EMPLOYMENT TRIBUNAL

Claimant: Mr. J. Jones

Respondent: Royal Borough of Greenwich

Hearing: Final Merits Hearing

Heard at: London South ET (via video/CVP)

On: 27 November 2023

Before: Employment Judge Tinnion

Appearances: For Claimant: In person
For Respondent: Mr. P. Lockley, Counsel

JUDGMENT

1. The Claimant's claim of unfair dismissal under ss.94-98 of the Employment Rights Act 1996 is not well founded and is dismissed.

REASONS

Claims

1. By an ET1 [144-155], Claimant Mr. J. Jones presented a claim of unfair dismissal under ss.94-98 of the Employment Rights Act 1996 against his former employer, the Royal Borough of Greenwich (**RBG**). In its ET3 [157-161], RBG denied the claim. It contended the Claimant had been fairly dismissed for gross misconduct, but if he was unfairly dismissed (a) he contributed to his dismissal to a very significant extent (b) there was a 100% chance he would have been fairly dismissed had a fair disciplinary procedure been applied.

Final merits hearing

2. The final merits hearing (via CVP) was held on 27 November 2023 (**Final Hearing**). RBG was represented by counsel. The Claimant represented himself. The parties relied on documents spread over two e-bundles, a PDF file with 144 pages, and a second 9 page PDF. References in square brackets are to the relevant paginated page(s) of the first bundle. The Tribunal is grateful to the parties' assistance in concluding the evidence and submissions in the 1 day slot allotted. There was

insufficient time for deliberations/judgment, so judgment had to be reserved.

3. The Tribunal heard evidence from 4 witnesses: for the Claimant Ms. B Camilleri and the Claimant himself, for RBG Mr. C. Eckworth (Customer Service Manager, dismissing officer) and Mr. K. Mittelstadt (Assistant Director, appeal officer). All witnesses sought to assist the Tribunal by giving their honest, best recollection of events. Nearly all the material facts in this case were not in dispute.

Findings of fact

4. The Tribunal makes the following findings of fact, including any findings contained in the other sections of this document, on the civil balance of probabilities.

5. RBG is a local authority which provides a 'telecare' service to local residents. It employed the Claimant from 1998, most recently as one of its Telecare officers, until 29 March 2023 on which date he was dismissed for gross misconduct in relation to the events referred to below.

6. The job of a Telecare Officer involves taking telephone calls from service users who subscribe to RBG's Telecare service, often elderly, vulnerable adults with significant health issues. Calls to the service are usually made by the service user activating a personal alarm button. When a Telecare Officer receives a call, they are required to assess the situation and decide what support (if any) the service user requires/needs. Appropriate responses to a call depend on the circumstances, and may vary from taking no further action (eg, if an alarm button was activated by accident, and no assistance is required) to calling an ambulance in an emergency situation. Telecare Officers are given training on their responsibilities.

7. Telecare Officers hold a position of considerable responsibility, and it is obvious that the inappropriate handling of a call from a service user may potentially have serious health and safety consequences (eg, not calling an ambulance for a service user in an emergency health situation who needs to be taken to hospital immediately).

8. On 2 December 2022, the Claimant was working as a Telecare Officer that evening when he entered into a telephone conversation initiated by a female service user ("**Service User X**"). That call (lasting 3 minutes 23 seconds) was recorded, and formed a critical part of the evidence at the disciplinary hearing. Although the audio recording of the call at times verges on the inaudible, it is not in dispute that during the course of that call:

    a. Service User X said she had fallen over but got back up;
    b. Service User X said she had fallen over and hurt her head;
    c. Service User X said she had broken her glasses;
    d. Service User said she was feeling sick;
    e. the Claimant repeatedly offered to call an ambulance for her if she wanted, Service User X repeatedly declined that offer – the Claimant asked her at one point if she was sure, she said yes;
    f. the Claimant asked Service User X what she wanted him to do, to which she replied "*I'm asking you*";

g. the Claimant asked Service User what she wanted him to do for her, and she replied "*nothing, go away*";
h. Service User said she had already told her daughter, the Claimant asked her what her daughter said, she replied "*too far away to come over*";
i. the Claimant asked Service User X if her head was bleeding, she replied no but she'd got a bump;
j. Service User X appeared at times to be crying/sobbing;
k. the Claimant told her that if she felt ill or changed her mind to press the button and he would do it (ie, call an ambulance for her), and Service User X agreed to that course of action.

