



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Weller

Respondent: Chigwell Homes Limited

Heard at: East London Hearing Centre (by CVP) **On:** 30-31 July 2025

Before: Employment Judge Bann

REPRESENTATION:

Claimant: Mr Lewis (family friend)

Respondent: Ms English (legal representative, Peninsula)

JUDGMENT having been sent to the parties on **13 August 2025** and reasons having been requested in accordance with Rule 60(3) of the Rules of Procedure 2024.

REASONS

Facts

1. The respondent, Chigwell Homes Limited runs 5 residential care homes. It has 300 staff including a HR manager. The claimant was employed by the respondent at Marcris House from 1 August 2016 as a cleaner. Marcris House provided accommodation and personal care for up to 32 older people, including some resident' s living with dementia ("the Home").
2. In 2020 the claimant accepted a role as a care assistant. The statement of terms of employment from August 2020 stated that there was no continuous service but that is not accurate. It is a template that was not correctly amended for the Claimant. A handwritten note confirms that this was just a change in role.

3. The claimant was required to undertake mandatory training which was renewed annually. It was an online training assessment. The tribunal was not given any evidence on the nature of that training other than it was sufficient to comply with national mandatory training.
4. Up to early July 2024, the registered manager of the Home was Sharon Lawrence. The tribunal was advised that Ms Lawrence left with immediate effect after the CQC inspection in early July.
5. In her role as a care assistant, the claimant was asked to supervise one resident on his trips out of the care home. On these occasions he would pick up his pension and he also liked to go to the local tesco. The claimant supported the resident with these trips once a fortnight. She understood that other care assistants would support him on the alternate week. The tribunal found that there was no training or guidance given to care assistants in relation to their responsibilities for supervising visits out of the home and no specific risk assessments.
6. From around March/ April 2024, the claimant confirmed that the resident started to buy paracetamol on his trip to tesco. The claimant confirmed that he bought two boxes at a time.
7. The claimant raised a concern about the purchase of paracetamol with Sharon Lawrence who stated that *'it was his money, he could buy what he wanted'*. The claimant did not know what the resident was doing with the paracetamol or where he kept them.
8. The tribunal accepted the witness evidence of the Claimant, Della Johnson who was a senior carer at the Home that Sharon Lawrence was a bully. She made it clear to all staff that any safeguarding concern should be raised with her first and she would escalate it if required. Sharon Lawrence threatened staff with dismissal if they went above her head. The claimant was in fear of repercussions if she raised any concerns with Sharon Lawrence or others.
9. The Care Quality Commission ("CQC") undertook an inspection of the Home in early July 2024. The Report highlighted very serious failings at the home and those overseeing the home in terms of safeguarding across all aspects of running and managing the home. Sharon Lawrence left with immediate effect.
10. At this time the claimant was asked to change to cleaning duties to cover for a staff member who had left, which she agreed. From this date, the claimant did not escort the resident on his trips out of the Home.
11. On 16 July 2024 a full staff meeting took place with the respondents directors and all staff including the claimant. The notes of the meeting highlight that there had been only two safeguarding concerns raised at the Home within the last 12 months, which was well below average. The Tribunal heard from Ashley Coplestone, the proprietor who said that within a matter of a very short period after that date she raised 20 safeguarding issues at the Home. This appears to be indicative of what

would be expected in a care home for vulnerable adults. In the notes of that meeting at page 42 of the bundle, the staff were reminded about incident report forms and advised that if anyone was unsure, please refer to a duty senior or go to the office to discuss.

