



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Griffith

**Respondent:** Simply Care UK Limited

**Heard at:** Watford Tribunal

**On:** 28,29, 30 October 2025

**Before:** Employment Judge Cowen

Mrs C Grant

Mrs P Barratt

## Representation

**Claimant:** Mr Lixandru (counsel)

**Respondent:** Mr Joshi (counsel)

# JUDGMENT

1. The Claimant's claim for unfair dismissal succeeds and a remedy hearing will take place on 27 January 2026
2. The Claimant's claims for discrimination on the grounds of age, race and disability are dismissed.

# WRITTEN REASONS

## Introduction

1. The parties provided an agreed bundle of documents and two witness statements from the Claimant and one from each of Mrs Beletsioti and Mrs Meghani on behalf of the Respondent. The Claimant also provided a bundle of documents which she considered relevant (only two pages were referred to during the hearing).
2. The List of Issues which was set out in the Case Management Order of 7 July 2025 was followed by the parties and the panel.
3. The first morning was used to complete the Tribunal's reading. Unfortunately Mr Lixandru was not available to attend on the afternoon of the first day and an application to postpone the afternoon session was accepted on the grounds that it would not be in the interests of justice to allow the hearing to proceed without the presence of the Claimant's counsel. No specific reason was given for his absence, other than the fact that the Claimant had been informed of this in advance of the hearing and

had agreed to it.

4. The parties were provided with an oral judgment on the final day of the hearing. At that time, orders for the preparation of a remedy hearing were also given. Written reasons were requested and are set out below.

### **Facts**

5. The Claimant worked as a registered nurse in Respondent's care home which had 12 beds for elderly, dementia and learning disability service users.
6. She initially worked as a bank nurse, working extra hours with the Respondent, on top of her other full time job. This was on an ad hoc basis to begin with and became a regular shift.
7. At the time of her interview and appointment in 2018, the Respondent was aware that the Claimant was a type 2 diabetic and that she was insulin dependent. This was declared on her medical forms and the nurse manager of the Respondent would have understood what this meant.
8. On 15 September 2021 the Claimant signed an employment contract with the Respondent. The contract did not indicate any regular hours, or even the number of hours each week. This was by arrangement – similar to a zero hours contract. Both sides being able to offer and to accept or reject the work.
9. The Claimant was a good worker, a skillful nurse and a reliable employee for the Respondent. The Respondent never had any concerns about her nursing practice and were pleased to have her within their team.
10. The Respondent was a supportive employer, who was aware of the fact that the Claimant had diabetes and was attuned to the fact that the Claimant said she could not work nights all the time due to her diabetes.
11. Around November 2022 the Claimant returned to work after she collapsed at her other place of work, and asked for extra shifts with Respondent. Thereafter the Claimant regularly worked one long day and then other shifts during the week, including occasional nights.
12. The Respondent also supported the Claimant in early 2023 when she needed to travel to Trinidad to look after her mother and allowed her to take 2 weeks off. The Claimant was due to return to work on 15 March 2023.
13. On 18 March 2023 the Claimant wrote an email to Mrs Beletsioti, the home manager, outlining the fact that she had left the UK once again, due to a domestic issue in the UK. She said in the email that she was going to take some time away and that she would return to work in '2 months or so'.
14. Mrs Meghani, Operations Director, replied to the email saying it had been forwarded to her. The reply indicated that this was not ideal for the organisation as the Claimant had already been allocated shifts. It said that due to the uncertainty of the Claimant's return date, the organisation would need to recruit another Staff nurse to support the rota. Mrs Meghani told the

Claimant that she “ welcome you keeping us updated” and to “contact Evi when ready to return back to work and Evi will gladly update you where the home is in regards to any nurse shifts available”.

