Mr Atkins on 16 August 2019 stating that with respect to Girtrell Court, *“Girtrell Court is an easy one as I would have gone out there to re-affirm that it was not operating and there was no other food business in its place...In the interview I confirmed that I did not undertake an inspection or go into the premises as it was closed which is an accurate description of my activities.”* In relation to the Refreshment Rooms he said – *“This is obviously a mistake but due to my condition, I was simply not aware it was an error... I had no idea until today that I had even done that.”* (245)
68. Mr Dawson provided Mr Atkins with some further information regarding the claimant’s mitigation (247-248).
69. The claimant sent a further email on 23 August 2019 to Mr Atkins (249) and gave a “hypothesis” for why he may have claimed mileage for the Refreshment Rooms food hygiene visit. He said *“It is possible (because I originally didn’t plan to carry out an inspection...) that I changed my mind and put the Refreshment Rooms in my calendar and set off to carry out the inspection”*. He said he had *“looked at the Refreshment Rooms on Google Street view and it does look familiar.”* He suggested that he may have been sitting in his car outside the Refreshment Rooms preparing when he got a phone call from his wife regarding her wound and then went to pick her up and take her to the hospital. He said he got this call at 1.05pm on 18th *“which would definitely fit the timing for this hypothesis.”*
70. Mr Atkins finalised his report on 25 September 2019 (79-250), it ran to over 170 pages with appendixes (which contained the evidence gathered). Mr Atkins recommended disciplinary action in relation to the alleged falsification of Summary of Hygiene Visit forms in relation to the Refreshment Rooms and Girtrell Court and falsely claiming mileage claims for visits not undertaken to these premises. He said that *“having considered the details and circumstances of these events, [he] consider[ed] that there was evidence to support the following”* alleged breaches of the Council’s disciplinary Policy and Procedure:
- Falsification of documents and therefore potentially committing an act of fraud;
 - Failing to comply with organisational rules and/or procedures;
 - Breaching the Council’s Employee Code of Conduct;
 - Potentially damaging the reputation of the Council;
 - Neglecting your duty;
 - Failing to maintain proper and professional regard for the ethos, policies and practices of the Council. (91-92)
71. Mr Atkins key findings were:-
- that the claimant did not undertake Food Hygiene Visits at Refreshment Rooms on 18 December 2018 or at Girtrell Court on 21 August 2018;
 - the food inspection report (Summary of Food Hygiene Visit form) completed looked like it had been photocopied and it had previous

information on it. The chef's signature looked like the previous form and the chef confirmed he had not signed the 18 December 2018 inspection report and was not at work on the Tuesday in question;

- the claimant said he had "dummy scored" Girtrell Court and was only following the advice of another senior food officer, Jon Hardwick. The claimant had been reminded on more than one occasion not to dummy score, it was an outdated process and had to stop. The Girtrell Court incident took place on 21 August 2018, but the claimant had been reminded not to dummy score and how to correctly deal with closed businesses in emails dated 9 November 2016, 23 March 2018 and 15 August 2018 (all appendices to the report). Therefore, the claimant was aware of the correct procedures to follow;
- after the Girtrell Court incident was raised with the claimant he said "*it just triggered what possibly has led up to the possible reason for what I did in December.*" Mr Atkins stated that it was important to highlight that Girtrell Court was a closed business, and the Refreshment Rooms was an operating business therefore how they were dealt with in terms of paperwork and procedures was and would be different as highlighted in the statements by Mr Dawson. Furthermore, this would not explain why the records were completed in the way they were.
- the claimant had claimed mileage for visits he had previously identified that he did not attend;
- the claimant was experienced and fully aware of what to do when conducting an inspection and notifying his line manager of closed businesses;
- the claimant highlighted several personal/wellbeing and one work related injury. Based on evidence the claimant had provided no satisfactory explanation as to why the incidents had occurred or why he had claimed mileage for both visits when he had stated the visits;
- if a food establishment goes unregulated and uninspected, interventions into any contraventions of food hygiene and food standards laws cannot be carried out. "*Shortfalls in hygiene practices lead to contraventions which could lead to a food poisoning incident or outbreak. Ultimately such outbreaks can prove fatal.*" There would also be "*reputational damage to the local authority in terms of the undermining, loss of trust and general lack of confidence.*"

72. During the investigation the claimant had raised a number of personal and health issues by way of potential mitigation which were considered as part of the investigation. These related to "*the mental and physical condition [the claimant] was in during late November and December*". Mr Atkins requested information from the claimant's line manager with regard to these personal

and health issues and recorded, in his investigation report, the evidence he had gathered and his conclusions.

73. The claimant was updated on the progress of the report throughout the investigation and was given an opportunity to provide his representations each time the terms of reference were updated to include further allegations. The bundle contained copies of email exchanges between Mr Atkins and Ms Newman, these relate to updates on how the investigation was proceeding, estimated timelines, the updating of the terms of reference to include new allegations and Mr Atkins being asked to make further enquiries about whether the claimant had raised personal issues with his line manager (247).

Disciplinary Hearing

74. A provisional date for the claimant to attend a disciplinary hearing had been set for 9 October 2019 but this was cancelled on 27 September 2019 as the claimant had a serious accident in which he broke his back. The disciplinary process was, therefore, put on hold until the claimant was fit to attend a disciplinary hearing (371). A disciplinary hearing was, initially, arranged for 3 February 2020 and the claimant was sent a copy of the Investigation Report and appendices. However, at the request of the claimant, the disciplinary hearing was postponed and further advice requested from occupational health regarding the claimant's fitness to attend a disciplinary hearing. The claimant said in evidence that he was on 20 tablets a day for his pain following his accident and that "*things were slightly hazy*" so he had asked for a postponement.
75. In accordance with occupational health advice, a disciplinary hearing was rearranged for 24 March 2020. Ms Newman sent the claimant a further letter on 11 March 2020 inviting him to the rearranged disciplinary hearing (251-252). This letter confirmed the allegations which would be considered at the hearing:
- Falsification of documents;
 - Failing to comply with organisational rules and/or procedures;
 - Breaching the Council's Employee Code of Conduct;
 - Potentially damaging the reputation of the Council;
 - Neglecting your duty;
 - Failing to maintain proper and professional regard for the ethos, policies and practices of the Council.