9. It is not in dispute that the Claimant's tone and manner when speaking to Service User X was calm and sympathetic throughout. There is no suggestion he said anything inappropriate or wrong to her – he was plainly trying to help.

10. It is not in dispute that RBG's electronic records, which the Claimant had access to at the time, noted Service User X could refuse help as a form of self-neglect when making decisions.

11. It is not in dispute that after this conversation with Service User X (a) the Claimant did not ask anyone in the Telecare team to visit Service User X to check on her welfare (b) the Claimant did not contact Emergency Services to request an ambulance be despatched to check on her (c) the Claimant did not contact Service User X's daughter to ask her to check on her mother.

12. In his witness statement, the Claimant described these omissions as a "*judgmental error*". What the Claimant did do in response to the call was two-fold: first, he duly logged the call on RBG's system; second, he told his colleagues about his conversation with Service User X (he did not play them the recording of the call), and they agreed he had handled the situation appropriately.

13. On 3 December 2022, Service User X called RBG (M. Phillips) to complain about the service she had received. After listening to a recording of the call, M. Philips escalated her complaint to Mr. R. Rayson (Telecare Manager) and Mr. Eckworth. On 5 December 2022, the Claimant was suspended pending an investigation.

14. On 8 December 2022, Mr. Rayson and Sue Loft (Telecare Team Manager) visited Service User X at her home. She had visible bruising on her forehead and nose. Service User X stated that on the night of 2nd December, she had taken medication (morphine) for pain and was in bed. She remembered being in bed then waking up on the floor beside her bed. She remembered bleeding, her glasses being broken, and being in pain and confused. She stated she had hit her head, and believed she might have landed on a tower of electronic sockets which caused the damage to her face and glasses. Service User X stated she activated her Telecare alarm in her front room. She remembered speaking to a member of the Telecare staff, but said she didn't remember the conversation word for word as she was hurt, confused and bleeding.

15. Mr. Rayson prepared an initial investigation report dated 9 December 2022, which concluded Service User X had fallen and needed assistance, the correct response

to which would have been to call an ambulance for her, and that based on the information from the call Telecare staff should have attended to assess the situation and provide first aid. Mr. Rayson concluded a full investigation was required.

16. RBG assigned to Mr. P. Davis (Head of Adult Safeguarding) the task of conducting that full investigation. On 1 February 2023, Mr. Davis conducted an investigatory interview of the Claimant [42-44], accompanied by a UNISON representative. In his interview, the Claimant accepted that during the call Service User X told him she had fallen and banged her head, and said the reason for the call was for him to make a decision about what she needed. The Claimant accepted Service User X had been upset. The Claimant stated he had ended their call because she was not on the ground and had declined his offer of support.

17. On 10 February 2023, Mr. Davis conducted an investigatory interview of Mr. Rayson [6-7]. Having listened to the call, Mr. Rayson stated the expected response would have been to attend Service User X to ensure she was safe and not seriously hurt, and there should have been a visit by a member of Telecare staff or an ambulance. Mr. Rayson stated the Claimant's training would include call handling, and stated his opinion that the Claimant should have known what to do in the situation based on his training and experience.

18. Mr. Davis prepared an Investigation Report (**Report**) [9-14] based on (i) Mr. Rayson's initial investigation report and the evidence gathered in that investigation (ii) the Claimant's investigatory interview (iii) Mr. Rayson's investigatory interview (iv) the recording of Service User X's call on 2 December 2022, which he listened to. The Report concluded as follows:

