Case Number: 6007982/2024

THE EMPLOYMENT TRIBUNAL

Claimant: **Mr L Imafidon**

Respondent: **Ansa Care limited**

Heard at: London South Employment Tribunal

On: 5 - 8 May 2026 (in person)

Before: Employment Judge A. Beale KC

Representation
Claimant: In person
Respondent: Miss T. Ahari (Counsel)

JUDGMENT

1. **The Claimant's complaints of:**

   1.1 automatic unfair dismissal for making a protected disclosure (s. 103A ERA 1996);
   1.2 detriment for making a protected disclosure (s. 47B ERA 1996);
   1.3 age-related harassment (s. 26 EqA 2010);
   1.4 direct age discrimination (s. 13 EqA 2010);
   1.5 failure to pay holiday pay;
   1.6 unauthorised deductions from wages; and
   1.7 breach of contract,

   are not well-founded, and are dismissed.

2. **The deposit of £100 paid in respect of the Claimant's age discrimination and age-related harassment complaints is to be paid to the Respondent in accordance with rule 40(7)(b) of the Employment Tribunal Rules of Procedure 2024.**

WRITTEN REASONS

Introduction

1. The Claimant brings claims for dismissal and detriment for making a protected disclosure, direct age discrimination and harassment related to age, unauthorised deductions from wages, failure to pay holiday pay and breach of contract in relation to mileage expenses.

2. The Claimant's claims arise out of his employment with the Respondent as a home care worker.

3. The Claimant submitted an ACAS early conciliation notification on 4 June 2024, and the ACAS certificate was issued on 8 July 2024. The Claimant's claim was received by the Tribunal on 7 August 2024.

4. There have been two preliminary hearings in this case, the second of which was listed to determine an application to amend the Claimant's claim, which was granted in part. The second preliminary hearing resulted in an agreed List of Issues, recorded in the case management order at p. A82 – 89 of the hearing bundle. Although the Claimant raised a number of other issues during the course of the hearing, he did not seek to amend his claim further, nor did he dispute the agreed List of Issues. To avoid further lengthening these Reasons, the issues are not set out here.

Documents and Witness Statements

5. I was provided with a bundle comprising 321 pages, a chronology and cast list, five witness statements on behalf of the Claimant (including his own) and three witness statements on behalf of the Respondent, and a video recording taken on the Claimant's phone on 14 May 2024.

6. During the course of the hearing, the Respondent disclosed three further documents: the Claimant's contract of employment and two care plans relating to a service user, who will be referred to in this judgment as "T". The Claimant did not object to these documents being added to the file.

7. The Claimant also disclosed a large number of audio recordings, varying from around 30 seconds to around 18 minutes in length. The Claimant said that he had sent the documents to the Respondent's solicitors and the Tribunal on a flash drive. The Respondent's solicitors had no record of receiving the drive; nor did the Tribunal, although I accept that the Claimant had sent it. However, when provided with a similar flash drive, neither the Respondent's counsel nor I were able to access the documents. I therefore asked the Claimant to provide the Respondent's counsel and the Tribunal with the recordings by email.

8. In total, the Claimant sent 21 recordings between around 6 p.m. on the first day of the hearing and 11 a.m. on the second day. On receipt of the recordings, I gave the Respondent's counsel around an hour to listen to those recordings she had not yet heard (she had listened to several) and take instructions on them from the Respondent's witnesses. I also listened to most of the recordings, save for the 18 minute recording and a recording of around 6 minutes which was so unclear I could not make out what was being said. I then spent some time discussing the recordings with the parties, and how they were said to be relevant by the Claimant.

9. Following that discussion, the Respondent accepted that certain of the recordings were relevant, and the Claimant accepted that certain recordings were not relevant. In relation to the other recordings, I made decisions whether or not to listen to them and gave my reasons orally during the hearing. The Tribunal and the witnesses ultimately listened to 6 recordings.

10. On Thursday 7 May (the third day of the hearing), the Claimant sought to adduce two further recordings, which he said were extracts from the very long recording, to which I had not listened, from the previous day. The Claimant said the recording was from a meeting on 17 May 2024 (of which there are minutes in the bundle), and that they related to issue 3.1.5.4, which was an allegation that the Claimant had made a disclosure that information falling within one of the other sub-sections of s. 43B(1) had been/was being/was likely to be deliberately concealed. As the List of Issues did not include any disclosure made on 17 May 2024, I decided that these recordings were unlikely to be relevant. For completeness, I did listen to the recordings and, having done so, I remained of the view that they were of little relevance to the issues. In view of their very late disclosure, the time that had already been spent dealing with the other recordings, and their apparent lack of relevance, I did not allow the Claimant to rely on these later disclosed recordings.

Witness Evidence

11. I heard oral evidence from the Claimant on his own behalf, and Tina Egbonimali (director of the Respondent), Hajrah Jameel (care coordinator) and Ebeneezer Dixon (care coordinator) on behalf of the Respondent. The Claimant's four witnesses did not attend the Tribunal, but the Respondent's counsel indicated that she did not propose to ask them any questions as she did not consider their evidence to be relevant.

