



EMPLOYMENT TRIBUNALS

Claimant: Mr Efevawere-Onowotu

Respondent: Nexus Programme Limited

Heard at: London South ET and by CVP

On: 10 and 11 June 2025
and on 20 August 2025 in
chambers

Before: Employment Judge Sean Jones KC

REPRESENTATION:

Claimant: In person

Respondent: Ms Lauret, Consultant

JUDGMENT

1. The Claimant's wrongful dismissal claim succeeds.
2. The Claimant is awarded the sum of one week's net pay.

REASONS

(1) The Claim

1. The Claimant was summarily dismissed and alleges that that dismissal was wrongful. Although both claim and defence have undergone some evolution from the pleadings, the issues as they emerged were that:
 - (1) The Respondent alleges and the Claimant denies that he committed a repudiatory breach of contract; and
 - (2) The Claimant complains that the disciplinary procedure was not applied fairly. ■

(2) The Law

2. Contracts of employment may be lawfully terminated by either party giving the required period of notice. Where the contract is a written one, it will usually specify the period of notice required. **Employment Rights Act 1996, ss. 1(4)(f)** requires the period of notice to specified in the written statement of employment particulars that the employer is obliged to give to the employee when they begin employment.
3. **ERA 1996, s. 86** sets out minimum periods of notice to which the employer and employee are entitled. The contract of employment cannot make provision for a shorter period than the statutory minimum, though it can provide for a longer period.
4. In some cases, a party may lawfully terminate without giving the period of notice otherwise required. In practice, this will happen in one of two cases. In the first case, the party is exercising a Common Law right to treat the contract as “repudiated”. In the second, the party is exercising a right conferred on him by the contract itself (and not by the Common Law).
5. Turning first to repudiation, a party may lawfully terminate the contract without giving notice where the other has committed a so-called “repudiatory breach of contract”. It is open to the other party to “accept the breach” and treat the contract as terminated immediately. Repudiatory breaches have been described in a number of ways but the essence is that the breach is so serious that a party cannot reasonably be held to their side of the bargain. The test is an objective one. It is not a question of whether the party genuinely believes that a breach is repudiatory but whether, objectively assessed, it is. Nor is it a question of applying a “range of reasonable responses” test. Whether the breach reaches the necessary degree of seriousness is a matter for the court or tribunal. Some breaches are always treated as repudiatory. This is true of breaches of the implied obligation not, without reasonable and proper cause, to conduct oneself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (i.e. the so-called Duty of Mutual Trust and Confidence): **Morrow v Safeway Stores plc** [2002] ICR 77 EAT.
6. Turning to the second kind of case, contracts commonly expressly identify circumstances in which the employer is entitled to terminate without notice. Often the written contract will contain a list of what one might call “offences” in a non-technical sense. As will appear below, there is a written contract in this case and it contains (by means of incorporation by reference) just such a list. So, for instance, the list includes “physical violence or aggressive behaviour”. Such behaviour would, in many circumstances, amount to a repudiatory breach of contract by an employee even if there were no express provision. The provision, however, puts the matter beyond doubt as it is open to the parties to agree that breaches that might not otherwise be treated as repudiatory will nevertheless justify a dismissal without notice or, as it is more commonly called, a summary dismissal.
7. If an employer dismisses without notice in circumstances where the employee has not committed a repudiatory breach or a breach which the contract provides allows for summary termination, the dismissal will itself amount to a breach of contract. Breach of contract actions of this kind are commonly referred to as claims for “wrongful dismissal”.

8. Where an employer wishes to dismiss for misconduct and there is a contractual disciplinary policy the employer is obliged to follow that policy. In the absence of an express provision in a contractual disciplinary procedure requiring that the procedure be conducted fairly, a court or tribunal will “very readily [imply] one” (Per Underhill LJ in **Sasha Burn v Alder Hey Children’s NHS Foundation Trust** [2021] EWCA Civ 1791).
9. When determining what loss an employee has suffered as a result of a wrongful dismissal, the tribunal is obliged to assume that the employer would have terminated the contract in the way least burdensome to itself (**Lavarack v Woods of Colchester Limited** [1967] 1 QB 278). In most cases that will mean that the employer who summarily dismisses when it was obliged to give notice will be treated as if they would have wished to terminate on notice instead. That means that, in practice, compensation is usually limited to what the employee would have been contractually entitled to receive during his period of notice. The Tribunal does not ask, as it would do in an unfair dismissal claim, whether termination might not have happened at all. It is sometimes possible for an employee to recover somewhat more than their notice monies. This may happen where the contract specifies a disciplinary procedure which the employer has failed to follow. In such a case the employee may be able to say: “in order to dismiss me lawfully, you were obliged first to complete the disciplinary process and only then to issue me with notice” (see **Gunton v Richmond-upon-Thames Borough Council** [1980] ICR 755).

(3) Findings of Fact

(a) Background

10. Nexus Programme Limited (“the Respondent”) provides residential and supported living services. It specialises in providing care to young adults with learning disabilities.
11. Mr Clem Efevawere-Onowotu (“the Claimant”) began working for the Respondent on 12 June 2023. His job title was “Support Worker” (although his job description refers to him as a “Carer”).
12. The Claimant’s terms and conditions of employment were set out in a written agreement executed on 4 September 2023. The agreement makes express provision in respect of notice entitlement as follows:

“Notice of Termination to be Given by Employer

Under one month’s service – Nil

One month but less than two years’ service – 1 week

Beyond this – four weeks.”

There is no express provision allowing for summary termination. However, there is reference to an employee handbook which, the agreement suggests, sets out details of disciplinary rules and procedures. In fact, the handbook simply points to a Disciplinary and Appeals procedure referred to as PP03. The procedure appears to be one of a suite that the Respondent bought in from a company called “Quality Compliance Systems Ltd”.

13. Policy PP03 makes the following provision in relation to Summary Dismissal:

“NPL regards certain issues as serious enough to warrant ‘summary dismissal’ without prior warning. These issues would constitute gross misconduct, that is a

single act of misconduct that is sufficiently serious to break the employment contract between us. Matters that may justify summary dismissal, include, but are not limited to:

- Actions which may harm the well-being of a Service User (“abuse”)
- Acts of dishonesty where the employee’s conduct affect their ability or suitability for continued employment, for example, theft, fraud, the deliberate falsification of records or expenses, a relevant criminal warning or conviction, or inclusion on the DBS register.
- ...
- Physical violence or aggressive behaviour.
- ...
- Bringing NPL into serious disrepute.
- ...”

