

**Employment and
Discrimination
Tribunal**

Form ET3 (05/16)

Case No ED042/16

THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

Applicant: **Ms Susan Cotterill**
Represented by: Self-represented

Respondent: **States of Guernsey (Acting by and through the Policy
& Resources Committee)**
Represented by: Mr Glen Symons

Tribunal Members: Mrs Paula Brierley (Chairman)
Ms Alison Girollet
Mr Darren Etasse

Hearing date(s): **22 and 23 June 2017**

Decision of the Tribunal

The Applicant claimed that she had been unfairly dismissed by reason of her conduct within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended.

Having considered all the written and oral evidence presented, whether recorded in this judgment or not, the representations of both parties and having due regard to all the circumstances, the Tribunal determined that the Respondent's actions in dismissing the Applicant were those of a reasonable employer.

The Tribunal therefore found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was fairly dismissed and makes no award.

The Respondent's application for costs within the meaning of The Employment Protection (Recoverable Costs) Order, 2006, was considered and rejected by the Tribunal.

Mrs Paula Brierley
.....
Signature of the Chairman

18 September 2017
.....
Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

The Legislation referred to in this document is as follows:

The Employment Protection (Guernsey) Law, 1998, as amended (the Law)

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, Ms Susan Cotterill represented herself.
- 1.2 The Respondent, States of Guernsey (Acting by and through the Policy & Resources Committee) was represented by Mr Glen Symons of the Law Officers of the Crown, St James Chambers.
- 1.3 The Applicant claimed that she had been unfairly dismissed on 14 December 2016 following a disciplinary process, which considered alleged misconduct (that of falsification of her application form).
- 1.4 The Applicant claimed that she had complained several times about bullying and harassment during the investigation and disciplinary process and had been ignored.
- 1.5 The Applicant gave both written and oral evidence.
- 1.6 In addition to ET1 Application form, the Applicant submitted a bundle of documents, EE1 and a closing statement, EE2.
- 1.7 The Respondent gave both written and oral evidence.
- 1.8 In addition to ET2 Response form, the Respondent submitted a bundle of documents, ER1, a second witness statement of Mrs Lynne Duckworth ER2, a written opening statement, ER3 and a closing statement, ER4.
- 1.9 There were no witnesses called by the Applicant.
- 1.10 The Respondent called the following witnesses who gave witness testimony under Oath or Affirmation:
 - Mrs Lynne Duckworth (Senior HR Manager for Health and Social Care Committee of the States of Guernsey);
 - Mrs Janet Coleman (Director of Hospital Services for Health and Social Care Committee of the States of Guernsey);
 - Mr Dermot Mullin (Head of Adult Community Care Services for Health and Social Care Committee of the States of Guernsey);

- Dr Tracey McClean (Head of Institute of Health and Social Care Studies for the Committee of Education Sport and Culture of the States of Guernsey); and
- Mr Tim Langlois (Director of Human Resources (Delivery) for the States of Guernsey).

1.11 As the dismissal was not in dispute the burden of proof rested on the Respondent to prove that the dismissal was fair.

1.12 The parties did not agree on the gross earnings of the Applicant, therefore this item was heard by the Tribunal as a preliminary point in order to determine the amount that any award would be based on.

2.0 Preliminary Point – Gross Earnings

2.1 The Applicant stated that 6 months' salary was the annual salary on her contract of employment divided by 2, that is, £21,672 / 2 = £10,836.

2.2 The Respondent presented evidence (ER2 refers) showing that the actual earnings for the preceding six months up to dismissal was £10,609.14.

2.3 In determining the amount of an award Section 22 (1) of the Law “..... *the amount of an award of compensation for unfair dismissal is a sum equal to – (a) six month's pay*’, Section 22 (2) ‘*For the purposes of subsection (1), the amount of a month's pay (a) shall be an amount equal to the complainant's average monthly pay during the six month period immediately preceding the effective date of termination ..*”

2.4 Having considered the relevant part of the Law and the evidence put before it, the Tribunal concluded that the actual gross earnings for the six month period immediately preceding the termination of employment should be used to determine any claim. Meaning the sum of £10,609.14.

3.0 Facts Found

3.1 The Applicant commenced employment with the Respondent on 3 August 2015.

3.2 The Applicant applied for and was appointed to the role of Band 4 Support Time and Recovery (STaR) Worker in the Community Drug and Alcohol Team (CDAT) and commenced in that role on 11 July 2016.

3.3 The job description for the role of Band 4 STaR Worker (ER1, File 2, Tab 7, Page 13 refers) stated in the ‘key criteria, essential, qualifications section’, “Level 3 VQ Diploma in Health and Social Care or equivalent (NVQ Level 3)”.

