



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Ahmed Sharif

**Respondent:** London Borough of Islington

**Heard at:** London Central (by CVP) **On:** 29 and 30 September 2025

**Before:** Employment Judge Kilgannon

## **Representation**

Claimant: In person

Respondent: Mr Lester, Counsel

# JUDGMENT

1. The Claimant's claim for unfair dismissal is not well founded and is dismissed.

## **REASONS**

These reasons are produced at the request of the Respondent, following oral reasons having been provided at the hearing.

### **Introduction**

1. The Respondent is a local authority.
2. The Claimant was employed by the Respondent as a cleaning operative from 24 June 2019 to 23 April 2024. He was summarily dismissed for gross misconduct.
3. The Claimant claims that his summary dismissal on 23 April 2024 was unfair because:
  - a. he was dismissed for something unrelated to his performance as a cleaning operative, and
  - b. the Respondent failed to deal with the concerns relating to the Claimant's housing application informally (for example, by a conversation between the Claimant and his line manager) before inviting the Claimant to a disciplinary meeting.

4. The Respondent contests the claim. The Respondent asserts that the Claimant was dismissed for gross misconduct because he had made false statements in a housing application and had failed to notify the Respondent that he had been interviewed under caution in relation to the housing application.

### **The Hearing**

5. The hearing took place on 29 and 30 September 2025.
6. The hearing was scheduled to take place via videolink (CVP), starting at 10am on 29 September 2025. Following the late arrival of the Claimant at 11am and technical difficulties with the Claimant's video and audio connection, the Tribunal made enquiries as to whether it might be possible to convert the hearing format to hybrid, so that the Claimant could participate face to face at the hearing centre.
7. The Respondent made an application for the claim to be struck-out on the basis that the Claimant had failed, without good reason, to comply with the order of the Tribunal to attend the CVP hearing starting at 10am, had conducted the proceedings unreasonably and had failed to actively pursue his claim. The Tribunal acknowledged the practical difficulties caused by the Claimant's late arrival, and that it appeared to have been without good reason. However, with regard to the overriding objective, and with particular regard to fairness and the fact that the Claimant was not legally represented and had technology difficulties, the Tribunal decided that it was in the interests of justice to dismiss the application for strike-out and to proceed with the hearing.
8. The hearing started at 1:30pm on 29 September 2025 using a hybrid format, with EJ Kilgannon, the Claimant and Mr Lester for the Respondent all present at the hearing centre, and with witnesses and observers joining via videolink (CVP).
9. The Respondent had provided two witness statements – from Ms Rachel Farrugia (Ms Farrugia), Cleaning Operations Manager, and Mr John Reynolds (Mr Reynolds), Assistant Director Corporate Facilities. I read the witness statements in advance of the hearing. Ms Farrugia had been available to give oral evidence to the Tribunal on the morning of 29 September 2025, but due to ill-health was unable to attend in the afternoon. That meant that when the Tribunal came to hear the Respondent's evidence, she was unavailable. The Claimant made no objection to the Tribunal accepting in evidence Ms Farrugia's witness statement, and according it what weight the Tribunal considered appropriate, keeping in mind that the evidence would not be tested under cross-examination. Mr Reynolds gave oral evidence to the Tribunal and was asked questions by the Claimant.
10. The Claimant had provided a witness statement and I read it in advance of the hearing. The Claimant also gave oral evidence to the Tribunal and was asked questions by Mr Lester on behalf of the Respondent.
11. The Respondent produced an agreed hearing bundle of 352 pages.

12. The second day of the hearing, 30 September 2025, also started slightly late. The Claimant had sent an email saying that he would not be coming to the hearing due to feeling unwell. However, at about 10:20am, he attempted to join the videolink (CVP) but with a very poor connection. With the help of the Tribunal staff, the Claimant joined the CVP link by telephone, so with audio only. I heard detailed oral submissions from both parties.
13. The hearing resumed for judgment in the afternoon of 30 September 2025 by videolink (CVP) only.