> "*Based on the evidence gathered it seems apparent that the incident reported by [Service User X] is not an uncommon scenario for telecare to respond to. It is very clear from the voice recording that [Service User X] had suffered a fall, sustained an injury and had broken her glasses. It is also apparent from the call that she is distressed. The manner in which [Service User X] speaks in the recording suggests that she may have been confused and disorientated. The fact that [Service User X] had broken her glasses as a result of the fall is evidence that the fall was significant and potentially very serious. The fact that [Service User X] reports an actual injury (a bump) is also significant. Based on the evidence presented it would appear that whilst [Service User X] herself could present challenges to the service in terms of the frequency of her calls, the scenario that was presented on 02.12.22 was not in itself complex and a decision should have been taken to ensure that [Service User X] received a visit to attend to her and further assess any needs she might have. Since this did not occur it seems reasonable to conclude that [Service User X]'s needs were neglected on 02.12.22 and she did not receive the support she should have received. It is difficult to ascertain why this error of judgement by Mr Jones occurred. He has significant experience in his role and is otherwise deemed to be a competent and reliable member of the Telecare Team. No mitigating circumstances have been identified. There is nothing neglectful or disrespectful in the tone of Mr Jones' voice in the audio recording with*

Ms Jones and he maintains a polite, professional demeanor in the course of the conversation aside from the apparent error of judgement." [A13]

19. The Report recommended that the matter proceed to a disciplinary hearing.

20. By letter dated 15 March 2023 [30], the Claimant was invited to attend a disciplinary hearing to be chaired by Mr. C. Eckworth to consider the allegation that by the incident on 2 December 2022 the Claimant had committed potential gross misconduct for failing to coordinate a response for a vulnerable service user in need of assistance, and breached Code of Conduct 1.2.5. The letter informed the Claimant of his right to be accompanied.

21. On 27 March 2023, the disciplinary hearing was held, and a very basic note taken [86-88]. The Claimant attended, accompanied by a UNISON representative. At the hearing, the Claimant explained why he had taken the action he had taken and not called an ambulance or sent someone to check on Service User X. The telephone call was played. To explain his conduct, and in mitigation, the Claimant mentioned (a) busy (b) the service user was a repeat caller (c) Service User X had refused LAS multiple times (d) Service User X was not on the floor.

22. After considering the matter, Mr. Eckworth decided to uphold the allegations and dismiss the Claimant. The Claimant was verbally informed of this. By letter dated 29 March 2023 [15-17], Mr. Eckworth formally notified the Claimant of his dismissal. His letter stated (in relevant part):

> "*The purpose of the hearing was to consider the allegations set out in the letter to you dated 15/03/23. At the hearing you stated that you disagree with the allegations presented and that [Service User X] was a "different call from a normal call". You stated your mitigations around the incident, and these were as follows:*
>
> • *The service was usually busy, and Ryan Rayson (Telecare manager) had not been correct in saying this was a normal volume of work. No Telecare officers were available to be sent due to a pervious callout and the shift being busier than normal.*
>
> • *That [Service User X] is a frequent caller who is difficult to deal with, and that you used your previous knowledge of this client to make a decision. She is known for being difficult and needing time to calm down.*
>
> • *That you parked the call – A reminder notification facility.*
>
> • *That the client refused an Ambulance multiple times and you were unsure if you should override the client.*
>
> • *That [Service User X] wasn't on the floor. Although [Service User X] had fallen she had managed to get back up.*
>
> *At the hearing the recording of the call was played.*

After considering the evidence, I am satisfied that during the call sufficient information was gathered to send an emergence response to [Service User X]. That the mitigation presented was not sufficient to justify or understand why the decision was made to not organise a response or welfare check in any form.

[Service User X] has extensive medical and mental health issues and a note on her record that indicates she can refuse help as a form of self-neglect. This note was not taken into account when making the decision.

The busyness of the shift should have no b[e]aring in the decision making process, while I acknowledge this can cause a delay in a response, this plays no part in whether a response is required.

[Service User X] stated she had a head injury, you agreed that this should normally be an Ambulance call, but [Service User X] refused this as an option so you asked her to call back if anything changes. This left [Service User X] i[n] an extremely vulnerable situation as there was no reasonable way for you to ascertain the extent of the injury and her later ability to call for help.

Telecare officers were not sent or contacted while out, it is still unclear why this is the case. Telecare officers went on multiple callouts but were never directed to check on [Service User X].