- 3.4 Previous to being appointed to the role of Band 4 STaR Worker, the Applicant was employed with Health and Social Care (HSC) at 'The Willows' as a Band 2 Activity Engagement Care Assistant for which no qualifications were required.
- 3.5 The Applicant stated on an application form (received by recruitment on 22 April 2015) that she held a counselling Level 3 qualification. In a covering email dated 20 February, 2016 (ER1, page 165 refers) applying for a role of Psychological Therapist, she stated "I qualified as a Counsellor in 1999, having completed an NVQ Level 3 with the University of Kent, via Guernsey Alcohol and Drug Abuse Council G.A.D.A.C. at Brock side, The Grange, St Peter Port. This was a 3 year course, and involved some clinical practise, counselling people with Alcohol and Drug issues I then completed my professional development by enrolling for a foundation course with the Open University, from 1999-2001, this included Psychology as well as other subjects".
- 3.6 The declaration on the application form (ER1, Page 179 refers) signed by the Applicant, on 21 April 2015, states *"I declare that the information contained in this form and any attachment is true and complete to the best of my knowledge and belief. I understand that should I make a false statement regarding my history by completing this form incorrectly I will, if appointed, be liable to termination of my contract with or without notice."*
- 3.7 The HR Advisor looking after the recruitment of the STaR Worker role requested copies of the qualification certificates from the Applicant and the Applicant wrote an email dated 6 July 2016 (ER1, Page 163 refers) stating that she had sent her certificates via internal mail that morning.
- 3.8 The HR Advisor did not receive the VQ in counselling.
- 3.9 The Applicant told the HR Advisor in an email dated 7 July 2016 (ER1, Page 162 refers) that he would have to contact the Director at the Guernsey Alcohol Advisory Service (GAAS), stating, "he has all the information there, as it was a voluntary role that got me the qualification". The Applicant also queried why the Respondent would need the certificate as the job was not a counselling role.
- 3.10 The HR Advisor responded by email to the Applicant dated 7 July 2016 (ER1, Page 161 refers), detailing the 'table of core qualifications' which showed that in order to be a Band 4 the Applicant had to have 'Level 3 VQ Diploma in Health and Social Care or equivalent (NVQ Level 3)'. He explained that was why they needed evidence of the Applicant's VQ Level 3 in counselling. He further explained, "failing that, we have to appoint you at a Band 3 until you have produced the relevant documentation". This would mean your pay would drop".

- 3.11 In a reply email dated 7 July 2016 (ER1, Page 161 refers) the Applicant restated that the GAAS could confirm her course qualifications. The Applicant further stated that she was “happy to go to whatever you think is appropriate”.
- 3.12 The Applicant’s contract for the Band 4 STaR worker role (EE1, Tab 1, Section B refers) was issued by the central HR unit on 12 July 2016. The Applicant having commenced working in the role on 11 July 2016.
- 3.13 The contract did not state that the appointment was subject to evidence of qualifications. The Respondent said that this had been an error caused by the ‘Appointment Form’ being incorrectly completed within HR.
- 3.14 In the continued absence of evidence of qualifications, the Respondent reduced the Applicant’s pay on or around 19 August 2016 to the pay of a Band 3 pending the receipt of confirmation/evidence of the Applicant’s NVQ 3 qualification. The communication of the reduction in band and pay was during a meeting with the Applicant’s line manager and HR representative to discuss other unrelated issues (ER1, Page 320 refers).
- 3.15 The Applicant was advised by letter on 12 September 2016 that an investigation had been commissioned in to other conduct issues and that for the duration of that investigation she would be redeployed to Tauteney Ward.
- 3.16 By email dated 12 September 2016, Mrs Duckworth, Senior HR Manager, chased the Applicant for evidence of the NVQ 3 qualification (ER1, Page 249 refers).
- 3.17 On 14 September 2016 Mrs Duckworth forwarded the email to the Applicant’s personal email address because she had not received a response.
- 3.18 On 14 September 2016 the Applicant responded by email (ER1, Page 244 refers) saying she had contacted GAAS, the Applicant said that HR should have received confirmation. The Applicant said that she had had her qualifications, received from GADAC and The Open University, converted into a Diploma.
- 3.19 On 14 September 2016, Mrs Duckworth responded by return (ER1, Page 244 refers) stating that the HR Advisor had received copies of qualifications but not a Diploma and the evidence of the NVQ 3 was still outstanding.
- 3.20 The Applicant responded asking if verbal or written confirmation from GAAS would be sufficient, as she did not want to pay £150 to get copies. Mrs Duckworth responded saying that they needed the certificate or confirmation

from the Awarding Body, pointing out that it was the Applicant's responsibility to obtain this evidence. Mrs Duckworth also stated that the Applicant could not return to her role as the offer had been made based on the fact that the Respondent had understood that the Applicant had the NVQ 3 in Counselling as stated by her on the application form (ER1, Page 241 refers).

- 3.21 The Applicant responded to Mrs Duckworth's email of 14 September 2016 stating "Dear Lynne. Clearly, this is not my problem, I have my contract. All of this was done prior to the job offer. Your department is responsible. I will wait to hear from my Manager. Regards, Sue Cotterill." (ER1, Page 241 refers).
- 3.22 By email of 15 September 2016 (ER1, Page 229 refers), Mrs Duckworth noted that whilst the Applicant had a contract, it was for a Band 4 STaR Worker, the job description required 'a minimum qualification level of VQ Level 3 or equivalent'.
- 3.23 With the Applicant's permission, Mrs Duckworth contacted the GAAS by letter dated 19 September 2016 (ER1, Pages 219 and 221 refer).
- 3.24 The Director of GAAS responded by contacting Mrs Duckworth by telephone on 22 September 2016 (ER1, Page 215 refers). According to a file note of the conversation taken by Mrs Duckworth, he said that the Applicant had been "rather disingenuous" with the Respondent. He said that the course the Applicant had taken had run from the latter part of 1996 to April 1997. The course had been called 'Talking it Through' and was run by the University of Canterbury. He said the course was recognised by Alcohol Concern which is the main body in the UK to deal with alcohol abuse; however, it was not a qualification at NVQ Level 3. He said the course gave skills, there was no certificate at the end of it, but the learning could have been put towards an NVQ. He confirmed it was the only course that that Applicant had undertaken with GAAS. He added that the Applicant knew full well this was the case as he had "had this conversation with her several times over the years".
- 3.25 When Mrs Duckworth spoke with the Applicant on 23 September 2016, regarding the response of the Director of GAAS (a file note was made by Mrs Duckworth of this conversation (ER1, Page 181 refers), the Applicant disputed the dates of the course, saying it had been a three year course. When Mrs Duckworth said that the Director had been certain it started at the end of 1996 and ran to April 1997, the Applicant then said it was six months of theory then she practised in a voluntary capacity.
- 3.26 A meeting took place on 28 September 2016 (File Note ER1, Page 191 refers) to inform the Applicant that an investigation would take place to look into the fact that the Applicant seemingly could not evidence the fact that she