## **The Issues**

14. The Claimant's ET1 claim form had included claims of unfair dismissal and whistleblowing (protected disclosure). However, the whistleblowing claim had been struck-out by EJ Heydon at a case management hearing on 7 February 2025. At that case management hearing, the parties had agreed the following list of issues for this final hearing:

### ***"1. Unfair dismissal***

- 1.1 What was the reason or principal reason for dismissal? The respondent says the reason was misconduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.*
- 1.2 If the reason was misconduct, did the respondent act 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? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:*
  - 1.2.1 there were reasonable grounds for that belief;*
  - 1.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;*
  - 1.2.3 the respondent otherwise acted in a procedurally fair manner;*
  - 1.2.4 dismissal was within the range of reasonable responses*

### **2 Remedy for unfair dismissal**

- 2.1 Does the claimant wish to be reinstated to their previous employment?*
- 2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?*
- 2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.*

*2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.*

*2.5 What should the terms of the re-engagement order be?*

*2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:*

*2.6.1 What financial losses has the dismissal caused the claimant?*

*2.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?*

*2.6.3 If not, for what period of loss should the claimant be compensated?*

*2.6.4 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?*

*2.6.5 If so, should the claimant's compensation be reduced? By how much?*

*2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*

*2.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?*

*2.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?*

*2.6.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?*

*2.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?*

*2.6.11 Does the statutory cap of fifty-two weeks' pay or [£105,707] apply?*

*2.7 What basic award is payable to the claimant, if any?*

*2.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?"*

## **Findings of Fact**

15. I limit my findings to those factual matters which I consider to be of relevance to the issues in this case.

16. Mr Reynolds provided a witness statement and gave oral evidence. He provided straightforward and clear answers to the questions that were asked. I was given no reason to doubt his intention to answer questions truthfully, to the best of his knowledge and recollection. I also noted that his answers were consistent with the contemporaneous documentary evidence contained within the bundle. I therefore accorded his evidence substantial weight.

17. Ms Farrugia was not available for cross-examination so I afforded her written evidence (her witness statement) less weight because it had not been tested in that way.

18. The Claimant provided a witness statement and gave oral evidence. His oral evidence was at times difficult to follow, in that he did not always give direct answers to the questions asked. However, I have taken account of

the fact that English may not be his first language, that he told me that he was feeling very nervous about the hearing, and that he did not have the benefit of a legal representative. Weighing up those matters, and on that basis, I consider that the Claimant did his best to answer the questions truthfully, and to the best of his knowledge and recollection. I therefore accorded his evidence substantial weight, but where there were conflicts between his recollection and the contemporaneous documentary evidence, I have preferred the latter. That is because those documents were created at the relevant times, from independent sources and so are inherently more reliable than the Claimant's own recollection, the quality of which may be understandably diminished by the passage of time.

Relevant policies of the Respondent

19. I was provided with a copy of the Respondent's Code of Conduct, which provides the following at paragraphs 4.2 and 4.4:

*4.2 "As public servants, Council employees have a particular responsibility to look after public resources and property and their conduct inside and outside work must never undermine the trust and confidence the public and the Council need to have in them to carry out their work properly and conscientiously"*

*4.4 "At all times employee are required to:*

- Give their highest possible standard of service to the public and make service delivery their main priority*
- Do nothing inside or outside their working hours which could undermine public confidence in them as Council employees and/or in the Council*
- Work in the best interests of the Council, and the community it serves.*
- Do nothing which results in the Council (or any other public authority) being denied revenue to which it is entitled".*

20. The Respondent asserted that the Claimant would have been provided with a copy of the Code of Conduct when he started working for the Respondent and also on 2 November 2022. Furthermore, the Respondent asserted that the Claimant would have had access to the policy throughout his employment with the Respondent via the Respondent's intranet. The Claimant stated that he had never seen the Code of Conduct, had never been provided with a copy and never had access to the Respondent's intranet. The Claimant submitted that he had been given details of his employment contract when he joined the Respondent – for example, hours of work, annual leave, etc, - but he did not think that he had been given a copy of the Code of Conduct. On the balance of probabilities, I found it more likely than not that the Claimant would have been sent a copy or a link to a copy of the Code of Conduct when he started working for the Respondent. I accepted the evidence of Ms Farrugia and Mr Reynolds and the submission that this was the usual practice for new employees of the Respondent.

