



# EMPLOYMENT TRIBUNALS

**Claimant:** S Mattok

**Respondent:** Saludem LD Bidco IV Limited

**HEARD AT:** Manchester

**On:** 25 - 26 January 2023

**BEFORE:** Employment Judge Batten (sitting alone)

**REPRESENTATION:**

**For the Claimant:** O Davies, Counsel

**For the Respondent:** P Smith, Counsel

**JUDGMENT** having been sent to the parties on 7 February 2023 and written reasons having been requested by the respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Introduction

1. By a claim form presented on 29 March 2022, the claimant presented a claim of unfair dismissal. On 1 June 2022, the respondent submitted a response to the claim.

### Evidence

2. An agreed bundle of documents comprising 289 pages, to which an updated Schedule of Loss was added, was presented at the commencement of the hearing in accordance with the case management Orders. A number of further documents were added to the bundle in the course of the hearing by both parties. References to page numbers in these Reasons are references to the page numbers in the bundle.

3. The claimant gave evidence himself by reference to a written witness statement. The respondent called 3 witnesses to give oral evidence, being: Gary Laville, the respondent's Group Quality and Governance Director; Kelly Brien, service manager of Meade Close where the claimant worked (the dismissing officer); and Melinda Glover, the respondent's Head of Quality Assurance (who handled the claimant's appeal). All witnesses gave oral evidence from written witness statements and were subject to cross-examination.

### Issues to be determined

4. At the outset of the hearing, the Tribunal discussed a list of issues which was agreed with the parties. This was a claim of unfair dismissal. However, it was noted that there was reference to the Equality Act 2010 in the claimant's witness statement. No such claim had been intimated in the claim form nor in any of the other documents. After a discussion, the claimant agreed that he was only claiming unfair dismissal and making no other claims, whether under the Equality Act or anywhere else.
5. The agreed list of issues to be determined is as follows:

#### Unfair dismissal

1. What was the respondent's reason for dismissal?
2. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating misconduct as a sufficient reason to dismiss the claimant?

The Tribunal will decide whether:

- a) The respondent genuinely believed the claimant had committed misconduct;
  - b) there were reasonable grounds for that belief;
  - c) at the time the belief was formed the respondent had carried out a reasonable investigation;
  - d) the respondent followed a reasonably fair procedure;
  - e) dismissal was within the band of reasonable responses.
3. Polkey: Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
  4. If so, would it be just and equitable to reduce any compensatory award? By what proportion?
  5. Did the claimant cause or contribute to his dismissal by blameworthy conduct?

6. If so, would it be just and equitable to reduce the basic and/or compensatory award because of any conduct of the claimant before the dismissal? If so, to what extent?

**Remedy - ACAS code**

1. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
2. Did the respondent or the claimant unreasonably fail to comply with it?
3. Is it just and equitable to increase or decrease any award payable to the claimant?
4. If so, by what proportion, up to 25%?

**Findings of fact**

6. Having considered all the evidence, the Tribunal made the following findings of fact on the basis of the material before it, taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities. The Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.
7. The findings of fact relevant to the issues which have been determined are as follows.
8. The claimant was employed by the respondent from 16 April 2018 as a support worker based at the Meade Close care home in Urmston, Greater Manchester. This is a facility run by the respondent for vulnerable people with severe learning difficulties and complex medical needs.
9. The claimant's contract of employment appears in the bundle at page 42 It was signed on 1 July 2018. There is reference to an employee handbook which, amongst other things, sets out examples of gross misconduct. These include a failure to follow a management instruction without justification or reasonable excuse.
10. On 8 March 2021, the respondent sent a letter to all staff about the introduction of a COVID vaccination policy and procedure. The policy appears in the bundle at pages 68-79. In essence, the policy states that COVID vaccination was compulsory for all staff unless not medically advisable. The purpose of the policy is to protect the respondent's service users. The respondent set a deadline of 30 April 2021 for its employees to either arrange and have a COVID vaccination or register an objection.

