



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J Taylor

**Respondent:** Tameside Metropolitan Borough Council

**Heard at:** Manchester

**On:** 12, 13 and 14 March 2019  
26 March 2019 (In Chambers)

**Before:** Employment Judge Ross

## REPRESENTATION:

**Claimant:** Miss Eeley (Counsel)

**Respondent:** Miss L Carr (Solicitor)

# JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim for unfair dismissal is well-founded and succeeds.
2. The claimant's claim for wrongful dismissal is well-founded and succeeds.
3. The basic award will be reduced by 10% for contributory fault.
4. Any compensatory award will be reduced by 10% for contributory fault.

# REASONS

1. The claimant was employed by the respondent as a social worker in a managerial role. She was a Service Unit Manager ("SUM"). She had commenced employment with the respondent in 1993, secured her Social Work qualification in 2000 and transferred Children's Social Work Service where she was a social worker progressing to Assistant Team Manager then Team Manager and then a Service

Unit Manager in December 2013. She had an exemplary service record with no disciplinary proceedings ever brought against her.

2. On 22 January 2018 the claimant was dismissed for gross misconduct. She appealed but her appeal was unsuccessful.

3. The claimant brought a claim to this Tribunal.

4. I heard from the dismissing officer, Mr Thomas and the appeal officer, Councillor Fitzpatrick. I also heard from Mrs T Brennand and Mrs B Wilde for the respondent.

5. For the claimant I heard from the claimant herself, Ms Adele Smith and Mrs J Titiloye.

### **The Facts**

6. The claimant was appointed Service Unit Manager in December 2013. In February 2016 the claimant's existing role required her to be responsible for the following areas: looked after children, leaving care, private foster, fostering and adoption, point of contact from the Government for unaccompanied asylum seeking children, the named lead for looked after health, the named lead for contact point for commissioning with health (Pennine Trust), the named lead with Housing for 16+ young people.

7. In February 2016 a decision was made by the senior management team to increase her service area and as a result the Looked After Children ("LAC") Support Service, the contact function and residential homes would move into her service area. I find this concerned the claimant as she had no experience of working in the residential care setting sector of social work. Mrs Smith, Head of Services, (the claimant's line manager at the time) explained that Mrs White, the SUM for contact function and residential settings at that time would organise and undertake a full handover to the claimant. She was also informed that the Assistant Executive Director (Dominic Tumelty) who was also appointed as the Registered Individual ("RI"), a statutory position, would hold learning and mentoring sessions with the claimant given his background in residential children settings. Unfortunately, neither the handover nor the mentoring sessions took place although the claimant took steps to inform herself of the relevant statutory provisions by online research.

8. The claimant had voiced her concerns to Mrs Smith that she had no experience or knowledge of managing Children's Homes and that she was very concerned as two of the Homes held "required improvement status" and the other one had not long undergone a professional abuse investigation which led to a criminal conviction of the team manager, with findings of "unsatisfactory" of the practices within the Home.

9. There is no dispute that the young people residing in the residential Homes were mainly teenagers and young children who struggled to settle within a family setting such as foster care. Many of the children had issues with substance misuse, criminality and mental health issues making them vulnerable to sexual exploitation

and self-harm. A high number of the children had been excluded from full-time education, could exhibit aggressive behaviour and would struggle to regulate their emotions.

10. In the autumn of 2016 an Ofsted inspection concluded that Tameside Children's Services were "inadequate" due to poor leadership. The inspection concluded that service areas where the claimant was responsible "required improvement".

11. There was evidence from the claimant and from Mr Thomas who was the Director of Services appointed on an interim basis following the report from October 2017 to September 2018 that Children's Services were under a great deal of strain during this period of time and that staff often worked excessive hours.

12. At the end of March 2017 the claimant became ill due to work related stress and anxiety as a result of an unmanageable workload, lack of support, together with family issues including bereavement and illness. From April 2017 the claimant was prescribed propranolol and sertraline (an antidepressant).

13. On 21 June 2017 the claimant returned to work. A phased return was agreed. I accept the claimant's evidence that features of the plan agreed with the claimant did not take place. It had been agreed there would be weekly meetings with the claimant's manager, Mrs Wooding, but only three took place. A risk assessment did not take place. The claimant retained significant management responsibilities in addition to the projects assigned to her.