21. I was provided with a copy of the Respondent's Disciplinary Procedure and noted that it included arrangements for formal hearings and an appeal

procedure. I noted that Appendix 4 provided examples of misconduct and gross misconduct as follows:

*“Misconduct*

*It is impossible to list every type of act which would result in disciplinary action for misconduct. The examples of misconduct below are given so that employees have a general understanding of the type of act that would result in such action:*

- a) Failure or refusal to follow/comply with reasonable management instruction(s) including failure to wear personal protective clothing / equipment (PPE).*
- b) Continued unauthorised absence, failure to follow attendance and time keeping requirements.*
- c) Continued failure to follow organisation procedures.*
- d) Wilful or negligent failure to sustain satisfactory standards of work.*
- e) Breach of the Employee Code of Conduct.*
- f) Breach of Health and Safety.*
- g) At work using a mobile phone whilst driving or failure to wear a seat belt as required by legislation.”*

*“Gross Misconduct*

*Gross misconduct is misconduct which is serious enough to destroy the contract between Islington Council and the employee, and to make any further relationship of trust and confidence impossible in relation to their continued presence at work. It is impossible to list every type of act which would result in disciplinary action for gross misconduct. The examples of gross misconduct below are given so that employees have a general understanding of the type of act that would result in such action:*

- a) Intentional direct and indirect discrimination (including harassment) and intentional victimisation against any Islington Council member of staff, stakeholders/clients or members of the public on the grounds of race, sex, sexual orientation, disability, age, gender reassignment, marriage and civil partnership, pregnancy and maternity or religious belief;*
- b) Theft, unauthorised possession or removal of property belonging to Islington Council, any member of staff, stakeholders/clients or members of the public;*
- c) Serious failure to comply with the Code of Conduct;*
- d) Dishonest conduct;*
- e) Inappropriate sexual conduct;*
- f) Physical assault, fighting and threats of violence;*

- g) Falsification of information, timesheets, subsistence and expenses claims etc. or inappropriate use of council's season ticket loan or other loan schemes;*
- h) Malicious or reckless damage to Islington Council property;*
- i) Corruption;*
- j) Serious incapability for work due to being under the influence of alcohol or drugs;*
- k) Evasion of payments due to Islington Council or its service partners (including non-disclosure or those who fail to make payment within an agreed reasonable timeframe);*
- l) Fraudulent claims for benefits, including housing benefit, Council Tax and income support;*
- m) Cumulative or persistent acts of misconduct;*
- n) Gross negligence;*
- o) Gross incompetence;*
- p) Unauthorised access to/disclosure of confidential information;*
- q) Being an accessory to an act of gross misconduct;*
- r) Knowingly providing false evidence in relation to a disciplinary matter;*
- s) Unauthorised employment during working hours, sick leave and special leave;*
- t) Bringing Islington Council into disrepute (lack or decline of good reputation);*
- u) Undermining trust and confidence;*
- v) Conduct which jeopardises health and safety;*
- w) Serious failure to comply with Islington Council's Dignity for All policy;*
- x) Abuse or unauthorised use of Islington Council property or facilities i.e. office equipment (internet, email, mobile phone, credit/purchase card), tools;*
- y) Serious criminal convictions;*
- z) Breach of the council's Data Protection policies;*
- aa) Improper use of an employee's position for his/her or another's private advantage, or an attempt to do so;*
- bb) Improper use of e-mails, internet and social media.*
- cc) Driving at work whilst under the influence of drink/drugs.*