held a VQ level 3 qualification which was required for the role, despite putting it on her application form. A preliminary assessment form was completed (ER1, Page 195 refers). The investigation was commissioned by Mr Dermot Mullin.

- 3.27 Mr Mullin explained to the Applicant that this particular investigation could lead to a finding of gross misconduct and therefore in such cases employees are generally suspended from duty. However, in this case, as the Applicant was already redeployed, for unrelated reasons, into a role which did not involve the Applicant dealing directly with service users, it was felt that suspension would be disproportionate. The commissioning of the investigation was confirmed by letter to the Applicant dated 29 September 2016 (ER1, Page 271 refers).
- 3.28 The investigation into the issues of qualifications was separate to the other investigation underway on an unrelated matter.
- 3.29 A letter dated 27 September 2016 (ER1, Page 199 refers) which served as the commissioning brief, was sent to the investigator, Dr Tracey McClean, Assistant Director/Head of Institute of Health and Social Care Studies.
- 3.30 The investigation was conducted by Dr Tracey McClean and a report was produced by Dr McClean dated October 2016 (ER1, File 2, Tab 3 refers).
- 3.31 As part of the investigation, Dr McClean interviewed the Applicant on 10 October 2016. A file note of the interview was taken (ER1, File 2 Tab 13 refers).
- 3.32 The investigation stated that it found that the Applicant had made a false statement on her application form regarding her qualifications and that this applied to both her claim to hold a 'VQ2 Care of the Elderly' award and the 'Counselling Level 3 VQ'.
- 3.33 Mr Mullin wrote to the Applicant on 1 November 2016, inviting her to attend a disciplinary hearing on 14 November 2016, to be chaired by Mrs Jan Coleman, Director of Hospital Services. The invitation enclosed the HSSD Dealing with Disciplinary Matters Policy, G614 and hearing documentation (ER1, Page 284 refers).
- 3.34 The timing between the invitation letter and the hearing and also the content of the letter was in line with Dealing with Disciplinary Matters Policy (ER1, File 3, Tab 10, Page 8 refers).
- 3.35 The hearing took place on 14 November 2016 and meeting notes were produced (ER1, Page 296 refers).

- 3.36 An outcome letter dated 16 November 2016 was sent and received by the Applicant on 17 November 2016 (ER1, Page 316 refers). The letter stated that it had been found that the Applicant had failed to act with “honesty and integrity in relation to the claim you made on your application form, relating to holding a VQ qualification” and that this constituted “dishonesty in relation to employment matters and is regarded as gross misconduct.”
- 3.37 The States of Guernsey policy on ‘Dealing with Disciplinary Matters’ G614 (ER1, File 2, Tab 10 refers) states at page 4 *“Gross Misconduct has the effect of destroying the trust and confidence on which contracts of employment are based. The following are examples of serious gross misconduct, which may warrant summary dismissal, even for a first offence:*
- *Dishonesty relating to employment matters;*
 - *Serious misrepresentation, or deliberately withholding personal information, including qualifications held*”
- 3.38 By email of 17 November 2016 to the Chief Secretary of Health and Social Care, the Applicant confirmed her intention to appeal the outcome of the disciplinary hearing (ER1, Page 326 refers). The Applicant stated in her appeal letter that the appeal was “based on both procedures and severity of the outcome”.
- 3.39 The Chief Secretary wrote to the Applicant on 18 November 2016 (ER1, Page 398 refers) inviting the Applicant to an appeal hearing on 1 December 2016 and also noting that the Applicant’s grounds for appeal were (i) procedure, and (ii) the severity of the penalty. The letter also asked the Applicant to notify the Respondent of any witnesses together with relevant documentation six days prior the appeal hearing. This was a reciprocal timeline. Therefore, notification from either side was to be before close of business on 22 November 2016.
- 3.40 The Applicant sent an email on 19 November 2016 to Mrs Duckworth stating that she wanted a number of individuals, including Tracey McClean, to bring their “paper qualifications” to the hearing (ER1, Page 402 refers).
- 3.41 Mrs Duckworth wrote back to the Applicant on 21 November 2016 (ER1, Page 399 refers) ‘respectfully suggesting’ that the appeal would need to focus on the reasons for the dismissal. Mrs Duckworth also noted that claims of bullying and harassment, which related to a different matter, should be dealt with under the separate disciplinary process covering the other matters.
- 3.42 The Applicant’s appeal hearing of the decision to dismiss her, took place on 1 December 2016. The appeal was chaired by the Chief Secretary. Mr Tim Langlois was HR support.

