



EMPLOYMENT TRIBUNALS

Claimant: Mr A Banasiak
Respondent: Tricuro Limited
Heard at: Southampton Employment Tribunal
On: 7, 8 and 9 January 2026
Before: Employment Judge Hay
Tribunal Member J Roddick
Tribunal Member J Ratnayake

Representation

Claimant: in person
Respondent: Ms Nichols – Counsel

JUDGMENT

1. The complaint of unfair dismissal is not well-founded and is dismissed.
2. The complaints of indirect religion and belief discrimination are not well-founded and are dismissed.

REASONS

Introduction and background:

1. By Claim form dated 29 March 2022 Mr Banasiak presented claims of unfair dismissal and discrimination on basis of religion or belief. The claimant is a Polish speaker who was employed by the respondent as kitchen assistant in a Care Quality Commission (CQC) regulated care home from August or September 2016 until November 2021 or January 2022. Although there was some dispute about the date of his termination it was not in dispute that he was dismissed because he declined to receive the Covid-19 vaccine.

2. The claim was stayed (put on hold) whilst test litigation was conducted. In Dimitrovia and other v Barchester Healthcare Ltd [ET 1803315/2021] 5 care home workers brought claims against a respondent who was a large provider of care home services in the UK. All the claimants brought claims of unfair dismissal, and two additionally brought claims of discrimination on the basis of their religion or belief, and so were similar, or raised similar issues to this case. Their claims of unfair dismissal were dismissed by a Tribunal and that decision was upheld on appeal to the Employment Appeal Tribunal. Following those decisions the stay in Mr Banasiak's case was lifted and the proceedings "re-started".
3. In a response provided in June 2024 following removal of the stay the respondent said that the claimant was dismissed on 11 Nov 2021 because of a statutory prohibition on the presence of unvaccinated non-exempt persons in CQC regulated care homes after that date. That prohibition was introduced by the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 – "the relevant regulations". These were first published in July 2021 but became law on 11 November 2021. The respondent argued the regulations imposed a legal requirement that all staff who were not medically exempt from receiving the Covid-19 vaccine had to be fully vaccinated, which meant having received two doses, before 11 November 2021 or else they could not be permitted entry to any care home, including one where they were employed.
4. There were two substantive case management hearings, including one with Regional Employment Judge Pirani, which resulted in a list of issues for decision by this tribunal, which neither side objected to and which were confirmed at the start of the hearing.
5. They were:
 - 5.1 Unfair dismissal including;
 - 5.2 When was the claimant dismissed?
 - 5.3 What was the respondent's reason or principle reason for dismissing the claimant?
 - 5.4 What that reason of a kind such as to justify the dismissal pursuant to Employment Rights Act 1996, s98 (1) (b)?
 - 5.5 If so, was the dismissal for that reason fair in the circumstances, pursuant to ERA s98 (4) considering both the grounds for the dismissal and the procedure(s) adopted?
 - 5.6 If it did not use a fair procedure, would the claimant have been fairly dismissed anyway, and if so, when?
 - 5.7 If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct.

AND

5.8 Indirect discrimination including:

- 5.9 Was the claimant's Christianity and or his belief that vaccinations should not use foetal tissue in their development a protected belief under s10 (2) of the Equality Act 2010 which meant asking;
- 5.9.1 Are they beliefs as opposed to viewpoints or opinions?
- 5.9.2 Do they relate to a weighty and substantial aspect of human life and behaviour?
- 5.9.3 Do they attain a minimum level of cogency, seriousness, cohesion and importance?
- 5.9.4 Are they worthy of respect in a democratic society, and not incompatible with human dignity and not in conflict with the fundamental rights of others?
- 5.10 Did the Provision, Criterion, or Practice that all relevant staff refusing to submit to receiving the vaccine be subject to investigatory and disciplinary measures including dismissal put persons holding the claimant's beliefs at a particular disadvantage compared with others who do not share it?
- 5.11 If so, did that put the claimant at a particular disadvantage?
- 5.12 If so, was the PCP a proportionate means of achieving a legitimate aim?
6. That list of issues summarised the legal questions the Tribunal was obliged to address.