The claimant was also made aware that "*as this matter is being considered as gross misconduct, one outcome of the hearing may be your dismissal.*" He was informed that he was entitled to be represented by a trade union official or colleague. The letter recorded that the claimant had already been sent a copy of the Investigation report and appendices.

76. The re- scheduled disciplinary meeting was then further postponed due to the Covid-19 pandemic and the first lockdown. On 20th March 2020, in

consultation with its Trade Unions, the respondent agreed to temporarily suspend a number of employment relations cases (including the claimant's) to enable time for full consideration to be given to how such cases could continue to be conducted in a safe and fair way due to the national Covid-19 outbreak. The claimant was requested to attend the postponed disciplinary hearing on 6 August 2020 (253-254), the invite letter reconfirmed the information provided in the invite letter of 11 March 2020, referred to in paragraph 75 above.

77. In the week commencing 27 July 2020, the Council began face to face meetings again and the claimant attended his postponed disciplinary hearing on 6 August 2020 accompanied by his union representative. Mr Atkins presented his investigation report at the start of the disciplinary hearing and the claimant, and his union representative, were given an opportunity to put questions to Mr Atkins, as was Ms Newman. The claimant was then given an opportunity to provide his representations to Ms Newman. A note of the disciplinary hearing was taken (258-266) and the hearing lasted just over 3 hours.

Refreshment Rooms- inspection and mileage claim

78. During the disciplinary hearing the claimant admitted that he had not undertaken a Food Hygiene Visit at the Refreshment Rooms on 18 December 2018. He said that in his first few interviews with Mr Atkins his answers had been vague and as time had passed, he had realised more. He said it was not until he got the investigation report in full that he had been able to piece everything together. He said when he was interviewed by Mr Smith on 26 February 2019, he was convinced he had undertaken an inspection at the Refreshment Rooms on 18 December 2018 as its address, date and time were in his casebook. But he could not be sure as he had no memory. He said that 2018 was a “*perfect storm of work and personal issues*” and it was a “*bit of a blur*”. (262)
79. The claimant stated that on 18 December 2018 he had been told that a friend from football had had a stroke, which was a real shock. He then “*tried to catch up backlog despite not being fit -went to the Refreshment Rooms, I was in the car prepping. [My wife] called at the time to say her wound had opened- took her to hospital and then stopped off at Typhoo with the certification on the way home, got [my wife] comfortable - saw daughter in play*” (262).
80. He said that the following day he could not find the inspection report (i.e. the Summary of Hygiene Visit form) so “*just copied over previous report. I simply did not realise I had not done the inspection*”. He said he then took some time off in December and when he returned, he “*did the dummy sheet.*” He said “*in high insight [he] should have contacted the Refreshment Rooms for their copy of the inspection but did not due to health and mental issues*”

(262). Mr Atkins confirmed that the system indicated that the documentation for the Refreshment Rooms was loaded onto the M3 system at 8.12 am the following day (19 December 2018). The claimant said that when the allegations about Girtrell Court were put to him he realised that he had dummy scored the Refreshment Rooms, instead of calling the restaurant.

81. The claimant confirmed that his wife had called him at 1.05pm on 18 December 2018, but when Ms Newman referred to the fact that the Summary of Hygiene Visit form for the Refreshment Rooms said 1.55pm, the claimant said he was not sure where 1.55pm came from. When asked by Ms Newman whether he had told anyone he had to leave to help his wife, the claimant said he did not remember, but he was on a flexible working pattern due to caring for his wife and there was an out of office number to call to say he had finished for the day.
82. He put forward in mitigation that he was overwhelmed by his workload, he said he was told by Mr Dawson to improve inspections but had 50 jobs when others had only 10. He said a work related injury had affected his work but occupational health recommendations were ignored. He was refused a DSE chair and had a heart murmur and would need an operation at some point. He said he was a carer for his wife during November 2018, when she had an operation, and had been refused carers leave. He was not sleeping and not being able to do sports due to his work related injury had also impacted his mental health. He said he was suffering from mental health issues, which was diagnosed as depression later on (in January 2020). The claimant said he had no intention to deceive the Council, it was not a deliberate act and was not for monetary gain. He referred to his exemplary record and 20 years' service.

Girtrell Court- Inspection

83. In relation to Girtrell Court he said he had followed an ingrained cultural process of dummy scoring the premises as he knew it was closed. He had copied an old record for Girtrell Court. When reminded there were no records for the previous inspection in 2017, he said that this was a potential admin error or had been misplaced. He said he learnt the process from more experienced workers but obviously they were older processes. He said that dummy scoring was being used by several people. Ms Newman referred the Claimant to the email sent to the whole team in March 2018 about not dummy scoring and the claimant said that he thought he had not dummy scored until Girtrell Court. *He said he had "just slipped into an old habit then [he] re-read Ken's email and went straight to [Mr Dawson] to explain what [he] did."*

Girtrell Court – Mileage claim

84. The claimant said he followed a standard procedure. He went to visit Girtrell Court to check it was closed and there was not something else in its place. The claimant said he had clarified with Mr Atkins that he did not enter the

premises- he did not enter Girtrell Court as there was no building there. The claimant said that he did not say to Mr Atkins that he did not go to the location, he did go to location but did not undertake an inspection. When Ms Newman referred to the claimant having told Mr Atkins about not going on site when he was interviewed in June 2019, the claimant replied "*this is a grey area going on site is me going inside building not just pulling up outside.*"