dd) *Fraudulently / deliberately outstaying your visa restrictions.*

ee) *Failure to comply with the drug and alcohol testing policy.*

ff) *Victimisation of whistleblowers.”*

22. I was provided with a copy of the Respondent's 'Housing Policy – Succession of tenancy' which lists “*Eligible relatives – the following relatives may be eligible to be assigned the tenancy: Parent; Grandparent; Child; Grandchild; Sibling; Uncle or Aunt; Nephew or Niece; A half brother or sister*”. The policy states that such relatives may be allowed to succeed to the tenancy “*if they have been living in the property for 12 months before the death of the tenant and the property is suitable for their housing needs [...]*”. I was also provided with a copy of the relevant Procedural Policy which set out the steps to be followed by the Respondent's housing team when considering applications under the Succession of tenancy policy.

The Claimant's Housing Application (To join a household)

23. On 12 December 2022, the Claimant made an application to join the household of his relative, Mr Sharif Mohamed Abbas (Mr Abbas). In the part of the form asking “*Relationship to tenant*”, the Claimant had written “*Relative*”. In the part of the form asking “*How long have you been living at the above address?*” the Claimant had written “*Since 2011*”.
24. On 15 December 2022 the Respondent's Housing team made a telephone call to Mr Abbas informing him that the Claimant's application to join his household was refused because the property only has one bedroom. During that telephone call Mr Abbas stated that his son had moved out and now has his own property. There is no record in the relevant telephone file note of Mr Abbas mentioning anything about the Claimant living at the property.

The Claimant's Housing Application (Tenancy succession)

25. Following the death of his relative, Mr Abbas, on 8 March 2023 the Claimant made an application to take over the tenancy of Mr Abbas.
26. In order to succeed to (take over) the tenancy, the Claimant needed to prove that:
- a. he was Ms Abbas' spouse, civil partner, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece; and
  - b. he had occupied the property as his only or principal home at the time of Mr Abbas' death, and that he had resided with Mr Abbas throughout the 12-month period preceding Mr Abbas' death (approx.. February 2022 to February 2023).
27. With the application form, the Claimant provided an affidavit stating:
- “[...] I am the nephew of Sharif Mohamed Abbas who passed away [...] I confirm that [...] he was my uncle. I confirm that I was living with my uncle Sharif Mohamed Abbas since 2011. I would further like to affirm that I was living with my uncle before he passed away”.*



Investigation by the Respondent's Housing Team

28. The Respondent's housing team had some concerns about the Claimant's application to take over Mr Abbas' tenancy and so opened an investigation, led by Ms Jessica Thistle (Ms Thistle), Housing Investigation Officer.
29. On 24 October 2023 the Claimant was interviewed under caution by the Respondent's Housing team in relation to his housing application. I was provided with a copy of a transcript of the interview. The Claimant accepts that he was informed at the interview that he could ask for the interview to be stopped to enable him to obtain independent legal advice if he wanted to.
30. The transcript shows that when asked why he had stated in his housing application form that Mr Abbas was his "uncle", the Claimant stated that it was *"Because he's my, er, the both side, my mum and dad, they are cousin"* and confirmed that Mr Abbas was not a sibling of either his mother or father. The point was explored further and the Claimant confirmed that Mr Abbas was the first cousin of his mother and his father.
31. At the hearing, the Claimant stated that as a result of being very nervous at the interview, he became confused, had difficulty answering the many questions and did not realise what he was saying. I accept that the Claimant may have been nervous at the interview. However, I do not accept that he had any difficulty answering the questions. It is clear from the transcript that the Claimant understood what he was being asked and was able to give a very detailed explanation of how he was related to Mr Abbas, that is that he was the son of first cousins of Mr Abbas.
32. At the hearing, the Claimant also stated that, in his religion, it is appropriate to call such a relative "uncle". I accept that in many cultures the terms "aunty" and "uncle" are used as a term of respect for relatives and even beyond family members, and that the use of those terms is not limited to the siblings of one's parents. I also accept that the Claimant may have referred to Mr Abbas as his "uncle" in that context. However, those matters are irrelevant to the question of what was the Claimant's actual familial relationship with Mr Abbas – that was the question that was put to him at the housing interview and he explained clearly that Mr Abbas was the cousin of his father and his mother.
33. At the interview under caution the Claimant was also asked about his claim to have lived with Mr Abbas at his property since 2011. He confirmed in clear terms, that he had lived there for 12 years, since 2011. Ms Farrugia stated in her witness statement that the Respondent's housing investigation had concerns about apparent discrepancies between the Claimant's answers to questions about whether and, if so, from when he had lived with Mr Abbas. I note that these were detailed by Ms Thistle in her 'Investigation Summary' document. In summary, Ms Thistle noted that:
  - a. in a housing application submitted by the Claimant in 2011, he had stated that he had lived at Mr Abbas' property since 2008;
  - b. a 'Housing Needs' visit was carried out in July 2012 and Mr Abbas was found to be at home alone and the visitor considered it unlikely that the Claimant was living at the property;