14. The claimant continued to attend her GP in August who increased the dosage of sertraline.

15. The claimant took annual leave in August, September and October.

16. In August 2017 the claimant lodged an informal grievance against her manager, Sheena Wooding, via email.

17. Meanwhile by September 2017 a decision had been made to close the relevant Children's Home, which I will refer to as Children's Home Z.

18. When the claimant took over the responsibility for Children's Homes she was reassured that although she did not have detailed knowledge of running such Homes she could operate a "light touch" in terms of management because very experienced managers had been appointed. The manager for Children's Home Z was Juliette Murphy ("JM").

19. By October 2017 there was only one young person who was a resident at Children's Home Z. That was child X. Child X was a young person aged between 16 and 17 years. She had finished school and was attending college. There is no dispute that she was a young person who exhibited challenging and volatile behaviour. She had assaulted staff at the Home and gone missing from the Home. A risk assessment in June 2017 assessed her as being at high risk of harming staff, of being restrained, of making false allegations, of damaging to property, of a criminal

record, of aggressive behaviour, of pregnancy, of sexual health issue, of emotional instability and of meeting strangers.

20. On 1 September 2017 there was a serious incident at the Home where Child X “lashed out at staff, punching and biting”. She was noted to “continue her aggressive behaviour screaming and making threats to harm staff” (see pages 97-99).

21. There was a further serious incident on 10 September 2017 where Child X hit one of the staff in the face.

22. Despite this the staff stated that at this time in this placement Child X had improved. Her social worker stated when asked about Child X’s behaviour at this time that Child X “has made significant progress, dramatic reduction in assaults on staff and outbursts are now for shorter periods of time, previously could have gone on for hours and now they can be up and down and done within a short period of time. Child X is engaging in education compared to previously refusing. She does have good positive relationships with certain staff on the placement...”p168. See statement of Ms A Astbury to the investigation.

23. The Home Manager, JM, stated in her investigatory interview:

“We have come a million miles with Child X, still very challenging but now on a one-to-one basis both in and out of the building.”

24. I find that each Children’s Home is required to have a statement of purpose which records key information about the residential unit. There is no dispute that the statement of purpose for the relevant residential unit stated that the Children’s Home Z did not accept emergency placements. That document was filed with Ofsted.

25. I rely on the evidence of JM in the investigatory interview at page 142, “Child X’s behaviour is always better on a one-to-one”. I rely on her evidence that from approximately March 2017 there had only been Child X and one other young person at the relevant Home. That other young person had left residential care approximately four weeks earlier so Child X had been on her own.

26. I find on 25 October 2017 JM was asked to accept another child, Child Y aged approximately 12 years, as an emergency placement to the Home. I find (see page 143) JM informed the other party that the Home was not an emergency admission unit. She also stated that the Home did not have a spare bedroom with furniture in it because the last young person to move out had gone to a flat of his own and had been permitted to take the furniture because the unit was closing down.

27. I find that the claimant received a telephone call on 25 October 2017 from Debbie Duddrige “DD” explaining that the manager at Home Z, JM, was not being helpful in allowing an emergency placement at the residential unit. I find the claimant explained to DD that the statement of purpose clearly says they will not accept any children in an emergency. The claimant explained the regulations say that JM is responsible for that purpose and any changes to that JM has to alert Ofsted. I find the claimant noted Child X was at Home Z, aged nearly 17, and the child requiring

emergency placement , Child Y was aged 12 and very vulnerable, and an impact assessment would be needed. (p176 Investigatory interview of claimant.)

28. The claimant was then informed by DD that a senior manager, Liz Stenton, had directed that the emergency placement was to happen into Home Z. I find the claimant rang her own manager, Sheena Wooding "SW", to clarify this and reiterated her concerns about moving child Y, against the standards. SW told her that JM would have to notify Ofsted and they would have to change the purpose of the statement if need be.

29. At the Tribunal Mr Thomas, the dismissing officer and the Director of Social Services for the respondent at that time (appointed on an interim basis) confirmed he had authorised the placement of Child Y at Home Z. He stated that occasionally such a matter had to happen. It was not ideal but if there was nowhere else for the child to go it had to occur.