85. The claimant's union representative summarised the claimant's case by saying "*the claimant did attend both the Refreshment Rooms and Girtrell Court but just did not go on site.*" He reiterated the claimant's mitigation and said that the claimant had admitted errors so he expected a sanction but given all his mitigation would not expect dismissal.
86. Before coming to her decision, Ms Newman undertook some further investigations relating to some issues that had arose during the disciplinary hearing such as seeking clarification on what was the common approach when dummy scoring was being done by officers. with regard the "dummy scoring process". The claimant alleged that these investigations took two months, however in evidence, Ms Newman explained that she had undertaken and completed these further enquires in the week following the disciplinary hearing. As the claimant's line manager was on leave, the other team leader in the department was able to address many of the queries prior to his return as they related to departmental processes (267- 270, 278-279, 282-303).
87. In response to Ms Newman further enquires, Mr Doig provided some answers to queries which related to departmental processes and records as Mr Dawson was on leave (269-270). Mr Doig confirmed that dummy scoring was only used for either a closed business or seasonal business- it was not used for open business premises. This was accepted by the claimant in evidence to me.
88. He said that to dummy score the EHO would use the previous proforma document and then change the date on the form. There was no need to complete a new proforma if dummy scoring- no documentation needed altering or attaching to it and a manual note that it was dummy scored so other officers were aware. By dummy scoring the process, the premises would not keep flagging up to be inspected as there was no need as it was closed. Mr Doig confirmed that there were no circumstances where the Food Hygiene Visit form would be used for a dummy score purpose. He said there was no need and that you couldn't overtype this form as it was handwritten by the officer on the day of the inspection.
89. Mr Doig confirmed that there was no Food Hygiene Visit form present against the records for the Refreshment Rooms for 2017. There was a proforma which had been attached to the worksheet and a note on file to say no report sheet had been left. Mr Doig also provided Ms Newman with a copy of the claimant's PACE book.

90. Mr Dawson responded to Ms Newman's other queries (including those relating to mitigation on 10 August 2020 (283-305). He included an email from Mr Hardwick, dated 30 July 2020, which stated that management had instructed that dummy scoring of premises should not be used 18 months- 2 years before.
91. Before finalising her decision, Ms Newman provided the claimant with a copy of the information she had received from the two team leaders in answer to her further investigations and the claimant was given an opportunity to make further representations. The claimant was asked to provide any written representations by 24 August 2020, but, at his request, this was extended. The claimant provided detailed written representations (306- 322). His union representative also provided written representations (323-324). Ms Newman wrote to the claimant on 4 September 2020 acknowledging the significant amount of information he had been provided and how that this needed to be fully reviewed and checked. She also asked him to clarify some representations.
92. Ms Newman said in evidence that when she produced her initial draft decision letter, she asked human resources for a "steer" on the Girtrell Court mileage allegation as she was "*tending to think he probably did the mileage.*" As her final decision was to uphold the allegation, the claimant asked Ms Newman in cross examination what changed her mind. Ms Newman explained that she was 50/50 when she initially drafted her decision letter and was advised by human resources to review the evidence again and double check her assumptions, but the decision was hers to make. In evidence and her final decision letter, Ms Newman was clear as to why, following such further consideration of the evidence before her, she decided to uphold both mileage claim allegations.
93. Ms Newman decided to uphold the allegations that the claimant had falsified documents relating to inspection visits for both the Refreshment Rooms and Girtrell Court and falsified mileage for both these visits. Ms Newman found that this constituted the following breaches of the Council's disciplinary procedure and amounted to gross misconduct:
- Falsification of documents and therefore potentially committing an act of fraud;
 - Failing to comply with organisational rules and/or procedures
 - Breaching the Council's Employee Code of Conduct;
 - Potentially damaging the reputation of the Council;
 - Neglecting your duty;
 - Failure to maintain proper and professional regard for the ethos, policies and practices of the Council;

On 30 September 2020, Ms Newman sent the Claimant a letter terminating his employment summarily on the grounds of gross misconduct (342-350). The letter stated that his late date of employment would be 1 October 2020.

94. Ms Newman made the following findings:

Girtrell Court Inspection

95. Ms Newman rejected the claimant's response that he had put a dummy score on the respondent's system for two reasons. Firstly, she referred to two emails that had been sent to the claimant on 29 March 2018 and 15 August 2018 (shortly before the date on which the inspection of Girtrell Court was said to have taken place) advising him not to dummy score and of the procedure to follow with closed premises. She referred to how the claimant had responded to both emails confirming he would follow the procedure advised – which meant not dummy scoring (232, 229). Secondly, she found that the document produced by the claimant on 21 August 2018 did not demonstrate that there had been a dummy score. Ms Newman referred to the evidence provided to her by both Mr Dawson and Mr Doig regarding the approach used when dummy scoring. It appeared that the claimant had generated a handwritten report on 21 August 2018 as well as a pro-forma (which made no mention that this was a dummy score). Ms Newman concluded the claimant had submitted a false document.

Girtrell Court mileage claim

96. Ms Newman decided that the claimant had not visited Girtrell Court and had therefore submitted a false mileage claim. She referred to the inconsistencies in the claimant's evidence and that there was no reference to this visit in his PACE book. She referred to how the claimant had said, when first interviewed about Girtrell Court on 20 June 2019, that at "*no point did I actually go and visit on site because through social media and other checks it was definitely closed*" (169). It was only after becoming aware that his mileage claim was being questioned that the claimant stated that he meant he had not gone onto the premises but had visited Girtrell Court to check it was closed.

Refreshment Rooms Inspection

97. The claimant admitted he had not undertaken an inspection of the Refreshment Rooms on 18 December 2018. Ms Newman found he had submitted and uploaded to the respondent's system a false inspection report suggesting he had carried out an inspection. He had completed a food hygiene inspection report (the Summary of Hygiene Visit form) which was a handwritten document, which, Ms Newman noted was not required if a dummy scoring process was being followed (as the claimant had alleged). The form contained a signature from the chef of Refreshment Rooms, but he was not at work on the day of the alleged inspection.