The hearing

7. The claim was heard over three days on 7, 8 and 9 January 2026. Mr Banasiak represented himself with assistance of interpreter provided to him by the Tribunal. The respondent, Tricuro, was represented by Counsel Ms Nichols who had appeared throughout.
8. There was a trial bundle of 281 pages which was added to without objection by the claimant producing a "supplementary bundle" and some additional documents which were mostly commentaries on the agreed evidence. Included in the papers considered by the panel were the contract of employment, various sick notes provided by the claimant, exemplar copies of memos and letters sent to staff about the forthcoming regulations, some emails, notes of a meeting with Mr Banasiak, and some payslips. It also included various commentary documents produced by Mr Banasiak although it was not entirely clear how he had produced those documents given his lack of spoken and written English. The panel reminded themselves and the parties that those documents were not pleadings (his ET/1 or list of issues) nor witness statements, and they were not referred to or adopted in Mr Banasiak's closing submissions. For that reason the panel did not seek to answer each and every point he raised in the various commentaries he submitted but have restricted the

decisions to the employment law questions the panel were obliged to answer.

9. There were 3 witness statements and oral evidence from those producing them which included the claimant, Mr Coa, his immediate supervisor in the kitchen where the claimant worked, and Richard Warren who was the respondent's Business Development Lead in 2021 and is now Head of Corporate Services and Governance. None of the people personally involved in the process by which the claimant was dismissed were available as they were no longer employed. The respondent was also not able to produce any specific correspondence with Mr Banasiak personally and relied instead on examples of the letters they say had been sent to employees sharing his situation.
10. During the hearing evidence was produced which showed that the respondent had made a payment to Mr Banasiak, apparently without his direct agreement, which the respondent said represented a fair settlement of his unfair dismissal claim to compensate for any procedural unfairness, whilst maintaining that the dismissal itself was for a fair reason. They also maintained that they have not discriminated against Mr Banasiak because of his religion or belief and to any extent that their actions had a discriminatory effect this was inevitable but was a proportionate means of achieving a legitimate aim and therefore is a defence pursuant to the Equality Act 2010 s19 (2) (d) and is not discrimination.

Findings of fact

11. The chronology of events was mostly agreed. Although there was some confusion about the month in which Mr Banasiak commenced his employment it was agreed that he was employed from at least September 2016, and so met the qualifying minimum term of service necessary to bring an unfair dismissal claim.
12. It was agreed that from Jan 2021 Mr Banasiak was mostly away from work due to sickness for which a series of medical notes were provided. The reasons for his absence were noted variously as insomnia, dental issues, mouth symptoms, and references in October and November 2021 to anxiety. It was apparent from the medical records Mr Banasiak provided that communication with his doctor(s) was challenging at times due to the language barrier. The records showed that on occasion a Polish interpreter was provided to assist Mr Banasiak to communicate with his doctors, and that correspondence was mostly via email so that he could use a translation app to understand it.
13. Those records cover January 2021 to August 2022, including the period covering the events relevant to this claim. They also show that claimant

was willing to take medications during this time, although there were also examples of him being offered treatment options and declining to follow them; for example a record dated 25 Aug 21 states he *“did not attend ENT but is awaiting maxfax appt”* and that he *“did not take up any offers of support but simply wants (sick) note”* .

