EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No. 4101045/2025

Final Hearing held in Aberdeen remotely on 16 September and 5 November 2025

Employment Judge A Kemp

Ms E Guthrie	**Claimant** **Represented by** **Mr B McKinlay** **Solicitor**
Deeside Cuisine Ltd	**Respondent** **Represented by** **Ms A Acheampong** **Litigation Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. **The claim under section 13 of the Equality Act 2010 does not succeed,**

2. **the claim of breach of contract has been withdrawn and**

3. **the Claim is accordingly dismissed.**

REASONS

Introduction

1. This was a Final Hearing on the claims made by the claimant. She was represented by Mr McKinlay. The respondent was represented by Ms Acheampong.

2. There had been a Preliminary Hearing on 18 July 2025. That noted that there was one claim made being of direct age discrimination under section

13 of the Equality Act 2010. The claimant had pursued other claims earlier, and that for a protected disclosure had earlier been dismissed. The claim of breach of contract was withdrawn after it was confirmed that the claimant had been paid sums due to her for notice pay and holiday pay. That claim had not formally been dismissed, and is so above.

3. The respondent admitted dismissing the claimant, but denied that age was a significant factor in that.

4. The case had been set down for one day, but the evidence was not concluded within that time, with the claimant calling one other witness in addition to herself, and the respondent calling three witnesses. A further day of evidence and for submissions was therefore convened.

Issues

5. The issues before the Tribunal are:

   (i) Did the respondent directly discriminate against the claimant under section 13 of the Equality Act 2010 ("the Act") on the grounds of her age by (a) not providing her with a statement of particulars of employment or (b) dismissing her?

   (ii) If so to what remedy is the claimant entitled, including
   (a) what sum for injury to feelings is appropriate and
   (b) what were the claimant's losses?

Evidence

6. The respondent had prepared a Bundle of Documents in accordance with the order at the Preliminary Hearing. Evidence was given by the claimant. She called her mother as her only other witness. Evidence for the respondent was given by Ms Joy Buchan and Mr Graham Buchan, both directors of the respondent. There had been an initial calling of Ms Tara Grozier but she withdrew when not feeling able to give evidence. She did so however on the second day of the hearing.

Facts

7. The Tribunal considered all the evidence led before it and found the following facts, material to the case before it, to have been established:

Parties

8. The claimant is Ms Emily Guthrie.

9. The respondent is Deeside Cuisine Ltd. It operates a business trading as the Cowshed. It operates a restaurant and takeaway service for fish and chips and similar products at premises in Banchory. Its directors are Ms Joy Buchan and Mr Graham Buchan, who were formerly married to each other.

Employment

10. The respondent employed the claimant in or around August 2024. It was her first job, and at that point she was 16 years of age. She attended for a trial shift initially in July 2024, and then commenced employment. She shadowed another employee named Finn when she commenced, which was in the restaurant side of the business. The respondent did not consider that she had performed well in doing so, and moved her to start working in the takeaway part of the business. She was given on the job training including by an assistant Manageress. The claimant reported to the manageress Susan Coutts.

11. The very basic terms of employment including hourly rate and that the work was on the basis of no guaranteed hours were set out in an email sent to the claimant. She was provided with a safety handbook, which she acknowledged in writing, and documentation relating to payments to her. She was not provided with a statement of terms complying with section 1 of the Employment Rights Act 1996.

12. The respondent had around 24 other staff on zero hours' contracts, both those under 18 years of age and those over that age, including one of the age of 61, all of whom had not been provided with such a statement of particulars of employment. All of the staff on permanent contracts, of which there were four, had statements of particulars of employment provided to them.

13. The director of the respondent Mrs Joy Buchan did not realise that statements of particulars of employment were required for staff on zero hours' contracts, and she thought that many of the terms of the standard contract for permanent staff did not apply to zero hours' contract workers. She thought that sending an email with the main terms and referring to a company Handbook was sufficient.

14. The claimant completed timesheets for the hours she worked, which were signed by a manager, and payment to her was made on the basis of those timesheets.