Refreshment Rooms mileage claim

98. Ms Newman concluded that the accounts given by the claimant were not consistent and that the evidence he gave about receiving a call at 1.05pm from his wife whilst outside the Refreshment Rooms did not align with the time given for the appointment in the food hygiene inspection report (1.55 pm) or his outlook diary or align with his evidence that he would normally arrive at a premises five minutes before any Food Hygiene Visit. This led Ms Newman to conclude that the claimant had not visited the premises and had claimed his mileage falsely.

Mitigation and sanction

99. Having concluded that the claimant had falsified records and made false claims for mileage expenses, Ms Newman found that the claimant had committed acts which amounted to misconduct or gross misconduct in the Council's disciplinary policy, in that he had failed to comply with or have proper or professional regard to the Council's procedures and he had acted in neglect of his duty staff had also not complied with the Council's employee code of conduct which required employees to perform their duties with honesty integrity impartiality and objectivity and not to do anything which would affect their ability or the public's confidence in their ability to do their job and that they act at all times in accordance with the trust that the public is entitled to place in them.
100. Ms Newman also considered that the claimant's actions presented serious risk of reputational damage to the Council. Ms Newman took into account the position of trust and responsibility which the position of an EHO holds with regard to food safety and the potential consequences of the failure to accurately report the results of food hygiene inspections for the Council and for public health. In evidence, Ms Newman confirmed that she had concluded the claimant's conduct cumulatively amounted to gross misconduct. However, she said that if she had only been considering the falsified records for the Refreshment Rooms, she would still have found gross misconduct and dismissed the claimant.
101. Ms Newman considered the claimant's length of service, clean disciplinary record and the points he made in mitigation during the disciplinary process. She detailed in her dismissal letter her conclusions regarding his points of mitigation. However, Ms Newman decided that, notwithstanding his mitigation, the claimant's actions were so serious that the appropriate sanction was summary dismissal.

Appeal

102. The claimant was informed of his right of appeal against the decision to dismiss him. He submitted an appeal on 14 October 2020 (354). In accordance with the respondent's appeal procedure (temporarily amended, with the Trade Unions agreement, during the COVID-19 pandemic) the claimant's appeal was heard by a panel made up of an Assistant Director and two Heads of Service. Mr David Ball (Assistant Director, Special Projects) chaired the panel and gave evidence at the hearing. It took the respondent some time to arrange the appeal hearing due to the availability of all parties who needed to attend and the impact of the Covid-19 Pandemic (357, 363).
103. The claimant's appeal hearing was heard over three sessions with notes being taken at each session. The first session was held on 14 December 2020 (425- 435), the second on 11 January 2021 (436-446) and 16 February 2021 (447- 452) and the claimant was represented at each session by his union representative, David Jones. The claimant submitted that this caused delay and impacted his mental health. He suggested the appeal could have been dealt with at one longer meeting. In evidence, Mr Ball explained that there was a lot of documentation and they wanted to give the claimant and his representative an opportunity to fully explain the claimant's side. They wanted to do this in a fair, equitable and considerable manner. The panel was aware that such a hearing could be "*stressful and take a lot out of people*" and given the feelings the claimant had expressed about the process and his health the panel thought that breaking up the appeal hearing over three sessions was the best way to proceed.
104. The appeal was a re-hearing with the panel hearing the case afresh and making their own decision as to what happened. The panel was provided with copies of relevant documents from the disciplinary process. At the first appeal hearing session, the panel heard from Ms Newman and she explained her reasons for her decision and called Mr Dawson as a witness. The claimant was given the option to adjourn as his union representative raised concerns about not having been aware that Mr Dawson would be a witness. However, the claimant decided to proceed, and the claimant's union representative was given a full opportunity to ask questions of both Ms Newman and Mr Dawson.
105. The claimant provided detailed written representations to the panel (372 -390) which included mitigation. His union representative also requested assistance with obtaining some further documents/information, which was facilitated. Not all of the documents the claimant's representative requested (such as records of the one to ones he had with Mr Dawson) were available, but the claimant had had the opportunity to ask Mr Dawson questions in the first appeal hearing session and his representative spent a significant period of time asking Mr Dawson questions. The panel was also provided with a copy of the responses to the claimant's requests for further information (406-424).

106. Before the panel came to its decision it conducted some further investigations of its own. They also considered some further written representations from the claimant on 22 February 2021 (479-484).
107. The decision of the panel was set out in a letter sent to the claimant on 5 March 2021 (485-496). The panel was unanimous in forming the view that the claimant did act as alleged, that he had committed gross misconduct and upheld the decision to summarily dismiss him. They decided that he did falsify documents relating to a Food Hygiene visit and mileage claims in relation to the Refreshment Rooms and Girtrell Court.
108. The panel considered that his “*misconduct was of the most serious kind*” and decided that it amounted to gross misconduct. The panel found that “*each of the allegations made against [him] amounted to gross misconduct of itself and also that taken cumulatively [his] conduct amounted to an act of gross misconduct*”. At the hearing, Mr Ball took me to the relevant examples of gross misconduct in the claimant’s disciplinary procedure which the panel had relied on:
- Falsification of time sheets, bonus sheets, subsistence or expense claims etc;
 - Breaching the Council’s Employee Code of Conduct;
 - Neglect of duty;
 - Failure to maintain proper and professional regard for the ethos, policies and practices of the Council;
 - Failure to uphold public trust and maintain high standards of ethics and behaviour within and outside of work.

Fraudulent Mileage Claims

109. During the appeal the claimant stated that he had visited both the Refreshment Rooms and Girtrell court on the respective dates but had not undertaken inspections as he did not go into the premises. His union representative said that the claimant had been consistent in stating this and that two cases of alleged false mileage claims did not amount to systematic abuse and did not meet the threshold for gross misconduct. The panel concluded that the claimant had not visited either location and referred to the inconsistent accounts the claimant had given to Mr Atkins. They also believed that they could make a decision without the benefit of CCTV footage from the Refreshment Rooms. In relation to Girtrell Court, the panel referred to the claimant’s second interview with Mr Atkins where he said that “*So at no point did I actually go and visit on site because through social media and other checks it was definitely closed.*” (169) As the claimant had admitted submitting both mileage claims the panel found he had submitted false mileage claims.