You repeatedly informed us that you parked the call, but this did nothing to service [Service User X]'s needs as no follow up, or further contact was made. The action of parking the call does nothing but indicate a follow up is required or to act as a reminder for information to be passed. Neither of these things occurred.

Although [Service User X] was not on the floor this is not the key component to the call, the head injury was the primary concern. This required a visit to ascertain the seriousness of the injury.

Based on the evidence and your statements it is clear [Service User X] needed emergency assistance. This was not supplied and in failing to do so, this behaviour constituted gross misconduct.

I now confirm the decision which was conveyed to you at the conclusion of the hearing that you be given formal notice of dismissal from the Council's service and that your last day of service was 28th March 2023."

23. The letter informed the Claimant of his right to appeal and how to exercise it, and on 6 April 2023 the Claimant duly lodged an appeal against his dismissal [18-21] [34-36]. Summarising, the Claimant contended (a) the decision of summary dismissal was too harsh and a reduction in sanction could be made (b) Mr. Eckworth did not properly consider all the circumstances of the incident when coming to the conclusion of summary dismissal (c) Mr. Eckworth's decision was inconsistent with past cases in Telecare (d) the sanction of instant dismissal was not proportionate.

24. On 7 June 2023, the Claimant's appeal hearing was held, chaired by Mr. K. Mittelstadt, of which a full note was taken this time [97-108]. The Claimant was accompanied by a UNISON representative. At the appeal hearing, the Claimant highlighted that (a) the sanction of summary dismissal was too harsh in the circumstances, as he had worked at RBG for 25 years, and in all that time had never had a disciplinary, or had concerns raised about him, and this was the first time complaint against him had been raised (b) the decision to dismiss was not in keeping with previous practice, where more serious misconduct had not resulted in dismissal (c) Mr. Eckworth had failed to take into consideration mitigating circumstances. During the appeal hearing, the Claimant explained (and accepted) a 'Category 1' was when a call comes through and the caller tells Telecare they have fallen and reported an injury.

25. Reading the note of the appeal hearing carefully, the Tribunal notes the Claimant did not actually dispute he was guilty of misconduct in relation to his response to Service User X's call on 2 December 2022, nor did he take issue with Mr. Eckworth's finding that that misconduct constituted gross misconduct, although he challenged the reasonableness/proportionality of the decision to dismiss based on that conduct.

26. Mr. Eckworth attended the appeal hearing, explained the basis of his decision-making, and answered questions. He highlighted the fact that at the disciplinary hearing the Claimant had not admitted to making a mistake [104]. Mr. Eckworth stated the overriding issue was that there was a head injury and there was no way of ascertaining what the head injury would lead to, and no way to reflect accurately what Service User X's injuries were [103, 5th para]. Mr. Eckworth addressed mitigation and the sanction being harsh, stating it was clear something needed to be done and a response needed, and there was no logical reason for no response [Id.].

27. After considering the Claimant's grounds of appeal after the hearing, Mr. Mittelstadt decided to dismiss the appeal. By letter dated 14 June 2023 [56-58], Mr. Mittelstadt told him his appeal had been unsuccessful, and explained his reasoning as follows:

> "*You and your Trades Union representative stated:*
>
> *- That you graded the call as a 'Category 1' call, and that you believed you followed existing procedure in place at the time*
>
> *- That there is an absence of clear guidance where a client's case note contradicts existing procedures*
>
> *- That your decision to not call an ambulance was influenced by prior knowledge of the client. You made reference to a previous occasion where you had called out an ambulance (but that the client had refused help when the ambulance arrived on the scene).*
>
> *- That you discussed your decision with your colleagues and were satisfied about the decision to park the client's call*
>
> *- That staff shortages/shift patterns impacted on your ability to mobilise a response*

The responding manager Mr Eckworth stated:

- This was a category 1 call. The procedures are clear and require calling emergency services.

- Each call should be responded to on its own merit. Prior knowledge of the client is not relevant and at worst can hinder clear decision-making.

- The procedures were updated in March 2023. The appeal hearing was based on procedures in place in December 2023. Both procedures require calling out an ambulance in response to category 1 calls.

- Shift patterns may be a reason for a delayed response, but not a reason for no response. Records indicate that all members of staff were in the office at 00:41h.