15. The claimant's role in the takeaway included taking orders from those attending the takeaway in person, known as walk-ins, completing a sheet with details of the order and passing that to the kitchen, taking cash payments, cleaning, re-stocking and box-making. The sheet for the order was prepared and had ten-minute slots. It was partly completed where online or telephone orders had been received. Where a person was a walk-in customer the claimant's role was to fill in the next available timeslot.

16. The procedures included telling walk-ins that it would take at least 20 minutes to provide the food ordered, and if there were a large number of orders online that it may take longer. Online orders were given priority.

17. If a refund was required, the claimant's training was that she could not authorise that if the original payment had been by card, which required a manager to authorise. If the original payment had been in cash the claimant could do so, and refund the cash from the till after writing a note to confirm the reasons for that as a record and leave that in the till.

18. Once the respondent was satisfied that she was aware of the procedures that required to be followed she was allowed to work in that role without supervision which was from in or around December 2024.

23 February 2025

19. On 23 February 2025, a Sunday, the claimant was working in the takeaway. She started at about 4.14 and it opened at about 4.30pm. It was a busy shift. During it a customer named Joanne Dunn came as a walk in and made an order. She paid in cash. The claimant did not tell her that the wait would be at least 20 minutes. After waiting for about 20 minutes Ms Dunn asked about her food, saying that she had been waiting a long time and had her young son in the car, and the claimant referred her to the kitchen, which is in a form of open plan. Ms Dunn was told by Ms Tara Grozier that her order had not yet been attended to as the kitchen was busy or words to that effect. Ms Dunn left and returned after about five minutes and spoke again to Ms Grozier who repeated what she had said earlier

20. Mr Graham Buchan the head fryer heard that exchange, and came over to say that the kitchen was busy, and in effect that she would require to wait. He was in the middle of frying food and could not leave it for other than a short period.

21. Ms Dunn was not happy with that, or with how she had been spoken to as she perceived it. She asked the claimant for a refund. The claimant did not give it to her, and said that it required a manager to approve who was not present. The claimant spoke to another customer. The claimant was then told to give a refund to Ms Dunn, but before she could do so Ms Dunn left.

22. Ms Dunn then complained about not receiving a refund on social media for the respondent, and more widely on other social media groups and review sites. It included an allegation that Mr Buchan had been rude and aggressive towards her. That caused the respondent reputational damage and some loss of business from such complaints.

23. On seeing the first message from Ms Dunn Ms Buchan replied initially and sought to find out what happened. She telephoned the takeaway twice, there being a telephone in the takeaway to receive orders, once around 7pm and once around 7.30pm on 23 February 2025. She did not receive an answer. She then called the restaurant phone which Mr Buchan heard and answered. Mr Buchan asked the claimant about matters, and she said that she had not been trained to tell a walk-in that there would be a 20

minute delay, or about refunds. Ms Buchan heard that from the other end of the phone.

Dismissal

24. Mr Buchan, Ms Buchan and the supervisor Ms Susan Coutts met on 26 February 2025. They discussed the events of 23 February 2025 and the complaints made by Ms Dunn. They considered that the claimant was not sufficiently capable and reliable to perform the role. They considered that she had been trained adequately about informing walk-ins of the delay to expect, and about refunding cash payments. They considered that had she followed those procedures the complaint from Ms Dunn would not have arisen. They thought that her statement that she had not been trained about telling walk-ins about the delay was untrue. They considered from the takeaway phone not being answered that she had silenced the takeaway phone that day, which was why Ms Buchan's calls had not been answered. They checked the orders made by telephone that day, and the two earlier Sundays when the claimant had been working, and considered that there was a pattern of less orders being made by telephone than was expected. They concluded from that that she had muted the telephone when at work, and that they had lost business from that.

25. They did not follow any disciplinary procedure, including a procedure set out in a company handbook, although that handbook had not been provided to the claimant. They decided to dismiss her without having any form of investigation that involved her.

26. Ms Coutts emailed the claimant that day to inform her of the dismissal. The claimant was not informed verbally of the decision.

27. The claimant sought to appeal that dismissal. She wrote to the respondent, initially on 6 March 2025 asking for documents. Ms Buchan replied that day with some documents but not a contract of employment, stating that they were not provided to "young" workers.