- 3.43 The appeal hearing minutes noted, at page 4 of 19 and also page 17 of 19, (ER1, Page 420 and 433 refer) that during the appeal, the Applicant agreed that she was not expressing concerns regarding the procedure used within the disciplinary process dealing with the issue around evidence of her qualification but instead raising concerns around the process in regard to the other unrelated matter. Therefore, this particular ground for appeal was 'parked' and the only point of appeal remaining was the severity of the decision of the disciplinary hearing.
- 3.44 It was acknowledged by the Respondent at the appeal hearing that whilst management had correctly adhered to the terms of the Disciplinary Policy G614, there had been a period of delay in some of the paperwork being produced by HR. It was noted, however, that whilst these lapses were unfortunate the Applicant accepted that they did not in themselves have a material bearing on the reasons for the action that had been taken against her.
- 3.45 The timing between receiving the appeal request, the hearing and also the content of the letter was in line with the Dealing with Disciplinary Matters Policy (ER1, File 3, Tab 10 Page 12 refers).
- 3.46 The appeal was dismissed and the decision to dismiss upheld by the Chief Secretary.
- 3.47 An appeal outcome letter dated 2 December 2016 was sent to the Applicant (ER1, Page 437 refers).
- 3.48 The Chief Secretary noted in his appeal outcome letter to the Applicant that in reaching his decision at the appeal, he considered whether the penalty of dismissal that had been imposed was unduly harsh, he also considered the Applicant's suggestion of a lesser punishment such as redeployment. However, whilst he was prepared to accept there was no malice intended on the part of the Applicant, he concluded that the very fact that the Applicant had made a false declaration fundamentally undermined the key principles of the contractual relationship of trust and confidence.

4.0 Mrs Lynne Duckworth

- 4.1 Mrs Duckworth read from a prepared witness statement (ER2 refers), and made the following statements.
- 4.2 Mrs Duckworth is a Senior HR Manager for Health and Social Care (HSC), has worked in her present role for 3 years and has 21 years' experience working as an HR Manager for HSC previously.

- 4.3 Mrs Duckworth became aware of HSC offering the role to the Applicant on 4 July 2016 and queried the offer with the HR Advisor, who was looking after the recruitment.
- 4.4 Mrs Duckworth queried the offer because it was unusual for an employee to progress directly from Band 2 to Band 4.
- 4.5 Mrs Duckworth was the HR Advisor's line manager at the time.
- 4.6 Mrs Duckworth was shown the application form where the Applicant stated that she held a VQ Level 3 in Counselling and a VQ Level 2 in Care of the Elderly.
- 4.7 Additionally, on file was an email dated 20 February 2016 (ER1, Page 165 refers) from the Applicant applying for a role of Psychological Therapist which stated "I qualified as a Counsellor in 1999, having completed an NVQ Level 3 with the University of Kent, via Guernsey Alcohol and Drug Abuse Council G.A.D.A.C. at Brock Side, The Grange, St Peter Port. This was a 3 year course, and involved some clinical practise, counselling people with Alcohol and Drug issues I then completed my professional development by enrolling for a foundation course with the Open University, from 1999-2001, this included Psychology as well as other subjects".
- 4.8 As there was no need for a Band 2 to hold any qualifications, it was not discovered at the time of the Applicant's initial application, that she could not evidence her claim to hold the stated qualifications.
- 4.9 Mrs Duckworth said that during the Applicant's interview for the STaR worker role the interviewers had not suggested that the Applicant could apply for the Band 4 role without her claimed VQ Level 3 in Counselling, as this was a prerequisite for the role. They had said, in the firm belief that she already had the VQ Level 3 in counselling, that if she were successful she would be supported to take a VQ Level 3 in Health and Social Care.
- 4.10 During August 2016 other unrelated concerns were raised by the CDAT (Community Drug and Alcohol Team) manager. These other concerns were not related to the reason given for termination of employment. However, during the meeting on unrelated issues in August the Applicant was informed that her pay would be temporarily reduced to a Band 3 as she had still not provided evidence of her qualifications.
- 4.11 The Applicant was advised by letter on 12 September 2016 that an investigation had been commissioned in to the other conduct issues and that for the duration of that investigation she would be redeployed to Tauteney Ward.