- c. an occupancy check undertaken in May 2012 recorded Mr Abbas as the sole occupant;
  - d. a credit check carried out in May 2023 found that the Claimant had a link to another property address;
  - e. Social Services had involvement with Mr Abbas for several years before his death and on their records he is recorded as living alone throughout, apart from a short period when his son was living with him;
  - f. Social Services care assessments of Mr Abbas were carried out in 2020 and 2021 and the Claimant is not mentioned;
  - g. Social Services record the Claimant as visiting Mr Abbas to care for him in a few months before he died, but not living with him;
  - h. Benefits and Council Tax records recorded Mr Abbas as living alone. In 2016 Mr Abbas wrote to the council to state that the Claimant did not live at the property and just came to collect his post; and
  - i. in September 2023 a neighbour of Mr Abbas stated that, to their knowledge, no one had been living with Mr Abbas before he died.
34. On 20 November 2023 the Respondent's housing team wrote to the Claimant refusing his application to take over the tenancy of Mr Abbas, stating that this was because Mr Abbas was the Claimant's cousin and not his uncle, and because the Claimant had not lived at the property with Mr Abbas throughout the 12-month period prior to Mr Abbas' death.
35. On 27 November 2023 the Claimant wrote to the Respondent setting out his disagreement with the Respondent's decision to refuse his housing succession application. He stated, amongst other things, that *"[Mr Abbas] was my uncle and last two years, before, he passed away I was living with him and also looking after him"*.
36. The Claimant's letter was treated as a request for a review of the refusal decision, but the decision was upheld by Ms Stephanie Toghill, Housing Investigations Manager, and conveyed to the Claimant by way of a decision letter dated 15 January 2024.

The Respondent's disciplinary process

37. The Respondent held an investigation meeting on 23 February 2024. The note of the hearing makes clear that the Claimant attended and was accompanied by his trade union representative, and that the allegations against him were read out at the outset. In outline, the allegations were twofold – providing false or insufficient information in his housing succession application, and failing to inform his line manager that he had been interviewed under caution by the housing team.
38. The notes of the meeting show that the Claimant had an opportunity to ask questions of the Respondent's witnesses. Although the Claimant' stated that his union representative did not say anything on the Claimant's behalf,

that is not borne out in the notes, which record the union representative making a number of points throughout the meeting.