28. The claimant appealed on 8 March 2025 and a hearing was arranged for 22 March 2025. The claimant was accompanied by her mother. Ms Buchan attended for the respondent and Ms Coutts attended as note-taker. The note of that meeting is a reasonably accurate record of it.

29. Ms Buchan wrote to the claimant rejecting her appeal by letter dated 26 March 2025.

Other matters

30. The respondent has been in business for about 25 years, and has dismissed two staff in that time, one for theft and another for aggressive behaviour.

31. It had assistance from a company providing HR and employment law support.

32. Ms Buchan referred to employees aged under 16 as “child workers”, to those aged 16 – 18 as “young workers”. She did not have a term for those over 18.

33. The claimant commenced Early Conciliation on 25 April 2025, and the Certificate was issued on 28 April 2025. The Claim Form was presented on 26 May 2025.

Submissions for claimant

34. The following is a very basic summary of the submission made. The claimant argued that a prima facie case for direct discrimination on the grounds of age had been made out. The respondent had used age-related terms and had a stereotypical and patronising attitude towards younger workers. It had not provided a statement of terms to the claimant, and that was because of her age. The explanation for that could not be a legitimate aim as it was contrary to the 1996 Act. It had dismissed the claimant for a mistake that did not merit doing so. A comparator would not have been dismissed. Allegations by the customer included ones against Mr Buchan and no action was taken. The disciplinary process had not been followed, and although that could be disapplied for those with less than two years’ service there was no requirement to do so. The claimant was in her first job and the failure to follow a process together with the other aspects of the evidence shifted the onus to the respondent. It had not discharged it. Its evidence should not be accepted. A submission was also made as to remedy.

Respondent’s submission

35. The following is again a very basic summary. The respondent had not dismissed the claimant because of her age in any way. It had done so as she had not informed the customer of the wait time as required, had muted the telephone which ought not to have been done, and had had not shown that she could do the job. The respondent had made a genuine mistake about the statements of terms, but that applied to older workers as well as younger ones. Mr Buchan was not a comparator. The claim should be dismissed.

Law

36. The law relating to discrimination is found in statute and case law, and account may be taken of guidance in a statutory code.

(i) Statute

37. Section 4 of the Equality Act 2010 (“the 2010 Act”) age is a protected characteristic. It is further defined in section 5.

38. Section 13 of the Act provides as follows:

> "**13 Direct discrimination**
> 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."

39. Section 23 of the Act provides

> "**Comparison by reference to circumstances**
> (1) On a comparison of cases for the purposes of sections 13,14 and 19 there must be no material difference between the circumstances relating to each case…."

40. Section 39 of the Act provides:

> "**39 Employees and applicants**
> An employer (A) must not discriminate against a person (B) –
> ……..
> (c) by dismissing B
> (d) by subjecting B to any other detriment."

41. Section 136 of the Act provides:

> "**136 Burden of proof**
> If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision."

42. Section 212 of the Act defines "substantial" as "more than minor or trivial."

43. The provisions of the Act are construed against the terms of the ***Equal Treatment Framework Directive 2000/78/EC***. Its terms include Article 5 as to the taking of "appropriate measures, where needed in a particular case", for a disabled person, "unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned."

44. The Directive is retained law under the European Union Withdrawal Act 2018, since renamed assimilated law by the Retained EU Law (Revocation and Retention) Act 2023.

(ii) Case law

45. The basic question in a direct discrimination case is: what are the grounds or reasons for the treatment complained of? In ***Amnesty International v Ahmed [2009] IRLR 884*** the EAT recognised two different approaches

from two House of Lords authorities - (i) in ***James v Eastleigh Borough Council [1990] IRLR 288*** and (ii) in ***Nagaragan v London Regional Transport [1999] IRLR 572***. In some cases, such as ***James***, the grounds or reason for the treatment complained of is inherent in the act itself. In other cases, such as ***Nagaragan,*** the act complained of is not discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed in ***R (on the application of E) v Governing Body of the Jewish Free School and another [2009] UKSC 15***.