12. As a direct consequence of the CQC findings, Essex County Council forced the respondent to close the Home within 28 days. Staff were notified of this decision on 14 August 2024. The employees were offered job opportunities at other Residential homes run and managed by the respondent. The claimant did not want to take a job at an alternative residential home due to distance and agreed to take redundancy. The staff taking redundancy were told that they would have a meeting to confirm redundancy pay.
13. In early September 2024, social workers from Essex County Council attended the Home to support the transfer of the resident to alternative accommodation. They found 27 boxes of paracetamol in his drawer. This clearly constituted a safeguarding risk
14. In her written witness statement on behalf of the respondent, Ashley Coplestone stated that on this discovery the directors were made aware of the "*Claimant's continued error*". When questioned Ms Coplestone stated that she must have spoken to the senior carers; Della Johnson, Hannah and Petti who gave two names of care assistants (including the claimant) who took the resident out on supervised trips to the local shops. Della Johnson was a witness to this tribunal. She was not questioned on whether she had been questioned as part of this investigation. Ms Johnson provided undisputed evidence that several care assistants had supervised the resident on shopping trips.
15. There is no record of a disciplinary investigation hearing in the bundle. Ashley Coplestone in oral evidence for the respondent stated that there was an investigation hearing and a wellbeing meeting on 9 September 2024 with the claimant. When questioned, she could not confirm who had led the investigation meeting with the claimant. The claimant denied attending any earlier meeting. She confirmed that the first time she was spoken to about the resident was on 10 September 2024 when she attended her first meeting with Ashley Coplestone. The ET3 states that an investigation meeting took place on or around 11 September. This cannot be correct as this was the second stage of the of the disciplinary hearing.
16. The tribunal was not provided with any evidence of any fact finding process such as a review of the books which would record the resident leaving the site, the notes of the conversations with the senior carers. The tribunal therefore found that the respondent did not hold an initial investigation before proceeding to a disciplinary hearing.
17. The respondent included a template disciplinary invite letter in the bundle. It is not completed and there is no evidence it was given to the claimant. The tribunal

accepted the claimant's evidence that on 10 September 2024, she was on shift and called into a meeting. The claimant did not know it was a disciplinary hearing that could result in her dismissal. The claimant said in evidence that she asked whether she was in trouble and would it result in her getting sacked and was told no. This was not disputed in cross examination.

18. The notes of the disciplinary meeting on 10 September 2024 are very basic. The document is entitled 'disciplinary hearing'. The claimant did sign the final page of the notes. The claimant says that she didn't see the heading when she signed the notes. The tribunal found that the claimant was not told during that meeting that it was a disciplinary hearing or that it might result in her dismissal.
19. The notes of that meeting and not easy to follow as they are set out as answers to questions, which were not provided. It is clear that the claimant explained that she had raised concerns with Sharon Lawrence about the resident buying paracetamol. Her manager had stated 'it is his money it is up to him'. She confirmed also that she was frightened to approach Sharon Lawrence again. The claimant also stated *'if I see something in the future I would report it to the safeguarding team. Now I know. I didn't know the safeguarding procedure.(I wouldn't of known how to'*.
20. On 11 September 2024, the claimant was called again on facetime by Ashley Coplestone and Jo Peel. She was asked why she hadn't raised her concerns with the safeguarding team. The claimant stated that she didn't understand her safeguarding training and when she had queried it with her manager she was told it was your training.
21. The claimant was asked why she had not raised with whilst Ashley and Jo had been in the home. She responded *'I've had no concerns'*.
22. The claimant was not asked how often she took the resident to the shops and over what period, how regularly he bought paracetamol and did she know that the resident was storing the tablets.
23. The claimant's evidence was that she continued to work and went to work on 18 September 2024 with the other staff to have her individual redundancy meeting and pick up her redundancy letter. This is supported by Ms Johnson who confirmed in the written statement that the claimant continued to work until Wednesday 18 September 2024. Instead of receiving a redundancy letter, the claimant as given a letter dated 16 September 2024. The letter states that the allegation considered at the disciplinary hearing was that *she had failed to follow the correct safeguarding procedures lid out in the safeguarding training. Further particulars being that on various dates the service user continued to purchase paracetamol and placed them in his drawer and you failed to report this causing potential risk t the service user. notice of dismissal for gross misconduct.*

24. The Claimant was dismissed with immediate effect without notice. The claimant was notified of her right to appeal.
25. The claimant triggered the ACAS EC process on 7 October 2024 and was issued with the certificate on 18 November 2024. The Claimant submitted the tribunal claim on 20 November 2024.