14. Policy PP03 requires all allegations of misconduct to be fully investigated. There is provision for a disciplinary meeting. After Paragraph 4.4 of the policy the following appears:

“Before any disciplinary meeting, the employee will be:

- Told in writing of the allegations/complaints against them, and the basis of those allegations
- Given a reasonable opportunity to consider their response to that information
- Offered the opportunity to be accompanied by a work colleague or trade union representative
- The employee must take all reasonable steps to attend the meeting. At the meeting, they will be given a full opportunity to comment on the allegations, to put forward any defence or arguments, and to comment on what disciplinary sanction (if any) is appropriate.

15. There is further detail provided at Paragraph 5.1:

“If [the Respondent] considers there are grounds for taking formal action, the employee will be required to attend a disciplinary hearing. The employee will be provided with a notification of the hearing and the following information:

- A summary of the evidence gathered as part of the investigation
- A copy of all relevant documents to be used at the hearing; and
- Copies of any witness statements

As part of the disciplinary hearing [the Respondent] will look to confirm with the employee:

- Details of the conduct issues and the evidence which suggests the conduct or behaviour has fallen below the standards required
- Provide the employee with an opportunity to ask questions and present evidence on their own behalf
- Establish the likely causes of the conduct issues

- Identify whether any further measures can be taken to assist with the conduct issues
 - Discuss the standard of conduct expected; and
 - Issue the employee with an appropriate warning.
16. Paragraph 5.3 makes further provision for the procedure at the disciplinary hearing and suggests that the Disciplinary Officer will inform the employee in writing of the decision “and our reasons for it” and will do so usually within one week.
17. Paragraph 5.10 sets out a right to appeal. However, there is no provision requiring employment to continue whilst the appeal is heard.
18. Finally, Paragraph 5.11 provides:
- “If an employee has less than 2 years’ continuous service, [the Respondent] retains its discretion to vary or to not follow the disciplinary process as set out above.”
19. The Claimant worked in a home known as the Hall. In April 2024, one of the residents was a young person to whom I will call AB. AB suffered from eczema which resulted in marks on his skin that could look like injuries.
20. The Respondent operated an online records system called Sekoia. It was the Respondent’s policy that if a resident was found to have visible marks on their body, it should be promptly recorded on the system to ensure that, if necessary, the cause of and appropriate response to any such mark could be looked into.
21. An education protocol was drawn up for AB by Karen Roffey-Bond, the Respondent’s Director of Care. It required AB to be taken to school by a support worker by taxi. On Tuesdays, the support worker was expected to join AB in a hydro pool and engage with him. On Friday, the support worker would engage with AB from the poolside.
22. On 2 May 2024, the Claimant picked up AB from school, took him back to the Hall and helped him change into his pyjamas. No record was made by the Claimant of AB having any marks on his skin at that point.
23. On 7 May 2024 the Claimant took AB to the hydro pool. 7 May 2024 was a Tuesday so that the Claimant would be expected to be in the pool with AB who would be in trunks. He would, at least, be observing him from the poolside. The Claimant made no record suggesting that AB had any visible marks.
24. On 9 May 2024, AB was visited by Ms Lucy Love, a social worker employed by Kent County Council. Following her visit, she sent an email to Mark Gilbert, the Respondent’s Service Manager which said:
- “I have spoken with my senior as I am concerned about the marks/bruises on [AB]’s arms today, as I had mentioned to you during my visit. I am also concerned that no staff members that were present today (4 in total) or yourself knew anything about these marks and when I asked his keyworker and Lauren (team leader) they seemed surprised and said that they had not noticed them before. Another staff member also made comment that ‘that looks like a carpet burn’.

Can you send me any body maps/incident reports that relate to this by 12 pm tomorrow latest please? I understand Lauren looked on the system earlier but could not find any information about these.

Can you also advise what medical attention has been sought for the sores/bites on his arms and what advice was given? Some of them look like they have been there some time and one looks like it may be infected.”

25. Mr Gilbert responded at 11:01 the next day sending body charts and a report. He told Ms Love that the documents had been on his desk waiting for him to check them and enter them on the system. He promised it would not be a “regular recurrence”. He explained that he had also arranged for AB to be taken to a doctor.
26. On 10 May 2025, the Claimant took AB to see his GP. He did not record the outcome of the meeting with the GP in Sekoia.
27. On 11 May 2025, the Claimant was sat in a television room with a colleague and with AB. Another resident, whom I shall refer to as CD, entered the room and began to attack AB. I was shown CCTV footage of the incident. The CCTV video has no sound.
28. This is what the video shows:
 - 28.1 CD enters the room through a door. He is carrying a DVD case.
 - 28.2 Working anti-clockwise round the room:
 - 28.2.1 AB is sat on a sofa close to the door;
 - 28.2.2 Along the next wall there is seating and two individuals (EF and GH) are sat watching a television opposite them. I understand that EF and GH were agency staff;
 - 28.2.3 Along the next wall is a further sofa, opposite the one that AB is sat on. The Claimant is sat on that sofa;
 - 28.2.4 On the fourth wall is the television.
 - 28.3 CD moves immediately to AB, grabs his T-shirt at the collar and pulls it. At that point, no-one else in the room rises from their seat.
 - 28.4 Almost immediately, CD crosses the room to where the Claimant is sat. CD grabs at the Claimant with his right hand. The Claimant takes hold of CD’s wrist with his left hand. CD leans forward towards the Claimant. The Claimant raises his right hand towards CD who with his left hand, pushes the Claimant’s hand away and makes a grab for the Claimant’s face. The Claimant grabs CD’s right hand and his left forearm.
 - 28.5 GH rises from his seat and appears to speak to CD who turns his head towards him. FH appears to be trying to persuade CD to stop struggling with the Claimant.
 - 28.6 CD does not stop. He rolls onto the sofa and he and the Claimant continue to struggle. CD appears to bite his own left forearm. By this point about 30 seconds has elapsed since CD entered the room.