39. The notes show that the Claimant stated on a number of occasions at the meeting that he had been living with Mr Abbas at his property since 2008.
40. A further investigation meeting was held on 26 February 2024 that did not include the Claimant's attendance. In attendance were Ms Farrugia, Ms Thistle, a representative from the Human Resources team and a note taker. The conclusion was recorded as "*there had been: False information that had been living in the flat; Insufficient evidence regarding the relationship; Had not informed his line manager – says did not know*".
41. The matter was then referred to a disciplinary hearing. By a letter dated 29 February 2024 the Claimant was informed of the referral. The allegations against him were set out.
42. On 2 April 2024 Ms Farrugia prepared a 'Disciplinary Investigation Management Report'. The report provides her analysis of the investigation to that point and concluded "*After carefully reviewing and evaluating all the evidence, I believe there is a case of gross misconduct to answer [...] I believe that [the Claimant] undermined the trust and confidence between himself and the Council. He has given false and conflicting information throughout the investigation with the Housing team during their investigation and continues to be uncooperative even after exhausting the appeals process to succeed the property. Despite failing in an appeal and being asked to vacate the property, [the Claimant] continues to be uncooperative and is refusing to*". She also references the relevant parts of the Respondent's Disciplinary Procedure.
43. On 4 April 2024 the Respondent wrote to the Claimant inviting him to a disciplinary hearing. The letter set out the two allegations against the Claimant and warned that if proven the matters may amount to a breach of paragraphs 4.2 and 4.4 of the Code of Conduct and amount to gross misconduct.
44. The hearing was held and a note was taken. Mr Reynolds chaired the hearing. The Claimant attended the hearing, accompanied by his trade union representative. Again, I can see from the note that the Claimant's trade union representative was active during the hearing, making comments on the Claimant's behalf. The Claimant was given an opportunity to ask questions of Ms Thistle. The Respondent's concerns were put to the Claimant and he was given an opportunity to respond to them.

#### The dismissal

45. On 22 April 2024 the Respondent wrote to the Claimant with the outcome of its disciplinary investigation. In that letter, the Respondent stated that:  
  
"*After carefully reviewing all the information, I am satisfied that the charge of Gross Misconduct is proven and that you should be summarily dismissed, without notice as of 16 April 2024 [...]*". The letter records Mr Reynolds' understanding of the mitigation and points presented by the Claimant and his trade union representative. The letter then sets out Mr Reynolds' detailed reasons for his decision. In outline, he concluded that the Claimant

had provided false information relating to the relationship and residency rules in his housing succession application, in breach of the Code of Conduct. He also found that the Claimant had failed to inform his line manager that he was being investigated under caution, in breach of the Code of Conduct. He concluded that the Claimant's actions had undermined the relationship of trust and confidence between the Claimant and the Respondent and as such constituted gross misconduct. The Claimant was informed of his right to appeal.

46. I am satisfied that the reasons given in the letter were the reasons for the dismissal, namely that Mr Reynolds considered that the evidence available indicated that the Claimant had given false information in his housing application and had failed to inform the Respondent (as his employer) that he had been interviewed under caution, and that this conduct amounted to gross misconduct under the Respondent's Disciplinary policy as a breach of the Code of Conduct and the relationship of trust and confidence. There was no evidence before the Tribunal indicating that any other matters were considered or may have factored into Mr Reynolds' thought process. Furthermore, the Claimant did not seek to challenge that those were the reasons for the dismissal. Rather, the Claimant wanted to assert that Mr Reynolds' conclusions were incorrect (because Mr Abbas was, in fact, his "uncle") and overly harsh (because the Claimant had not realised that he was required to tell the Respondent if he was interviewed under caution).
47. On 8 May 2024 the Claimant sent an email to Mr Reynolds indicating that he wished to appeal the decision to dismiss. In response, Ms Kwon of the Respondent asked the Claimant to put his appeal in the required written format. No such appeal was submitted by the Claimant. This is because he wanted to find someone to help him write the appeal, but did not manage to find such help before the relevant deadline.

### **The Relevant Law**

48. Section 94 of the Employment Rights Act 1996 gives employees the right not to be unfairly dismissed. Enforcement of the right is by way of a complaint to the Employment Tribunal under section 111. The Claimant must show that they were dismissed by the Respondent, but in this case the Respondent admits that the Claimant was dismissed.
49. Section 98 of the Employment Rights Act 1996 deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the Respondent shows that it had a potentially fair reason for the dismissal, the Tribunal will consider whether the Respondent acted fairly or unfairly in dismissing for that reason.
50. Section 98(4) then deals with fairness generally and provides that the determination of the question of 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 shall be determined in accordance with equity and the substantial merits of the case.