46. Further guidance was given in ***Amnesty***, in which the then President of the EAT explained the test in the following way:

> "… The basic question in direct discrimination case is what is or are the "ground" or "grounds" for the treatment complained of. ……
> In some cases the ground, or the reason, for the treatment complained of is inherent in the act itself……
> In other cases—of which ***Nagarajan*** is an example—the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, ie by the "mental processes" (whether conscious or unconscious) which led the putative discriminator to do the act. Establishing what those processes were is not always an easy inquiry, but tribunals are trusted to be able to draw appropriate inferences from the conduct of the putative discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). Even in such a case, however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the putative discriminator's action, not his motive: just as much as in the kind of case considered in ***James v Eastleigh***, a benign motive is irrelevant … The distinctions involved may seem subtle, but they are real … There is thus, we think, no real difficulty in reconciling ***James v Eastleigh*** and ***Nagarajan***. In the analyses adopted in both cases, the ultimate question is—necessarily—what was the ground of the treatment complained of (or—if you prefer—the reason why it occurred). The difference between them simply reflects the different ways in which conduct may be discriminatory."

47. The Tribunal should draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance, where necessary, of the burden of proof provisions referred to further below) – as explained in the Court of Appeal case of ***Anya v University of Oxford [2001] IRLR 377.***

Less Favourable Treatment

48. In ***Glasgow City Council v Zafar [1998] IRLR 36***, a House of Lords case, it was held that it is not enough for the claimant to point to unreasonable behaviour. The claimant must show less favourable treatment, one of whose effective causes was the protected characteristic relied on.

Comparator

49. In ***Shamoon v Chief Constable of the RUC [2003] IRLR 285***, also a House of Lords authority, Lord Nichols said that a tribunal may sometimes be able to avoid arid and confusing debate about the identification of the appropriate comparator by concentrating primarily on why the complainant was treated as she was, and leave the less favourable treatment issue until after they have decided what treatment was afforded. Was it on the prescribed ground or was it for some other reason? If the former, there would usually be no difficulty in deciding whether the treatment afforded the claimant on the prescribed ground was less favourable than afforded to another.

50. The comparator, where needed, requires to be a person who does not have the protected characteristic but otherwise there are no material differences between that person and the claimant. Guidance was given in ***Balamoody v Nursing and Midwifery Council [2002] ICR 646***, in the Court of Appeal.

51. The EHRC Code of Practice on Employment provides, at paragraph 3.28:

> "Another way of looking at this is to ask, 'But for the relevant protected characteristic, would the claimant have been treated in that way?'"

Substantial, not the only or main, reason

52. In ***Owen and Briggs v Jones [1981] ICR 618*** it was held that the protected characteristic would suffice for the claim if it was a "substantial reason" for the decision. In ***O'Neill v Governors of Thomas More School [1997] ICR 33*** it was held that the protected characteristic needed to be a cause of the decision, but did not need to be the only or a main cause. In ***Igen v Wong [2005] IRLR 258*** the test was refined further such that it part of the reasoning that was more than a trivial part of it could suffice in this context: it referred to the following quotation from ***Nagarajan***

> "Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is

> obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out."

53. The Court considered arguments as to whether an alternative wording of no discrimination whatsoever was more appropriate, and the wording of EU Directives. It concluded as follows:

> "In any event we doubt if Lord Nicholls' wording is in substance different from the 'no discrimination whatsoever' formula. A 'significant' influence is an influence which is more than trivial. "

54. The law was summarised in ***JP Morgan Europe Limited v Chweidan [2011] IRLR 673***, heard in the Court of Appeal. Lord Justice Elias said the following (in a case which concerned the protected characteristic of disability):