- 4.12 By email on 12 September 2016, (ER1, Page 249 refers) Mrs Duckworth asked the Applicant again for evidence of her VQ Level 3 qualification, pointing out that it was her responsibility to obtain the evidence.
- 4.13 By email of 14 September 2016, (ER1, Page 241 refers) the Applicant responded to Mrs Duckworth stating, "This is not my problem, I have my contract".
- 4.14 During a meeting on 23 September 2016, (ER1, Page 181 refers) the Applicant then said that she had got confused when saying it had been run by someone from the University of Kent when it was the University of Canterbury and the name of the person running the course was Kent.
- 4.15 During the meeting of 23 September 2016, (ER1, Page 181 refers) Mrs Duckworth also explained to the Applicant that the Director of the GAAS had said that, although the course the Applicant had undertaken was an accredited course recognised by Alcohol Concern, it was not a qualification at NVQ Level 3. Mrs Duckworth said that the Applicant said in response that she had asked for the course to be accredited and she assumed it would have been GNVQ 3 equivalent.
- 4.16 Mrs Duckworth had taken from the discussion on 23 September 2016, (ER1, Page 181 refers) that the Applicant had accepted that she did not hold an NVQ Level 3 qualification and did understand that holding an NVQ Level 3 was a minimum requirement of the role of Band 4 STaR worker.
- 4.17 During a meeting on 28 September 2016 (ER1, Page 191 refers) the Applicant was informed that there would be a separate investigation, conducted by Dr Tracey McClean, into the fact that she could not evidence her NVQ Level 3 qualification. The Applicant stated that whilst she did not hold a piece of paper, she was qualified by experience and was a counselling psychotherapist. During the meeting, the Applicant said that the Director of the GAAS was being sexist.
- 4.18 During the meeting held on 28 September 2016 (ER1, Page 191 refers) the Applicant stated that she was not worried about being a Band 4. Therefore, she could be employed as a Band 3. Mrs Duckworth explained that the role the Applicant had been employed to do was a Band 4 and that the Applicant had stated on her application that she held an NVQ 3 when she did not.
- 4.19 During the meeting of 28 September 2016, Mr Mullin told the Applicant that he was commissioning an investigation into the fact that she could not seemingly evidence the fact that she held a VQ Level 3 qualification which was a requirement for the role, despite putting it on her application form. He also said that once he had received the Investigating Officer's report he

would make a decision as to whether or not he felt a disciplinary hearing was required concerning the qualification issue.

5.0 Mrs Janet Coleman

- 5.1 Mrs Coleman read from a prepared witness statement (ER2, Page 21 refers), and made the following statements.
- 5.2 Mrs Coleman is a Director of Hospital Services for Health and Social Care (HSC). She has worked in her current directorship role for 18 months. She has held either a Director or Assistant Director position within HSC since 2011. Previously she held a clinical senior management position within HSC for 16 years.
- 5.3 Mrs Coleman was appointed Chair of the Applicant's first disciplinary hearing held on 14 November 2016.
- 5.4 As per the HSC Disciplinary Policy G614 (ER1, File 2, Tab 16, pages 7 & 8 refer) Ms Coleman was assigned a HR representative to support her.
- 5.5 The HR representative prepared a 'Disciplinary Hearing - Format and Briefing Notes' document (ER1, pages 286 – 289 refer) which was to ensure that the hearing was compliant with policy G614 (ER1, File 2, Tab 16, pages 7 & 8 refer).
- 5.6 Formal meeting notes of the hearing held on 14 November 2016 were taken (ER1, Page 296 refers).
- 5.7 The Applicant had submitted a pack of documentation one week prior to the disciplinary hearing. Mrs Coleman said that only one section of the pack was relevant for that particular hearing. A large amount of paperwork in the Applicant's pack related to a separate investigation looking into other conduct issues.
- 5.8 During the disciplinary hearing Mrs Coleman gave both the Applicant and Mr Mullin the opportunity to table further documentation. The Applicant said she had no further documentation to table.
- 5.9 At the hearing Mr Mullin presented the management's case on the specific issue of alleged falsification of qualifications.
- 5.10 Mrs Coleman said that she considered it worthy emphasising the following documentation as she felt it important to the case:
 - The Job Description Advertisement which listed as Essential Key Criteria '1. Level 3 VQ Diploma in Health and Social Care or equivalent (NVQ Level 3)' (ER1, File 2, Tab 5 refers).

- The Applicant's email dated 20 February 2016 (ER1, File 2, Tab 6 refers) which was a covering email for a previous job application which states, "I qualified as a Counsellor in 1999, having completed an NVQ Level 3 with the University of Kent, via Guernsey Alcohol and Drug Abuse Council G.A.D.A.C. at Brock Side, The Grange, St Peter Port. This was a 3 year course, and involved some clinical practise, counselling people with Alcohol and Drug issues I then completed my professional development by enrolling for a foundation course with the Open University, from 1999- 2001, this included Psychology, as well as other subjects".
- The Applicant's application, which evidenced that she stated that she held a certificate called 'Talking it Through', Counselling Level 3 VQ. The application form required the Applicant to confirm that she had entered full details of her employment history and qualifications in her candidate profile (ER1, File 2, tab 6 refers).
- The file note of a conversation with the Director of the GAAS (ER1, File 2, Tab 9 refers).
- The file note of a conversation between the Applicant and Mrs Lynne Duckworth on 23 September 2016 (ER1, File 2, Tab 10 refers) during which Mrs Duckworth explained to the Applicant that they had made contact with the GAAS. During the conversation, the Applicant said that she had 'assumed' that her qualification would have been an NVQ 3. The file note also stated that the Applicant "accepted that she does not hold an NVQ Level 3 qualification and does understand that this is a minimum requirement for the role she holds as a Band 4 STaR worker."

5.11 Mr Mullin called Dr Tracey McClean as a witness at the disciplinary hearing. Dr McClean confirmed that:

- She considered that the Applicant had completed her application form to state that she held qualifications appropriate for the role despite not having them.
- The Applicant had no insight into the requirements for the qualifications in order to carry out the full range of duties of a STaR worker at Band 4.
- The Applicant kept contradicting herself during her investigation interview, had a cavalier attitude about her qualifications and was unable to produce any paperwork to prove them.
- The Applicant considered herself to hold qualifications which entitled her to be a Band 6 or 7 employee.