15. The Claimant replied to say that she knew the importance of keeping the home well staffed and that any nurse joining the company would be well supported.
16. On 26 April 2023, Mrs Meghani sent a WhatsApp message to the Claimant's UK mobile phone, asking for an update on her wellbeing. That message did not reach the Claimant, as she was in Trinidad, using a different mobile phone number. She therefore did not reply.
17. The Claimant then did not contact the Respondent until sometime around 4 May 2023, when it seems she made a telephone call to the home for 6 minutes. Whilst the Tribunal accepted the Claimant's evidence that a call was made, we did not accept that the Claimant spoke to Mrs Meghani, nor Mrs Beletsioti during that call. We do not accept that a further date for return was discussed, nor that the Claimant provided any information updating management about her situation.
18. The Respondent had been using agency nurses to cover shifts, but wanted to avoid this in order to maintain continuity for their service users. The Respondent therefore took steps to recruit another nurse in May 2023. They did so on the same basis that the Claimant had worked, with no guarantee of work. Hence, if the Claimant were to return, they would still be able to offer her work too.
19. Mavis, a black African nurse was recruited to work some shifts in the home. She preferred to work nights and therefore the rota was amended to ensure that the existing staff covered the Claimant's day shifts.
20. Mrs Megahni tried to contact the Claimant again on 12 June 2023, saying she hoped things in her personal life had settled and asking her for an update on her plans about working shifts at the home and when this might happen. She indicated that the Claimant's last communication with Ms Beletsioti, she had said that she might start shifts in June and that they had no further update.
21. Once again, the Claimant did not reply to this as it was sent to her UK phone number.
22. Mrs Meghani therefore had no idea if, or when, the Claimant would return to work at the home.
23. There came a point where the Respondent created the vacancy for Mavis by the dismissal of the Claimant, this was the timing of the dismissal.
24. In October 2023, Mrs Meghani and Mrs Beletsioti took the decision to terminate the Claimant's contract. They had had no contact with her since March 2023 and no indication of when she might return to work and Mavis was asking to be made a permanent member of staff.
25. They did not attempt to hold any meeting to discuss the Claimant's return

to work. A letter was sent to the Claimant's home address, by post only, indicating that her employment was being terminated and her P45 would be sent at the end of October.

26. Mrs Meghani told the Tribunal that the dismissal letter of 3 October was the start of the process and that she expected the Claimant to respond to it, if she wanted to continue to work there.
27. Mrs Meghani told the Tribunal that she considered the Claimant's actions to be Gross Misconduct in accordance with the employee handbook as the Claimant had failed to follow a reasonable management instruction of keeping them updated. The letter referred to the reason for dismissal as the Claimant's failure to keep the employer informed of her situation.
28. The Claimant did not respond to this letter until she called the home sometime shortly before 21 November 2023. At that point she told Mrs Beletsioti that she was back in the UK and wanted to come to the home to collect documents to allow her to complete her nursing revalidation. Mrs Beletsioti told her she could attend any time that Mrs Beletsioti was at work.
29. The Claimant therefore went to the home on 21 November. This was an informal meeting at which the Claimant asked for documents which she thought were held by the Respondent. She was told by Mrs Beletsioti and Kastur, the office administrator, that as she had been removed from the training system and they could not access her documents, but that in any event those documents had expired. She was offered copies of other documents such as appraisals, which the Respondent held.
30. At that meeting, the Claimant did not request to return to work and did not ask for shifts to be allocated to her. Mrs Beletsioti did tell the Claimant that if she were able to complete her revalidation, there may be shifts available for her in January. The Claimant did not respond to this.
31. The Claimant wrote a grievance on 24 December 2023. It was not clear if this was ever sent to the Respondent, but if it was, it was not seen by the Respondent and the Claimant did not mention it further. The Claimant sent a further document on 15 January 2024 outlining her complaints. This resulted in a grievance meeting being held on 19 February 2024, with Mrs Meghani, at which the Claimant was represented by an RCN officer. The Claimant herself was unable to connect to the video conference and told them to go ahead without her. The grievance raised, amongst other things, her shock that she was told that she had been dismissed and her belief that policies had been breached in the process of her dismissal.
32. The outcome of that meeting was a letter on 22 February 2024, which dismissed the Claimant's grievance. Mrs Meghani made the decision that the dismissal had been appropriate and that they had attempted to contact the Claimant without success..