The hearing

26. The tribunal hearing took place on 30-31 July online. The tribunal was provided with a 57 page bundle. The respondent relied on one witness, Ashley Copplestone proprietor of the respondent who was the dismissing officer. The tribunal also heard from the claimant and Ms Johnson. The tribunal was provided with a 57 page bundle. It is relevant to note that the bundle did not include the following; the disciplinary policy, the safeguarding policy, the safeguarding training details, the whistleblowing policy.
27. During course of the claimant's evidence, the tribunal stopped for a break. The claimant was given clear instructions that she must not talk to anyone about the case or her evidence, specifically that she must not talk to Mr Lewis. Mr Lewis confirmed that he was in a different house. The claimant did not turn off her camera and did not mute herself. She was heard by the Judge and Ms Coplestone having a telephone discussion about her evidence. She stopped the call and Mr Lewis was seen on the camera.
28. The respondent legitimately raised objections about the breach of process arguing that the claimant's evidence was contaminated. The position as carefully considered at the time, and when deliberating. The tribunal did not accept that the evidence was contaminated. There were very few issues in this case in dispute. Where there was a dispute such as whether there was an investigation hearing, the tribunal referred the claimant's evidence because it would have been very straightforward for the respondent, who as legally represented throughout the claim to have produce the notes of the investigation meeting and the investigator's name. There was no obvious change in the way the claimant answered questions, after the break which would suggest her evidence was tainted.

Issues for the tribunal to decide

Unfair dismissal claim:

29. It is accepted that the claimant was dismissed for misconduct, which is a potentially fair reason for dismissal under section 98(1) and (2) Employment Rights Act 1996.

30. The tribunal had to determine whether that dismissal was fair. Under section S98(4) Employment Rights Act 1996, this meant assessing whether the respondent acted reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant.
31. The Burchell test outlines the key considerations when assessing the fairness of the dismissal in a misconduct case:
 - a) Did the respondent genuinely believe that the employee was guilty of the alleged misconduct?
 - b) Did the respondent have reasonable grounds for that belief?
 - c) at the time the belief was formed the respondent had carried out a reasonable investigation.
 - d) did the respondent otherwise act in a procedurally fair manner.
32. The starting point must be the words of S98(4) ERA 1996. It is not open for the tribunal to substitute their view with that of the employer and say what they would have done. The tribunal must consider whether the decision to dismiss in those specific circumstances was in the band of reasonable responses a reasonable employer might have adopted ***Iceland Frozen Foods v Jones [1982] IRLR 439***.
33. Further, when considering a gross misconduct dismissal, the tribunal has to be satisfied that the employer acted reasonably both in characterising it as gross misconduct, and then in deciding that dismissal was the appropriate punishment: ***Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854***.
34. The respondent referred the tribunal to *Reilly v Sandwell MBC*, which held that a dismissal was fair for a one-off failure to comply with safeguarding obligations. The Tribunal held that it would have been "*obvious that for a head teacher to have failed to disclose such information to her governing body whether it is expressed in her contract of employment or not is a matter of misconduct*";
35. The tribunal also considered the Court of Appeal of ***OFSTED v Hewston [2025] EWCA Civ 250***, where the Court of Appeal has held that an employment tribunal was wrong to find that a school inspector's summary dismissal for inappropriate physical contact with a child during a school visit was fair. There had never been any suggestion of any improper motivation on the part of the inspector: what he did was intended as a friendly act of sympathy and assistance. Therefore, in the absence of a 'no touch' policy, it was not reasonable for Ofsted to take the view

that the conduct was of a kind which the inspector should have realised would be regarded as warranting dismissal.

36. EAT in this case noted that in safeguarding cases, it is important to consider whether the allegations have been properly covered in disciplinary rules. The respondent did not have a 'no touch' policy. It referred to the need for great scrutiny in a case where an adverse decision may prevent the employee from working in their chosen field again.

ACAS Code of Practice on Disciplinary procedures

37. The ACAS Code of Practice represents recognised industry-wide good practice. The code stipulates:
- a) Establish the facts in each case. Different people should carry out the investigation and disciplinary hearing.
 - b) If there is an investigation it should not by itself result in any disciplinary action.
 - c) The employer should inform the employee of the alleged issue and that it is being treated as a disciplinary matter. The employee should be notified in writing and provided with sufficient information about the alleged misconduct and the possible consequences to enable the employee to prepare to answer the case at the disciplinary meeting.