- 5.12 The Applicant was given the opportunity to question Dr McClean at the disciplinary hearing at which time she took the opportunity to state that the minutes of the investigation meeting held on 10 October 2016 were not correct as in her words, “there were big chunks left out and there were errors and omissions”. In response, it was put to the Applicant that she had signed the minutes of that meeting as a true and accurate record after her requested amendments had been made to them. (ER1, File 2, Tab 13).
- 5.13 During the disciplinary hearing, the Applicant was given the opportunity to present her case (ER1, page 296 refers, pages 11 to 13 of minutes) however, she did not address the allegations of falsifying her qualifications on her application form or her failure to provide suitable evidence that she had the requisite key qualifications for the Band 4 STaR worker role. Instead, the Applicant raised the issue that she felt that her salary had been unfairly reduced and that due process hadn’t been followed to allow the employer to reduce it.
- 5.14 The Applicant then summed up her case and repeated that she was “absolutely qualified in all areas”, but just did not “have the papers to show this”, but was “qualified”. She also stated that she did “understand from the employer’s point of view their concern” but reiterated that she is “fully qualified”.

6.0 Mr Dermot Mullin

- 6.1 Mr Mullin read from a prepared witness statement (ER2, Page 51 refers), and made the following statements.
- 6.2 Mr Mullin is the Head of Adult Community Care Services for Health and Social Care (HSC), has been an employee of the States since 1993 and is a registered nurse. He has worked in a variety of clinical settings before moving into senior management in 2005. As Head of Adult Community Services he has responsibility for Community Health and Care, Mental Health Services, Disability Services and Older People Services.
- 6.3 The issues regarding the problems connected with obtaining the Applicant’s qualifications came to Mr Mullin’s attention in late August and he was generally kept up to date on this matter by Mrs Lynne Duckworth and other staff on an ongoing basis.
- 6.4 Mr Mullin had agreed in mid August that the Applicant’s pay band should be temporarily reduced pending proof of qualification. He was very concerned on 6 September 2016, following return from annual leave, to find that there were still problems evidencing the qualifications.

- 6.5 During a meeting between Mr Mullin and Mrs Duckworth on 6 September 2016, consideration was given to commissioning an investigation into the matter of the qualifications. However, it was decided to give the Applicant the benefit of doubt as she had said that the GAAS would hold evidence of her qualifications.
- 6.6 Mr Mullin met with Mrs Duckworth again, following a meeting which Mrs Duckworth had had with the Applicant on 23 September 2016. Mr Mullin was aware of the response Mrs Duckworth had had from the GAAS and also that the Applicant had allegedly confirmed during her meeting with Mrs Duckworth that she did not hold an NVQ 3 in Counselling.
- 6.7 Given the new information and the concerns Mr Mullin had, that the Applicant appeared to believe that she was more than qualified for her role, which was exacerbated by the Applicant's rather confusing and evasive approach to the matter, Mr Mullin and Mrs Duckworth agreed that it was the appropriate time to commission an investigation specifically into this particular matter.
- 6.8 During the meeting held on 28 September 2016 (ER1, Page 191 refers) the Applicant admitted that she did not hold a piece of paper to prove she was qualified, but said she was qualified by experience.
- 6.9 After a discussion with Mrs Duckworth, Mr Mullin explained to the Applicant that as she was already redeployed he would not suspend her pending investigation.
- 6.10 Mr Mullin prepared and sent the Applicant a letter on 29 September 2016 (ER1, Page 271 refers) confirming to the Applicant the commissioning of the new investigation, also identifying the investigator appointed.
- 6.11 Mr Mullin sent a commissioning brief to Dr Tracey McClean (ER1, Page 199 refers).
- 6.12 Dr McClean completed her report (ER1, File 2, Tab 3 refers) and returned it to Mr Mullin in early October 2016. The report concluded that there was no doubt that the Applicant had made a false statement on her application form regarding her qualifications and that this also applied to her claim to hold a "VQ2 Care for the Elderly" in addition to the VQ3 in Counselling.
- 6.13 Mr Mullin considered that the findings of the report warranted a disciplinary process and so, in accordance with policy G614 (ER1, File 2, Tab 16 refers) he wrote to the Applicant on 1 November 2016 (ER1, Page 284 refers) to invite the Applicant to a disciplinary hearing on 14 November 2016.
- 6.14 Mr Mullin attended the disciplinary hearing to present the management case.

- 6.15 Mr Mullin's only involvement in the appeal was that he was on notice that he might be a witness. However, the Applicant confirmed during the hearing that she had no issue with the actual disciplinary process but instead, only the severity of the sanction of dismissal. Therefore, given there was no claim of a procedural flaw, Mr Mullin's attendance at the appeal hearing was not needed.