### **The Law**

#### **33. Unfair Dismissal**

The Tribunal has to have regard to the following provisions of the law:

Section 98(1) Employment Relations Act 1996

*“In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show - a)the reason (or, if more than one, the principal reason) for the dismissal, and (b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2)A reason falls within this subsection if it—  
.....(b)relates to the conduct of the employee,”*

34. Section 98(4) Employment Relations Act 1996

*“Where there employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –  
(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and  
(b) shall be determined in accordance with equity and the substantial merits of the case.”*

35. In relation to a conduct dismissal the Tribunal must consider whether the dismissal was unfair. In doing so they consider the following issues in accordance with s.98 Employment Rights Act 1996 ('ERA') and BHS v Burchell [1978] ICR 303;

- a. What was the principal reason for the dismissal and was it a potentially fair reason in accordance with section 98 of the Employment Rights Act 1996?
- b. Was the dismissal fair in all the circumstances in accordance with equity and the substantial merits of the case (and section 94 of the Employment Rights Act 1996)?
- c. Did the respondent have a genuine belief in the misconduct which was the reason for dismissal?
- d. Did the respondent hold that belief in the claimant’s misconduct on reasonable grounds?
- e. Did the respondent carry out a reasonable investigation in all the circumstances?

36. In considering s.98(4) the ET must be satisfied that the employer has acted reasonably in all the circumstances in treating that reason as sufficient. We note that there is no burden of proof and we must consider all the facts in order to reach our own conclusion as to whether the decision to dismiss lay within the band of reasonable responses

37. The fact that other employers might reasonably have been more lenient is irrelevant (see the decision of the Court of Appeal in British Leyland (UK) Ltd v Swift [1981] IRLR 91

38. It is not necessary to consider whether the appeal was a review or a rehearing as Taylor v OCS Group Limited [2006] IRLR 613, CA indicated that what is important is that the procedure was fair overall. It also sets out that an appeal can correct any defect in the initial investigation or procedure.

39. Disability

Section 6(1) Equality Act 2010 (EqA) states:

*“A person (P) has a disability if—*

*P has a physical or mental impairment, and*

*the impairment has a substantial and long-term adverse effect on*

*P's ability to carry out normal day-to-day activities.”*

Direct discrimination

40. Section 13 of the Equality Act 2010 provides that

*“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”.*

41. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

42. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial *evidence*.

43. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

44. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.

## **Decision**

Unfair dismissal

45. The Respondent's letter of dismissal names two separate reasons for dismissal; Firstly, unauthorised absence and secondly failure to keep employer informed on the situation ie. not following reasonable management request

46. The Respondent asserted that this is a dismissal for 'some other substantial reason'. In fact the letter of dismissal sets out conduct reasons and Mrs Meghani's evidence referenced gross misconduct. Based on the Respondent's own evidence therefore, the Tribunal considered this was a dismissal due to reasons of conduct. On that basis the disciplinary policy

applied and the Claimant should have been the subject of a disciplinary process.