Girtrell Court Inspection

110. During the appeal, the claimant said he had visited Girtrell Court but had not undertaken an inspection as it was closed. He said he had entered a dummy

score onto the respondent's system because the premises was closed. He said there was no clear procedure with regard to submitting dummy scores onto the system, there was confusion as to how a closed business should be recorded. He said that dummy scoring was still being used in 2018. With regard to the email of 15 August 2018 (confirming dummy scoring should not be undertaken) the claimant said he had only returned from annual leave on 16 August 2018 and had not properly digested its contents. He said that there was confusion as to how a closed business should be recorded. He said the paperwork in relation to Girtrell Court was not fraudulently submitted.

111. The panel did not accept that the claimant had dummy scored Girtrell Court. They also concluded that he was aware that he was not to dummy score premises that were closed and rejected his submission that he had not properly digested the email of 16 August 2018 telling him not to dummy score. The panel concluded the claimant had been given a clear management instruction on more than one occasion not to dummy score. They referred to the evidence given by the two team leaders as to how a premises had been dummy scored. They had explained that when closed premises were being dummy scored no documentation needed altering or attaching to the pro-forma worksheet. There was no need to attach a food hygiene inspection form from a previous visit. They panel also noted that there was no reference to the premises being demolished or having not been inspected on the documents the claimant had submitted for Girtrell Court. The panel concluded that that there was a practice of making some note to indicate that the premises had not been inspected when dummy scoring. The documents completed by the claimant made it appear as if an inspection had taken place.
112. The panel concluded that the claimant knew the premises were closed, that he did not visit the premises and that he was not to use dummy scoring and formed a view that he had submitted a record that was false.

Refreshment Room Inspection

113. The claimant accepted he had not undertaken an inspection of the Refreshment Rooms on 18 December 2018. He also accepted that the submission of the inspection report was inappropriate, but said it was not fraudulent. The claimant's representative said that this action required a sanction, which was not dismissal. The claimant said he was under a lot of stress at the time and did not remember what he did on the morning of 19 December 2018 as he was "*in a fog*".
114. In respect to the Refreshment Rooms the panel found that the completion of an inspection report was a deliberate act and he had falsified the report. The panel considered the mitigation the claimant put forward but did not accept that on 19 December 2018 the claimant could not remember either visiting the Refreshment Rooms on the day before or not remember completing the inspection report as he had stated. The panel said they struggled to accept

this as the claimant was able to recall, in some detail, other events of 18 December 2018 and provide examples of some of these events. He had said that his memory regarding the inspection report had not been prompted by seeing a copy of it during the investigation but said his memory regarding other events had been prompted by text messages, call records and his wife reminding him of his actions on that day. The panel also concluded that the inspection report would have taken some thought and time. He had also had to scan it into the respondent's system (as it was handwritten). These were not single or simple tasks of the kind the claimant would not recall.

115. Whilst the panel accepted that he may have been under pressure at the time, considering his evidence on what he had also done that day, the panel believed he was functioning to a sufficient degree that he knew what he was doing when he completed a false inspection record.
116. The panel were particularly concerned that the falsified inspection report in relation to the Refreshment Rooms "*could have presented a risk to the public given that the Council's records would indicate that a food inspection had taken place when, in fact, it has not.*" They found this could, or could have, potentially damaged the reputation of the Council. They also found that the claimant had falsified the inspection report to make it appear as if the chef had signed it. *His conduct put at risk the integrity of the system of inspections which is designed to protect the public and of the public's confidence in that system.*"

Mitigation and sanction

117. Having concluded that the claimant had committed gross misconduct, the panel considered what sanction would be appropriate to apply. They considered all the points the claimant raised in mitigation, (including his length of service) some of the which were not accepted by the panel for reasons set out in the decision letter. The panel did not think that the claimant's other points of mitigation, such as the refusal of special leave when his wife had an operation explained, justified, or excused his actions. They decided that "*dismissal was an appropriate sanction*" and that the decision to dismiss him for gross misconduct was "*reasonable*" and therefore upheld the decision taken by Ms Newman to summarily dismiss the claimant.
118. In submissions, the claimant said that he "*was not denying the Refreshment Rooms was a serious issue*" but that he should have been given a lesser sanction. He said he should have received support for this due to his mitigation.

Law

119. Section 94 of the Employment Rights act 1996 (ERA) confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of

complaint to the tribunal under section 111 ERA. The employee must show that he was dismissed by the respondent under section 95.

120. The reason for dismissal is the set of facts known to the employer, or the set of beliefs held by him, that causes him to dismiss the employee: ***Abernethy v, Mott, Hay and Anderson [1974] ICR 323, CA.***
121. Section 98 of the Employment Rights Act 1996 states:
- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show -
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
 - (2) A reason falls within this subsection if it –
 - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - (b) relates to the conduct of the employee,
 - (c) is that the employee was redundant, or
 - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
 - (3)
 - (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.

122. In misconduct dismissals, there is well established guidance for Tribunals on considering fairness within section 98(4) in the decisions of **British Home Stores v Burchell [1980] ICR 303** and **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. The Tribunal must also consider whether the employer followed a reasonably fair procedure. If all those requirements are met, the tribunal must then go on to decide whether the decision to dismiss the employee was within the bands of reasonable responses or whether the band fell short of encompassing termination of employment.
123. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4) ERA, the tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances of the case. The appeal is to be treated as part and parcel of the dismissal process (**Taylor v OCS group limited 2006 IRLR 613**). The focus must be on the fairness of the investigation, dismissal, and appeal, and not on whether the employee has suffered an injustice.
124. Importantly, the tribunal must be careful not to substitute its own view for that of the employer regarding the reasonableness of the dismissal for misconduct. It is therefore irrelevant whether or not the Tribunal would have dismissed the employee or investigated matters differently if it had been in the employer's shoes: the Tribunal must not "substitute its view" for that of the employer (**London Ambulance NHS Trust v Small [2009] IRLR 563 CA**). The function of the Tribunal is to decide whether the decision to dismiss the employee fell within the range of reasonable responses open to a reasonable employer in the particular circumstances of the case (**Iceland Frozen Foods Ltd v Jones 1982 IRLR 439**).
125. In gross misconduct cases, a Tribunal must consider both the character of the conduct and whether it was reasonable for the employer to regard that conduct as gross misconduct on the facts of the case. Here the employer's rules and procedures are important as a particular procedure or rule which makes clear a certain type of behaviour is likely to be categorised as gross misconduct, may make it reasonable for the employer to dismiss for such behaviour.

