



EMPLOYMENT TRIBUNALS

Claimant: Mr. Eguono Otite

Respondent: Serco Limited

Heard at: London South Employment Tribunal (hybrid)

On: 8th, 9th, and 10th April 2026

Before: Employment Judge Sudra sitting with non-legal members Mr. S. Khan and Ms. F. Whiting

Appearances:

Claimant: In-Person (unrepresented)

Respondent: Mr. L. Gregory of Counsel

(References in the form [XX] are to page numbers in the Hearing bundle. References in the form [XX/X] are to the paragraph of the named (by initials) witnesses' witness statement)

JUDGMENT

The unanimous decision of the Tribunal is that the Claimant's complaints of,

- (i) 'Ordinary' unfair dismissal is not well founded and stands dismissed.
- (ii) Direct race discrimination is not well founded and stands dismissed.

REASONS

1. Following delivery of oral summary reasons on 10th April 2026, the Claimant, on 20th April 2026, wrote to the Tribunal stating '*I want you to send me written summary reasons and written full reasons of my case.*' This was taken as a request for written summary reasons and written full reasons. Exercising our discretion under r.60(4E) of the Employment Tribunal Procedure Rules 2024, we have considered it appropriate to provide full written reasons.
2. The Claimant began Acas early conciliation on 1st August 2024 ('Day A') and was issued with an Acas early conciliation certificate on 11th September 2024 ('Day B'). On 11th September 2024 the Claimant presented his ET1. The Respondent defended the claims by way of an ET3 and Grounds of Response

on 10th September 2024 and an amended Grounds of Resistance on 6th October 2025.

The Issues

3. The Claimant's claim is for:
- (i) 'Ordinary' unfair dismissal (ss.94 and 98 Employment Rights Act 1996 ('ERA')); and
 - (ii) direct disability discrimination (s.13 Equality Act 2010 ('EqA')).

The parties had agreed a final List of Issues, at a Preliminary Hearing on 3rd September 2025, and it is as follows:

'The Issues

43. The issues the Tribunal will decide are set out below.

1. Unfair dismissal

1.1 What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

1.2 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

- 1.2.1 there were reasonable grounds for that belief;
- 1.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
- 1.2.3 the respondent otherwise acted in a procedurally fair manner;
- 1.2.4 dismissal was within the range of reasonable responses.

2. Remedy for unfair dismissal

2.1 Does the claimant wish to be reinstated to their previous employment?

2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

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

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

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

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

- 2.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 2.6.3 If not, for what period of loss should the claimant be compensated?
- 2.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 2.6.5 If so, should the claimant's compensation be reduced? By how much?
- 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 2.6.7 Did the respondent or the claimant unreasonably fail to comply with it?
- 2.6.8 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 2.6.9 If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?
- 2.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 2.6.11 Does the statutory cap of fifty-two weeks' pay or [£86,444] apply?
- 2.7 What basic award is payable to the claimant, if any?
- 2.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

3. Direct race discrimination (Equality Act 2010 section 13)

3.1 The claimant identifies as Black British and he compares himself with a hypothetical person who does not share this characteristic.

3.2 Did the respondent do the following things:

- 3.2.1 ~~Kirsty Hawkes~~ Kirsty Kernott accuse the claimant (implicitly or explicitly) of possessing and/or dealing drugs?
- 3.2.2 Sammy Bedford accuse the claimant of being aggressive?
- 3.2.3 Darren Todd and Natalie search the claimant's vehicle without consent after being unable to find his phone in the claimant's locker or on his person?
- 3.2.4 Dismiss the claimant?

3.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

The claimant has not named anyone in particular who he says was treated better than he was.