14. On 17 June 2021 the respondent sent a memo to employees about the forthcoming regulations concerning the Covid-19 vaccine and the requirement to be vaccinated if working in CQC registered services. The memo indicated that the respondent was starting to make plans to track and support employees who had not received the vaccine. It gave details of deadlines and ways to book a vaccine. The memo also said *“from an employment perspective it is also important for us to note that at this early stage we do not know the full extent of possible repercussions for not receiving your COVID-19 vaccinations within the next 16 weeks. However if you are medically fit enough to do so and you choose not to receive both vaccinations inside the next 16 weeks you may be putting your employment with Tricuro in jeopardy and you may be dismissed as required once the law is passed.”*
15. On 13 July 21 the relevant regulations were published in draft form (date taken from CMO of REJ Pirani) and it became clear that the respondent and other providers of regulated care services would not be allowed to permit entry to a person unless they met the requirements of either being vaccinated or having a medical exemption.
16. A further memo was issued on 14 July 21 informing staff that although the country was moving to a new phase of recovery Tricuro were not relaxing any infection control policies. It reminded staff of their obligations and repeated the forthcoming Government requirement for Adult Social Care employees to be vaccinated.
17. A final memo was dated 11 August 2021 and confirmed that the Gov had approved compulsory vaccinations for care home staff in England and that anyone working in a CQC regulated service would need to be vaccinated if not medically exempt. That memo also stated: *“If you believe you are medically exempt we encourage you to proactively and immediately commence conversations with your GP consultant in order to obtain evidence of medical exemption which you will need to provide to your line manager”*. It goes on *“failure to provide evidence of vaccination or exemption may result in termination of employment.”* It also has a note to managers; *“Please ensure this memo is cascaded to all staff who do not have a trike euro e-mail address including staff members who are on holiday are off sick on maternity leave or away from the service for any other reason.”*

18. Mr Banasiak claims he did not receive any of these memos although the respondent says if he was not in work they should have been posted to him. The panel concluded Mr Banasiak was aware of these communications, or at least one of them, because there were some limited weeks during 2021 when Mr Banasiak was at work and Mr Coa stated in evidence that when he received the memo he showed it to people in the kitchen and he recalled that “*as soon as they tell us... a few days after he (Claimant) said he was not going to be taking the vaccination*”. Mr Coa also told us, and we accept, that he told the claimant that he would have to go and talk to the home manager about it because that was “over me” in other words not something over which Mr Coa had any control. The claimant did not challenge that these conversations took place, or that Mr Coa correctly recalled his response. Mr Coa has no reason to invent them and so the panel accepted they represent his genuine memory.
19. The panel was therefore satisfied that whether it was via post received at his home, or via conversations during those limited periods he was at work in 2021, the claimant knew of the need to be vaccinated, and knew that failure to receive a vaccination would have consequences for his employment.
20. Ms Woodward, the manager of the care home at which the claimant worked, left the respondent’s employ during the period that the claim was stayed, and the respondent has not had access to her work email address and so is unable to produce all the correspondence between her and Mr Banasiak. However the available evidence proved there was a channel of communication between Mr Banasiak and his employers because he was regularly emailing Ms Woodward, including forwarding his sick notes. At the beginning of September she emailed him noting he had failed to attend absence meetings on 19 August and 2 September 2021. He replied sending her some “missing” certificates (sick notes) which we can see from an email from him dated 9 September 2021 timed at 17.44pm in which he says he cannot say when he will be ready to go back to work.
21. On 3 Sept 2021 Mr Banasiak went back to his doctor, and the notes record he had said “*had problems sleeping he’s not sure why ... he’s not depressed... has problems in his work as they require a vaccine which he doesn’t want currently*”. The panel did not agree that this was evidence that his medical problems were being caused by his employer or that the need for a vaccine was the reason for any medical absence from work. This is because the reason for his medical complaint (insomnia) is undiagnosed and he is not depressed – there is no mention by him of any causal link between how he was feeling and the actions of the respondent. Nor was this evidence of psychological or psychiatric harm because there was no reference to any anxiety, certainly not to any anxiety about taking the vaccine or risking his employment. The notes record Mr Banasiak was

not depressed and the cause of his insomnia unknown. Although the claimant tried in his submissions to cite this as evidence which “proves” the effect of his employer’s conduct upon him, on an objective or neutral analysis it does not.