47. The potentially fair reason for dismissal was therefore conduct.
48. The Tribunal were satisfied that the evidence showed that the Claimant had left work without an agreement; telling her employer she would be away for about 2 months.
49. The Respondent told the Claimant that this was acceptable, but to keep them informed. This placed the responsibility on the Claimant to update the Respondent, which the Claimant failed to do.
50. The Tribunal found that the Claimant did not speak to Mrs Meghani nor Mrs Beletsioti on 5 May and did not indicate to the Respondent at any time that she would return in November 2023. Whilst she clearly called the home around that date and spoke to someone, the Tribunal accepted Mrs Beletsioti and Mrs Meghani's evidence that they did not have a conversation with the Claimant. The Tribunal accepted that the further communication from the Respondent was consistent with them not having heard from the Claimant in May and therefore accepted the Respondent's position.
51. The Tribunal also found that the Respondent did attempt to contact the Claimant in April and in June 2023, although the Tribunal were not satisfied that these messages were seen by the Claimant.
52. The evidence before the Respondent at the time of their decision to dismiss was that the Claimant had failed to keep them informed and failed to respond to the Respondent's attempts to contact the Claimant.
53. Mrs Meghani was aware that the Claimant had not been in touch since March with her or Mrs Beletsioti. She considered that this meant that the Claimant's absence was unauthorised as it had gone beyond the 2 or so months which the Claimant had indicated. In short the Claimant was not there and had not been in touch to authorise her absence.
54. The Tribunal were satisfied based on the evidence, that Mrs Meghani had a genuine belief that the Claimant was on an unauthorised absence and that she had failed to keep in touch with them. She had reasonable grounds for her belief, as she had tried herself to communicate with the Claimant and had been involved in the initial communication with her.
55. The Tribunal then considered whether there had been a reasonable investigation and procedure;
56. The Tribunal noted that the Respondent made no attempt to contact the Claimant, to invite her to an investigatory or disciplinary meeting prior to a decision being made to dismiss.
57. The Claimant therefore was not aware that the Respondent was considering dismissal, nor did she have the opportunity to respond to it before the decision was taken. The Tribunal were satisfied that was a breach of the ACAS code of disciplinary procedure.

58. The Tribunal also did not consider that the Respondent gave the Claimant any opportunity to appeal. The Tribunal considered that the Respondent's submission that the letter was the start of the process and that it considered the Claimant's grievance to be an appeal, was not in accordance with the ACAS code of practice and therefore not appropriate. The Tribunal noted that the Respondent admitted by way of Mrs Meghanis's evidence, that it did not follow this process
59. The Tribunal concluded that the lack of process would make this dismissal initially unfair.
60. The Tribunal considered whether the grievance process acted as an effective appeal of the decision to dismiss and corrected the procedural errors. The Tribunal were not satisfied that this was the case, as this decision was taken by Mrs Meghani who was part of the dismissal decision and issued the dismissal letter. The Tribunal considered that it was not appropriate for her to consider an appeal of her own decision.
61. Furthermore, we noted that the Claimant was not present (her choice) and did not have the opportunity to discuss her communication or lack of it during the hearing.
62. The Tribunal considered whether it would have been utterly useless or futile to have carried out a proper process with the Claimant.
63. The Tribunal considered that the Respondent, as the employer of around 21 people ought to have followed the ACAS code and ought to have given the Claimant an opportunity to respond before the decision to dismiss. The Tribunal felt that it could not say that it would have utterly useless or futile to have given the Claimant that opportunity.
64. The Tribunal therefore will consider on a future date, the issue of Polkey and the extent, if any, of the Claimant's contributory behaviour.

#### Discrimination Claims

65. There are two alleged acts of direct discrimination; Direct discrimination occurs where under s.13 A Equality Act 2010 treats B less favourably than he did or would treat another person who does not have the Protected Characteristic which B has.
66. In this case, the Claimant said she was a person of 57 years at the time, she was black Caribbean and was disabled with diabetes.
67. The Tribunal accepted that these were her protected characteristics. The Tribunal also accepted that the Claimant's diabetes amounted to a disability and that the Respondent knew this. The fact that the Claimant indicated that she was insulin dependent and that it would be known to the Respondent as a health care provider, that without her insulin the Claimant would become ill and ultimately incapacitated, was sufficient for the Tribunal to consider that the Respondent had knowledge of a disability.
68. There were 2 acts which the Claimant relied upon as acts of direct discrimination due to any of her Protected characteristics.