- 28.7 After a further 5 seconds or so of struggling, the Claimant disengages, crosses the room and sits down next to AB. GH sits down again. CD is seated on the sofa opposite AB and the Claimant.
- 28.8 CD throws the DVD case at the Claimant, who bends over from his seat to pick it up off the floor. CD then stands up with his left forearm in front of his face. He may be biting himself. At the same time the Claimant stands up. EF and GH both stand. AB remains seated. The Claimant leaves the room via the door through which CD entered.
- 28.9 CD moves in the same direction, towards the door through which he entered. He goes through the door and is followed by GH.
- 28.10 As GH reaches the doorway, CD reappears. He again appears to be biting his own left forearm. His right hand is flapping in the air. He grabs at AB who is still seated. The Claimant also reappears in the doorway. Roughly a minute has elapsed by this point.
- 28.11 CD leans over AB and appears to be struggling with him. The Claimant, EF and GH all grab CD. EF from his left, GH from behind and the Claimant from his right.
- 28.12 CD stands up. The Claimant, EF and GH let go of him. EF reaches down to AB. CD turns to the Claimant and appears to try to push him.
- 28.13 CD then lunges at AB. EF and GH appear to be trying to pull AB up off the sofa. The Claimant reaches out and tries to grab CD's right arm with his left. He then disengages, stands up and opens the door.
- 28.14 Having opened the door, the Claimant grabs at CD again. With his left arm wrapped around CD's right arm, the Claimant puts his hand on CD's head and pulls him away from AB. He then seems to try to pull him up off the sofa by his arms. CD has rolled so that he is now in a seating position. He again seems to bite his own left forearm and flaps his right hand. The Claimant who has hold of CD is braced with his knees bent pulling at him.
- 28.15 The Claimant fails to pull CD up with his first pull.
- 28.16 EF and GH succeed in getting AB up from the sofa and move him to the sofa opposite. AB then slaps himself in the head three times. The Claimant is leaning over CD. They appear to be struggling but the view is blocked.
- 28.17 At one minute and 30 seconds into the CCTV footage, the Claimant disengages and goes out through the door. CD stands, puts his arms in front of his face. He runs forward, with his left forearm in front of his mouth. EF and GH step out of his way.
- 28.18 CD reaches AB who grabs CD's right arm. CD slaps AB on the top of his head twice. The Claimant has come back into the room. The Claimant, EF and GH grab CD. The Claimant grabs him from behind and walks him back to the door.
- 28.19 The door is now closed. CD puts his arms out in front of him. The Claimant pushes him through the door from behind. GH is seen in the doorway. There seems to be some further struggling out of shot.

- 28.20 At one minute and 46 seconds the video comes to an end.
29. It is this incident which precipitates the Claimant's dismissal.
30. The Claimant prepared an incident report which was typed up the following day. The account that he gave was as follows:
- “[AB] was sitting on the sofa by [CD's] room and [CD] came out and went straight towards [AB] and grabbed the side of [AB] collar of his top. [THE CLAIMANT] immediately verbally de-escalated [CD] and he let go straight away but then went towards [THE CLAIMANT] who was sitting on the sofa opposite biting his left hand and attempting to grab [THE CLAIMANT], [GH] was verbally de-escalating [CD] at this point. [THE CLAIMANT] managed to remove himself away from [CD] and sat on another sofa. [GC] was attempting to verbally redirect [AB] out of the lounge for his safety but [AB] stayed sat on the sofa, [CD] then threw his DVD case towards [THE CLAIMANT] and then [THE CLAIMANT] verbally redirected [CD] into his bedroom and [GH] followed behind but [CD] quickly turned around biting his left hand and right hand raised attempting to grab [GH] but turned towards [AB] and lent up against the back of the sofa very close to [AB] in an attempt to grab [AB] but missed. [THE CLAIMANT] support [CD] to stand up and away from [AB] and then was attempting to strike [THE CLAIMANT] with both of his hands but [THE CLAIMANT] was blocking the strikes with his arms. [CD] then lent towards [AB] again to attempt to grab him but [GH] managed to guide his arms again. [GH] was still attempting to verbally redirect [AB] out of the lounge but still stayed where he was sitting. [CD] then sat next to [AB] and was attempting to hit [THE CLAIMANT] but missed and [EF] and [GH] managed to guide [AB] off the sofa as [CD] was then attempting to strike and grab [AB]. [AB] sat on the opposite sofa and [THE CLAIMANT] then tried to verbally redirect [CD] to his room but [CD] very quickly turned around biting his left arm and right arm raised and attempted to grab [GH] but as he stepped aside [CD] very quickly went towards [AB] and hit him on top of the head. All 3 staff rushed to [CD] with [GH] supporting [CD] left arm and GC with [CD] right arm to guide him away and then [THE CLAIMANT] took over and redirected [CD] into his room as well as verbally de-escalating [CD]. [THE CLAIMANT] then used [CD] bedroom door as a environmental barrier so he had time to calm down as [CD] was still attempting to grab once in his room. [AB] then continued to sit on the sofa showing no signs of distress as well as no physical injuries. After a few minutes [THE CLAIMANT] stepped away from [CD] door and sat next to [AB] on the sofa. [CD] came out of his room once again biting his left hand and attempting to grab [THE CLAIMANT] but missed so [THE CLAIMANT] stood up from the sofa and guided [CD] to sit down and was verbally de-escalating. [CD] then went into the hallway and [THE CLAIMANT] and TO followed but [CD] was still attempting to grab both staff to [GH] was verbally de-escalating. Once [CD] had entered the dinning room [CD] threw kitchen chairs at [THE CLAIMANT] and then RK came into the kitchen and verbally de-escalated [CD] which worked as after a few minutes [CD] appeared calm.”
31. On Sekoia, the Claimant recorded that CD had been “attacking staff members” and also noted “Attack on staff members, and other service users”

32. On 16 May 2024, the Claimant was required to attend a “Fact Finding/Professionals Conduct Meeting. He was interviewed by Ms Roffey-Bond and Mr Rogers. There were three matters put to the Claimant: (1) That he had refused to support AB in the Hydro Pool on 7 May 2025; (2) That he had informed the GP that AB had had a rash for some time but that fact had not been recorded in Sekoia; and (3) That the Claimant walked in front of AB when they were together when he should have been behind him, and that he was on his mobile phone when he should not have been. Of the three questions raised with the Claimant, only the second is presently relevant.

33. The Claimant’s response to the question about his record-keeping was as follows:

“[The Claimant] said that he told the GP, that the rash had been there a while but it wasn't infected. He also said that OG always has marks on him as he picks. I asked why this was not recorded in his records or on a body map, and he said that he didn't know and that he might not have been allocated to him.

It was explained that only factual information can be given to professionals, and that if anyone sees marks on a service user, they are duty bound to report it.”

33. That same day the social worker, Ms Love, returned to the home on an unannounced visit. She watched the CCTV of the incident on 11 May 2025. Ms Love informed Ms Roffey-Bond that the Council would be investigating the safeguarding of AB and CD. She also specifically raised the Claimant. In an email dated 17 May 2025 she summarises what she had said:

“I then told you what I had seen on the CCTV regarding staff member [the Claimant] restraining [CD]. I asked you again what immediate actions you will be taking and you advised me that you would review the CCTV and follow the same procedure as outlined above. You told me that [the Claimant] has had his restraint training and I told you that there was no evidence of this when I reviewed his paperwork yesterday and that [the Claimant’s] training sheet was blank.

I asked you to review the CCTV and come back to me by 11:30am today to discuss further and advise me on an action plan.”

Ms Roffey-Bond appears to have sent through an action plan the same day as its receipt is acknowledged in an email of the same day. The action plan was not in the bundle.