> "5
> Direct disability discrimination occurs where a person is treated less favourably than a similarly placed non-disabled person on grounds of disability. This means that a reason for the less favourable treatment – not necessarily the only reason but one which is significant in the sense of more than trivial – must be the claimant's disability. In many cases it is not necessary for a tribunal to identify or construct a particular comparator (whether actual or hypothetical) and to ask whether the claimant would have been treated less favourably than that comparator. The tribunal can short circuit that step by focusing on the reason for the treatment. If it is a proscribed reason, such as in this case disability, then in practice it will be less favourable treatment than would have been meted out to someone without the proscribed characteristic: see the observations of Lord Nicholls in ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285*** paragraphs 8–12. That is how the tribunal approached the issue of direct discrimination in this case.
>
> 6
> In practice a tribunal is unlikely to find unambiguous evidence of direct discrimination. It is often a matter of inference from the primary facts found. The burden of proof operates so that if the employee can establish a prima facie case, ie if the employee raises evidence which, absent explanation, would be enough to justify a tribunal concluding that a reason for the treatment was the unlawfully protected reason, then the burden shifts to the employer to show that in fact the reason for the treatment is innocent, in the sense of being a non-discriminatory reason".

Burden of proof

55. There is a normally two-stage process in applying the burden of proof provisions in discrimination cases, whether for direct discrimination or victimisation, as explained in the authorities of ***Igen v Wong [2005] IRLR 258***, and ***Madarassy v Nomura International Plc [2007] IRLR 246***, both from the Court of Appeal. The claimant must first establish a first base or prima facie case by reference to the facts made out. If he does so, the burden of proof shifts to the respondent at the second stage. If the second stage is reached and the respondent's explanation is held to be inadequate, it is necessary for the tribunal to conclude that the claimant's allegation in this regard is to be upheld. If the explanation is adequate, that conclusion is not reached. It may not always be necessary to follow that two stage process as explained in ***Laing v Manchester City Council [2006] IRLR 748*.**

56. Discrimination may be inferred if there is no explanation for unreasonable behaviour (***The Law Society v Bahl [2003] IRLR 640*** (EAT), upheld by the Court of Appeal at ***[2004] IRLR 799.***). In ***Chapman v Simon [1994] IRLR 124*** the Court of Appeal had given guidance about drawing an inference of discrimination, which must be from primary facts that have been found, Lord Justice Longmore stating:

> "In order to justify an inference, a Tribunal must first make findings of primary fact from which it is legitimate to draw the inference. If there are no such findings, then there can be no inference: what is done can at best be speculation." Lord Justice Peter Gibson stating: "It is of the greatest importance that the primary facts from which such inference is drawn are set out with clarity by the tribunal in its fact-finding role, so that the validity of the inference can be examined. Either the facts justifying such inference exist or they do not, but only the tribunal can say what those facts are. An intuitive hunch, for example, that there has been unlawful discrimination is insufficient without facts being found to support that conclusion."

57. In ***Ayodele v Citylink Ltd [2018] ICR 748***, the Court of Appeal rejected an argument that the ***Igen*** and ***Madarassy*** authorities could no longer apply as a matter of European law, and held that the onus did remain with the claimant at the first stage. That it was for the claimant to establish primary facts from which the inference of discrimination could properly be drawn, at the first stage, was then confirmed in ***Royal Mail Group Ltd v Efobi [2019] IRLR 352*** at the Court of Appeal, and upheld at the Supreme Court, reported at ***[2021] IRLR 811***. The Supreme Court said the following in relation to the terms of section 136(2):

> "s 136(2) requires the employment tribunal to consider all the evidence from all sources, not just the claimant's evidence, so as to decide whether or not 'there are facts etc'. I agree that this is

> what s 136(2) requires. I do not, however, accept that this has made a substantive change in the law. The reason is that this was already what the old provisions required as they had been interpreted by the courts. As discussed at paras [20]–[23] above, it had been authoritatively decided that, although the language of the old provisions referred to the complainant having to prove facts and did not mention evidence from the respondent, the tribunal was not limited at the first stage to considering evidence adduced by the claimant; nor indeed was the tribunal limited when considering the respondent's evidence to taking account of matters which assisted the claimant. The tribunal was also entitled to take into account evidence adduced by the respondent which went to rebut or undermine the claimant's case."