- 'Parking' a call is not an adequate response to a reported medical emergency

- Call records suggest that Jason has had contact with the client a total of 6 times in the last 3 years.

Having given careful consideration to the information put forward by you in support of your appeal together with the management response, my decision is that your appeal is not upheld. The decision taken by Mr Colin Eckworth to summarily dismiss you is upheld for the following reasons:

- The decision of summary dismissal is not too harsh in the circumstances. I have taken into account the length of time you have been in service, and the fact that you have not been subject to any disciplinary proceedings prior to this incident. However, the evidence available to me also suggests that you have shown very little contrition and repeatedly failed to recognise (or learn from) the error in your judgment and the significant risks of your actions.

The failure to provide meaningful assistance to a client with a suspected head injury constitutes gross misconduct under the council's disciplinary procedures and, in the absence of sufficient mitigating circumstances, rightly resulted in summary dismissal.

- Based on the evidence available to me, there were no similar incidents of dismissal to compare this incident to. The most recent formal procedure resulted in a final written warning and pertained to a situation where an ambulance was called, but information was not provided in a timely manner. This is very different to the circumstance of your case and not comparable and I have therefore considered this case on its own merits.

- The circumstantial evidence provided as part of the initial investigation and disciplinary process me does not, on the balance of probabilities,

sufficiently explain or mitigate against the decision not to provide meaningful assistance to the client.

I note that there appeared to be some discrepancy over which procedures were in place at the time. I received copies of both. The procedures submitted by Mr Eckworth were dated 23/07/21. You submitted procedures dated 13/05/2019. I decided to take these into account as new evidence.

I have had sight of an e-mail to which you were copied into sharing the procedures dated 23/07/21. I am therefore satisfied that the procedures dated 23/07/23 were in place at the time and that you had had sight of them. These procedures were clear that an ambulance was required for Category 1 calls. (Having reviewed both, I also conclude that both policies require telecare officers to call an ambulance for category 1 calls. The confusion over which procedure was in place has therefore limited impact on my conclusion that an ambulance should have been called for a client with a suspected head injury.)

You stated that the client was known to the service. Whilst there was some disagreement about what constituted 'regular contact', the fact that the client was known should have no bearing on the decision to provide a response. When asked, you rightly stated that a Category 1 case (which this was) should result in an ambulance being called.

The fact that there was a case note advising that the client 'may' refuse an ambulance should not have resulted in the complete absence of any meaningful support. At the hearing you stated that you had called an ambulance for this client on a previous occasion. In this context, the decision not to provide any meaningful assistance on this occasion not only constitutes a failure to follow procedure but is also not in keeping with precedent.

On the evidence provided to me there would have been ample opportunity to respond meaningfully to the client – irrespective of how busy the shift was.

You stated that you had discussed this call with your co-workers. This was the correct course of action. You were not able to provide any evidence about the content, timings or tone of these conversations. This is an unfortunate omission as part of the original investigation which you contributed to. In the absence of this evidence, I am therefore unable to take this particular aspect of your appeal into consideration. However, the responsibility to provide meaningful assistance remains yours regardless of the nature of the interaction with your co-workers.

At the appeal hearing, you asked for assurances that the complaint was actually related to your handling of the client's call. I have had sight of the interactions between the Telecare Service and the client on the 3rd

December and am satisfied that the complaint made related to your handling of the call on 2/12/2022."

Law

28. Section 98(4) of the Employment Rights Act 1996 provides (in relevant part):

    (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 …

    (b) relates to the conduct of the employee ...

    (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.

29. The fairness of the dismissal must be judged based on the facts and circumstances before the employer at the time of dismissal. A dismissal will be unfair if, and only, *considered as a whole* the dismissal fell outside the band of reasonable responses open to the employer at the time – the Tribunal must not focus solely on the substantive or procedural fairness of the dismissal. The issue of whether the Tribunal itself would have dismissed the employee for the conduct at the time is irrelevant.