Conclusions

Was the dismissal fair or unfair?

126. Turning to whether the dismissal was fair or unfair. Section 98 ERA deals with the fairness of dismissals and this is a two stage process. The first stage is for the respondent to show a potentially fair reason for dismissal

and secondly, if that is done, the Tribunal must consider, without their being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

What was the reason for dismissal?

127. In this case it is not in dispute that the respondent dismissed the claimant because it believed he was guilty of misconduct. I was satisfied that the respondent had shown that the reason for the Claimant's dismissal was misconduct (i.e. the belief held by Ms Newman (and upheld by the panel) that the Claimant had falsified records relating to food hygiene inspections on two food establishments which he had not actually inspected, and that he had submitted false mileage claims in relation to the two inspections he had not undertaken).
128. Section 98 ERA identifies a number of potentially fair reasons for dismissal. Misconduct is a potentially fair reason under section 98 ERA. The Respondent has satisfied the requirements of section 98(2) ERA.

Was the dismissal fair under section 98(4) ERA?

129. Turning to fairness under section 98(4). The claimant and Mr Jewell provided me with oral submissions on fairness within section 98(4) which I have considered in reaching my conclusions. Applying the Burchell principles and reminding myself that it is not my role to substitute my view of what was reasonable and focusing on the range of reasonable responses open to a reasonable employer in the particular circumstances I find the following:

Did the respondent genuinely believe the claimant was guilty of misconduct?

130. I find that the respondent did genuinely believe the claimant was guilty of misconduct. The evidence of Ms Newman and Mr Ball (on behalf of the panel) was clear about why they had dismissed the claimant or upheld the decision to dismiss. The disciplinary and appeal outcome letters were detailed and unambiguous in their conclusions.
131. The claimant challenged Ms Newman's genuine belief in relation to one of the allegations only- that he had fraudulently claimed mileage for visiting Girtrell Court. In evidence, Ms Newman accepted that before finalising her decision she had originally been 50/50 as to whether he had "done the mileage". However, in her evidence and her disciplinary outcome letter, Ms Newman provided clear and careful reasoning for why her final decision was to uphold this allegation as well. I am satisfied that having reviewed and considered the relevant documents again, before finalising her decision, Ms Newman came to the genuine belief based on reasonable grounds that the claimant was guilty of misconduct in relation to the Girtrell Court mileage allegation. In any event, the appeal panel were clear in their finding that the claimant had not driven to Girtrell Court and had fraudulently claimed mileage for visiting Girtrell Court.

Was this belief based on reasonable grounds?

132. I find that this belief was based on reasonable grounds.
133. There was no dispute that the claimant had admitted, on a number of occasions, that he had not conducted a Food Hygiene Visit at the Refreshment Rooms on 18 December 2018 or Girtrell Court on 21 August 2018. However, in relation to the Refreshment Rooms the claimant accepted that he had scanned and uploaded on 19 December 2018 a handwritten and signed Summary of Hygiene Visit form. He had copied the signature of the Refreshment Rooms chef from a previous Summary of Hygiene Visit form. The claimant accepted that that this would suggest to others that he had undertaken a food hygiene visit inspection of the property. He also accepted that doing this was inappropriate and that a sanction should be imposed, but not dismissal due to the mitigating circumstances he presented concerning his mental and physical health at the time. The mitigation he put forward largely related to the Refreshment Rooms allegations.
134. The claimant argued that he had dummy scored both premises and that officers were still dummy scoring premises at the relevant time, and he did not know the correct procedure to follow when faced with a closed premises.
135. I find there were reasonable grounds on which to reject these arguments on the basis that (1) it was not in dispute that dummy scoring was a practice that had only ever been used in relation to closed and seasonal premises. The Refreshment Rooms was an open premises, (2) information provided by the two team leaders of the EHO department about how EHO's had dummy scored closed properties did not concur with the process followed by the claimant in relation to both inspections; and (3) there was evidence in the form of emails (sent in March and August 2018 and acknowledged by the claimant) that he had already been instructed not to dummy score closed premises and informed of the correct procedure for dealing with closed premises before either of the incidents.
136. I find it was reasonable for the respondent to form the belief that the claimant had not dummy scored the two premises and had falsified documents.
137. The claimant had admitted that he had not undertaken Food Hygiene Visits on either premises. The claimant had also initially stated, during the formal investigation, that he had not visited the sites of either the Refreshment Rooms on 18 December 2018 or Girtrell Court on 18 December 2018. He accepted that he had claimed mileage with regard to both of these visits. However, after it was alleged that he had fraudulently claimed mileage for the inspections he did not conduct, the claimant gave a different and inconsistent account, suggesting he had driven to both sites but not gone onto the premises.
138. With respect to the Refreshment Rooms, he originally said that he had not visited the Refreshment Rooms and that claiming mileage was a mistake. In a subsequent email he presented a "hypothesis" that he may have driven to the Refreshment Rooms and been called away by a phone call from his wife

before he entered the premises. At the disciplinary hearing, his account was that he had visited the Refreshment Rooms to undertake the investigation and had left, before going onto the premises, following a phone call from his wife at 1.05pm. On the evidence before them, I find there were reasonable grounds for Ms Newman and the panel to conclude that the claimant had not driven to the Refreshment Rooms on 18 December 2018 and so had fraudulently claimed mileage.