34. At 16:00 on 17 May 2025, the Claimant attended a “Professionals Conduct Meeting Lessons Learnt”. The meeting was conducted by Mr Gilbert and a Ms Lloyd. The subject of the meeting was the 11 May 2025 incident. At the meeting, the Claimant was shown the CCTV footage. Amongst the questions that he was asked was:

- (1) If he could see anything wrong within the Physical Intervention; and
- (2) Why not all the information was in the incident form “regarding [CD’s] head”.

35. The reference to CD’s head is to the interaction described at 28.14 above, where the Claimant put his hand on CD’s head and pulled him away. The Claimant admitted that he had put his hand on CD’s head but said that it was not premediated. He went on to say that “knowing how [CD] is with spitting and biting that he was trying to protect all from possibly being hurt”.

36. The outcome of the meeting is recorded as being that the Claimant was not to support CD, that he would attend a refresher course on Physical Intervention and that he would redo E learning on Positive Behaviour Support and Challenging Behaviours. It is also recorded that Kent County Council had directed that the Claimant was not to support young services users for whom they were responsible, including AB. There does not seem to have been any suggestion at that point that the Claimant had committed any repudiatory breach of contract or that he was otherwise at risk of dismissal.

(b) The Dismissal

37. The next day, 18 May 2025, a new investigation began. The subject of the investigation was the Claimant. The investigation later resulted in a report. The report identifies the reason for the investigation as being; “Reporting of incidents and care delivery do not accurately reflect your actions within incidents and care records, which was serious enough to bring the company into disrepute”. The nature of the allegations is said to be: “Inaccurate reports in relation to serious incidents, which constituted abuse, and brought the company into disrepute.”
38. On 21 May 2024, there was a Teams Meeting organised by Kent County Council. Ms Roffey-Bond and Mr Rogers attended on behalf of the Respondent. A Care Quality Commission (“CQC”) inspector was also in attendance. There are minutes of the meeting in the bundle. They are heavily redacted. In the little material that is visible, Ms Love runs through a number of concerns including the apparent failure to record marks on AB’s body and what she considered to be discrepancies between the CCTV footage of the 11 May incident and the incident report. Other Kent County Council employees suggested that it was concerning that the Claimant had not been suspended.
39. The Claimant was suspended the same day.
40. On 22 May 2024, the CQC visited the Hall. The following day, the CQC sent the Respondent a notice of possible urgent enforcement action under **Health and Social Care Act 2008, s. 31**. The copy of the letter included in the bundle is again heavily redacted.
41. The CQC letter says that it had “serious concerns” which included a failure to “ensure there was a robust system in place to monitor that incidents were documented, reviewed and analysed.” Included in the evidence upon which the CQC’s concerns are said to be based is a reference to the incident on 11 May 2024:

“On 11th May 2024 CCTV shows Service user A became distressed in the living room. We reviewed the CCTV of this incident which shows Staff member 1 using physical force outside any care planned physical restraint technique excessive force and assaulting Service user A. Your staff failed to raise this as a safeguarding concern, failed to seek an urgent healthcare check from a healthcare professional for service user A, and failed to complete a body map identifying any marks or bruising following this physical force. When you were made aware of the incident you by Kent County Council, you allowed staff member 1 to continue to work at The Hall with no monitoring, supervision, training or assessment of the risks this may pose and therefore no mitigation.”

Staff member 1 is the Claimant.

42. Given the extent of the redaction, the CQC's concerns about the Claimant's conduct are likely to have been only a part of the story. However, it appears that the CQC's concerns were that:

- (1) The Claimant had used excessive force;
- (2) No-one had raised that as a safeguarding concern;
- (3) No-one had sought an urgent health check for CD;
- (4) No-one had completed a body map for CD; and
- (5) The Claimant had continued to be allowed to work without monitoring, supervision, training or assessment of the risks that might pose.

The CQC's main concerns, therefore, were safeguarding generally rather than record-keeping specifically. There is no suggestion that the CQC was concerned that the 11 May 2024 incident report was inaccurate. They were concerned, however, that there was no body map. The CQC seem to have felt that allowing the Claimant to continue to work unsupervised at least potentially created risks to those in care.

43. In response to the CQC's concerns, the Respondent submitted an action plan.
44. On 23 May 2025, Ms Roffey-Bond concluded her investigation. Her findings included the following:

"On reviewing the incident report from [THE CLAIMANT] in relation to the incident that occurred on the 11th of May 2024, I found that it lacked details and did not truly reflect, the incident or his actions in relation to his intervention with [CD]. Essential details were missing from the report and there were inaccuracies in the recording.

- 1: No description of the re-direction to his bedroom. In the CCTV, [THE CLAIMANT] physically moves him out of the lounge into his room.
- 2: No mention of [THE CLAIMANT] putting his hands on [CD's] head, this is clear in the CCTV.
- 3: No description of how [THE CLAIMANT] supported [CD] to stand up, this is clear in the CCTV, and involves a hands on act.
- 4: No description of how [THE CLAIMANT] supported /re-directed [CD] to his room, for the second time. Hands on are clearly viewed.
- 5: It states that there were no injuries, but there is no evidence that [CD] was checked.
- 6: It states that a body map was done for [AB], but nothing for [CD].

The incident is recorded as lasting 11 minutes, but the recording for this incident was less than a side of A4 paper.

In [THE CLAIMANT's] fact finding in relation to reporting he said "there's so much confusion and a lot that was going on, that he can't remember everything and can only document what he can at the time"

On reviewing the minutes from Kent County Council (21/05/2024), it referenced marks on [AB] on the 9th of May 2024. It also referenced the incident on the 11th of May, which I have not redacted as it evidences the inconsistencies in the report recorded by [THE CLAIMANT]. In this report we were advised by Kent County Council to suspend [THE CLAIMANT], pending further investigations.

I revisited the Fact-finding report of the 16th of May, as [THE CLAIMANT] had supported [AB] at school for his educational hydro session. In this, [THE CLAIMANT] would have supported [AB] to get changed into his swimming gear and to get dressed after the session, so would have seen the marks. I checked as part of Safeguarding, as it is essential that all unexplained marks are reported and recorded. In the Sekoia logs for both 2/5/2024 and 7/5/2024 there is no recoding on the body maps for that day. and no mention of the marks. [THE CLAIMANT] is named as his allocated worker for those days.

In the Sekoia records of the 2/5/2024, [THE CLAIMANT] supported [AB] at school, it is [AB]'s normal routine after school to have snack on return from school, and if he is not going out he gets changed into his pyjamas. This would be supervised by staff and there is no record of this or the marks. It is a requirement for a support worker to report any marks or injuries, and to record on a body map so that these marks and injuries can be tracked.

In the Sekoia records of 7/5/2024 [THE CLAIMANT] supported [AB] at school, where it states that he participated in hydro. No further details. This activity was supported by education staff as [THE CLAIMANT] had not participated, but he would have supported [AB] to get ready for the pool. No body charts, or information relating to why [THE CLAIMANT] did not participate as this is part of his role at school.