30. I find the claimant went to the office at Home Z on 25 October where tensions were raised. She explained that the Child Y had to move in and that she understood the concern of staff that it did not give a chance to prepare Child X for this change. p176.

31. I find Child Y was admitted to Home Z that same evening, Wednesday 25 October.p255

32. I find there was an incident on Thursday 26 October 2017 at 6.00pm (see pages 103-105) where Child X pushed one of the members of staff. The incident is described as:

"Child X was planning to go on an outing with staff and new young person. Child X became agitated about where she would be sitting in the car."

33. Who was at risk is noted to be "staff and other resident". The note goes on to state at page 106:

"Child X had been in a positive mood and looking forward to the outing but overall was struggling with the situation of having an emergency admission to the Home a few days prior and the impact this had on her in terms of sharing staff time and attention."

It goes on to state:

"Following the incident Child X quickly calmed down and apologised. She became very upset about her actions and cried, stating that disappointed herself and realised she had overacted by shoving staff member and pulling her hair on her way to the kitchen."

34. On Thursday 26 October 2017 I find JM rang the claimant and told her Child Y had not settled and had gone missing but subsequently returned (page 176). The claimant reiterated her concerns to her manager SW.

35. JM said it was in a brief conversation on Thursday 26 October with the claimant she first mentioned she first mentioned about taking child X away. p145. The claimant could not recall that being mentioned at that stage. P178

36. I find the claimant was on annual leave on Friday 27 October and back in work on Monday 30 October.

37. On Sunday 29 October at pages 107-110 Child X is recorded as "missing from home/unauthorised absence". She returned home in a taxi safe and well at 1.25am. She had been missing for two hours and ten minutes (page 111). I find this was drawn to the claimant's attention. Document page 110 states 29/10/17 at 2.05am "spoken with Jane" which I find is likely to refer to the claimant.

38. I find the manager of Home Z, JM, rang the claimant on Monday 30 October and reported that Child X, the new placement Child Y and the staff had had a really difficult weekend. She stated that Child X had appeared to regress with her behaviour and there were concerns that although she had been settled for a number of weeks (attending college) the staff needed to come up with something to resolve the situation. JM told the claimant that she had discussed the issue with the staff and the consensus was they needed to get Child X out. p177. See also statement of JM: "I had a conversation with LL(staff member Lorelle Lowe) and agreed Child X "needed some time out". p145 JM investigatory interview.

39. In the conversation on Monday 30 October I find JM stated she planned to take Child X to the Haven Holidays caravan for an overnight stay with the aim of staying a second night, for a break.

40. I find that it was half-term week from College for Child X.

41. I find that for each resident at the Home there are detailed documents in relation to risk which include a placement plan (pages 65-75), a serious incident report form (for an example see page 97), a report when a child goes missing from home (for an example see page 107), risk assessment forms (see example page 41) and running sheets (for example see page 29). The claimant explained that she would not be party routinely to detailed risk assessments and it would not be her job to conduct them. She would see the running sheets when she attended the Home but again she was not responsible for completing them and they were not sent to her. She did receive serious incident forms.

42. There is no dispute there had been communication between the claimant and JM about a potential overnight stay for Child X in a caravan in June 2017 (see page 121). JM owned a caravan "at arm's length", namely that she did not use the caravan herself and it was managed and let by a holiday rental company. On that occasion JM suggested renting the caravan she owned at a reduced rental rate. Mr Thomas agreed in cross examination that in June the claimant had identified that the caravan was unsuitable because of the potential financial interest of JM. See the claimant's

email to JM 29 June 2017, included in the investigation report. p121. He agreed the situation in September was different because there was no conflict in relation to finance.

43. I find the claimant was aware the caravan was situated at Martin Mere, Blackpool. I find JM told her there would be no cost to the respondent because if the caravan which was managed by the holiday letting company was available (which it was) JM could use it at no cost. p179. The claimant said she considered the question of conflict, she referred to the situation with foster carers where a looked after child is resident with those caring for an individual and stated because there was no payment being made, it didn't appear to her to be a conflict of interest. p179

44. I find the claimant asked JM "will you be safe and will Child X be safe?". I find JM replied saying that she had 30 years' experience and Child X wanted to go and she would not put anyone at risk.