3.4 If so, was it because of race?

3.5 Did the respondent's treatment amount to a detriment?

4. Remedy for discrimination

4.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

4.2 What financial losses has the discrimination caused the claimant?

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

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

4.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

4.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

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

4.9 Did the respondent or the claimant unreasonably fail to comply with it?

4.10 If so, is it just and equitable to increase or decrease any award payable to the claimant?

4.11 By what proportion, up to 25%?

4.12 Should interest be awarded? How much?'

Preliminary Matters

4. The Respondent stated that the Claimant had raised an issue with them regarding the List of Issues. The person named at paragraph 3.2.1 of the List of issues is Kirsty Hawkes but the Claimant believes it should be 'Kirsty *Kernott*.' The Respondent did not object so the List of Issues was amended to reflect this.

5. The Respondent had previously applied for its witness, Kirsty Hawkes, to attend via CVP due to childcare issues. That application was granted by Employment Judge Sudra – on the papers – and that decision was confirmed.
6. The Claimant told us that his witness, Claude Williams, may not attend the Hearing as his mother was ill. We said we would place such weight on Mr. Williams's evidence as we considered appropriate in the circumstances.
7. The Claimant had produced a document from his GP [295] but had only provided the first page of it. The Claimant confirmed that he would send the Respondent the undisclosed pages.

Reasonable Adjustments

8. Neither party required any reasonable adjustments for this Hearing.

Procedure and Documents

9. We had before us:
 - (a) An agreed Hearing bundle consisting of 300 pages;
 - (b) a cast list, chronology, and reading list produced by the Respondent; and
 - (c) a skeleton argument from the Respondent.
10. We also had written witness statements and heard live evidence¹ from:

For the Claimant
 - (i) The Claimant;
 - (ii) Claude Williams;
For the Respondent
 - (iii) Jeremy Gage;
 - (iv) Kirsty Hawkes;
 - (v) Natalie Ions;
 - (vi) Darren Todd;
 - (vii) Sammy Bedford; and
 - (viii) Kirsty Kernott.
11. Upon the conclusion of evidence, the Claimant and Respondent provided us with written closing submissions.
12. We notified the parties at the outset of the Hearing that we would only read documents that we was specifically referred to and would only read documents referred to in witness statements insofar as they were relevant.

¹ Mr. Claude Williams did not attend the Hearing to give live evidence.

Relevant Findings of Fact

13. The following findings of fact were reached by us, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account our assessment of the witness evidence.
14. Only findings of fact relevant to the issues, and those necessary for us to determine, have been referred to in this Judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. We have not referred to every document we read and/or were taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.
15. In the interests of proportionality and in keeping with the Overriding Objective, we have confined our findings of fact to matters in dispute and those relevant for us to reach a fair determination of the complaints.

Employment

16. The Claimant was employed by the Respondent on 16th March 2015, as a prison custody officer, and was based at the Respondent's Croydon Vehicle Base ('the base'). His duties included transferring individuals in custody from prisons or police stations to courts in secure vehicles.
17. The Claimant's employment began smoothly enough and was unremarkable in that there were no disciplinary or capability issues regarding the Claimant.
18. Due to the nature of the Respondent's business, matters of security were something taken with the utmost seriousness. The Respondent's staff had contact with sometimes dangerous individual's and the environment lent itself susceptible to possible corruption or abuse, both physical and verbal, from service users.
19. In order to mitigate risk to its staff and service users, the Respondent had various policies which all staff were compelled to abide by. Policies relevant to the present claim include a: Disciplinary policy; bullying and harassment policy; violence and aggression at work policy; restricted and banned items policy; and policies in respect of searching visitors and staff.
20. There were a number of restricted items which the Respondent's staff were prohibited from having on their person or in their possession whilst on duty. One such prohibited item was a personal mobile telephone.

11th June 2024 Incident

21. When beginning his duty on 11 June 2024, the Claimant confirmed that he had no electronic device declared on the electronic device register. The Claimant proceeded with his duty that day which involved transferring prisoners to and from Wimbledon Magistrates' Court.