11. On 15 March 2021, the claimant obtained a letter from his GP about his stress and anxiety, which said he had concerns about vaccinations in general. The letter appears in the bundle at page 83. It is not signed but nothing turned on that aspect. The letter is brief and says:

*“Stephen is a patient under my care at Flixton Road Medical centre. He has a history of anxiety and depression and is currently taking medication. Recently I have added to his medication as he has been increasingly more stressed and anxious. He does have anxiety concerning vaccinations in general but also specifically the COVID vaccination. If possible, I would like for him to be excepted if he wishes not to have the COVID vaccination. I have advised him to seek advice from the occupational health service.”*

12. The letter does not in any way suggest that the claimant is entitled to any form of medical exemption from vaccinations or the COVID vaccination. The claimant’s GP merely states: *“I would like for him to be excepted if he wishes not to have the vaccine”*, and further it does not specify the purpose of an occupational health referral and/or advice. The claimant gave the letter to the respondent.
13. As a result, the claimant was invited to an informal vaccination refusal meeting with Ms Brien, on 13 April 2021. The claimant attended with his trade union representative, Steve Morris, from the Workers of England union. Notes of the meeting appear in the bundle at pages 86-89. In the course of the meeting, the claimant declared that he was unwilling to be vaccinated. He described the COVID vaccine as ‘experimental’ and stated that he did not trust the vaccine. The claimant also said *“he [knew] people in the NHS who tell him it’s all lies and there aren’t that many people in the hospitals”*, and he mentioned a family history of blood clots and strokes. As a result of the claimant’s statements, the respondent understood that the claimant was refusing to be vaccinated.
14. On 10 June 2021, a second meeting about vaccination was conducted by Ms Brien together with Mr Laly, a regional director of the respondent. The claimant attended with his trade union representative, which on this occasion was a Mr McRae. Notes of that meeting appear in the bundle at pages 91-97. In the course of the meeting, the claimant said, *“More people died because of the vaccination now. A lot probably haven’t been reported by the GPs ...”*. The trade union representative accepted that a lot more was known about the vaccination and that it was not killing everyone, but he stated that *“there is [still] a risk”* and he asked for a reasonable adjustment based on the claimant’s medical history. Mr McRae did not, however, suggest that the claimant’s anxiety amounted to a disability, and he did not ask for reasonable adjustment based on any disability. Rather, the request was made *“based on the claimant’s medical history”*. It is unclear from the meeting notes as to what was being referred to by Mr McRae.

15. Around this time, the claimant had raised a grievance about the conduct of a co-worker towards him. This was unrelated to the respondent's vaccine policy or the meetings with Ms Brien. The grievance was upheld in part (see page 104 of the bundle).
16. In July 2021, the UK Government announced that regulations would be introduced affecting care homes in terms of mandatory or compulsory vaccinations. In light of that announcement, the respondent decided it must pursue its vaccination policy.
17. Also in July 2021, allegations were raised against the claimant by a number of staff, about racist and homophobic remarks he was said to have made, and swearing, in the workplace. An investigation took place and the claimant was subject to disciplinary action. As a consequence, the vaccination refusal process was paused.
18. On 29 July 2021, the claimant attended a disciplinary hearing which was adjourned and reconvened on 20 September 2021. The outcome of that process was delivered on 1 November 2021, when the claimant was told there would be "no formal action". The Tribunal found no evidence of any link between that disciplinary process and the way the respondent dealt with the claimant in relation to his vaccination status and/or refusal. The disciplinary process was handled by different personnel to the individual managers who were dealing with the claimant's vaccine refusal.
19. On 2 November 2021, once the disciplinary process had concluded, the claimant was invited to a final formal COVID vaccination refusal meeting, which took place on 9 November 2021, with Ms Brien. The claimant attended with a trade union representative, who was a Mr Bellamy. The notes of the meeting appear in the bundle at pages 139-141. When asked about the COVID vaccine, the claimant said that he was even more determined than he had been to not have the vaccination and that he considered himself to be medically exempt. The trade union representative told Ms Brien that the union had a form for exemption which covered its members, and which would cover the claimant. Ms Brien sought to clarify whether the union's exemption was through the official government process, but without success.
20. The next day, 3 November 2021, the claimant produced what amounted to a self-certification form issued by his trade union. The document appears in the bundle at page 146. It states that, "*The above named person has provided a statement of truth lodged with the union on 9 November 2021 that confirms that the above named person is exempt from requiring vaccination with a medicinal product that is for supply in the United Kingdom ...*"
21. The Tribunal found that the Workers of England union is not a medical organisation and is not in any way medically qualified. The "certificate" issued by the union does not suggest that the person who had lodged a statement of truth had in fact told the union on what grounds they are entitled to medical exemption nor that they have provided any proof of such. It was not apparent