45. I find the claimant responded saying that she was not opposed to the idea of the trip, to make the appropriate arrangements and to get back to her if she needed anything (see page 156 and pages 145-146).

46. I find it is within the Registered Manager's remit to make such a decision to take a looked after child away and the responsibility of the staff within the Home to undertake the appropriate risk assessments (see pages 411-413 and page 424).

47. I find in relation to Child X that although there are some documents within the detailed risk assessments which suggest Child X should be managed on staff ratio of 2:1 around the Home (page 47 – "two staff wherever possible to be in the building at all times and aware of where colleagues and other young people are at all times", and page 49 – "staff 2:1 around the Home to be vigilant around Child X behaviours"), other entries appear to implicitly accept the claimant will not have a ratio of 2:1. See page 82 – "without an activity and Child X will not respond to de-escalation techniques and staff members should leave Child X to make her own way home using her bus pass or if this not appropriate call another member of staff for support and assistance". As per the schedule of visits document in the placement plan, (page 87) a number of those visits to family members in October 2017 were unsupervised. Entries within the placement plan suggest Child X, who was aged 16 and approaching age 17, should be encouraged to become independent (see page 89).

48. In terms of practice her social worker stated at page 168 that it was not "best practice" to lone work.

49. The residential trip policy for safeguarding suggests for supervision:

"The degree and extent of supervision of children/young people must be appropriate to the activities being undertaken and the age and nature of the young people involved. A Residential Manager or Service Unit Manager must be satisfied that the arrangements made are satisfactory and can be safely entrusted to the staff in charge of young people. The staff in charge must ensure that the activity or outing is properly financed."

It then states:

“The adult/young person ratio that is appropriate will depend upon the nature and duration of the activity. The following can be used as a guide: one adult to two young people.”

50. On 31 October 2017 the claimant received a telephone call and email from Gerard Sweeney, Head of Safeguarding (pages 123-124) saying that he had been alerted to the fact that a manager from the relevant Children’s Home had taken Child X away to her caravan without completing a risk assessment, had not informed anyone and had taken a large amount of money with them. This information had come to light when a routine regulation 44 Independent visit took place, unannounced to Home Z. (see pages 112-119).

51. I find the claimant contacted JM and asked where the risk assessments were for the activity. JM reported there was generic risk assessment covering activities and lone working but she had not completed one specifically for the trip. She had contacted Child X’s social worker but the social worker was on leave. The money was accounted for.

52. On 2 November 2017 the claimant was suspended. She attended two investigatory meetings. She attended a disciplinary hearing on 17 January 2018 (pages 270-276). She received a disciplinary letter dismissing her on 1 February 2018, for gross misconduct (see page 277). The claimant lodged an appeal on 16 February 2018 (see pages 282-91) and lodged supplementary grounds of appeal (see page 292-301).

53. An appeal was heard on 14 April 2018. The minutes are at page 322.

54. The appeal was unsuccessful.

### The Law

55. The relevant law is found in Section 95 and section 98 of the Employment Rights Act 1996. **British Home Stores v Burchell [1980] ICR 303** is relevant as is **Salford Royal NHS Foundation Trust v Roldan [2010] ICR 1457** and **A v B EAT/1167**. Given that the claimant was a senior social worker and was dismissed for gross misconduct for a safeguarding matter, accordingly her ability to work with children in future and pursue her professional career is jeopardised.

56. The issues were agreed at the outset of the case.

57. I turn to the first issue: can the respondent show a reason for the dismissal?

58. The reason relied upon by the respondent is conduct. There is no dispute that the conduct relied upon by the respondent is that the claimant committed gross misconduct when she:



- (1) failed to undertake appropriate governance and approval before authorising the use of an employee's (JM) privately owned caravan for council business;
- (2) through ineffective, negligent and unsafe leadership and management she failed in her duty of care to safeguard an employee (JM) and a child (BH) demonstrating a serious breach of:
  - (i) safeguarding; and
  - (ii) the council's health and safety rules with regard to employees and service users.

59. The action referred to by the respondent was "the overarching decision making by yourself to allow JM to take Child X away for one night, possibly two, on a one-to-one basis in her own private caravan". I find the respondent has shown that the incident was potentially an issue of conduct.