22. Whilst in situ at Wimbledon Magistrates Court the Claimant was observed by Joanne Stevens (officer in charge) using what she perceived to be a mobile telephone. Ms. Stevens reported to Sammy Bedford (prison custody officer) that she believed that the Claimant was using his mobile telephone during his shift and asked her to check on him.
23. Ms. Bedford subsequently went to the kitchen area and observed the Claimant to be using what she believed was his personal mobile telephone. Mrs. Bedford was sure the device the Claimant possessed was not a company issue electronic device. Mrs. Bedford did not approach and ask the Claimant about what device he was using as she feared that he may react aggressively. The concerns of Mrs. Bedford and Ms. Stevens were reported to Kirsty Kernott (deputy vehicle base manager) who was on duty at the base.
24. Concerned by what two witnesses had told her, Miss. Kernott escalated the matter to Kirsty Hawkes (area operations manager). Ms. Hawkes authorised Miss. Kernott to conduct a personal search of the claimant when he returned to the base. In anticipation of the claimants return Miss. Kernott asked Frances Cadogan (training officer) to witness the search she intended to carry out.
25. When the Claimant returned to the base Miss. Kernott asked the Claimant to come into a separate room explaining that she had been informed he may be in possession of an item which was prohibited and that she had been authorised to conduct a search of his person and effects. The Claimant said that he needed to use the lavatory and when leaving the room he used a sufficient degree of force to move Ms. Cadogan (who was stood in the doorway) out of his way which caused her to lose her balance.. After a period of eight to 10 minutes the Claimant returned to the room and agreed to a search.
26. When Miss. Kernott later searched the Claimant and his personal bag she did not find a mobile telephone but did find small empty plastic Ziploc bags and tablets. Ms. Kernott noticed the tablets were small blue tablets marked with a 'V' which she believed to be Viagra tablets and in evidence Ms. Kernott stated that she formed that belief as she *'knew what Viagra looked like.'* When Miss. Kernott asked the Claimant what the Ziploc bags were for, he replied they were for *'salt and pepper.'* The Claimant also stated that the tablets were his medication.
27. Miss. Kernott then reported to Ms. Hawkes that the Claimant had initially refused to comply with the search, had made physical contact with Ms. Cadogan (by barging or pushing into her), was unaccompanied in the lavatory for around eight to 10 minutes, and that she had recovered Ziploc bags and tablets during her search of the Claimant's bag. A mobile telephone was not found by Miss. Kernott during her search.

Suspension

28. Ms. Hawkes believed the allegations against the Claimant to be sufficiently serious enough to warrant a paid suspension from work and following a

suspension meeting, on 14 June 2024, Natalie Ions (escort manager) suspended the Claimant on full-pay. Darren Todd (area operations manager) was also present at the meeting.

29. Following the suspension meeting Ms. Ions and Mr. Todd escorted the Claimant off the base.
30. At some point when the Claimant was being escorted off the base Mr. Todd asked the Claimant if he would be amenable to showing him where, in his vehicle, he kept his mobile telephone. The Claimant voluntarily retrieved his mobile telephone from his vehicle and showed it to Mr. Todd.

Investigation Meeting

31. The Respondent proceeded to conduct an investigation into the allegations against the Claimant and Ms. Hawkes was tasked with conducting it. On 17 June 2024 the Claimant was invited to attend an investigation meeting scheduled for 19 June 2024.
32. The Claimant attending the investigation meeting with Ms. Hawkes and was accompanied by Claude Williams (trade union representative). At the meeting Ms. Hawkes discussed the allegations with the Claimant and afforded him an opportunity to respond to them. Ms. Hawkes asked the Claimant why he had Ziploc bags in his bag. The Claimant responded that he buys and sells '*things*' such as Viagra. When Ms. Hawkes asked the Claimant if he sold Viagra to people at work he said '*sometimes*'.
33. As part of her investigation Ms. Hawkes also interviewed: Ms. Cadogan; Ms. Stevens; Miss. Kernott; and Mrs. Bedford. During Miss. Kernott's interview she told Ms. Hawkes that she had seen circa 50 to 100 small plastic bags in the Claimant's personal bag. Miss. Kernott described the small plastic bags as those '*you would put drugs in*' in order to explain what they looked like.
34. During the interview with Mrs. Bedford, she told Ms. Hawkes that when she saw the Claimant using what she supposed to be a personal electronic device, she did not challenge him as she believed that he would probably have become quiet aggressive toward her. Mrs. Bedford thought that the Claimant could become aggressive as previously she had overheard the Claimant shouting or speaking in a loud voice to Ms. Ions albeit, she was not present in the room. Additionally, Mrs. Bedford had seen the Claimant speak loudly in general and thought that his manner was brusque and confrontational.
35. On 24 June 2024 Ms. Hawkes produced an investigation report which concluded that the Claimant should be dealt with under the Respondent's disciplinary procedure.