Findings:

Unfair dismissal

38. The tribunal accepts that the reason for dismissal was gross misconduct. It also accepted that the respondent genuinely believed that the claimant had committed the misconduct as alleged. Ashley Coplestone was very clear in her evidence. The discovery of the boxes of tablets was obviously a safeguarding risk. It was reasonable to instigate an investigation to find out how that could have happened.
39. Were there reasonable grounds for that belief? No. At the time the belief was formed the respondent had not carried out a reasonable investigation. In fact, the tribunal found that the investigation was fundamentally flawed. Further, the tribunal found that the respondent had not otherwise acted in a procedurally fair manner, and it was not in the range of reasonable responses to dismiss the claimant for that reason.

40. The reason for dismissal in this case as set out in the dismissal letter included negligence, failure to report a safeguarding matter, knowledge of a potentially fatal quantity of paracetamol stored in the resident's drawer.
41. The respondent failed to conduct a fair and reasonable investigation into these allegations. While the claimant accepted that she had witnessed the resident purchasing paracetamol there was no investigation into how often she has witnessed this and over what period of time. Once the claimant conceded that she knew the resident had bought paracetamol the respondent reached a conclusion that the claimant was negligent, breached safeguarding procedures and that she knew that he had stored those paracetamol tablets, creating a safeguarding risk. It was not reasonable to jump to the conclusion on the basis of the information the respondent had at the time of making the decision. The claimant was clear that she initially did consider the purchase of paracetamol was a concern and raised it with her care home manager. The manager said it was up to him what he bought with his money. It was reasonable for a care assistant to rely on the directions of the registered care home manager in this situation. By the time the care home manager left, the claimant had moved to cleaning duties so was not doing the trip to the shop with the resident and therefore there was not an ongoing safeguarding issue that she was aware of. It was therefore reasonable that she did not consider that there was an ongoing concern.
42. The claimant was clear in her response to questions at the disciplinary hearing that she did not know it was a safeguarding issue or how to escalate it as a safeguarding issue. It should be clear to all employees what actions could be considered gross misconduct. The Respondent did not provide a disciplinary policy, notes from the safeguarding training course, a safeguarding policy or a whistleblowing policy. The tribunal found that there was no risk assessment undertaken in respect of employee supervising trips out of the home and no guidance given to employees when asked to undertake this task.
43. It is relevant to consider the context in which the decision is taken. At the time Ashley Copleston took the decision to dismiss, she was aware that the Home was forced to close following the CQC Report which highlighted serious breaches in protocols including safeguarding. She knew that by mid-July, the directors found that only two safeguarding concerns had been reported in 12 months, which was well below the average. This would suggest to a reasonable employer that staff did not know their responsibilities in terms of reporting safeguarding concerns. She also knew that at least one other care assistant took the resident shopping and did not stop him buying paracetamol. w
44. The claimant was clear that she did not know what the resident did with the tablets. However, one of the reasons for dismissal was that the Claimant knew that he was

storing the tablets in a drawer. There was no evidence to support this funding. Likewise there was no evidence to support Mrs Coplestone's assertion in evidence that the Claimant was purchasing the tablets for the Claimant and not just with him when he bought the tablets.