We held a professionals conduct meeting on the 21st of May and as Kent County Council, had made the recommendation for suspension, based on inaccurate reporting which could have led to serious harm, we suspended [THE CLAIMANT].

I then reviewed four additional incident reports written by [the CLAIMANT] for factual inaccuracies. These reports lacked vital information including dates, location within the building of the incident as well as details of the incident.

I then reviewed a further two records from Sekoia, written by [THE CLAIMANT]. One dated the 11/05/2024 and 14/05/2024. Both these daily records correspond to the incident reports I reviewed.

On 11/05/2024, the incident is timed as occurring at 08.28 to 08.39hrs, on Sekoia this was recorded at 19.23hrs, "attack on staff members and other service users". There is no behaviour log completed or any other detail. There should be a reference to an incident report or behaviour log. Under administering medication [THE CLAIMANT] has written "attacking staff", there is no incident or behaviour log for this. "Attacking staff" is not a description of behaviour.

On the 14th of May, the Sekoia records, clearly show that no body map is completed. This is required for every hands-on incident. In additional comments it states body map, but there is no record. There is no record of any incidents or

behaviours. There are four incident reports for [CD], so the records are factually incorrect.”

45. The findings go on to identify the rules applicable to record-keeping. They are:

- (1) Record Keeping Policy and Procedure: AB10;
- (2) Accident and Incident Reporting Procedure: HS01; and
- (3) Safeguarding Adults Policy and Procedure: CR74.

Ms Roffey-Bond seems to suggest that the Claimant had failed to comply with the requirements of those policies.

46. Ms Roffey-Bond concludes that the Claimant had failed to comply with his job description which identified as a specific job requirement: “Maintain all care plans/care records in accordance with the services policy”. She satisfied herself that he had been trained on the requirements.

47. The specific outcome identified under the heading “next steps” is: “There is a case to answer, therefore a disciplinary hearing is recommended in relation to the allegation of nonfactual reporting and record keeping.” At that point, therefore, Ms Roffey-Bond does not appear to have been intending immediately to dismiss the Claimant. No disciplinary hearing ever seems to have taken place.

48. There is a dispute between the parties as to whether any attempt was made to convene a disciplinary hearing. The Respondent says that Ms Roffey-Bond called the Claimant at around 10:30 am on 24 May 2024 to invite him to a disciplinary meeting that day. Ms Roffey-Bond says that the Claimant declined her invitation. She called again at around 3 pm and again invited him to attend. The Claimant’s position, according to Ms Roffey-Bond was that it was a long way to travel and he would rather just be given the outcome. Ms Roffey-Bond, in tears, then did so. On the Claimant’s account, he was not invited to a disciplinary meeting. During the 10:30 call he was told what the issues were and that Ms Roffey-Bond had arrived at a decision. She called again at 3 pm. Ms Roffey-Bond wanted him to attend a meeting but he said it was too far away and asked if he could come another day. Ms Roffey-Bond suggested that he had to come that day. The Claimant told her that if sacking him would make things better he would accept it in good faith. Ms Roffey-Bond told him that he was dismissed. The material dispute appears to be over whether Ms Roffey-Bond wanted to hear from the Claimant before making a decision or whether she had already made up her mind. That would be a very significant matter if the issue was whether the Claimant’s dismissal was unfair. However, it does not affect the question whether he had committed a fundamental breach of contract. Where it may be relevant is if there was a contractual obligation to hold a disciplinary hearing before dismissal. I deal with that question in the Discussion and Determinations section below.

49. On 24 May 2024, the CQC wrote again to the Respondent. The letter imposed conditions on the Respondent’s registration. Specifically, the Respondent was prohibited from admitting any new service users to the Hall. The Respondent was also required to provide a written report covering a wide range of issues including: a requirement to evidence that staff were trained and competent in positive behaviour support; a summary of all incidents and accidents, actions taken and lessons learned; and risk assessments for each service user. A very wide range of matters are identified as evidencing the need for

the restriction. None of them appear to be the 11 May 2024 incident. There is a reference to other incidents involving “SM1”, i.e. staff member 1 or the Claimant, and an alleged failure to investigate them:

“whilst we acknowledge SM 1 no longer works at The Hall, you have not considered what other incidents SM1 may have been involved in.”

The language used by the CQC seems to suggest that they had been told that the Claimant’s employment had terminated rather than that he had been suspended, but nothing turns on that for present purposes. I note that on 7 August 2024, the CQC effectively closed the Hall by removing the Respondent’s authorisation to carry out regulated activity there.

50. On the same day, Ms Roffey-Bond wrote to the Claimant confirming his dismissal:

“As you are aware we suspended you 21st of May due to your records not being factually accurate in relation to your reporting intervention incidents, pending an external enquiry from Safeguarding and the Police.

On the 22nd of May, the Care Quality Commission visited the Hall, in connection with this concern. This was an inspection and they viewed CCTV, and viewed more reports of recording.

In this they found more incident reports written by yourself that did not match the recorded events.

On the 23rd of May, the Care Quality Commission sent us their finding and they determined several breaches at the Hall, which included incident reports that did not match the recorded events.

Having carefully considered the report of their findings and recommendations, it is my decision to summary dismiss you from your employment.

Although, occurrences of gross misconduct are very rare because the penalty is dismissal without notice and without any previous warning being issued. We find any behaviour or negligence resulting in a fundamental breach of contractual terms that irrevocably destroys the trust and confidence necessary to continue the employment relationship will constitute gross misconduct.

You have the right to appeal against my decision and should you wish to do so you should write to Mr Stewart Davies, our Human Resources Manager within 28 days of receiving this letter giving the full reasons why you believe the action taken against you was inappropriate or too severe.”

51. Again on 24 May 2024, Mr Rogers submitted a statutory notification about abuse or alleged abuse to the CQC concerning the 11 May incident which appears to identify the Claimant as the alleged abuser (although he is not named).
52. On 27 May 2024, Ms Roffey-Bond wrote to the Claimant explaining that she had contacted the Home Office and that the Respondent had withdrawn its sponsorship of the Claimant.
53. On 31 May 2024, Ms Roffey-Bond made a referral to the Disclosure and Barring Service.

54. The Claimant appealed against his dismissal on 4 June 2024. His case was that he had acted as he had on 11 May 2024 to protect AB and that he had himself sustained injuries.
55. The Claimant's appeal was rejected by a letter dated 6 June 2024 from Mr Stewart Davies, the Respondent's HR Manager. His response was as follows:

"You have been dismissed as the recording of your actions, as viewed on CCTV, did not match your recording of events. In one case you did not produce a report of the incident at all.