Disciplinary Hearing

36. Subsequently, Jeremy Gage (assistant area operations manager) was appointed as the manager who would chair a disciplinary hearing to determine whether the allegations against the Claimant were made out and if so, what sanction should be applied.
37. On 26 June 2024 Mr. Gage wrote to the Claimant inviting him to attend a disciplinary hearing which would take place on 2 July 2024. The Claimant was informed that the allegations against him were: The Claimant was reported to have used a personal mobile phone whilst on duty; he had refused to be searched in accordance with the Respondent's policy; he had pushed a colleague; he had gone to the lavatory unaccompanied; and he was seen to have placed an unidentified item into his locker prior to the search.
38. The disciplinary hearing proceeded on 2 July 2024 and the Claimant attended with his trade union representative Mr. Williams. The allegations were put to the Claimant and he was given an opportunity to provide his version of events, and observations on the evidence which had been gathered during the investigative process.
39. The Claimant queried why John Reid had not been interviewed and Mr. Gage adjourned the hearing to ascertain the reason. During the adjournment, Mr Gage spoke with 'Sandra' (surname unknown (HR adviser)) to discuss possible sanctions. He also contacted Ms. Hawkes and asked why Mr. Reid had not been interviewed. Ms. Hawkes stated that she did not consider it necessary to interview Mr. Reid as he had not witnessed the alleged infractions.
40. Mr. Gage reconvened the disciplinary hearing to inform the Claimant that on the balance of probabilities he found the allegations against him proven and in light of the fact that he had been held to have committed gross misconduct the only appropriate sanction was summary dismissal. Mr. Gage confirmed the outcome in a letter sent to the Claimant on 2nd July 2024 which informed the Claimant of his right to appeal the summary dismissal.

Appeal

41. On 5 July 2024 the Claimant appealed the decision to dismiss him. The Claimant's appeal consisted of 15 grounds which were:
- (i) That he had been detained illegally;
 - (ii) that he had not refused a search;
 - (iii) that a personal mobile telephone phone had not been found on his person;
 - (iv) that he had not been told why he was being detained in the office;
 - (v) that he had been judged on his size, and that assumptions were made that he would be violent or aggressive (profiling);
 - (vi) that he had been stereotyped or discriminated against due to the presence of small bags found in his personal bag, and that assumptions were made about their purpose (profiling);

- (vii) that his statement regarding needing to use the toilet before being informed of anything had been ignored;
- (viii) that there were inconsistent and contradictory accounts regarding the alleged assault, including how anyone behind him could state that he used his “full body weight” to barge someone;
- (ix) that, having been employed by the Company for nine years without any previous accusations of bullying or harassment, the allegations amounted to defamation of character;
- (x) that Ms Kirsty Kernott (“Ms Kernott”), Deputy Base Manager, had clearly heard him ask Ms Francis Cadogan (“Ms Cadogan”), Training Officer, to step aside so he could use the toilet, which she confirmed in her statement;
- (xi) that comments made by witnesses about whether he had his personal phone on him were inconsistent, as their positions shifted between the investigation meeting and subsequent statements;
- (xii) that Ms Wendy McHale’s (“Ms McHale”), Prison Custody Officer, account was contradictory, as she stated it had been explained to him that he needed to be searched but also stated she could not remember exactly what was said;
- (xiii) that conflicting information in Ms Kernott’s statement had been overlooked;
- (xiv) that he had been obstructed by Ms Cadogan and that his property had been taken from him; and
- (xv) that he had been denied permission to use the restroom when he needed to relieve himself.