22. Mr Banasiak also talked in his evidence about “pressure at work” related to the forthcoming need to take the vaccine but the medical evidence and limited emails from his manager Ms Woodward, indicate he was largely absent from work throughout 2021, only working about 5 weeks between 20 January 2021 and 11 November 21 after which date he did not go back. That meant he was not at work for such pressure to be put on him in that environment, and so the panel rejected his contention that his employer’s conduct was the cause of Mr Banasiak’s absence during this period. Similarly, the panel did not accept that the memos dated June, July, and August of 2021 can have been the cause of any pressure or anxiety for Mr Banasiak because he insisted he did not receive them.
23. In addition the panel noted Mr Banasiak’s own oral evidence that the pressure to receive a vaccination started in December the year before (2020) and he knew from his beliefs and convictions that he would not be able to accept it and so the “pressure” of which he tries to complain was not from his employer. The claimant appeared to agree with this analysis when he was asked “*so the pressure was not because of the respondent but because you felt strongly about vaccination? Yes – because it contains certain elements of human foetus that has been aborted.*” The panel concluded therefore that “pressure” was caused by the national situation and the indication when a vaccine became available that there would be an expectation people would take it up, which then had a particular focus on care home settings when the draft regulations were published in July.
24. On 9 September 2021 there was a meeting between Mr Banasiak and Ms Woodward about his covid vaccination status. For the reasons given above there must have been a line of communication open between them via email, and the panel therefore infer that is how Mr Banasiak was able to be invited to that meeting. The notes of it are brief and are unsigned. Because of the absence of a signature Mr Banasiak challenged the veracity of it and claimed it was created “*for the benefit of this trial*”. However, in cross examination Mr Banasiak confirmed that the answers recorded as being given by him are accurate including the comment attributed to him in answer to a question about whether he understood Tricuro’s position re vaccination “*Yes I understand it. I will not change my mind it is against my religion*”. Mr Banasiak accepted in his oral evidence that those were the words he used. The panel therefore rejected the assertion that this record has been forged or created subsequently and for the purpose of these proceedings and accept it as an accurate record of that meeting.

25. The meeting notes record that Mr Banasiak is “not exempt” and he has never claimed to have had a medical exemption. It shows that there was a discussion about redeployment to other roles although the claimant disagrees and says there was no discussion. We note that the proforma record includes the following: *“the ability to redeploy staff to other roles within the Organisation has been considered by Tricuro we are unable to offer redeployment due to the company's position that all staff regardless of their place of work must be fully vaccinated unless exempt.”* Mr Warren confirmed in oral evidence that this was the company’s position and that none of the employees who declined to get vaccinated were redeployed. It therefore seems likely this discussion was no more than Ms Woodward informing Mr Banasiak that there was no possibility of redeployment.
26. The note goes on to ask *“have discussions occurred between the staff member and their line manager to understand the potential impacts of not being vaccinated and what that means to their employment?”* The record states yes Mr Banasiak says no. However that note also includes the comment *“Andrzej declined details of Information Services or an OH referral to get impartial advice.”* Also noted was that Andrzej (Mr Banasiak) stated that *“the NHS has not helped him with his current absence and he does not believe there is any support his employer can offer him regarding the vaccination or his health”*. In cross examination the claimant conceded he had said something like that about the NHS was not helping with his health, so the panel accept that note is accurate. The panel concluded it is unlikely that a manager would invent comments like that and so accepted the notes of that meeting are accurate and Mr Banasiak was informed at that meeting of the likely impact on his employment by declining to be vaccinated. The panel accepted, because Mr Banasiak said explicitly, that nothing would have made him change his mind and accept the vaccination. He also told us he knew *“long before that September meeting that if I don't get vaccinated I would be dismissed.”* The panel therefore determined that Mr Banasiak made an informed choice not to receive the vaccination, knowing that it would lead to his dismissal.
27. It was also agreed by him, and accepted by us, that simply asking about vaccination or exemption status was not an “investigation” and that other than dismissal, Mr Banasiak was not subject to any form of disciplinary procedure or consequence because of his decision.
28. The panel concluded the date of dismissal was the 11 November 2021, because that was the last date Mr Banasiak continued to accrue pay, although not the last date on which he was paid. Subsequent payments were made up of holiday and payments in lieu of notice, and so he continued receiving pay in December 2021 and January 2022, despite his dismissal in November. It was accepted that Mr Banasiak did not become aware he had been dismissed until 31 January 2022, because that was

the date of issue listed on his P45 and the last day he received any pay from the respondent.