that any reason(s) for clinical exemption were in fact being certified after, for example, a medical examination of the claimant. The document reads as a declaration that the person is exempt because they have told the union so. The document says: *“Reasons for clinical exemption are private and medical; these are confidential and protected under the Data Protection Act 2018.”* The union’s certificate is signed by a regional coordinator who is not named. There is a signature at the bottom of the documents, which is completely indecipherable, and it is unclear whether the document is a standard computer-generated document or whether it has been wet-signed by the person who received the claimant’s statement of truth or who knew of the claimant’s case.

22. In the bundle at page 148, there is an email from Mr Bellamy of the union to the claimant which includes a selected part of the text of an email which the union had received from the Care Quality Commission (“CQC”). This was disclosed by the claimant as evidence to support the validity of the trade union’s medical exemption “certificate”.
23. However, the Tribunal found the email to be of little value to the claimant , for the following reasons. First, the CQC refers to a temporary self-certification process, announced by the Department of Health and Social Care (“DHSC”) on 15 September 2021, that people could use if they believed they were medically exempt. However, a formal process for having a medical exemption agreed or declined went live on 1 October 2021. By November 2021, that formal process has been in place for nearly six weeks. The CQC suggests that people could still use the temporary self-certification exemption whilst they waited for a formal decision. The Tribunal took this to mean, in effect that an individual who had applied (or was in the process of applying) and was waiting for a decision on medical exemption. Therefore, self-certification was at best a temporary stopgap until a formal decision was received. Importantly, the CQC goes on to say, *“However, if their exemption is declined [the applicant] will have until 24 December 2021 to be fully vaccinated or to make other arrangements with their employer”*. There is no suggestion that the trade union self-certification process or “certificate” overrides/replaces the government scheme or in any way serves as an alternative to such.
24. In addition, the CQC’s email says, *“Personal choice not to have the COVID-19 vaccination is not considered an exemption”* and it also says:  
  
*“Although there is no legal requirement for care workers to only use the letters and forms provided on the DHSC website, it remains the most straight forward way of providing evidence of a temporary certificate of exemption. If, however, people choose to use alternatives such as those issued by the Workers of England, Scotland and Wales Union, it should be noted this will only be applicable until 24 December 2021, unless they apply and receive confirmation of formal medical exemption through the government process.”*