Both Kent County Council and the Care Quality Commission on seeing the CCTV and your reports have major concerns around the way you have reported your actions as they do match what they viewed. No one has commented on your intent. This is for Safeguarding and the Police to determine, not us."

He declined to reinstate the Claimant. Although Policy PP03 makes provision for an appeal hearing, none was held.

(4) Discussion and Determination

(a) The Hearing

56. There were two days of hearing. It had been listed to be heard by CVP. However, the Claimant was concerned about the reliability of his internet connection and attended in person (with the Respondent's consent).
57. Before the hearing commenced, the Respondent informed me that it had paid into the Claimant's bank account a sum which, by my reckoning, potentially exceeded the value of his claim for notice monies¹. There was discussion about whether the Claimant wished to continue with the hearing in those circumstances. It was clear that the Claimant hoped to receive compensation for, amongst other things, ongoing loss of earnings. I explained that that was a remedy for an unfair dismissal but not for wrongful dismissal. The Claimant lacked the necessary period of qualifying service for an unfair dismissal claim.
58. I was conscious that the Claimant was is a litigant in person. However, he does also possess a law degree. I explained that if he recovered less than the sum that he had been paid already, there was a risk that the Respondent might make an application for costs. I advised him to seek advice from as Citizen's Advice Bureau if he was able to. I adjourned the hearing to allow him to consider his position and, if possible, take advice.
59. The Claimant told me that he was concerned that the Respondent had failed to follow its own disciplinary procedure. He had been denied a fair hearing. He wanted to continue to pursue his wrongful dismissal claim and was going to repay the money that had been sent to him.
60. The Claimant asked me to adjourn the case so that he could take advice to see if another claim might be identified, which request I refused. I considered that the application was being made too late in the day and I did not consider it would be in the interests of justice to adjourn a final hearing on the speculative basis that he might be able to construct an entirely new case.

¹ It was paid gross rather than net and included a figure representing average overtime earnings.

61. The Claimant applied to add a direct Race Discrimination claim. What he was alleging developed over the course of his submission to me. Ultimately, he fixed upon an allegation that his dismissal was directly discriminatory. The Respondent objected to the application to amend.
62. I applied the guidance in **Selkent Bus Co Ltd v Moore** [1996] ICR 836 and in the **Presidential Guidance Note 1**. I rejected the application, giving an extempore decision. In short summary, my reasoning was:
- (1) The nature of the amendment was substantial. It was not a mere re-labelling. There had been no previous suggestion in the pleadings that the Claimant's race had played any role at all in the decision to dismiss. The Claimant was not able to explain, beyond bare assertion, on what the claim was based.
 - (2) The application was being made very late. The allegation was being made some nine months after the dismissal so that it would, as a stand alone claim, be out of time. It was also being made on the afternoon of the first day of a final hearing. The Claimant said that he had not made the application earlier because the experience of dismissal had been "traumatic" but, taking at face value that the dismissal had been traumatising, it had not prevented him from formulating and commencing a wrongful dismissal claim, so it was wholly unclear why it would have prevented him from formulating and presenting a discrimination claim.
 - (3) The consequence of allowing the amendment would be that the hearing would be ineffective. A two day hearing would be lost as the Respondent would need to obtain and produce further evidence to deal with the previously unintimated claim.

In the circumstances, I did not consider that it was in the interests of justice to allow the amendment.

63. At the end of the second day of the hearing the evidence was completed but the submissions were not. Both parties put in short written submissions and agreed that the matter could be determined without the need for a further hearing.

(b) Submissions

64. The Claimant's submissions are:
- (1) That the incident reports dated 11 May 2024 and 14 May 2024 and the Fact Finding/Professional Conduct meeting dated 16 May 2024 "were distorted and falsified by the Respondent". In the context, the Claimant alleges that his original hand-written notes were shredded. He says that shredding involved a breach of legal obligation on the Respondent's part.
 - (2) The disciplinary procedures policy was not followed. In particular, he was not given a fair hearing nor was he given an appeal hearing.
65. The Respondent's submissions are:
- (1) The Respondent was not dismissed for abuse, but for "[failing] to report the use of force, and omissions of body maps". Elsewhere in the written submissions it is said that the "fundamental reason" for the Claimant's dismissal was "the fact that

[his] actions, as viewed on CCTV, did not match [his] recording of events". I understand that to be a reference to the 11 May incident and the subsequent report. The submissions identify that as a "one off incident" which is a "fundamental breach" and which is "more than sufficient" to justify termination.

- (2) The dismissing officer, Ms Roffey-Bond, concluded that the failures were deliberate.
- (3) The reporting failures "constituted a serious breach of the duty of trust and confidence, as well as the duty to act with due care and skill".
- (4) The reporting failures fell within the list of wrongdoing identified in the Disciplinary Policy and Procedure as justifying summary dismissal because:
 - (a) They brought the Respondent into disrepute; and
 - (b) They amounted to falsification of records.
- (5) There was no prospect of establishing a breach of contract by the Respondent for failing to follow the Disciplinary Policy and Procedure because the Policy expressly allows the Respondent to adapt it where the employee has less than two years' continuous service, which the Claimant did.

66. It appears, therefore, that although there were questions about the accuracy of reporting in relation to the marks on the AB's skin and in relation to an incident (about which I have heard no evidence) that occurred on 14 May 2024, the case really turns on whether there was a failure accurately to record the events of 11 May 2024 and to produce a body map for CD and whether, if there were, those failures amounted to a fundamental breach of contract.

(c) Discussion

67. It is clear from the evidence before me that accurate recording of incidents that may have safeguarding implications is a matter of considerable importance. Indeed, the Claimant has not sought to persuade me otherwise. The Record Keeping Policy and Procedure: AB10 has a section specifically entitled "Acknowledging the importance of Record Keeping". That section states that records provide a "permanent legal record" and that they may be used for audit and investigative purposes. Paragraph 4.3 of the Policy AB10 provides:

"Record keeping is an integral part of the provision of care and support provided to Service Users on a day-to-day basis and it is the way that NPL Home staff demonstrate what care has been delivered, or not, in some cases."

At Paragraph 4.5 staff who create records² are made responsible for their accuracy:

"All staff who make entries in records are responsible for the quality and content as well as adherence to this policy. Staff understand they are responsible and accountable for meeting the requirements laid down by: Policies and procedures of the NPL home, their contract of employment ... the Care Quality Commission".

² And also, per Para 4.4 of the policy, those who supervise them.

Care records are required to be “accurate, honest and comprehensive”³. The entries have to be as objective as possible so that they are “precise and accurate”⁴. The Claimant received training on the recording of information on 23 October 2023. He told me in the course of his evidence that he had been trained and that he had no issue with report writing.