58. The Court said the following in relation to the first stage, at which there is an assessment of whether there are facts established in the evidence from which a finding of discrimination might be made:

> "At the first stage the tribunal must consider what inferences can be drawn in the absence of any explanation for the treatment complained of. That is what the legislation requires. Whether the employer has in fact offered an explanation and, if so, what that explanation is must therefore be left out of account."

59. In ***Igen Ltd v Wong [2005] ICR 931*** the Court of Appeal said the following in relation to the requirement on the respondent to discharge the burden of proof if a prima facie case was established, the second stage of the process if the burden of proof passes from the claimant to the respondent:

> "To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive."

60. The Tribunal must also consider the possibility of unconscious bias, as addressed in ***Geller v Yeshurun Hebrew Congregation [2016] ICR 1028***. It was an issue addressed in ***Nagarajan***.

Observations on the evidence

61. My assessment of each of the witnesses who gave evidence is as follows:

62. The **claimant** was I considered seeking to be honest and accurate in her evidence. She accepted that she had made some mistakes, and denied that she had put the telephone on mute. She did not think that she had been trained fully in the procedures about refunds or what to tell customers who walked in about wait times, but given the overall evidence I have concluded that it is likely that she was. The procedures were not in writing, but seem to me to be relatively simple. There was a system giving

preference to online orders, and they were added first to a sheet of available times. The claimant's role for those who walked in to the takeaway was to find the next slot and tell them about the wait. It could be 20 or more minutes. It appears to me that the claimant knew of that requirement but had forgotten to do so for the customer who later complained.

63. The next issue was the refund, which the claimant could have given herself. It appeared to me likely that she had forgotten that the customer had paid by cash, as it was a busy evening. By the time that was resolved the customer had left. It was not clear why when Ms Buchan called the takeaway twice that evening there was no reply from the claimant. Although there was a far from adequate investigation this is not an unfair dismissal claim, and it does seem to me more likely that the claimant had put the phone on mute as it was a busy evening and allowed her to do the walk-in part of the job. It seems to me likely that when this was all raised with her she rather shrugged the complaint off by saying that she had not been trained, when she had been and a lack of candour then held against her.

64. **Mrs Guthrie** gave evidence primarily about the appeal process. I considered it broadly credible and reliable, although it was clear how angry she was at how badly she thought that her daughter had been treated.

65. **Ms Buchan** was I considered a credible and reliable witness in general terms. She explained that she had earlier been a teacher and involved in educational roles, but her knowledge of employment law and practice was far from adequate. I did have a sense that she thought she had handled matters better than my own view of it. But I consider that her views of how the claimant had acted and responded to the matter were genuine ones, and for reasons I shall come to that age was not a factor to any extent in the decisions taken.

66. **Mr Buchan** I considered to be a credible and reliable witness. Ms Grozier I also considered to be a credible and reliable witness. Each gave fairly brief evidence primarily around the exchanges with Ms Dunn.

Discussion

(i) Did the respondent directly discriminate against the claimant under section 13 of the Equality Act 2010 ("the Act") on the grounds of her age?

67. In order for there to be direct discrimination because of age the claimant must first of all establish a prima facie case of discrimination. That is assessed before any explanation from the respondent is taken into account. It requires primary facts to be established, from which an inference of discrimination might legitimately be drawn. The primary facts relevant in this context are:

(i) There was no statement of terms provided to the claimant, as the Employment Rights Act required by section 1.
(ii) That was the case for all zero hours workers, of whom many were under the age of eighteen.
(iii) There was no disciplinary procedure followed, nor any formal investigation involving the claimant herself.
(iv) The claimant was not the only person complained about by the customer.
(v) The claimant was 16 years of age at the material time.
(vi) Mr Buchan is materially older, and a director of the respondent.
(vii) Ms Buchan referred to "younger" staff and "youngsters" in emails and during an appeal hearing respectively.
(viii) The claimant accepted that she had made some errors in what happened, but it was a busy shift.
(ix) There had been no prior formal performance management process for the claimant.
(x) The claimant was informed of her dismissal by email. It was with immediate effect. It made no mention of her entitlement to notice, or accrued holiday pay, both of which were paid later to her. The respondent latterly accepted that there had not been gross misconduct on the claimant's part.