42. Mr Todd was appointed to chair the Claimant’s appeal and the Claimant was duly invited to attend an appeal hearing scheduled for 23 July 2024.

43. The Claimant attended the appeal hearing accompanied by Derick Rawlings (trade union representative.) At the appeal hearing the Claimant submitted why he felt the decision to dismiss him was wrong and should be revoked. Mr Todd considered the Claimant’s submissions and reviewed the investigative and disciplinary process including the sanction of dismissal.

44. Mr Todd arrived at the decision that the disciplinary process had been a fair process and in light of Mr Gage’s findings the only appropriate sanction was summary dismissal and therefore, the Claimant’s appeal was not upheld.

Relevant Law

Unfair Dismissal

45. This important right is set out in s.94 ERA, and by s.98, the employer has first to show a fair reason for the dismissal, in this case conduct. If that is shown, then the test of fairness under s.98(4) depends in part on the Respondent’s size and administrative resources. The Respondent is a large organisation and so a very high standard of fairness is to be expected.

46. The question in unfair dismissal cases is not therefore, whether the employee was guilty of the misconduct, but – broadly speaking – whether it was reasonable of the employer to conclude that he was, and that he should be dismissed as a result.
47. As is well established from the well-known case of British Home Stores Ltd v. Burchell [1978] ICR 303 and others that question can be broken down further as follows:
- (a) Was there a genuine belief on the part of the decision-maker that the Claimant did what was alleged?
 - (b) Was that belief reached on reasonable grounds?
 - (c) Was it formed after a reasonable investigation?
 - (d) Was the decision to dismiss within the range of reasonable responses open to an employer in the circumstances?
48. This ‘range of reasonable responses’ test (sometimes referred to as the ‘band of reasonable responses’) reflects the fact that whereas one employer might reasonably take one view, another might with equal reason take another. Tribunals are cautioned very strictly against substituting their view of the seriousness of an offence for that of the decision maker: DB Schenker Rail (UK) Ltd v. Doolan [2010] UKEAT/0053/09.
49. That applies not just to the reasonableness of the decision to dismiss but also to the process followed in coming to that conclusion. If a failing is identified in the disciplinary process it is necessary to ask whether the approach taken was outside that range, i.e. whether it complied with the objective standards of the reasonable employer: Sainsbury's Supermarkets Ltd v Hitt [2003] ICR 111, Gherbrehiwt v. Wilson James Ltd [2025] EAT 50
50. However, it is well established that where an employee admits an act of gross misconduct and the facts are not in dispute, it may not be necessary to carry out a full-blown investigation at all: Boys and Girls Welfare Society v Macdonald. The Employment Appeal Tribunal in that case said that it was not always necessary to apply the test in Burchell where there was no real conflict on the facts.
51. Procedural fairness is nevertheless an important aspect and in considering it tribunals are required to take into account the guidance in the ACAS Code of Practice for Disciplinary and Grievance Procedures (2015).
52. A Tribunal should take into account the fact of the warning and a final written warning always implies that further misconduct of whatever nature will be met with dismissal, unless the terms of the contract provide otherwise or the circumstances are exceptional: Wincanton Group Plc v. Stone UKEAT/0011/12.

Direct Discrimination

53. Section 13 of the Equality Act 2010 ('EqA') provides that (so far as material),

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

...

54. Under section 23(1) EqA, where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
55. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant’s protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.
56. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.
57. In many direct discrimination cases, it is appropriate for a Tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of a protected characteristic. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the ‘reason why’ the Claimant was treated as she was.
58. S.136 of the EqA sets out the relevant burden-of-proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which I could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.
59. At the second stage, discrimination is *presumed* to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant’s protected characteristic. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory. Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v. Wong [2005] EWCA Civ 142; [2005] IRLR 258 and I have followed those as well as the direction of the Court of Appeal in the well-known case of Madarassy v. Nomura International plc [2007] IRLR 246, CA. The decision of the Court of Appeal in Efobi v Royal Mail Group Ltd [2019] ICR 750 confirms the guidance in these cases applies under the EqA.
60. The Court of Appeal in Madarassy, stated:

'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.' (56)

61. It may be appropriate on occasion, for the Tribunal to take into account the Respondent's explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (*Laing v. Manchester City Council and others* [2006] IRLR 748; *Madarassy*.) It may also be appropriate for the Tribunal to go straight to the second stage, where for example the Respondent asserts that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his or her favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).
62. We are required to adopt a flexible approach to the burden of proof provisions. As noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, they will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they may have little to offer where we are in a position to make positive findings on the evidence one way or the other.
63. Allegations of discrimination should be looked at as a whole and not purely on the basis of a fragmented approach (*Qureshi v London Borough of Newham* [1991] IRLR 264, EAT. This requires us to 'see both the wood and the trees' (*Fraser v University Leicester* UK EAT/1055/13 at paragraph 79).

Conclusions and Analysis

Credibility of Evidence

64. The evidence of the Claimant, and Respondent witnesses, was credible and forthright.
65. Where there was a dispute as to the factual matrix we preferred the Respondent's evidence as it was corroborated by documentary and witness evidence and remained consistent.

'Ordinary' Unfair Dismissal

66. The Claimant was summarily dismissed on grounds of gross misconduct which is a potentially fair reason.
67. On 11th June 2024 the Claimant was observed by colleagues using a personal mobile telephone which was a prohibited item as per the Respondent's policies. When the Claimant was requested to submit to a search he initially refused and rushed to the lavatory physically barging a colleague out of his way with a

degree of force. Upon being searched a number of Ziploc bags and Viagra tablets were found in the claimant's personal bag.

68. These facts in themselves were enough to arouse a genuine belief on the part of the Respondent as to misconduct having to have occurred.

69. Therefore, as per Burchell, what we have to consider is:

- (a) Was there a genuine belief on the part of the decision-maker that the Claimant did what was alleged?
- (b) Was that belief reached on reasonable grounds?
- (c) Was it formed after a reasonable investigation?
- (d) Was the decision to dismiss within the range of reasonable responses open to an employer in the circumstances?

70. It was clear from the evidence before us that the Respondent had a genuine belief that the Claimant had committed misconduct. The Claimant stated that the 50 to 100 Ziploc bags found in his bag were for 'salt and pepper' which is not plausible. The Claimant admitted that he had made contact with Ms. Cadogan but denied that he had been forceful. However, the Respondent had the evidence of three witnesses who all stated that the Claimant had barged Ms. Cadogan with enough force to cause her to lose her balance. The Claimant also only had an urgent need to use the lavatory after he was told he would be searched. These events rightly made the Respondent suspicious as to misconduct having been committed by the Claimant.

71. Ms. Hawkes had carried out a reasonable investigation in which she had questioned the Claimant and considered his version of events. Ms. Hawkes also interviewed all relevant members of staff conducted her investigation thoroughly and with neutrality. Ms. Hawkes was not a decision-maker but an investigator so the Respondent had carried out a reasonable investigation in *all* of the circumstances.

72. Having considered the findings of Ms. Hawkes' investigation report the Respondent had reasonable grounds on which to hold a disciplinary hearing.

73. During cross-examination the Claimant confirmed that he was not challenging the procedural aspects of the dismissal process but only the sanction itself. However, we did consider the disciplinary hearing and believed it to be procedurally fair. The fact that Mr. Gage adjourned the disciplinary hearing to seek HR advice and to ask Ms. Hawkes why she had not interviewed Mr. Reid did not vitiate the process.

74. With the evidence before Mr. Gage he was entitled to conclude that the Claimant was guilty of gross misconduct and that the only appropriate sanction was summary dismissal. We were careful not to fall into a substitution mindset when considering if summary dismissal was within the range of reasonable responses.

75. The Claimant, also on cross-examination, conceded that the appeal process was fair. Mr. Todd carried out a scrupulous appeal process and upholding the dismissal was the correct decision in the circumstances.