29. The panel also concluded that there was no opportunity for Mr Banasiak to appeal the decision to dismiss him because although there is an exemplar termination letter provided by the respondent there is no evidence any such letter was sent to the claimant. He was not at work after 11 November 2021 and so there was no way for it to be communicated to him via Mr Coa, and no evidence from Ms Woodward or any email from her showing any correspondence being sent or confirming it was posted. The panel inferred from Mr Banasiak's emphasis on procedure and insistence of getting all his rights that he likely would have appealed so the fact that he did not do so persuaded the panel that he was unaware that he could have. This absence of an appeal amounted to a procedural unfairness.
30. However, the panel found that had Mr Banasiak brought an appeal it would have been dismissed, because he would not have changed his mind about taking one of the vaccines available at that time, and the respondent employer was bound to follow the regulations.
31. Payslips included in the evidence show that from November 2021 to January 2022 the claimant received payment in lieu of notice. That means although he complains he was dismissed without notice he did receive the statutorily permitted alternative of pay for a period that he did not need to work. The result is that Mr Banasiak has already received any remedy that the tribunal could award him for that aspect of his case.
32. Some other relevant findings made by the panel included;
 - 32.1 That many Christians around the world received the vaccine – a fact Mr Banasiak eventually conceded despite a marked reluctance to do so. This was a matter of public knowledge.
 - 32.2 Christians were supported by doing so in statements issued by various branches of the Christian church, which the panel were aware of from their own knowledge. This included branches of the Catholic church and the Vatican, which the panel considered relevant because they understood the claimant to be from Poland (as he is a Polish speaker) and Poland is predominately Catholic.
 - 32.3 Therefore there was no church imposed prohibition on Christians receiving the vaccine, and no religious reason why Mr Banasiak could not although we acknowledge that is a different question to whether his own beliefs prevented him from doing do.

33. S94 of the Employment Rights Act 1996 gives an employee the right not to be unfairly dismissed by their employer. S111 of the same act allows a complaint that they were unfairly dismissed by their employer to be presented to an employment tribunal. S98 explains that the employer must show the reason or principal reason for the dismissal, and that the reason falls within the list of potentially fair reasons in s98 (2) or some other substantial reason which justifies the dismissal.
34. The list of potentially fair reasons for dismissal include: a) those relating to an employee's capability or qualification to perform the work for which they were employed; b) conduct; c) redundancy; and d) *"that the employee could not continue to work in the position which they held without contravention (either on their part or that of their employer) of a duty or restriction imposed by or under an enactment"*.
35. If the employer shows the reason for the dismissal, then s98 (4) states that the determination of whether the dismissal was fair or unfair (having regard to the reason shown by the employer [for the dismissal])
- 35.1 depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably as treating it as a sufficient reason for dismissing the employee and
- 35.2 shall be determined in accordance with equity and the substantial merits of the case.
36. The EAT has confirmed that this remains the correct legal test and there is no special approach to dismissals occurring in the context of the pandemic: *Lovingangels Care Ltd v Mhindurwa 2023 EAT 65*.
37. Fairness in relation to dismissal includes procedural as well as substantive fairness: *Polkey v AE Dayton Services Ltd 1988 ICR 142, HL*. There is no separation between "substantive" and "procedural" fairness, the job of the Tribunal is to consider procedural issues together with the reason for the dismissal, and decide whether despite any procedural imperfections, the dismissal was fair: *Taylor v OCS Group Ltd 2006 ICR 1602 CA*. Not every procedural defect will render a dismissal unfair, it will be for the Tribunal to evaluate whether any defect is so significant to amount to unfairness: *Sharkey v Lloyds Bank plc EATS 0005/15*.