25. In light of the above statement by the CQC, the Tribunal rejected the claimant's contention that his self-certification was enough to make him medically exempt from having the COVID vaccine as the respondent required. It is clear from the CQC text that the Workers of England Union certification could only be a temporary measure until an individual applies and receives confirmation of formal medical exemption. In any event, the Union's document was expired on 24 December 2021.
26. Importantly, the CQC also stated:
- "It is the responsibility of the registered person [in this case Ms Brien, as the Registered Manager of the Home] at the care home to satisfy themselves of the identity of the person entering the care home and their proof of vaccination or exemption status."*
27. And:
- "The DHSC Operational Guidance provides further information for employers and staff members around the duty. Anyone who believes they are medically exempt should follow the agreed process set out on the DHSC website as soon as possible."*
28. At best, therefore, the CQC accepted the trade union's certificate as a temporary holding measure. The CQC advice was that anyone who believed they were medically exempt must nevertheless follow the agreed procedure set out on the DHSC website as soon as possible not least because the temporary self-certification will not last forever.
29. On 15 November 2021, the respondent wrote to the claimant to say that his trade union certificate was not acceptable to the respondent, and the claimant was told that he needed to complete the UK Government's medical exemption process (the letter appears in the bundle at page 150). The letter included a copy of the UK Government scheme form to apply for medical exemption, which the claimant was advised to complete and return to the respondent, within 48 hours of receipt of the respondent's letter. The claimant was warned that, in default, the internal vaccination refusal meetings would continue.
30. The claimant did nothing. He did not comply with the respondent's requests nor did he contact the respondent or raise any objection. Therefore, on 19 November 2021, (48 hours having expired), the respondent wrote again to the claimant, replying to the points raised in his previous correspondence. The respondent pointed out that 3 vaccines had been authorised as safe for public use by the Medicines and Healthcare Products Regulatory Authority ("MHRA"); the respondent agreed that it had no legal right to force the claimant to have the COVID vaccine, but they had extremely vulnerable and very sick service users and so the respondent had to balance the risk to its employees against the risk to service users; and the respondent urged the

claimant to engage with its employee assistance programme in relation to his anxiety. Ms Brien wrote:

*“Having considered all the points put forward by you, the company policy and the specific circumstances that apply in the setting where you are employed, I do not accept you have provided sufficient reason to explain your refusal to be vaccinated and therefore I am issuing you with a formal reasonable management instruction to obtain a vaccination within four weeks of the date of this letter.”*

31. The claimant was advised that he must book his vaccination in 7 days, for a vaccination appointment within 4 weeks of the letter and then arrange to get his second vaccination within 8 weeks of the first vaccination. The claimant was warned that, in default, the respondent would treat his failure to comply as gross misconduct and may take disciplinary action which could result in the termination of his employment. The Tribunal found that those timescales were put in place because it was by then mid-November 2021; the claimant had to be vaccinated by the end of December 2021 and so the timings had to be tight.
32. Once again, the claimant did not comply with the respondent’s reasonable request to comply with its policy.
33. In that event, on 7 December 2021, the respondent convened a disciplinary hearing conducted by Ms Brien. The claimant attended with Mr Bellamy from his trade union. The claimant was asked if he had booked the vaccine or if he had received the government exemption, and he declared that he would never get the vaccination, nor even the self-certificate under the government process, because he did not trust the government process or the list of exemptions. The claimant talked about the anxiety and stress of everything that he had had to go through. The trade union representative read out a statement about the claimant's terms and conditions not having been altered to allow the respondent to introduce the policy, that the claimant had not given informed consent, that there had been no individual risk assessment, and contended that the government guidance was not law.
34. On 20 December 2021, the claimant was sent a letter terminating his employment. The letter appears in the bundle at pages 226-232. The claimant was summarily dismissed for having failed and/or refused to follow a reasonable management instruction to obtain a COVID vaccination. In her letter, Ms Brien went through each of the claimant's points once again and explained the respondent’s position in detail. The respondent said it was a reasonable instruction to employees to get the vaccination or obtain the government exemption. Ms Brien wrote that it was very important that the respondent and the individuals working with its service users take all steps necessary to protect them. The respondent considered redeployment for the claimant but none of its facilities or settings in the area were ones which did not require a vaccination. The Tribunal noted also that the requirement to be vaccinated in care settings was shortly to become a legal requirement.