60. I turn to the next issue: whether the employer who discharged the employee on the ground of misconduct entertained a reasonable suspicion amounting to a genuine belief in the guilt of the employee of that misconduct at that time. To answer that question, I must answer three elements:

- (i) the fact of that belief;
- (ii) that the employer had in his mind reasonable grounds upon which to sustain that belief; and
- (iii) the employer at the stage at which he formed that belief on those grounds had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

61. I remind myself that it is not for me to substitute my own view either with regard to the grounds (**BHS v Burchell**) or the investigation (see **Sainsbury's Supermarkets v Hitt**).

62. Mr Thomas was the dismissing officer. He was a clear, articulate and careful witness. I am satisfied he genuinely believed the claimant was responsible for misconduct.

63. I turned to consider whether he had in his mind reasonable grounds upon which to sustain that belief. To scrutinise his decision making I must be clear exactly why the claimant was dismissed.

63. The first ground relied was Allegation 1 that the claimant "**failed to undertake appropriate governance and approval before authorising the use of an employee's (JM) privately owned caravan for council business.**" The original allegation also included another allegation: "**That you disregarded a decision made by an Assistant Director**".P278

64. In his decision (see page 278) Mr Thomas confirmed that he found the first part of the allegation “that you disregarded a decision made by an Assistant Executive Director” not proven. Therefore, the only part of Allegation 1 relevant to this hearing is “failed to undertake appropriate governance in approval before authorising the use of an employee’s privately owned caravan for council business.

65. It is agreed that Mr Thomas accepted that there was no financial conflict of interest in the use of the caravan by JM.

64. There is no dispute that the claimant was not the person primarily responsible for conducting risk assessments for taking child X away. In fact the respondent’s own policies appear to suggest JM as the manager of Home Z could have made that decision without consulting the claimant.

65. However, the claimant accepted at the disciplinary hearing that JM had referred the decision to her and at the disciplinary meeting she stated, in answer to the question “whose decision was it that the trip was appropriate or not?”:

“It lies with me, I made a decision and I have to take ownership of that decision with regards to making decisions.”

66. The claimant explained the context of her decision to the respondent:

“I had been in the Home...and we knew that another young person was moving out and that was really positive. Tammy reported Child X was making positive progress and moving forward. So I was aware of that progress and that this other new child could be a trigger to what the dip was at the weekend. We knew if another child came in it could guarantee there would be a dip in Child X behaviour”. P273

67. I find the dismissing officer and appeals officer were aware that it was for these reasons, namely that the claimant understood that Child X had generally improved very substantially whilst at the Home but that her behaviour had deteriorated with the emergency placement Child Y being put into the Home that the claimant made her decision. She said she was aware of Child X going missing on the weekend when the new child was placed in the Home. She stated she relied on the knowledge and experience of the Registered Manager, JM, whose opinion it was that it would be a good idea to get Child X out of the Home for one night and possibly two. The claimant asked her if she was going to be safe and if the child would be safe, and she was told by JM that they would be.

68. It was not the claimant's job to carry out a detailed risk assessment; that was the Registered Manager’s job and the claimant left her to do that.

69. The claimant had been told not to “micromanage” and to manage with a “light touch”.

70. It was only when a routine unannounced inspection occurred that this decision was challenged. In fact the visit had gone smoothly (see statement of Child X) and there were no issues which arose out of her going away with JM.

66. Mr Thomas found that the claimant “failed to consider other elements that can cause a conflict of interest not just monetary values”. He also said that her “decision making was superficial and she had not adequately scrutinised the proposal for this planned trip as would be expected”.

67. There is no dispute that the claimant authorised the use of a privately owned caravan for council business. However, the respondent did not identify what was the appropriate governance and approval the claimant should have undertaken before authorising the use of an employee’s privately owned caravan for council business. Instead Mr Thomas appeared to suggest that the claimant had made a flawed decision. I am therefore not satisfied he has shown he had reasonable grounds for his belief that the claimant failed to undertake appropriate governance and approval before authorising the use of an employee’s privately owned caravan for council business when there was no financial benefit to the claimant or JM and there is no clear reference to what the “appropriate governance and approval” was that the claimant should have undertaken.