30. When considering whether a dismissal for misconduct was fair, the Tribunal should consider (a) whether the respondent genuinely believed the employee was guilty of the misconduct (b) whether the respondent had in its mind reasonable grounds for that belief at the time (c) whether at the time the respondent had formed its belief in the employee's guilt, it had carried out as much investigation into the matter as was reasonable in all the circumstances. British Home Stores v Birchell [1980] ICR 30.

31. The test "*all the way through*" is reasonableness - the employee is not required to be "*sure*", nor is there any requirement that an employee's guilt be proven "*beyond reasonable doubt*".. The range of reasonable responses test applies to the question

of whether the investigation was reasonable. Sainsbury's Supermarkets v Hitt [CB/2002] EWCA 1588, para. 31.

32. In determining whether a disciplinary dismissal was fair, the Tribunal may take into consideration the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Discussion / Conclusions

33. For the reasons below, the Tribunal's conclusion is that the Claimant's claim of unfair dismissal is not well founded.

Reason for dismissal

34. The Tribunal is satisfied the sole reason for the Claimant's dismissal was for the potentially fair reason of conduct, specifically the Claimant's conduct on 2 December 2022 following his telephone conversation with Service User X that evening. The Claimant did not dispute that that conduct was the reason for his dismissal.

Fair disciplinary procedure

35. The Tribunal is satisfied the Claimant's dismissal followed a substantially fair and reasonable disciplinary process.

36. First, RBG applied its written disciplinary policy, a copy of which the Claimant and his UNISON representatives had (and certainly had access to).

37. Second, following Service User X's complaint about the Claimant, RBG conducted a prompt initial investigation, the conclusions of which led it to conduct a reasonably prompt fuller investigation to establish the basic facts of the case.

38. Third, during the course of its investigation, RBG conducted investigatory interviews with the Claimant before referring him to a disciplinary hearing.

39. Fourth, the Claimant was permitted to be accompanied by a union representative at his investigatory interviews.

40. Fifth, the Claimant's suspension was on full pay.

41. Sixth, RBG notified the Claimant in writing that he had a disciplinary case to answer, The Tribunal is satisfied the relevant letter contained sufficient information to put the Claimant on notice of the case he had to meet, namely, the propriety of his conduct on 2 December 2022 following his call with Service User X.

42. Seventh, although the letter inviting the Claimant to the disciplinary hearing omitted to state a possible outcome might be dismissal, the letter did refer to gross misconduct, putting the Claimant (and if not him then certainly his union representatives) on notice that dismissal might be a possible outcome (at no point did the Claimant allege he was unaware a potential outcome might be his dismissal).

43. Eighth, the Claimant attended a disciplinary hearing on 27 March 2023, and exercised his right to be accompanied by a union representative.

44. Ninth, the Tribunal is satisfied Mr. Eckworth was an appropriate person to chair the disciplinary hearing and determine its outcome – there was no evidence his brother D. Eckworth was substantively involved in the events in question.

45. Tenth, the Tribunal is satisfied Mr. Eckworth conducted the disciplinary hearing in a fair manner, and gave the Claimant a fair opportunity to state his case (the Claimant's statement makes no criticism of Mr. Eckworth's conduct of the hearing).

46. Eleventh, the Claimant was promptly informed of the reasons for his dismissal, the date on which his employment would end, and his right of appeal.

47. Twelfth, the appeal hearing was held without unreasonable delay. The Claimant was allowed to be accompanied by his union representative.

48. Thirteenth, the Claimant's appeal was heard by Mr. Mitteltstadt, an experienced senior manager with no prior involvement. The Tribunal is satisfied Mr. Mittelstadt conducted the appeal hearing in a fair manner, and gave the Claimant a fair opportunity to state his case (the Claimant's witness statement makes no criticism of Mr. Mittelstadt's conduct of the appeal hearing).

49. Fourteenth, in a detailed appeal outcome letter the Claimant was informed of the reasons why his appeal was unsuccessful. The Tribunal notes the appeal outcome letter engaged with the reasons the Claimant had given for his dismissal being unfair.