35. On 21 December 2021, the claimant appealed his dismissal. The grounds of that appeal were that his self-certificate, via his trade union's exemption certificate, had been accepted by the CQC, and therefore the respondent should accept it as sufficient protection. The Tribunal found that this was at best a misunderstanding by the claimant of what the CQC's position in fact was – see paragraphs 22-28 above. The claimant also complained about bullying, harassment and being left alone while suffering a panic attack on a weekend. Thereafter, the claimant produced enhanced grounds of appeal in which: he questioned the current legislation and measures to be introduced by the Health and Social Care 2008 (Regulated Activities) Regulations 2014 to the effect that such measures cannot include a requirement for persons to undergo medical treatment defined to include vaccination; that his terms and conditions of employment had not been altered to make it a condition of his employment that he take part in what he described as a 'medical experiment'; that there was no informed consent on his part; that *"My personal health concerns about the vaccine were dismissed without an individual risk assessment. As vaccination is a work-related activity, [the respondent] was in breach of [the] Health and Safety at Work Act 1974."*; the respondent's insistence that the claimant submitted an application for the Government's exemption form is not a legal requirement; and that refusing to accept his self-declared medical exemption was in breach of his rights under the Equality Act 2010.
36. On 10 January 2022, as appeal hearing was conducted by Ms Glover. The claimant attended with Mr Bellamy from his trade union. The notes of the hearing appear in the bundle at pages 240-249. The thrust of the claimant's appeal was that he believed he had done nothing wrong. The appeal was followed by a grievance hearing. The claimant's appeal was turned down by letter dated 14 February 2022.

### **The applicable law**

37. A concise statement of the applicable law is as follows.

#### Unfair dismissal

38. Section 98 of the Employment Rights Act 1996 sets out a two-stage test to determine whether an employee has been unfairly dismissed. First, the employer must show the reason for dismissal or the principal reason and that reason must be a potentially fair reason for dismissal. The respondent contends that the reason for dismissal was the claimant's conduct. Conduct is a potentially fair reason for dismissal under Section 98 (2) (b) of the Employment Rights Act 1996.
39. If the employer shows a potentially fair reason in law, the Tribunal must then consider the test under section 98 (4) of the Employment Rights Act 1996, namely whether, in the circumstances, including the size and administrative resources of the respondent's undertaking, the respondent acted reasonably or unreasonably in treating that reason, i.e. conduct, as a sufficient reason for dismissing the claimant and that the question of whether the dismissal is fair

or unfair shall be determined in accordance with equity and the substantial merits of the case.

40. In considering the reasonableness of the dismissal, the Tribunal must have regard to the test laid out in the case of British Home Stores -v- Burchell [1978] IRLR 379 and consider whether the respondent has established a reasonable suspicion amounting to a genuine belief in the claimant's guilt and reasonable grounds to sustain that belief and the Tribunal must also consider whether the respondent carried out as much investigation as was reasonable in the circumstances.
41. The issue of the reasonableness of the dismissal must be looked at in terms of the set of facts known to the employer at the time of the claimant's dismissal, although the dismissal itself can include the appeal; so matters which come to light during the appeal process can also be taken into account: West Midlands Co-operative Society Ltd -v- Tipton [1986] IRLR 112.
42. The Tribunal must also consider whether the decision to dismiss fell within the band of reasonable responses open to a reasonable employer in the circumstances of the case: Iceland frozen Foods Ltd -v- Jones [1982] IRLR 439. The range of reasonable responses' test applies both to the decision to dismiss and to the procedure by which that decision is reached: Sainsbury's Supermarkets Ltd -v- Hitt [2003] IRLR 23.
43. The ACAS Code of Practice on Disciplinary and Grievance Procedures contains guidance on the procedures to be undertaken in relation to a dismissal for conduct. Although compliance with the ACAS Code is not a statutory requirement, a failure to follow the Code should be taken into account by a Tribunal when determining the reasonableness of a dismissal.