68. I turn to the second allegation:

“Through ineffective, negligent and unsafe leadership and management Jane failed in her duty of care to safeguard an employee (JM) and a child (BH) demonstrating a serious breach of (1) safeguarding and (2) the council’s health and safety rules with regard to employees and service users.”

69. Mr Thomas accepted there were two elements to the claimant’s failure in relation to safeguarding. The first element was that the claimant authorised child X to be taken away overnight on a one-to-one basis. I am not satisfied that he has shown reasonable grounds that this amounted to a matter of conduct. In his decision making letter he stated, “your decision making resulted in a serious breach of safeguarding in respect of Child X and a breach of the health and safety policy and placed both JM and BH at a potential risk of serious harm”. He goes on to state, “the management statement outlined the policies, procedures and guidance that are relevant to this allegation and I do believe that a number of policies were breached and this resulted in a breach of trust and confidence in the employment relationship”.

70. On cross examination Mr Thomas could not identify which policies and procedures were relevant. There is no dispute that the policies and procedures before the dismissing officer are set out in the Index of Documents found at page 288B and C. The policies were the Health and Safety Policy Statement in Children’s Services Health and Safety Policy (399-404); the Health and Safety Information Residential Visits away from Establishment (405-408); Specialist Services and Safeguarding Policy Activities and Outings for Looked After Children and Young People in Residential Children’s Homes (409-414); Decision Making and Accountability in Children Social Care Services (304-318); GM Safeguarding Children’s Board, a list of all available safeguarding documents (430-437); DFE

Statutory Guidance – Working Together to Safeguard Children (438-447); HCPC Standards of Conduct (448-463).

71. I find that Mr Thomas relied on the fact he considered the claimant's professional judgment that JM could take child X away on a one-to-one overnight stay was flawed. However, his dismissal letter does not identify why an error of judgment which he considered "seriously flawed" amounted to an issue of conduct.

72. Accordingly I find that although Mr Thomas had a genuine belief in the claimant's conduct, there was no reasonable ground that either of the allegations amounted to an issue of conduct. The information relied upon by the dismissing officer were, in his opinion, errors of professional judgment.

73. I turn to the issue of the investigation. Once again it is not for me to substitute my own view. The investigating officer interviewed the claimant. She also interviewed other relevant witnesses, namely the manager of the Home, JM, the members of staff there, Ms Lowe and Ms Hough. She also interviewed child X's social worker, Ms Astbury, and other members of staff: Mr Prescott (Team Manager), Ms Wooding (Head of Care to Success), Mr Bradley (Practice Manager at another Children's Home), Ms Sutherland (Practice Manager at Home Z) and Ms Jackson (the independent reviewing officer who carried out the investigation at the Children's Home). She also had a statement from Ms Murphy. Consequently I am satisfied that the respondent relied on a reasonable investigation.

74. As I have already found there were no reasonable grounds for the respondent's belief, the claim succeeds at this stage.

75. However, in case I am wrong about that and the fact that the claimant admitted her judgment was flawed suggests there were reasonable grounds for a belief in the conduct described in the two allegations, I have gone on to consider the next issue. The evidence for the fact that claimant accepted her decision may have been flawed was : "my rationale of thinking at the time was this was a property that JM rented out through Haven Holidays and I saw it as that. I got it afterwards reflecting the boundaries of JM and her own properties", and in response to the question "do you recognise the issue here?" the response was "absolutely" (pages 274 and 275). In relation to the decision to allow JM to take child X away, "with regard to decision making, I made the decision. I should have been more robust in checking out when I made the decision not to allow it in June but why it was ok now" (page 275).

76. I therefore turn to the next issue: was the dismissal fair or unfair within the meaning of section 98(4)? In answering that question I must have regard to the size and the administrative resources of the employer's undertaking, considering whether the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and I must have regard to equity and the substantial merits of the case.

77. I turn to consider the band of reasonable responses of a reasonable employer.

78. The claimant had an unblemished record with the respondent. She made what she conceded were two errors of professional judgment which were connected. It was undisputed that those decisions were made for good reasons. The evidence before the dismissing officer was that the claimant, who had been told to operate management “with a light touch” relied on the extensive experience of manager, JM, to take child X out of Home Z in a situation where her behavior at the Home had deteriorated following the placement of the new child, child Y, at the Home. Prior to the placement of the new Child the underlying trend of Child X’s behavior had been one of improvement. The claimant properly relied on JM to carry out the detailed risk assessment. In the documents supplied to the dismissing officer there was no clear policy that 2:1 adult to young person ratio was always required. No harm had come as a result of the visit. The evidence was Child X enjoyed the visit.