139. In relation to the mileage claim for Girtrell Court, the claimant originally said “*I remembered from local media/protests that it was permanently closed. I checked the internet which confirm this was the case. I then checked our database to see if there was a new food registration in place and there wasn’t so I completed the worksheet and put the previous inspection report against it with the relevant date and worksheet number on it to prevent it coming up in a report. I didn’t think anything of this as the premises was permanently closed*” (167). He also said “*So at no point did I actually go and visit on site because through social media and other checks it was definitely closed.*” (169) After being notified of the allegation that he had fraudulently claimed mileage for an inspection he had not undertaken he stated that “*I would have gone out there to re-affirm that it was not operating and there were no other food business in place...In the interview I confirmed that I did not undertake an inspection or go into the premises as it was closed which is an accurate description of my activities.*” (245). He maintained that he had visited Girtrell Court’s location to check it was closed during the disciplinary and appeal hearing. During the hearing, the claimant was frustrated that the respondent appeared not to understand the distinction he had made in his later representations between visiting the site and going out to the location. I find that Ms Newman and the panel fully understood the argument he was seeking to make but they chose not to accept it. On the evidence before them, I find there were reasonable grounds for Ms Newman and the panel to conclude that the claimant had not driven to Girtrell Court on 18 December 2018 and so had fraudulently claimed mileage.

Was there a fair and reasonable investigation?

140. The Claimant contends that the respondent did not carry out a reasonable investigation, I find that there was a fair and reasonable investigation taking into account the size and resources of the respondent. Before the claimant was dismissed a very thorough investigation was undertaken by the respondent. As set out in my findings of fact, the investigation fell into three stages, the initial fact find, the formal investigation conducted by Mr Atkins and the further enquires conducted by Ms Newman. The Investigation Report (including appendices) ran to over 170 pages (79-250). I find that it was a thorough and detailed investigation and Mr Atkins “*produced a fair, balanced and objective report*” in accordance with the respondent’s disciplinary policy. The claimant was interviewed at the initial fact finding stage, twice during the formal investigation stage (whilst accompanied by his union representative) and given an opportunity to give an explanation for his

actions. He also provided written representations in the form of documents and emails on a number of occasions during the investigation. These included detailed submissions with regard to mitigation, which were investigated by Mr Atkins (and his conclusions recorded in his report) and Ms Newman.

141. The number of alleged incidents of misconduct increased from one to four during the investigation due to new evidence coming to light and each time Mr Atkins sought Ms Newman's decision as to whether the terms of reference should be expanded. Each time a new allegation was added to the terms of reference, the claimant was given an opportunity to respond to the additional allegation before the investigation report was finalised. The formal investigation did take a number of months', but I conclude that the whole investigation still fell within the band of reasonable responses.
142. The claimant was informed of progress, when the report was likely to be completed and Ms Newman sort regular updates as to the status of the Investigation. The disciplinary procedure states that *the nature and extent of the investigation will depend on the seriousness of the matter*. It also sets out how *"investigations should be conducted as quickly as possible. That time scales may vary depending on circumstances."* These were serious allegations, the claimant had been warned that the allegations that were being investigated were allegations of gross misconduct. He was a valued and long serving employee with a clean disciplinary record and I find Mr Atkins took his responsibility to gather the evidence and produce a fair, balanced and objective report very seriously. I find that the steps the respondent took to investigate were fair and reasonable in all the circumstances of the case.

Reasonably fair procedure

143. The respondent submitted that it followed a fair procedure but the claimant raised a number of complaints regarding the fairness of the procedure. I address each of these concerns. I find that the procedure followed by the respondent was a reasonably fair procedure. At the investigation stage the claimant was given details of the allegations and given an opportunity to respond to the allegations each time they were expanded. He was also given a full opportunity to provide his representations at the disciplinary hearing, including those that related to mitigation. The claimant was given a right to appeal against Ms Newman's decision before a panel of three independent senior managers. He attended an appeal hearing (over three sessions) and made detailed representations before a unanimous decision was made by the panel to uphold the decision to dismiss him. The claimant was accompanied by his union representative at the formal investigation interviews, his disciplinary hearing and all three of the appeal hearing sessions.

144. For the reasons at paragraphs 140-142, I find a reasonable investigation was conducted. I find no evidence to support of the claimant's allegation that Ms Newman was inappropriately guiding Mr Atkins in relation to the findings and recommendation he made. Mr Atkins clearly sets out in his investigation report, the evidence he relied on to reach each of his findings and his recommendation. Ms Newman's evidence, the notes of the disciplinary hearing (at which Mr Atkins presented his findings) and emails in the bundle between Ms Newman and Ms Atkins regarding the investigation support the respondent's submission that Ms Newman did not inappropriately guide Mr Atkins and she was acting within the remit of her role as set out in the disciplinary policy.
145. The claimant and his union representative were provided with a copy of investigation report a number of months before his disciplinary hearing and he was given a full opportunity to make representations and, indeed submitted detailed representations at every stage in the process. I find the claimant's detailed representations, including those relating to mitigation, were carefully considered by Ms Newman and the appeal panel. I find there was no evidence of Ms Newman being biased. She based her findings on the evidence before her and was entitled to prefer the evidence of Mr Dawson to that of the claimant in relation to some of the claimant's representations, such as his workload. The claimant alleged that the respondent failed to consider his evidence in relation to mitigation and stated that around 90 percent of his mitigation was ignored. As is clear from the notes of the disciplinary and appeal hearings, the disciplinary outcome letter, the appeal outcome letter and the records of the further investigation undertaken by Ms Newman and the appeal panel, I find that this is a case where mitigation was carefully considered. It was not ignored, as the claimant stated, but in some circumstances, it was not accepted and the reasons for this were clearly set out in the disciplinary and appeal outcome letters. I find it was reasonable for Ms Newman and the appeal panel, having considered the mitigation, to decide that, notwithstanding his mitigation, the claimant's actions were so serious that the appropriate sanction was summary dismissal.
146. The claimant alleged that there were repeated delays in dealing with the disciplinary and appeal process. As set out above, I find that the time taken to undertake the formal investigation was reasonable in the circumstances. There were delays in dealing with the claimant's disciplinary hearing and appeal hearing but I find that these delays were not unreasonable as they occurred due to circumstances beyond the respondent's control and/or to ensure that the claimant had a fair and reasonable opportunity to provide his representations and for them to be carefully considered. For example, the claimant had a serious accident, and the disciplinary meeting was delayed for a number of months to allow the claimant to recover. The disciplinary hearing only took place after occupational health had advised that the claimant was fit to attend. The disciplinary hearing was further delayed due to the start of the COVID -19 pandemic, again to allow the claimant a fair hearing in person and