## Submissions

44. Counsel for the claimant made a number of detailed submissions which the Tribunal has considered with care but does not rehearse in full here. In essence it was asserted that: - the trade union's exemption certificate should have been accepted by the respondent; in view of the claimant's family's medical history, he should not have been required to have the COVID vaccination; the respondent should have carried out an individual risk assessment on the claimant; and that occupational health were not impartial and showed no insight into the claimant's objection to vaccination.
45. Counsel for the respondent also made a number of detailed submissions which the Tribunal has considered with care but do not rehearse in full here. In essence it was asserted that:- the respondent's reason for dismissal, conduct, had not been challenged; the respondent's request to get vaccinated or demonstrate a medical exemption was reasonable; the trade union's certificate did not amount to 'medical exemption' and it was reasonable for the respondent to reject it; the claimant was guilty of misconduct, as he had at all times made it clear that he would never comply

with what the respondent requested of him; that the respondent had only moved to dismiss the claimant after many meetings and after all other options had been ruled out; and that dismissal was within the band of reasonable responses.

**Conclusions** (including where appropriate any additional findings of fact)

46. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way.

*Reason for dismissal*

47. The Tribunal first considered the respondent had shown that its reason for dismissal was conduct. The dismissal letter (page 226 of the bundle) is clear on the reasons for the claimant's dismissal amounting to gross misconduct. Ms Brien was not challenged on that letter or her reasons. In addition, the Tribunal took account of the fact that the claimant himself gave clear evidence to the Tribunal that he was not going to get the vaccination, even now, and he was never going to comply with the respondent's request to do so, a fact which he had told the respondent repeatedly. In addition, although there was provision for medical exemption, the claimant had declared that he was not prepared to submit to the government scheme to obtain an exemption.

*Reasonableness*

48. This case concerns the policy introduced by the respondent in 2021, as a care provider, that staff working in its care homes were required, as a condition of continued employment, to be vaccinated against COVID. The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 came into force on 11 November 2021 and mandated the vaccination of care service employees unless medically exempt. The respondent had pre-empted those regulations by introducing its own vaccination policy which had the same requirement.
49. The Tribunal considered the terms and effect of the respondent's policy at the material time. The Tribunal found that the respondent's policy and its introduction, in a care home setting, was reasonable. At the material time, the UK Government had proposed and then did require mandatory vaccination for workers in care home settings. Mr Laville explained that the respondent's policy was introduced to protect both residents and staff. The residents were clinically vulnerable. The respondent's unchallenged evidence was that, in their establishments, they had lost a number of service users who had died due to COVID and so the respondent introduced the policy to protect its service users and staff, and to prevent further loss as best it could. The Tribunal considered that to be a reasonable approach in the circumstances. Further, the respondent did not act unreasonably in following government guidance from the NHS, public health authorities and lead medical

practitioners – examples of such appear in the bundle and were not specifically challenged by the claimant.

50. The respondent agreed that it had no legal right to force the claimant to have the vaccine. It accepted that employees are entitled to consent or not to medical procedures. However, the respondent has a legal responsibility for extremely vulnerable and very sick service users and so it had to carefully balance and weigh up the risk to employees and the risk to the service users.
51. The claimant was given options by the respondent during a process over many months whilst he was off sick from work. If the claimant did not want to have the vaccination, he could have obtained an exemption, but he had to apply through the government exemption scheme. The Tribunal considered that it was reasonable for the respondent to rely on the government exemption in place of the particulars of, and lack of detail in the certificate which the claimant obtained from the Workers of England trade union – see paragraphs 20 and 21 above.
52. The claimant had insisted that the trade union certificate would suffice. However, the Tribunal found that it would not suffice forever – see paragraph 23 above – and, by 20 December 2021, it was about to effectively expire. The union’s “certificate” was not something the claimant could have relied on forever. It was reasonable, in the circumstances, for the respondent to reject the trade union’s certificate. It was a temporary stopgap and it was clear that the claimant would do no more and would not comply with the respondent’s reasonable requests. It is therefore difficult to see what else the respondent could do.
53. The Tribunal considered why the claimant did not apply for the government exemption and concluded, on a balance of probabilities, that the claimant did not really believe he was exempt. He may have wanted to be exempt but there is a very limited list of exemptions on the UK Government website and although it says that the list is not exhaustive, the Tribunal found that the claimant did not believe that he would actually get an exemption through that process. In those circumstances, the claimant was looking at ways to circumvent mandatory vaccination, leading to his reliance on and insistence upon the respondent accepting the union’s certificate.
54. The Tribunal found that the claimant's refusal to take up any of the options given to him by the respondent was unreasonable. The claimant demonstrated at the material time, and in evidence to the Tribunal, that he was not inclined to accept anything, and he became intransigent. The claimant throughout knew that, ultimately, he would lose his job and he confirmed so in his evidence.
55. The claimant was dismissed for a reason related to conduct, so that the ACAS Code on Disciplinary Procedures applies. For his dismissal to be fair, there was a requirement of a fair process. The Tribunal found that there was no unfairness in the procedure adopted in the case of the claimant such as to render his dismissal unfair.