7.0 Dr Tracey McClean

- 7.1 Dr McClean read from a prepared witness statement (ER2, Page 51 refers) and made the following statements.
- 7.2 Dr McClean is employed by the States of Guernsey as the Head of Institute of Health and Social Care Studies which forms the training and education arm of the Health and Social Care Committee (HSC) and ESC. She had worked in her present role for two and a half years and has 29 years' experience as a registered nurse. The Institute provides a range of education and training opportunities to meet the needs of the health and social care provision in the Bailiwick. Dr McClean manages a team of staff to deliver a number of courses such as on-island nurse training and vocational qualifications of the type which the Applicant claimed to hold.
- 7.3 Dr McClean was formally instructed, by letter dated 27 September 2016 (ER1, File 2, Tab 4 refers) to undertake an investigation into the Applicant's claimed qualifications.
- 7.4 Following appropriate preparation, Dr McClean met with the Applicant on 10 October 2016 (ER1, File 2, Tab 13 refers).
- 7.5 During the meeting the Applicant was cordial but remained adamant that despite not holding the certificate she was qualified and had passed the NVQ Level 3 in Counselling.
- 7.6 Following the meeting on 10 October 2016, Dr McClean compiled her report (ER1, File 2, Tab 7 refers) based on the interview with the Applicant, the supporting minutes and the documentation supplied by Mr Mullin.
- 7.7 Dr McClean also attended the disciplinary hearing on 14 November 2016 to give evidence.

8.0 Mr Tim Langlois

- 8.1 Mr Langlois read from a prepared witness statement (ER2, Page 73 refers) and made the following statements.

- 8.2 Mr Langlois is the HR Director (Delivery) for the States of Guernsey. He has worked in his present role for nearly 10 years and has a further 5 years' experience working at a senior level within the States of Guernsey HR function.
- 8.3 Mr Langlois became involved in this matter from 17 November 2016 when the Applicant had made her intention to appeal known to the Chief Secretary.
- 8.4 The Applicant had provided notice to the Chief Secretary of her intention to appeal the sanction of dismissal on two grounds, namely (i), that there were flaws in the procedure, and (ii) that the sanction of dismissal with paid notice was unduly harsh.
- 8.5 Mr Langlois' role representing Human Resources during the appeal procedure was to assist the Chair by ensuring that the process was fair and just towards each party and that all relevant information had been reviewed and considered prior to a final decision being made.
- 8.6 At the appeal hearing, the Applicant represented herself, Mrs Coleman presented the management case, assisted by her HR support.
- 8.7 Throughout the hearing the Applicant had to be reminded that she should address issues relating to the grounds of appeal rather than go off on irrelevant tangents relating to other matters (ER1, page 417 refers).
- 8.8 During the appeal hearing the Applicant confirmed, unequivocally, that the process relating to the disciplinary matter was not the basis for her appeal.
- 8.9 The Applicant confirmed, on a number of occasions, that she was not appealing against the procedure used and that her appeal was based solely on the severity of the sanction of dismissal.
- 8.10 During the appeal hearing the Applicant queried whether it would have been normal for a sanction to be a written warning first and she noted that within the Employment Law it stated a written warning should be issued first. The Applicant was advised by Mr Langlois that because the hearing had reached a finding of gross misconduct it equated to a dismissal.

9.0 Ms Susan Cotterill

- 9.1 Ms Cotterill (the Applicant) read from a prepared witness statement (EE1 refers) and made the following statements.

- 9.2 The Applicant said that she had been unfairly dismissed at a disciplinary hearing on 14 November 2016, despite providing paperwork to the chair showing she did not have a case to answer.
- 9.3 The Applicant stated that her contract had been sent to her in July 2016. The Applicant described the contract as a “Band 4 contract which is legal and binding document dated 13 July 2016”.
- 9.4 The Applicant said that the HR Advisor had called her to say that she had been successful at the interview and congratulated her on her promotion.
- 9.5 Throughout the Tribunal hearing the Applicant maintained that she was qualified by experience and that that was good enough. Further noting that on the job description it stated, Level 3 VQ “or equivalent”.
- 9.6 The Applicant said that during the interview for the STaR worker role, the HR Advisor had said the Applicant could be ‘fast-tracked’ to obtain a VQ Level 3 qualification should she be appointed for the role. The Respondent has disputed that this was what the HR Advisor had, or would have, said.
- 9.7 The Applicant said that she had shown her line manager and her HR representative her union membership during the meeting on 19 August 2016. The Applicant further noted: “they were intent on getting rid of me from then on” (EE2 refers).
- 9.8 The Applicant said that “unreasonable demands and undue pressure” were put on her at the disciplinary hearing “to produce certificates for a role that they weren’t required for and in any case were over 12 years old”.
- 9.9 The Applicant stated that the States of Guernsey does not accept qualifications that are more than 10 years old, so it was all irrelevant and she had no case to answer. The Respondent denied that this was the case.
- 9.10 The Applicant said that she had been promoted into the Band 4 STaR worker role. This was denied by the Respondent who said that the Applicant had applied for the role and that she had been taken forward based on the understanding that she had an NVQ Level 3 in Counselling.
- 9.11 The Applicant said “lots of mistakes were made regarding Disciplinary G614, in terms of timelines for procedures, not having been given a verbal or written warning prior to any disciplinary action, not being given enough time to provide documents to the appeal hearing”.
- 9.12 The Applicant said that she had not been called for her annual appraisal on 3 or 4 November 2016 and this was evidence that it had already, at that stage, been decided to ‘fire’ her (EE2 refers).

9.13 The Applicant said that all the meeting records/minutes should be “verbatim” instead they read “like reports” with “chunks” of what she had said being left out. (ER2 refers). The Respondent disagreed that the meeting minutes needed to be word for word.

9.14 On several occasions, the Applicant stated that there was no regulatory body in Guernsey for therapists or counsellors.

10.0 The Law

10.1 In determining whether the dismissal of an employee was fair or unfair, Section 6(1) of the Law notes that *“it shall be for the employer to show (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and (b) that it was a reason falling within subsection (2)”* and Section 6(2) notes *“For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which (b) related to the conduct of the employee”*.