51. In misconduct dismissals, there is well-established guidance on fairness within the decisions in **British Home Stores Ltd v Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such a genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of a reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

### **Discussion and Conclusions**

52. Applying the relevant law to the facts as I have found them, and taking into account the submissions made by both parties, my conclusions in relation to the agreed list of issues are as follows.

#### ***What was the reason or principal reason for dismissal?***

53. The reason for dismissal was misconduct. Mr Reynolds considered the two disciplinary allegations against the Claimant, found them proved on the evidence, and found the conduct serious enough to amount to gross misconduct. He was clear and consistent in his written and oral evidence that it was these matters and no others that led him to decide to summarily dismiss the Claimant.

#### ***Did the respondent genuinely believe the claimant had committed misconduct?***

54. I am satisfied that the Respondent genuinely believed that the Claimant had committed misconduct. The allegations were serious, in particular the allegation of providing false information in a housing application. Mr Reynolds had been presented with multiple pieces of evidence that threw doubt upon the veracity of the Claimant's claims in his housing application. First, he had claimed to be the nephew of Mr Abbas. However, the Claimant had admitted during the interview under caution that Mr Abbas was not his uncle but a more distant relative. Second, there were multiple pieces of evidence indicating that the Claimant had given different and conflicting accounts of the length of time that he claimed to have lived with Mr Abbas. Furthermore, there were multiple pieces of evidence gathered by the Respondent which appeared to indicate that Mr Abbas lived alone during the relevant period. These matters were sufficient to create a valid concern for Mr Reynolds that the Claimant's claim in the housing application that he was Mr Abbas' nephew and had lived with Mr Abbas since 2011 were not true. Mr Reynolds gave clear and unchallenged oral evidence that he had formed a belief at the relevant time that the Claimant had acted in the ways alleged and that the conduct was serious enough to amount to gross misconduct.

55. I note that the Claimant has since changed his position in relation to how he explains his relationship to Mr Abbas. On 7 March 2025 solicitors acting for the Claimant wrote to the Respondent's Housing team stating that, during the interview under caution, the Claimant had felt unwell and nervous and that had affected his ability to properly respond to questions. It was asserted that the true position is that Mr Abbas was the Claimant's father's cousin, but the Claimant's mother's stepbrother, and therefore, could correctly be described as the Claimant's "*uncle*". The Claimant confirmed this position in his oral evidence to the Tribunal. Even if this change of position reflects the true relationship between the Claimant and Mr Abbas, and I am not in a position to say one way or the other whether it is or it is not, it does not affect my assessment of the Respondent's genuine belief that the Claimant had given false information in his housing application. That is because this change of position has come about only recently, almost a year after the Respondent's decision to dismiss. It was not information that the Respondent had available to it to weigh up at the relevant time.
56. I am satisfied that, with the information available to it at the relevant time, the Respondent held a genuine belief that the Claimant had committed gross misconduct.

***Did the respondent act reasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant?***

***At the time the belief was formed, had the respondent had carried out a reasonable investigation?***

***Did the respondent act in a procedurally fair manner?***

57. The Respondent is a local authority so is a relatively large organisation with considerable administrative resources at its disposal. The evidence available to the Tribunal indicates that the Respondent used its resources appropriately and proportionately, carrying out a reasonable and procedurally fair investigation into the serious allegations that were facing the Claimant. The matters were considered in detail by Ms Thistle, who gathered information and spoke to a number of colleagues. The Claimant was also interviewed under caution. The Claimant was then invited to a disciplinary hearing led by Mr Reynolds, at which the allegations against him were made clear and he was given a full opportunity to respond. Furthermore, he was able to be accompanied to the hearing by his trade union representative who spoke on his behalf. A detailed note was taken of the disciplinary hearing and shared with the Claimant. An outcome letter was sent to the Claimant, setting out the Respondent's findings and reasons clearly and informing the Claimant of his right to appeal. Although the Claimant chose not to appeal, it is clear from the documentary evidence that he had been given an opportunity to do so, with the procedure and deadline for doing so clearly explained to him in writing.
58. The Claimant did not seek, in his witness statement or oral evidence, to challenge the procedure followed by the Respondent in investigating the matters or in following its own Disciplinary Procedure. Neither did the Claimant seek to challenge the fairness or reasonableness of those procedures. I was not shown any evidence that might have indicated that

the Respondent had failed to follow the requirements of the ACAS Code of Practice on Discipline and Grievance Procedures. And overall, I formed an impression of a process that was detailed, thorough, impartial and fair to the Claimant.