The Law (2): Indirect Discrimination

38. S19 of the Equality Act 2010 prohibits employers having a provision, criterion, or practice which applies to everyone but which discriminates against some people because of their protected characteristics. It states: *s19 Indirect discrimination*

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

39. All four of these conditions must be met before a claim of indirect discrimination may succeed. It is for the claimant to establish a) that there was a PCP; b) that it put persons with the same characteristic as him at a particular disadvantage; and c) that it put HIM at that disadvantage. Only if a claimant does that is it for the respondent to justify the PCP as a proportionate means of achieving a legitimate aim (d): *Essop and ors v Home Office (UK Border Agency) and another* [2017] ICR 640 SC.

40. It is accepted that Christianity is a religion and covered by s10 of the Equality Act. It is for Mr Banasiak to satisfy the Tribunal that his opposition to the use of foetal embryonic stem cells is a "belief" as opposed to an opinion or viewpoint. In determining whether he has, a Tribunal will ask the questions listed at paragraph 5.9 following *Grainger plc and Others v Nicholson* 2010 ICR 360 EAT.

The Decision

41. UNFAIR DISMISSAL: the claimant was dismissed on 11 November 2021 because of his failure to provide proof of vaccination status or exemption which meant that he could not continue to work in the position he had held without a contravention on the part of his employer of a duty or restriction imposed by an enactment, namely the relevant regulations which required staff in care homes to be vaccinated.

42. That was a fair reason pursuant to ERA s98 (2) (d).

43. In all the circumstances dismissal for that reason was fair. Although there were problems in the process, namely the absence of a right of appeal, an unfair process can deliver a fair outcome and that is what happened here.

That is because even if a perfect procedure had been followed, the outcome would have been the same because the law at that time did not permit the respondent to continue to allow the claimant to do his job if not vaccinated. That means that the claimant's employment position with the respondent was untenable from 11 Nov 2021 when the relevant regulations came into force. Mr Banasiak had made clear to the respondent that he would not get vaccinated so they had no realistic alternative but to terminate his employment on that date. It was not realistic to expect or hope that the respondent would retain the claimant in circumstances where he was not able to undertake the role for which he was employed, or any other role within the business. Even had he been given the opportunity to appeal, the decision would have been upheld and his dismissal confirmed. Failing to provide an appeal process in circumstances where the inevitable outcome of any appeal is already known to everyone who would be involved in it is not unfair. It is unusual to find that an appeal outcome could or would be known before any appeal is commenced but that was the position here because of the claimant's insistence that he would not accept any of the available vaccines. That meant that an appeal would have been a pointless additional administrative burden, the absence of which does not render the dismissal unfair.

44. In all of those circumstances the dismissal was fair and the claim of unfair dismissal is dismissed.
45. INDIRECT DISCRIMINATION re religion: It is agreed that the PCP is the requirement that all staff were either vaccinated or medically exempt. As such it would apply to the claimant, but he was unable to show either that it caused any group disadvantage to Christians, or that it put him at any particular disadvantage as a Christian compared to non-Christians. This is because there was nothing in the teachings of the Christian church which prevented adherents from receiving the vaccine, and indeed millions around the world did.
46. Mr Banasiak's philosophical belief of being opposed to use of human embryonic foetal cells in development or testing was pleaded as separate from his religion and was treated as such by the panel.
47. The panel considered whether that qualifies as a protected belief pursuant to EqA s10 (2) by asking the questions set out in paragraph 5.9 above.
48. The panel concluded that his objection to the covid vaccine and the use of foetal tissue in its development was an opinion and not a belief. It is for the claimant to establish this was his belief and on the evidence the panel were are not satisfied that he did so. Although Mr Banasiak stated he had not received a vaccine in adult life, he did not say why that was. Other evidence shows that he did take medication; medical records from Jan 21

show him trying mirtazapine and subsequently amitriptyline when the physical side effects of mirtazapine didn't suit him. There was no evidence, in the records or from Mr Banasiak, of any concern about how such medications or others noted in his medical history from this specific period in 2021 had been developed or manufactured, nor anything done by him to satisfy himself that foetal tissue had not been used.