79. JM and in turn the claimant were exercising professional judgement in balancing a competing risk of child X remaining in Home Z with new child Y or for taking her away for a short break on a 1 to 1 basis by an experienced manager.

80. In addition to her long and unblemished career with the respondent, the claimant accepted responsibility but also expressed remorse:

“I have made the error and I take ownership of the error.

I have worked a long time in Tameside and I am experienced...

I am always willing to take on board when I’ve made decisions and I’m willing to learn from it, and that is the job I want to be in so I hope that is considered in your thoughts.” (Page 276)

81. Mr Thomas stated that the claimant’s actions were “so serious and are proven as gross misconduct”.

82. The respondent’s disciplinary policy, although it gives examples of gross misconduct, does not indicate every type of conduct which could amount to gross misconduct. Mr Thomas was not able to identify any of the examples from the list which might be applicable. He did not suggest, for example, that the claimant’s conduct amounted to “serious negligence which causes unacceptable loss, damage or injury”.

83. Any reasonable employer of this size and undertaking would have found that the claimant made a professional judgment with which other professionals could agree or disagree. Mr Thomas told the Tribunal he had personal knowledge of child X as she was one of the more troubled young people for whom the council was responsible, disagreed with the claimant’s judgement.

84. Although Mr Thomas said he had taken the claimant's personal circumstances into account, it is difficult to understand how he had in assessing the penalty of dismissal.

85. The claimant had returned to work earlier that year from sick leave and remained under the care of her GP and was on antidepressants at the relevant time. She and all the other employees expressed great concern about placing child Y in Home Z with child X: that was a decision authorised at the highest level, namely by Mr Thomas himself.

86. A reasonable employer of this size and undertaking would not dismiss a social worker with lengthy and unblemished service for an error of professional judgment in permitting a young person to be taken away overnight on holiday, where another experienced member of staff had made that suggestion and undertaken to carry out the appropriate assessments in the usual way. Although Mr Thomas said he had given consideration to alternatives, there was no clear reasoning as to why the claimant could not have been demoted or transferred to another role or given a final written warning or a first warning, particularly given her expression of remorse and her acceptance that her judgment on that occasion had been flawed.

87. Accordingly I find that dismissal was outside the band of reasonable responses of a reasonable employer. I have reminded myself it is not for me to substitute my own view. I have not done so. I have considered all of the evidence in this case. I remind myself that this is a situation where dismissal for a reason of this type is likely to be career ending for the claimant. There will be occasions where a decision is so far outside the band of responses of a reasonable employer of this size and undertaking that it is unfair. I find that this is such a case for the reasons expressed above.

88. Finally, for the sake of completeness I deal with the issue of procedural unfairness. It was the claimant's contention that there were flawed elements in the investigation, namely the claimant's state of health was not taken into account; that they did not consider the claimant's phased return to work or look into her informal grievance or scrutinise the level of support of supervision that the claimant had or the level of handover or training that she had. It was also submitted that there was procedural unfairness at the appeal stage because the claimant was not permitted to call witnesses to give oral evidence.

89. I then turn to the issues of **Polkey**. Given I have not found there was any procedural irregularity in this case, I am not satisfied there are any issues in relation to **Polkey** for me to consider.

90. I turn to the issue of contributory fault. I remind myself that section 123(6) ERA 1996 states that:

"Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of

the compensatory by such proportion as it considers just and equitable having regard to that failing.”

91. I remind myself that there is an equivalent provision for a reduction of the basic award contained in section 122(2) ERA 1996 although the language is different. Section 122(2) gives Tribunals a wide discretion whether or not to reduce the basic award on the grounds of any kind of conduct, whereas the provision under section 123(6) the conduct in question must be shown to have caused or contributed to the employee’s dismissal. I remind myself that the conduct must be culpable or blameworthy conduct.