10.2 Section 6(3) of the Law notes *“Where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of sections 8 to 14 and (15I), the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 that question shall be determined in accordance with equity and the substantial merits of the case.”*

10.3 Section 22(1) of the Law notes *“Subject to the provisions of section 23, the amount of an award of compensation for unfair dismissal is a sum equal to – (a) six months’ pay, ...”* and Section 23(2) of the Law notes *“Where in relation to such a complaint the Tribunal considers that, by reason of any circumstances other than those mentioned in subsection (1), it would be just and equitable to reduce the amount of the award of compensation for unfair dismissal to any extent, the Tribunal shall, subject to subsection (3) and subsection (4), reduce that amount accordingly”*.

11.0 Conclusion

11.1 The Tribunal heard two days of oral evidence and representations. It considered all the written evidence before it, whether specifically referenced in this judgment or not.

11.2 From the outset the Tribunal clearly stated that, as per the Employment Protection (Guernsey) Law, 1998 (as amended) Section 6 (3), *“the determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the*

circumstances the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee". Specifically the test is:

1. Did the employer have a genuine belief that the employee was guilty of the alleged misconduct?
2. Did the employer have reasonable grounds for that belief?
3. Did the employer carry out a reasonable investigation?
4. Was dismissal within the band or range of reasonable responses of a reasonable employer?

- 11.3 The reason given by the Respondent at the time of dismissal was that the Applicant had 'falsely' stated that she had qualifications on her application form.
- 11.4 Therefore, in order to determine the question of whether the dismissal was fair the Tribunal heard evidence in connection with this specific reason given by the Respondent for dismissal and the investigation and disciplinary processes followed in connection with that reason and that reason only. Although there were other matters being looked into at the time, these were not referenced in either the investigation, the hearing or the reasons for dismissal; therefore, the Tribunal considered it was appropriate to narrowly focus on the specific reason that that Respondent based the decision to dismiss on.
- 11.5 In answer to questions - did the employer have genuine belief of the employee's guilt of the alleged misconduct? and - did the employer have reasonable grounds for that belief? The Tribunal placed significant weight on the application form, completed by the Applicant and dated 21 April 2015 and the email dated 20 February 2016. These two written and signed documents clearly show that the Applicant was stating that, amongst other qualifications, she had an NVQ 3 in Counselling and an NVQ 2 in Care of the Elderly.
- 11.6 The Tribunal is persuaded that there is sufficient evidence to show that, at the time of the decision to dismiss, the Respondent had genuine belief that the Applicant had falsely claimed to have qualifications which she did not hold. The Tribunal noted that the Respondent gave the Applicant approximately three months to produce evidence of her qualifications and even followed up with a previous employer on her behalf and continued to give the Applicant further chances to produce her certificates prior to reaching the decision to dismiss.
- 11.7 The declaration section on the Application form, signed by the Applicant dated 21 April 2015, clearly noted that should a false statement be made

then the Applicant would be liable to termination of contract with or without notice. This declaration should have left the Applicant in no doubt about how very important it was to accurately reflect her qualifications on the application form and what the consequences would be of not doing so.

- 11.8 Despite a less than robust recruitment process, the Tribunal noted that the falsification of the qualifications took place prior to the recruitment of the Band 4 role. It noted that the job description for the Band 4 role clearly stated the essentiality of an NVQ 3 and that this had been available to the Applicant at the time of applying for the role. The fact that 'subject to qualifications' was not noted in the employment contract when a specific level of qualification was essential for the role is regrettable, however, there is sufficient evidence to show that the Applicant was aware of the level of qualification required for the role. The omission from the contract does not lessen the fact that the Applicant made false claims on her original application form. The Tribunal also noted that the Respondent commenced chasing up for the evidence of qualifications prior to the Applicant moving into the role or indeed prior to the Applicant receiving the contract for the Band 4 role. Therefore, the Tribunal is persuaded that this was an administrative error.
- 11.9 The Tribunal is persuaded that the steps the Respondent took in relation to the investigation and disciplinary process were in line with its disciplinary policy.
- 11.10 In looking at the question - was dismissal within the band or range of reasonable responses of a reasonable employer - the Tribunal took into account the Respondent's disciplinary policy. It clearly listed, amongst other items, 'dishonesty relating to employment matters' and 'serious misrepresentation, or deliberately withholding personal information, including qualifications', as examples of gross misconduct which could carry the penalty of dismissal. Additionally, the Tribunal took into account that the Applicant had signed a declaration which clearly set out the consequences of making any false statements when completing the application form, that is, termination of contract. Therefore, the Tribunal considered that the Respondent's action of termination of employment, under the circumstances, was reasonable.

12.0 Decision

- 12.1 The Applicant claimed that she had been unfairly dismissed by reason of her conduct within the meaning of the Law. Having considered all the written and oral evidence presented by both parties and having due regard to all the circumstances, the Tribunal determined that the Respondent's actions in dismissing the Applicant were those of a reasonable employer.

- 12.2 The Tribunal therefore found that, under the provisions of The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was fairly dismissed and makes no award.
- 12.3 The Respondent's application for costs within the meaning of the Employment Protection (Recoverable Costs) Order, 2006, was considered and rejected by the Tribunal.

Mrs Paula Brierley
.....
Signature of the Chairman

18 September 2017
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Date