68. There is a discrete, but overlapping, policy which applies to Accident and Incident Reporting. An incident is: “... any unintended event or occurrence that has caused death, injury, ill-health or damage”. The policy reference number is HS01. It requires that the home should record and investigate “all incidents which occur in connection with its service activities.” That includes “incidents of all types, whether or not they result in actual injury or property damage”.
69. The contract of employment does not include any express obligation in respect of record-keeping. Nor does it expressly incorporate either AB10 or HS01 by reference. There is a requirement set out in the Claimant’s job description (which no-one suggested to me is a document that has contractual force) that he should “understand and follow all policies and procedures relevant to the role”.
70. My understanding of the policies and of the evidence that I heard was that even if the requirement to keep accurate records is not an express contractual obligation, it is nevertheless understood by all parties to be a matter of critical importance which is an integral part of the proper provision of care. In answer to a question in cross-examination, the Claimant accepted that “accurate reporting is a fundamental part of [his] role”. A failure to keep accurate records might have adverse consequences for those in the care of the home. It might also have adverse consequences for the home itself because, as happened in the present case, both the County Council and the CQC insist on accurate record-keeping as a matter which goes to the ability of the home to care for its service users. Put another way, failing to keep accurate records could bring the Respondent into disrepute.
71. I accept that, in principle, sufficiently inaccurate record-keeping would be capable of being behaviour that might:
 - (1) be calculated or likely to materially damage or to undermine the relationship of trust and confidence; and/or
 - (2) bring the Respondent into disrepute.

The position is *a fortiori* if the inaccuracy is deliberate.

72. The first question, therefore, is whether the Claimant provided an inaccurate account of the 11 May 2024 incident and whether he failed to create a body map of CD. I remind myself that the burden of establishing these things falls upon the Respondent. The Claimant has put forward his own narrative, which I consider below, but it is not for him to prove that he did not commit a repudiatory breach.
73. The Claimant accepts that no body-map was created for CD. However, he says he had no reason to think that CD had suffered any injury that would have required recording. The

³ Para 5.2 of the Policy

⁴ Para 5.5 of the Policy

Respondent's position was that there had been a physical altercation and what was required was an examination and a body map even if no injuries were recorded. I was initially sceptical about the utility and importance of creating a record of an *absence* of injury, but I accept that with a service user who is prone to physical outbursts, it is important to be sure that they are not injured or, if an injury does occur, to have records that allow those investigating to know precisely when it happened. I note the absence of a body map was a matter that the CQC was specifically concerned about. However, the Claimant's position was that his training did not say that a body map was required in an incident of the kind at issue where no injury has been noticed. No evidence to the contrary was produced by the Respondent. It is the Respondent that has the burden. I conclude that whilst it is the Respondent's policy that a body map should be completed after a physical altercation even absent a visible injury, I cannot, on a balance of probabilities, be satisfied that the Claimant understood that to be a requirement. Absent such an understanding, the Claimant's failure is not, I conclude, sufficiently serious as to amount to a repudiatory breach.

74. The Claimant does not accept that his incident report for 11 May 2024 was inaccurate so as to amount to misconduct on his part. He put his case in a number of different ways, which I summarise now, hoping that I do his various contentions justice:
- (1) His original handwritten incident report was accurate, but the typed report is not and has been falsified;
 - (2) If the typed report does accurately transcribe his handwritten report, it is as accurate as it could have been given the circumstances;
 - (3) If the typed report accurately transcribes his handwritten report but is not accurate in substance, it was his expectation that that the report would be checked against the CCTV by a team leader, that being part of their job; and
 - (4) In any event, there was no dishonesty on his part as once he was shown the CCTV he immediately accepted that where the incident report differed, the CCTV should take precedence.

I consider each contention in turn.

75. The Respondent accepts that the Claimant did not personally type out the incident report that appears in the bundle. The report says that it was "typed by Lauren Culmer from [the Claimant's] report". It also says that it was checked by Ms Roffey-Bond, although there is no indication given as to how it was checked. It does not appear to have been checked against the CCTV notwithstanding the suggestion in Policy HS01 that every incident will be investigated.
76. The Claimant says that the version on the form is "fabricated". That is to suggest that a deliberately inaccurate account was created by Ms Culmer and/or Ms Roffey-Bond which differed materially from his own handwritten report. I do not accept that suggestion. First, if the Claimant believed that the report was falsified I would have expected him to have raised the point at the Professional Conduct Meeting on 17 May 2024 when the failure of the report to mention, specifically, that the Claimant had grabbed CD's head was explored with him. His contention (for which see Para 74(4) above) that he immediately accepted that the CCTV differed from his report is inconsistent with a suggestion that he

produced an accurate account that was doctored by others. Most significantly, no reason has been suggested as to why either woman would have done such a thing. What would either of them or, for that matter, the Respondent have had to gain from deliberately introducing inaccuracies into a report when inaccurate reports risked intervention by the County Council and CQC? The suggestion is all the more incredible given that only two days earlier Ms Love had been pressing for records in relation to AB. At a point at which record-keeping was already subject to critical scrutiny, the production of an inaccurate account, which could be easily checked against CCTV footage would be an astonishingly risky course for an employer and one from which it would derive no obvious benefit.

77. Next, the Claimant says, the incident on 11 May 2024 was intense and stressful and he could not be expected to capture every detail. On the face of it, that is reasonable proposition. However, what was put to him was that the material that was omitted consisted of things physical interventions by him for which he might have been criticised, such as putting his hand on CD's head and pulling him away and pushing CD through the door. I considered the evidence anxiously and concluded that there is a pattern to the omissions and it consists, broadly, of the Claimant minimising his physical actions in relation to CD. That is not to say that what he did amounted to abuse. I make no such finding. But I do find that the account the Claimant gave consciously minimised the nature and extent of his physical interventions. I did not accept that the stress of the situation would have led to a selective recall that allowed him to remember everything except his own physical interventions. I reject, therefore, the Claimant's contention that the account given was as accurate as might reasonably be expected in the circumstances.
78. Thirdly, he says that his expectation was that the report would be checked against CCTV by someone in what he called the Respondent's "various management levels"⁵. The implication appears to be that inaccurate reporting on his part could not cause harm, because any inaccuracies would always be caught and rectified. The Respondent's position was that there was no such process. Whether or not checking reported incidents against CCTV would have been a sensible policy, I accept that it was not done as a matter of course. However, as Policy AB10 makes clear, whatever responsibility others may have for the accuracy of the records, the care worker who creates them has their own responsibility. The availability of a check would not, I conclude, render any less serious the submission of a report that the author knew to be inaccurate.
79. Finally, the Claimant says that he accepted that the CCTV gave the true picture. As a statement of fact that is clearly true. The question is what the significance is of that acceptance. First, as I have already said above, accepting at the Professional Conduct meeting that there were things shown on the CCTV footage that were not in the written report is necessarily to accept (even if only technically) that the written report contained inaccuracies. That is inconsistent with his contention that the report was accurate. Second, again as explained above, if he had believed that the typed version of his report had been falsified so as to introduce inaccuracies, that would have been the time to raise it whereas, as he accepted in evidence, it was only really at the Tribunal hearing that he raised that supposed concern for the first time. Thirdly, assuming that the typed report is not a falsification and that the Claimant did accept that his own account had been

⁵ He later suggested that it was the Team Leader's responsibility.

inaccurate, his acceptance that footage and report differed does nothing to displace my finding that his report was consciously inaccurate and that it sought to omit or minimise his physical interventions. When confronted with the CCTV he could not, realistically, deny what it showed so his acceptance is not an indicator of honesty so much as an acceptance of the incontestable.