92. I turn to the first allegation. The claimant accepted with hindsight the decision to authorise the use of an employee’s own caravan was a flawed decision. I rely on the evidence that there was no financial benefit to JM or the claimant. I also rely on the evidence given during the hearing that there are occasions when child X would spend time in the property of a member of staff, for example when child X would spend time in the property of a member of staff, for example when being transported in a private car. I also rely on the claimant’s evidence that in relation to foster carers who were also responsible for looked after children there are different guidelines because they are caring for children in their own home. I therefore find that the issue of a conflict of interest is not as straightforward as might first appear. Nevertheless, I accept the claimant’s own evidence that with hindsight she could see that there was a potential conflict in JM taking child X to a caravan which was owned by her even if it was rented out and therefore “at arm’s length”. I also take into account that the claimant was seeking to exercise her professional duty in a fraught situation relying on the judgment of JM and in these circumstances I reduce both the basic and the compensatory awards by 10%.

93. I turn to the other allegation: that the claimant was responsible for culpable or blameworthy conduct in permitting a one-to-one trip away overnight for a young person with child X’s history.

94. I make no deduction. I find that the claimant was exercising her professional judgment. There was no absolute right or wrong in this case. Indeed the senior social worker, Adele Smith, who gave evidence to the Tribunal was able to give another perspective. She explained that personal professional boundaries are important but are not always as clear cut as the respondent suggested. Factors such as the age of child X, who was almost 17 years old at and a college student at the relevant time, together with the experience level of the member of staff responsible for her and the documents suggesting that Child X should be encouraged to be independent were as relevant as factors identified in the risk assessment documents held by the Home. There was also a balancing act in the potential risks of Child X and staff member JM in going away overnight as against the risks for Child X and Child Y and the staff in the difficult early days of child Y’s emergency placement at Home Z.

95. I find the claimant made a judgment relying on the experience Registered Manager with the best interests of child X at heart. I decline to find there was any culpable or blameworthy conduct on that occasion.

Wrongful Dismissal

96. The question for the Tribunal is whether or not the claimant committed a repudiatory breach of contract which entitled the respondent to summarily dismiss her.

97. I find there was no repudiatory breach of contract.

98. I turn to the respondent's disciplinary policy. It gives examples of gross misconduct. I find the judgment of the claimant in authorising a trip to a caravan on a one-to-one basis where the caravan was owned at arm's length by a member of staff but there was no financial benefit to the member of staff or the claimant does not come close to any of the examples in the list of gross misconduct.

99. I find that the claimant acted conscientiously in exercising her professional judgment in authorising the overnight stay. I find the judgment was exercised with the child's best interests at heart. It came in the context of a situation where the behavior of a challenging young person aged 16 had improved very substantially, although she continued to exhibit difficult behaviours. However, the emergency placement of another child, child Y, in the children's Home had caused child X's behavior to deteriorate substantially. In the view of the senior member of staff at the Residential Home, who was very experienced, a short break away (it was half term holiday) for one night would benefit the young person, Child X. The residential manager had discussed that option with at least one other staff member at the Home. The residential manager told the claimant she would put the appropriate risk assessments in place. Taking all these circumstances I find no repudiatory breach of contract when they claimant exercise her professional judgement and authorised that course of action.

100. The other aspect of the claimant's decision making which was alleged to amount to a repudiatory breach of contract was permitting the young person to go to a caravan which was owned by the relevant carer, although on an arm's length basis because it was let out as holiday rental.

101. I accept the evidence of the respondent's other witnesses that the positions of conflicts of interest are sometimes difficult to identify and can be a matter of judgment. There is no dispute there was no financial incentive here. The claimant agrees with hindsight it was not appropriate for the child to be taken to the caravan because it was a property owned by the member of staff. However, I am not satisfied that such an error of judgment was so serious that it amounted to a repudiatory breach of contract entitling the respondent to dismiss. I rely on the evidence of the claimant's other witnesses that in this area too conflicts of interest are a matter of judgement and there are occasions where looked after children are cared for in the property of their carer-for example when being transported by car.

102. Accordingly I find the claimant was wrongfully dismissed



Employment Judge Ross

Date 9 May 2019

RESERVED JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

10 May 2019

FOR THE TRIBUNAL OFFICE

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