### Dismissal

69. The Tribunal noted that the Respondent accepted that the Claimant was dismissed. The Tribunal accepted that the Claimant was age 57 at the time of her dismissal. The Tribunal considered whether the Claimant had provided any evidence from which the Tribunal could infer that age was the reason for the Claimant's dismissal. The Claimant did not put forward any such evidence. In her oral evidence to the Tribunal she did not give any explanation as to why she thought that the Respondent had been motivated by her age, when considering her dismissal.
70. The Tribunal were satisfied that the Respondent's evidence showed no connection to the Claimant's age was made at the time the decision to dismiss was made. The Tribunal were satisfied that the reason for her dismissal was her unauthorised absence and her failure to communicate with her employer. Neither of these has any connection with the Claimant's age.
71. The Tribunal were satisfied that there were no facts from which it could be inferred that age an active reason for the Claimant's dismissal.

### Race

72. The Tribunal accepted that the Claimant was Black Caribbean. We considered whether race was a reason for her dismissal. The Tribunal found no facts from which they could infer that the reason /principal reason for dismissal was due to her being Black Caribbean. As stated, the reason for her dismissal was due to her absence and her failure to communicate, they were not related to race in any way.
73. For the sake of clarity the Tribunal made it clear that this was an allegation of direct discrimination and therefore the Tribunal had to consider whether the Claimant was treated less favourably than a hypothetical comparator who had also taken unauthorised absence and failed to communicate with the Respondent, but whom was not black Caribbean. The Tribunal considered that they would have been treated in the same way and therefore there was no discrimination.

### Disability

74. The Tribunal accepted that the Claimant had type 2 diabetes and that this amounted to a disability. The Tribunal accept that the Respondent knew she was diabetic. However, the Tribunal found no facts from which they could infer that the reason/principal for dismissal was due to her diabetes. The Claimant gave no evidence which connected her dismissal with her disability.
75. Once again, the Tribunal considered a hypothetical comparator – someone without diabetes. They too would have been dismissed for unauthorised absence and failure to communicate.
76. In relation to the allegation that the Claimant was replaced with a younger member of staff, after her dismissal. The Tribunal considered this to be primarily an age discrimination claim. However, as the Claimant had not clarified whether this claim was limited to age, they considered it with

reference to all 3 protected characteristics, in turn;

#### Age

77. The Tribunal did not consider that the reason the Claimant was replaced with a younger member of staff following her dismissal was due to the Claimant's age. The Claimant's evidence to the Tribunal did not indicate that she considered that she had been treated less favourably than anyone else. The Tribunal considered the reason why and concluded that the evidence showed the reason for recruitment of another nurse was to ensure continuity of care and maintain the rota.

78. Once again, for the sake of clarity the Tribunal considered whether a hypothetical comparator, someone who was on unauthorised absence and failed to communicate would have been replaced with a younger member of staff, after they had been dismissed. The Tribunal considered that this was just as likely and therefore the Claimant was not treated less favourably.

#### Disability

79. The Tribunal considered the evidence and concluded that the Claimant was not replaced with a younger person after dismissal, due to the Claimant's disability. The Tribunal saw no evidence to support the assertion that the Claimant's disability had anything to do with the choice of who replaced her. This allegation was not supported and dismissed.

#### Race

80. Finally the Tribunal considered whether the Claimant was replaced with someone younger because the Claimant was black Caribbean. There was no evidence to suggest that the reason for hiring a younger replacement person was due to the Claimant's race or ethnicity. The Tribunal could see no evidence from which they could infer that the decision was related to her race.

81. A hypothetical comparator (white person) who was dismissed for unauthorised absence and failure to communicate with her employer, would also have been replaced with a younger member of staff. Therefore the Claimant was not treated less favourably.

Approved by:

**Employment Judge Cowen**

**25 November 2025**

JUDGMENT SENT TO THE PARTIES  
ON 26 November 2025

FOR THE TRIBUNAL OFFICE

#### Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)