80. As I have already emphasised, rejecting the Claimant's arguments does not mean that I am bound to accept the Respondent's contentions. The burden of establishing a repudiatory breach is on them. I have concluded, however, on the basis of the evidence before me that the Claimant consciously produced an inaccurate record. Given the importance of accurate records to the Respondent, to those in its care and to the agencies which commission and oversee the Respondent's operations, I conclude that the Claimant's conduct amounted to a repudiatory breach. I consider that it represented both a breach of the implied duty of trust and confidence and conduct which was likely to bring the Respondent into disrepute. I reiterate that I have not been required to and do not make any finding as to whether the Claimant's conduct towards CD on 11 May 2024 amounted to abuse and I note that the Police accepted the Claimant's account of his actions and decided to take no action against him.
81. That leaves, however, the question whether the dismissal was wrongful, notwithstanding the repudiation because there was a failure to follow a contractual disciplinary procedure.
82. I have found above that the disciplinary procedure is incorporated by reference into the contract of employment. The procedure requires both a disciplinary hearing and an appeal hearing. Neither happened.
83. The Respondent's submissions deal with the question of the alleged failure to follow the procedure with the lightest of touches, referring to "the minor error (if any) in terms of the process".
84. The Respondent's submissions do point to the discretion to vary or not to follow the disciplinary procedure where, as here, the employee has less than two years' continuous service. I deduce that the intention is to argue that in so far as the procedure may have fallen short of what is provided for in Policy PP03, that represents an exercise of the discretion. That is not, I consider a complete answer. As with any contractual discretion in an employment contract, it will be subject to implied constraints. For instance, they cannot be exercised irrationally (see **Braganza v BP Shipping Ltd** [2015] UKSC 17). More specifically, in cases where a disciplinary process is at issue the **Sasha Burn** case (for which see Paragraph 8 above) suggests⁶ that the tribunal will readily imply an obligation to deal with matters fairly.
85. The Respondent had a discretion not to follow the policy but not if that would have the effect of entitling it to handle the Claimant's case unfairly. The question, therefore, is whether that is what happened in this case.
86. Starting with the disciplinary hearing, the Respondent says that the Claimant was offered a hearing. However, that was not, I conclude an offer of a fair hearing. Even accepting Ms Roffey-Bond's account, he was not going to be given even 24 hours' notice of the hearing.

⁶ Albeit obiter

Nor had he received any document setting out the precise charges so as to allow him properly to understand what he was being accused of⁷. It is significant that when he came to appeal he seemed to be under the impression that he had been dismissed for abusive acts. I do not consider that a hearing at effectively no notice and without sight of at least the investigation report, could meet the bare requirements of an implied obligation to apply the disciplinary process (or to apply to the discretion conferred by it) in a manner which allowed the disciplinary question to be determined fairly.

87. The Respondent puts some weight on the Claimant having said that he would accept the decision to terminate him in good faith. Although the precise significance was never spelt out, it may be that the Respondent was seeking to suggest that the Claimant was thereby waiving his right to a disciplinary hearing. If that is what is contended for, I reject the argument. The Claimant's immediate response, I find, was to ask whether the meeting could be conducted on another day. His "acceptance" of the decision arises only once it is clear that the Respondent requires, for no reason ever articulated, that the matter had to be concluded that day. He was, therefore, put into a position in which he had little real alternative but to accept the reality of the dismissal. Further, accepting the dismissal in good faith is not the same as accepting that there has been no breach of contract in respect the disciplinary procedure adopted, so it falls well short of amounting to a clear and explicit waiver of any such breach. Still further, he was then offered (in the confirmation of termination letter) and took up the opportunity to appeal, so that the question whether he accepted that the Respondent was entitled to dismiss him and/or to dismiss him without notice remained live.
88. I conclude that the Respondent breached the Claimant's contract by failing to afford him a disciplinary hearing at a point in time that would have enabled him to read the investigatory report and prepare what he had to say in response. I further conclude that the minimum period that should have been allowed before the disciplinary hearing was 7 days.
89. The Claimant raised his appeal within the time allowed in the confirmation of dismissal letter. The procedure requires that there should be an appeal hearing. Did the Respondent's discretion permit them to deal with the appeal on paper? I conclude that it did not. Having been denied a disciplinary hearing, the appeal hearing would have been the first opportunity that the Claimant would have had to address the issues in person. The written response to his appeal suggests in terms that the Claimant had misunderstood the basis for this termination, which, I consider, would have made hearing from him once that misapprehension had been corrected all the more important to a fair disciplinary procedure. I conclude, therefore that there was a further breach of contract.
90. Both breaches of contract arise out of the termination of the employment contract within the meaning of **Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, Paragraph 3(c)**.

⁷ He had attended the Professional Conduct Meeting on 17 May 2025, but that meeting was not a disciplinary meeting, pre-dated the start of the investigation that resulted in the termination of his employment and did not address all of the matters and evidence that were later included in the investigation report.

Remedy

91. The remedy for the failure to afford the Claimant a disciplinary hearing is one week's net pay.
92. I make no award in respect of the failure to afford the Claimant an appeal hearing. It post-dates the termination of the employment and there is no requirement that the employment should be treated as having continued in the period prior to the date fixed for an appeal. There is, therefore, no claim for loss of earnings on a **Gunton** basis. The Claimant has not suggested that a claim for loss of a chance of reinstatement would lie, but even if it did, since I have concluded that he had committed a repudiatory breach, I would assess that chance (and thus his loss) at nil.

Directions

93. The parties are directed:
- (1) To agree the value of one week's net pay between them and the Respondent should then pay that sum to the Claimant;
 - (2) If the parties are unable to agree that sum, they should make further submissions in writing on the issue within 28 days of the date on which this judgment is sent to the parties ("the Promulgation Date"); and
 - (3) Any applications consequential on this judgment should also be made within 28 days of the Promulgation Date.

Approved by:
EJ SEAN JONES KC
20 August 2025

Sent to Parties.
2025

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 at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/