68. It seems to me that these facts taken together are, if only just, sufficient to lead to a *prima facie* case. That then requires the respondent to prove, on the balance of probabilities, that age was in no way whatsoever a reason for the dismissal. For that the focus was on the evidence of Ms Buchan. I considered that it was to be accepted. She stated clearly and convincingly that had the person on the till in the takeaway that day been someone much older, such as a 60-year-old, that person would have been dismissed too. She considered that the claimant had not followed the training given, and had both failed to tell the customer of the likely delay which was a basic part of procedure, and when a refund had been asked her had not given it when she should have, and could have as the original payment was a cash one. She also thought, genuinely, that the claimant had turned off the phone which she ought not to have done and that that had led to a loss of business.

69. Those were the only reasons for the decision to dismiss. It was a harsh decision, and the claimant argued that it was unfair, but this is not an unfair dismissal claim as the claimant had relatively short service. The respondent had failed to give her the statement of terms the law requires, but that was done for other staff who were on zero hours' contracts, and that included those much older than the claimant. It was not in my view evidence of a disparity of treatment because of the claimant's age. It was because of a lack of basic understanding of the requirements of the law. Similarly no full handbook was given on the evidence before me, but I did not consider that to be an issue of age in any way whatsoever.

70. The decision not to have any disciplinary process was admitted by the respondent to have been an error also. It was not what their handbook process required, although that was less of an issue given the service of under two years. But the reason for that was in my view not age in any way whatsoever – it was again part of the misunderstanding of how to conduct such processes, and from the fact that the respondent is a relatively small business which has not had much experience of dismissals.

71. It may well be that the customer caused material difficulties from the manner in which she set out her complaints widely on social media and otherwise, and that the nature of that impacted on the decision to dismiss and how it was brought into effect, but again that is not a matter related to the claimant's age to any extent at all in my view.

72. The claimant argued that Mr Buchan was not treated in the same way at all, and that that showed the disparity from age. But in my view he is not a comparator for the purposes of the Act, as he is a director, and was a decision-maker with Ms Buchan his former wife, and Ms Coutts. It seems to me that Ms Buchan was the driving force behind the decision, and that Mr Buchan agreed with it. Ms Buchan thought that he had simply spoken to the customer and not in the manner complained about, and his evidence and that of Ms Grozier contradicted the allegation. Ms Dunn of course was not present to give evidence and nor would that be expected in a case such as this. What that meant however was that the view of the respondent, particularly Ms Buchan, was that Mr Buchan had essentially done nothing wrong, whereas the claimant in its view had done something wrong, and in various respects. Whether as an actual or evidential comparator these are material distinctions.

73. The evidence of Ms Buchan was that the claimant's performance in the restaurant had not been good, and she was moved to the takeaway as it was an easier role with the hope she could fulfil it. There was no written material of that, nor any formal performance management process with the claimant, but I consider that that evidence should be accepted. It was part of the background to the decision to dismiss.

74. It appears to me that Ms Buchan in particular was concerned at the claimant's statement on the phone call that she had not been trained on the issues that arose, and had put the phone on mute, which the claimant denied. That concern was not investigated to any extent, however was in my view genuine, what she believed at the time, and was not related to the claimant's age in any way whatsoever. The lack of any process or procedure is surprising when the employee was a person aged sixteen in her first job, as was telling her of her dismissal by email which shows at the least a very surprising lack of consideration to someone in her circumstances, but these matters are not ones that in my view show that age itself was a factor to any extent.

75. In conclusion, having regard to all of the evidence before me, the respondent has discharged the onus on it, age was not a factor in any way whatsoever in either the failure to provide a statement of particulars of employment, or the dismissal, and as a result the claim of direct discrimination does not succeed.

(ii) If the claim succeeds to what remedy is the claimant entitled, including

(a) what sum for injury to feelings is appropriate and
(b) what were the claimant's losses?

76. This issue does not now arise.

Conclusion

77. In light of the findings made above, I must dismiss the Claim. Whilst I have done so, I express the hope that the claimant will be able to progress in her working life.

Date sent to parties 19 November 2025