50. The Tribunal notes certain 'procedural' matters were less clear than they ought to have been, perhaps most importantly whether the Claimant was provided with all the evidence RBG relied upon before the disciplinary hearing: the letter inviting him to the disciplinary hearing did not say it enclosed any documents or evidence; the response attached to the ET3 does not say the Claimant was provided that evidence before the disciplinary hearing; and neither of RBG's witness statements address the issue. However, the narrative in the ET1 makes no complaint about not being given that evidence, and the Claimant's statement, which makes numerous criticisms about the evidence presented, does not raise this issue. The Tribunal infers he must have been provided with a copy of the evidence RBG relied upon at some point before his disciplinary hearing, otherwise the Claimant would likely have included that omission as one of his important complaints.

Sanction of dismissal within range of reasonable responses

51. First, the Tribunal is satisfied both Mr. Eckworth at the disciplinary hearing and Mr. Mittelstadt at the appeal stage genuinely and sincerely believed the Claimant was guilty of the misconduct alleged, namely, failing to take appropriate steps after the Claimant spoke to Service User X on the evening of 22 December 2022 to ensure someone checked on her welfare. At no point did the Claimant challenge the fact that they held that belief.

52. Second, the Tribunal is satisfied that RBG conducted a reasonable investigation to determine the facts. The most important piece of evidence – the recording of the call – was available and listened to by all key decision-makers. Although parts of what Service User X said were not clear, the key material parts of what she had said to the Claimant that evening were sufficiently clear and not in dispute.

53. The Claimant was spoken to at least 4 times (twice during the two formal investigatory stages, once again at the disciplinary hearing, and a further final time at the appeal hearing) and had the opportunity to fully state his case and present all the facts he relied upon in response to the misconduct allegation.

54. The Tribunal rejects the complaint that the investigation was unreasonable because the Claimant's colleagues working alongside him that evening, who he said had agreed with the way he had handled the call, were not interviewed. The Tribunal accepts RBG's case that the conduct in question was that of the Claimant, not his colleagues, and notes they did not take or hear the call, nor were they responsible for determining what the appropriate course of action was.

55. Third, the Tribunal is satisfied Mr. Eckworth and Mr. Mittelstadt's belief that the Claimant was guilty of the misconduct alleged was based on reasonable grounds, given the overall adequacy of the investigation.

56. One factual dispute – whether the injuries Service User X was seen to have when subsequently visited – were attributable to the accident/fall she had on 2 December 2002 was clarified (they were not). In any event, the Claimant was not dismissed based on a finding that Service User X had sustained the injuries she was seen to have when she was visited several days later.

57. A further factual dispute was whether Service User X was upset that evening – while the sound of her voice on the recording suggested she was (the Claimant accepted this), the Claimant also said he was familiar with this service user and understood (better than those who did not know her) that how she sounded that evening was not out of the ordinary, and not cause for alarm. On that dispute, the Tribunal's judgment is that ultimately what mattered was what Service User X said, not the way in which she said it, and it is what she told the Claimant, and what he did (and more importantly did not do) in response to what she said that was the focus of the disciplinary hearing and ultimately the reason for his dismissal.

58. One of the Claimant's challenges to the fairness of his dismissal rested upon RBG relying on the wrong policy document. The Tribunal was satisfied this did not form a sound basis to challenge the reasonableness of the employer's decision-making process: both policies - the 2019 policy [70], the 2021 policy [147] - required Service User X's call to be treated as a 'Category 1' requiring an ambulance to be called. The Tribunal accepts the Respondent's submission that given what Service User X had told the Claimant, a visit that evening by someone was necessary in order to determine the severity of the head injury Service User X had sustained.

59. The reality is that there was little factually in dispute about what happened on the evening in question regarding (a) what Service User X told the Claimant during the course of the call (b) the actions the Claimant did and did not take after the call in

response to it, nor was there ultimately (at the appeal stage) a significant dispute about whether the Claimant had acted appropriately – he had not, and the key question was whether his conduct constituted gross misconduct and if it did whether dismissal was a disproportionate sanction given his long record of unblemished service. It is clear from the appeal outcome letter that the Claimant's grounds of appeal were carefully considered. Its rejection was a matter which the Tribunal finds was within the band of reasonable responses open to Mr. Mittelstadt.

Signed (electronically):

Employment Judge Tinnion

Date of signature: 8 January 2024