76. The complaint of unfair dismissal is not made out and fails.

Direct Race Discrimination

77. The Claimant is black British and relies upon a hypothetical comparator. Therefore, we compared the treatment the Claimant received against the treatment of a person in the same circumstances as the Claimant, but who was not black British, would have received.

'3.2.1 Kirsty Kernott accuse (sic) the claimant (implicitly or explicitly) of possessing and/or dealing drugs?'²

78. It is readily apparent from the evidence of Ms. Kernott and the documents that she did not accuse the Claimant, implicitly nor explicitly, of possession of drugs with an intention to supply.

79. The only mention of drugs was the following which is contained in the minutes of Ms. Kernott's investigation meeting [168]:

'There was no mobile phone, however, there was about 50-100 small plastic bags that you would put drugs in.'

80. The Ziploc bags the Claimant had in his possession are the kind which are commonly used by persons to supply illegal drugs in, such as ecstasy pills or marijuana. We believe that they are colloquially referred to as 'baggies.'

81. Ms. Kernott was not associating the illicit use of Ziploc bags to the Claimant but merely describing the *type* of bags found. It was the easiest way Ms. Kernott could think of how to describe them and her description was not because of the Claimant race and she would have used the same descriptor if the Claimant had not been black British.

82. On the balance of probabilities there are no facts from which we can infer that the Claimant was treated less favourably because of his race and he has not raised a prima facie case of a difference in treatment because of those characteristics or at all.

'3.2.2 Sammy Bedford accuse (sic) the claimant of being aggressive'

83. When Mrs. Bedford was interviewed by Ms. Hawkes, she said that she did not challenge the Claimant at Wimbledon Magistrates' Court as '*... I believe that he would have probably been quite aggressive towards me so I just reported it to Joanne Stevens*' [171].

²Numbering and allegations as per the List of Issues.

84. Mrs. Bedford's oral evidence was that her reference to having a belief that the Claimant may be aggressive towards her was due to incidents she had witnessed in the past [SB/13.1-13.2]. The Claimant had previously heard the Claimant speaking loudly, or with a raised voice, to Ms. Ions and had seen the Claimant behaving, what she perceived to be, confrontationally and loudly. This led to Mrs. Bedford saying that she was anxious that the Claimant would probably have reacted aggressively if she had confronted him about using a personal device.
85. There was no evidence from which we could infer that Mrs. Bedford's comment was less favourable treatment because of the Claimant's race. We were mindful to bear in mind that the alleged treatment need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.
86. In the circumstances before us the Claimant has not raised a prima facie case of a difference in treatment because of his race and we accept that Mrs. Bedford had non-discriminatory reasons for fearing that the Claimant make react aggressively towards her.

'3.2.3 Darren Todd and Natalie search (sic) the claimant's vehicle without consent after being unable to find his phone in the claimant's locker or on his person?'

87. Mr. Todd did not search the Claimant's vehicle. He asked the Claimant to show him where, in his vehicle, he kept his mobile telephone; which the Claimant did.
88. Mr. Todd was being overly (and unnecessarily) curious but the reason for his curiosity was his probing nature. Mr. Todd's action was not because of the Claimant race and on the balance of probabilities there are no facts from which we can infer that the Claimant was treated less favourably because of his race and he has not raised a prima facie case of a difference in treatment because of those characteristics or at all.

'3.2.4 Dismiss the claimant?'

89. We have found that the Claimant was fairly dismissed because he had committed gross misconduct.
90. The Claimant's race was not a material factor, or a factor at all, when the Respondent decided to terminate his employment. Another employee who did not share the Claimant's race would equally have been dismissed.
91. On the balance of probabilities there are no facts from which we can infer that the Claimant was treated less favourably because of his race and he has not raised a prima facie case of a difference in treatment because of those characteristics or at all.
92. For these reasons the Claimant's complaints are not well founded and stand dismissed in their entirety.

Employment Judge Sudra
Date: 24 April 2026

Sent to the parties on:
Date: 29 April 2026