with the agreement of the respondent's unions. The appeal hearing was held over three sessions rather than one long one to ensure the claimant had a full and fair opportunity to provide his representations.

147. The claimant stated that it was unfair for Ms Newman to undertake investigations post the disciplinary hearing. He suggested that Mr Atkins should have been asked to undertake these further investigations and/or that the disciplinary hearing reconvened. The claimant was provided with copies of the information that Ms Newman was provided with following her further enquires and given an opportunity to respond. I agree with the respondent's submission that it was reasonable for Ms Newman to undertake her own further investigations if she needed clarity on certain issues that had been raised during the disciplinary hearing. Ms Newman conducted these additional investigations in a timely manner and the delay between the disciplinary meeting and her outcome letter was due to the respondent giving the claimant, at his union representative's request, an extended opportunity to respond to the additional evidence and then needing time to consider the detailed representations in full. I find that Ms Newman's decision to undertake those further investigations herself (rather than pass them back to Mr Atkins) and to provide the claimant with the evidence from her further investigations and ask him to provide written representations, rather than re-convene the disciplinary hearing was within the band of reasonable responses.
148. The claimant also submitted that the appeal panel ignored information that had been provided previously and asked for information from a manager (Mr Doig), who was not the claimant's line manager and did not manage him. I find that it was reasonable for the appeal panel to undertake further investigations where they believed they needed clarity and there was no evidence that the appeal panel had ignored information provided by the claimant. The appeal panel had arranged three sessions to ensure that the claimant had a full opportunity to provide them with information. Given Mr Doig managed the claimant's department with his direct line manager, Mr Dawson and there was evidence that he also gave instructions to the claimant in his role as Team Leader, I find it was reasonable for the appeal panel to approach Mr Doig for information.
149. The claimant alleged that he had been subjected to enforced isolation since he was suspended on 26 February 2019. I was referred to an email dated 28 February from the Claimant's Support Officer, during his suspension. In this email Ms Vickery confirmed that the claimant was permitted to maintain social contact with colleagues and did not need to block colleagues on social media. The claimant was aware of this email as he responded to Ms Vickery that same day thanking her for confirming he could communicate with friends, as long as he did not talk about why he was not in work. I also heard evidence from Ms Cooper (the claimant's line manager) who said she was never told by Mr Smith that the claimant did not want to be contacted or instructed not to contact him. She was also not aware of anyone else in the team being told

this. Ms Cooper denied telling the Claimant at a welfare meeting they had a couple of weeks after he had a very serious accident, that Mr Smith had given this instruction.

150. I prefer Ms Cooper's recollection of this meeting. Ms Cooper was a clear and credible witness who was uninvolved in the decision to instigate the disciplinary process (as she had been a colleague of the claimant's when he was suspended) and Mr Smith had was no longer with the respondent. The claimant was clearly in pain during this meeting and referred in evidence to being on 20 tablets a day for his pain, following his accident, and that "*things were slightly hazy.*" I find this would have adversely impacted on his recollection of this meeting. I find that the respondent did not subject the claimant to enforced isolation but subjected him to reasonable restrictions with regard to what he could discuss with his colleagues during the disciplinary investigation.

Did the employer act reasonably in treating this reason as sufficient reason to dismiss the employee?

151. I find that the respondent acted reasonably in characterising the misconduct as gross misconduct and then in deciding that dismissal was an appropriate sanction. Ms Newman and the appeal panel found that the claimant had (a) falsified documents relating to a food hygiene visit for the business at "Girtrell Court" on 21 August 2018; (b) falsified documents relating to a food hygiene visit for the business 'The Refreshment Rooms' on 18 December 2018; and (c) falsified mileage claims in respect of the above visits and that these constituted the following breaches of the Council's disciplinary procedure.

- Falsified documents
- Failed to comply with the organisation's rules and/or procedures;
- Breached the Council's Employee Code of Conduct;
- Potentially damaged the Council's reputation
- Neglected his duty;
- Failed to maintain proper and professional regard for the ethos, policies and practices of the Council;

152. Although the claimant had a long record without any previous warnings, these were serious offences, particularly with regard to the Refreshment Rooms, which was an operating restaurant. The following were noted in the respondent's disciplinary procedure as examples of gross misconduct:

- Falsification of time sheets, bonus sheets, subsistence or expense claims etc;
- Breaching the Council's Employee Code of Conduct;
- Neglect of duty;

- Failure to maintain proper and professional regard for the ethos, policies and practices of the Council;
153. Both Ms Newman and the appeal panel reasonably took into account the position of trust and responsibility that a EHO holds with regard to food safety and the potential consequences of the failure to accurately report the results of food hygiene inspections for the Council and for public health. I find that the mitigation the claimant presented, including his length of service and clean record, was carefully considered by Ms Newman and the appeal panel before making their decisions. I find that notwithstanding the claimant's mitigation, the respondent's decision to summarily dismiss the claimant was still within the range of reasonable responses.
154. I am therefore satisfied that this was a fair dismissal, and the claim of unfair dismissal does not succeed.

Employment Judge McCarthy

Date: 24 May 2022

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

25 May 2022

FOR THE TRIBUNAL OFFICE

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