59. In the context of sufficiency of reasons, I have considered the Claimant's overriding concerns, set out during his oral evidence and closing submissions – that there was no problem with the Claimant's performance in his role as a cleaning operative, and that the Respondent is involving a unrelated housing matter in a decision about his employment.
60. First, I accept the Claimant's assertion that there was no issue with his performance in his role as a cleaning operative. There was no evidence before the Tribunal to suggest that there was and the Respondent did not seek to challenge the Claimant's assertion as to his good record in terms of job performance. However, the Respondent's silence on this matter in its decision to dismiss does not in my view render insufficient the reasons the Respondent relied upon for the decision to dismiss. The Respondent's reasons were unrelated to the Claimant's performance at work and whilst a good performance record might balance in one's favour when a disciplinary matter is being considered by an employer, I accept that it was not unreasonable for the Respondent to give that factor little or no weight given the seriousness of the matter under consideration – potentially fraudulent mis-statements on a housing application.
61. Second, I do not accept the Claimant's submission that the Claimant's conduct in relation to the housing application was so separate from his employment as a cleaning operative as to be inappropriate for the Respondent to consider in relation to his employment relationship with the Respondent. The Respondent's Code of Conduct made it clear that Council employees were required to uphold high standards of conduct both within and outside of work. Therefore it was entirely appropriate and reasonable for the Respondent to investigate concerns relating to an alleged failure of the Claimant to uphold those high standards in the context of the housing application, and to use the information gathered in that investigation to make a decision about whether the Claimant's conduct had undermined the employment relationship trust and confidence between the Claimant and the Respondent.
62. I therefore find that the Respondent acted in a procedurally fair manner, had carried out a reasonable investigation at the time when it formed the belief that the Claimant had committed gross misconduct, and that in all the circumstances the Respondent acted reasonably in treating that belief as a sufficient reason to dismiss the Claimant.

***Were there reasonable grounds for that belief?***

***Was dismissal within the range of reasonable responses?***

63. Taking all of the circumstances into account, I am satisfied that the Respondent had reasonable grounds for the belief that the Claimant had committed gross misconduct. The Respondent had evidence sufficient to indicate that the Claimant had provided false and conflicting information in a housing application and had failed to inform his employer that he had been

interviewed under caution when required to do so. The Respondent had conducted a reasonable investigation, gathering relevant information, talking to relevant people and giving the Claimant an opportunity to respond. At that time, it is clear that Mr Reynolds, on behalf of the Respondent, held a genuine belief that the allegations against the Claimant had been proven and the conduct amounted to gross misconduct. Mr Reynold's oral evidence to the Tribunal demonstrated that he had considered the Respondent's Disciplinary Policy, potentially mitigating features present (such as that the Claimant's first language was not English and that that might have affected his understanding) and whether any sanction other than dismissal might be appropriate, but had concluded – by reference to the examples given in the policy - that it would not be. That was a reasonable position in the circumstances, and certainly within the range of reasonable responses, because the nature and severity of the list of examples given under 'gross misconduct' were similar in seriousness to the matters that had been found against the Claimant, whereas those listed under 'misconduct' were at a lower level of seriousness.

64. I therefore conclude that the Claimant was not unfairly dismissed.
65. The Claimant's claim of unfair dismissal is not well-founded and fails.

Approved by:

Employment Judge Kilgannon

30 September 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

28 October 2025

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FOR THE TRIBUNAL OFFICE