56. The Tribunal considered that the claimant understood and was fully informed of the vaccination policy before it was implemented. He understood, when he decided not to be vaccinated, that he could face the sanction of dismissal. He understood that if he changed his mind and accepted the vaccine or could show a medical exemption, then he would not be dismissed. The respondent held a number of meetings with the claimant about the policy and his position, over several months, at which the claimant had an opportunity to put forward the reasons for his refusal to accept a vaccine. He was again able to put his position across at the formal meeting on 9 December 2021, to determine whether his employment could be continued, at which he had the right of accompaniment and was accompanied by his union. He was given a right of appeal where, when exercised, Ms Glover conducted a further investigation of each of the reasons behind the claimant's stance on being vaccinated.
57. The claimant sought to suggest that he should have been subject to an individual risk assessment and/or further examined by occupational health. However, the Tribunal considered, on a balance of probabilities that these would not have resulted in any medical exemption for the claimant. In any event the Tribunal questioned the point of such measures, and the consequent expense for the respondent, to no end. In that context, the Tribunal rejected these arguments, which were attempts to bolster the claimant's case and somehow justify his position. Family history was not a reason to disapply the law and, in any event, the claimant brought no evidence of the medical history of any of his relations. The claimant was effectively asking for a medical assessment. It is to be noted that he had already been to his GP and had not got the answer he wanted. It was always open to the claimant to get his own medical evidence but he simply would not do so. When examined by the respondent's appointed occupational health physician, in the process of managing the claimant's long term sickness absence, the claimant did not ask about his vaccination status or any exemption. Nevertheless, the claimant later sought to criticise occupational health, describing the physician as "belligerent" and as acting for the respondent. This was despite that there was nothing to suggest that occupational health had been partial nor that it had been briefed to make any particular findings. The claimant was off on long-term sick and it was reasonable for the respondent to seek medical advice as to whether he was well enough to attend a meeting, particularly when the meeting would be stressful and might result in dismissal.
58. The Tribunal accepted the respondent's submission that dismissal fell squarely within the band of reasonable responses. The respondent was in an impossible position. To allow the claimant to continue working for it would be to break the law and have somebody unvaccinated, and without a proven medical exemption, working in their premises. The claimant was, at the time, off sick and he was not going to change. He was not prepared to return to work under the respondent's conditions which were about to become law, or to comply with any requests of him in that regard. As the Government

scheme came in, the respondent would not have been able to employ him any longer.

59. The claimant accepted, in evidence, that he was going to lose his job given the stance he took. In those circumstances, and in light of the imminent change in the law on vaccination for workers in care home settings, the Tribunal considered that the claimant caused or contributed to his dismissal 100%. The respondent's policy resulted in the dismissal of the claimant in circumstances where he refused to be vaccinated and because he refused to undertake the government process to demonstrate that he was medically exempt. It was, in all the circumstances of the case, a fair dismissal.

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Employment Judge Batten  
Date: 29 September 2023

REASONS SENT TO THE PARTIES ON:

6 October 2023

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FOR THE TRIBUNAL OFFICE

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