49. Had this been his belief the panel would have expected some degree of manifestation of it and at the time he says he was under pressure because of it from Dec 2020 and there was none, beyond his declining the covid vaccine several months later.
50. To be clear, this decision does not assert that Mr Banasiak's belief is not capable of being a protected belief, but that simply that the panel were not satisfied that he has demonstrated on the balance of probabilities, that this was a belief as opposed to his opinion. That being so, it does not qualify as a "protected belief".
51. The panel acknowledge that the claim could end there but went on to consider the remainder of the "Grainger" questions as listed. The panel concluded that the answer to the first two questions are "yes". The PCP of requiring all employees in a CQC regulated setting to be vaccinated would have put people sharing Mr Banasiak's opinion at a disadvantage because they would not receive the vaccine and therefore could not comply with the criterion. The panel accepted that would have placed the claimant at that disadvantage also.
52. The key question for his discrimination claim is whether the PCP was a proportionate means of achieving a legitimate aim. The panel found that it was.
53. The respondent's legitimate aims were: to follow the law; to safeguard the residents; and to avoid reputational or financial damage.
54. The respondent has an obligation to follow the law. The regulations which came into force in Nov 2021 did not allow unvaccinated or non-medically exempt persons to work in a care home. Had the respondent allowed Mr Banasiak to keep working they would have broken that law. This would have jeopardised their regulatory status and potentially exposed them to some form of prosecution.
55. It would also have exposed residents, many or most of whom were likely to be elderly and / or vulnerable to greater risk of contracting covid. This was a risk they could not mitigate for themselves so they were dependent upon the managers and staff of the care home to do that for them. Such was the importance of safeguarding that sector of the population that Parliament introduced these regulations to assist.

56. In addition although Mr Warren was unable to articulate it, the panel inferred that had it become known that the respondent was employing unvaccinated non-medically exempt staff then clients and their families might well have wanted to move from the respondent's services, or at the very least complained. We infer that from the general anxiety about the real risk posed to care home residents from the Covid pandemic, because they were unable to keep themselves safe and were reliant on care from others which increased their potential exposure. Such exposure was of greater risk to elderly and vulnerable people, which care home residents were likely to be.

57. Since the unchallenged evidence from Mr Warren was that redeployment was not possible the only alternative would have been to keep unvaccinated non-medically exempt staff on the payroll until such time as the pandemic passed or the regulations were revoked. The respondent could not have known when that might happen and it would not be reasonable to expect an employer to do that. Although in fact the regulations were revoked relatively quickly in March 2022 that could not have been known in Nov 2021. It would therefore have been disproportionate to expect an employer to retain staff that they could not deploy on the payroll for an unknown period of time.

58. It follows therefore that the action of the respondent in dismissing Mr Banasiak was a proportionate means of achieving those legitimate aims so his discrimination claim fails.

59. Mr Banasiak said a number of times during his evidence that although he understood the change in the law requiring persons in CQC regulated environments to be vaccinated that did not have the effect of "suspending" employment law and his employment rights. He is right about that, but the effect of those regulations was not to suspend his rights. Both the Employment Rights Act 1996 which grant employment rights, and the Equality Act 2010 which grant the right not to be discriminated against, create qualified rights; they are not absolute. Hence inclusion in ERA s98 of (2) (d) and in s19 of the EqA of a "defence" that an applicable PCP is a proportionate means of achieving a legitimate aim. In reaching this decision the panel have not "suspended" employment law, but have done no more than follow the law relating to employment that always applied.

**Employment Judge Hay
15 January 2026**

JUDGMENT SENT TO THE PARTIES ON
02 February 2026

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/