45. The Respondent relies on the word 'neglect' used in the handwritten notes to make a finding that the claimant knew that this amounted to negligence. Neglect and negligence have very different meaning, and it was not reasonable to reach the conclusion that the claimant knew what her responsibilities were and failed to act.
46. The tribunal found that the respondent failed to follow a reasonable procedure. In particular:
 - a) the investigation was fatally flawed. There was no fact finding process and no impartial review of the information that would have been available. No documented investigation meeting with claimant to explore what happened to assess whether she was culpable of the safeguarding risk.
 - b) The claimant was not advised of the allegations she faced or how serious those allegations were considered. She was not notified that the meeting could result in her dismissal. She was not even told she was attending a disciplinary meeting. The tribunal accepted the claimant's evidence that she did ask if she was in trouble and whether she could be fired and she was told that was not the case.
 - c) The tribunal found that the disciplinary meeting was also flawed. Mrs Coplestone did not impartially assess the evidence and reach a fair conclusion on the information she had obtained. It is clear that she was shocked about the discovery of the tablets by the social work team of the County Council and had already made her mind up. An example of this is finding that the claimant was responsible for the fact the resident had stored 27 boxes of tablets in his drawer. There was no evidence that all those tablets had been bought when with the claimant. There is no evidence to support a finding that the claimant knew he was storing the tablets rather than taking them.
47. While the tribunal accepted that the respondent was under pressure, closing a home and relocating residents. This was a company running 5 care homes with 300 staff and a HR manager. There would have been sufficient senior people to conduct an investigation properly and impartially.
48. Therefore, in all the circumstances, taking into account the size and administrative resources, it was not within the range of reasonable responses to find that the claimant's actions amounted to gross misconduct. It was not then within the range of reasonable responses to ignore the mitigatory evidence including evidence that

the claimant did not understand the safeguarding process to find that the appropriate sanction was dismissal. The dismissal was substantively and procedurally unfair.

Compensation

49. In accordance with section 123 Employment Rights Act 1996, the tribunal must award compensatory award which it considers it just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. Section 123(3) states that the loss referred to above shall be taken to include in respect of any loss of any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or (b) any expectation of such a payment.
50. The tribunal should have regard to what the employee has lost in consequence of the dismissal. This will require findings as to what would have occurred but for the dismissal. It may require an assessment as to whether the employment would have ended but for dismissal.' ***Hamer v Kaltz Ltd EAT 0502/13.***
51. If a tribunal finds that the employee would have been dismissed in any event, and on the same day, the compensatory award will generally be nil — in such circumstances the unfairness makes no difference. ***Ros and Angel t/a Cherry Tree Day Nursery v Fanstone EAT 0273/07***
52. The claimant highlighted that the dismissal had resulted in her poor mental health. She provided one GP note in the bundle from 2 January 2025 stating the claimant was unfit to work due to depression. The claimant gave oral evidence stating that the dismissal had made her very unwell and she has been unable to work since.
53. However, the tribunal was given clear and undisputed evidence that the Home was closed, and all staff were relocated or made redundant on or around 18 September 2024. The claimant accepted that she was offered alternative work but had decided to take redundancy. On the day she was given her dismissal notice, she was expecting to be dismissed and receive confirmation of her redundancy pay.
54. While the tribunal accepted that the manner of dismissal did cause or contribute to the claimant's ill health, section 123 Employment Rights Act precludes the award of non-economic loss. ***Dunnachie v Kingston upon Hull City Council 2004 ICR 1052, HL.*** There were no financial losses attributable to the dismissal as the claimant would have been fairly dismissed on the same day for redundancy. The claimant was however entitled to a redundancy payment.

Wrongful dismissal

55. Under s86(4) ERA 1996 was the respondent entitled to dismiss the claimant without notice by reason of her conduct. The Tribunal found that there was insufficient evidence to support a finding that the claimant's conduct was so serious to justify summary dismissal. The claim for wrongful dismissal is well founded.

Breach of ACAS Code of Practice

56. The tribunal found that the respondent had breached the ACAS code of practice on disciplinary procedures. The respondent had:
- a) failed to notify the claimant in writing the allegations she was facing, the seriousness of the allegation and the consequences.
 - b) failed to hold an investigation hearing
 - c) failed to invite her by letter to a disciplinary hearing.
57. The tribunal awarded an uplift on the wrongful dismissal award of 15%.

Holiday pay

58. The holiday year ran from January to December. At the time of her dismissal, the claimant would have accrued 15 days holiday. The claimant was paid for 30 hours of accrued annual leave in her final salary. The claimant confirmed that she had taken two weeks holiday. The respondent accepted the calculation that she was owed 5 days pay in lieu of accrued but untaken leave.

Approved by:
Employment Judge Bann
Dated: 27 August 2025