12. Save for Mr Dixon, who gave his evidence clearly and I thought fairly, I had concerns about the credibility of all of the witnesses who gave evidence before me.

13. The Claimant's evidence was difficult to follow, as he often did not answer the question he was being asked. He also frequently denied propositions put to him instinctively, only to retreat from this stance when asked the question again by the Tribunal. It appeared that this behaviour arose largely because of his antagonistic attitude towards the Respondent's counsel. However, the Claimant also made unprompted assertions about the evidence that were exaggerated or inaccurate; for example, asserting that, during one of the recordings, Ms Egbonimali and Ms Jameel had said he did nothing wrong in relation to patient T on 14 May 2024. This was not borne out by the recording, during which both Ms Egbonimali and Ms Jameel made clear that they had several criticisms of the Claimant's conduct on that occasion.
14. Ms Egbonimali's evidence was evasive and vague in places (for example, when she was asked about sums of money paid by the Claimant to her husband in November 2023). Some parts of her witness statement were also shown to be incorrect by the recordings provided by the Claimant; for example, in her witness statement, she denied ever asking the Claimant to write a letter confirming that he had not paid the Respondent any money, and denied saying that she would remove shifts from him if this was not done, but both those statements are clearly made by her on one of the recordings produced by the Claimant.

15. Ms Jameel denied having spoken to the Claimant at particular times, or received reports from him, in circumstances where, as I will go on to explain, near-contemporaneous evidence supports the Claimant's account. I found Ms Jameel's evidence on some of these points unconvincing, although it was not clear whether this was because she was unable to remember the contacts, or because the evidence was untruthful.

16. I do consider that, generally, all of the witnesses were trying to assist the Tribunal. I do not find that any of them was generally lacking in credibility. However, the fact that in some areas, all three of the main witnesses lacked credibility means that I have not consistently preferred one party's account over the other's. I have weighed the evidence given in relation to each dispute carefully, taking into account all relevant matters, including the points I have referred to above.

Findings of Fact

17. The Claimant began working for the Respondent as an agency worker in around September 2023. At that time he was working around 20 hours per week.

18. The Claimant is not a British national and required a Certificate of Sponsorship ('COS') to work in the UK. His evidence was that the employer for whom he worked prior to the Respondent required him to pay thousands of pounds towards his COS. He relayed this to the Respondent, but says that Ms Egbonimali then herself demanded that he pay £10,000 towards his COS, and when he said he was unable to afford this because of the sums paid to his previous employer, agreed that he should pay £5,000. The Claimant's bank statements show that he paid Ms Egbonimali's husband £1,000 on 3 November 2023, £600 on 6 November 2023 and £100 on 1 February 2024. Initially, the Claimant was questioned on the basis that no money had been paid to Ms Egbonimali or her husband; when the Claimant pointed to these bank statements, it was put to him that the money had been loaned to him by Ms Egbonimali's husband to assist his family in making an immigration application to the Home Office. Ms Egbonimali gave the same evidence orally, although this information was not contained in her witness statement. I consider these payments further in my conclusions.

19. The Claimant was provided with a payslip on 6 October 2023, but he says not in November and December 2023, and there are no such payslips in the bundle. The payslip dated 6 October 2023 shows a deduction of £16.09 for National Insurance. The Claimant has provided a print-out from what I understand to be the HMRC app, which shows no national insurance was paid on his behalf in October (or indeed November or December) 2023.

20. It is agreed between the parties that, in or around September 2023, home care workers within the Respondent were given the opportunity to register for an NVQ level 2 or 3. It is also agreed that the Claimant expressed interest to the Respondent; there is a message to the Respondent's WhatsApp group to this effect dated 20 September 2023. Ms Egbonimali said in oral evidence, and I accept, that if they wished to register for the NVQ programme, employees had to contact the consultancy through which the training was arranged (Dominion) directly. There is no evidence that the Claimant did this.

21. The Claimant says that Ms Egbonimali said that he could not be registered on the NVQ course because he was too old. On the balance of probabilities, I find that this was not said. Firstly, it appears there were other reasons as to why the Claimant was ineligible to take up the offer at the relevant time, namely that he was working as agency staff and was not an employee of the Respondent. Secondly, the contemporaneous communications suggest that the Respondent wanted all of its staff to undertake the NVQ diploma (a text message from 19 December 2023 states *"we aim to get all field staff at level 2/3"*). Thirdly, the Claimant subsequently complained to the Respondent about incidents of what he regarded as mistreatment, but he did not complain to the Respondent about this alleged comment, which he says affected him deeply. Further, at this time he was not an employee of the Respondent, but an agency worker, and on his own account, he had previously moved to the Respondent from another provider because of alleged poor treatment. Had Miss Egbonimali in fact made the comment alleged, I think it unlikely that the Claimant would have taken permanent employment with the Respondent. On the balance of probabilities, I do not accept that this was said.

22. The Claimant also alleges that he was told he was too old to complete the "MAPA" training offered to employees of the Respondent. I accept Ms Egbonimali's evidence that "MAPA" training was only offered to those employees who worked in a specific care home in London, or other employees who were based in London. The Claimant lived in West Sussex at the time and was clearly ineligible. In such circumstances, it is highly unlikely that Ms Egbonimali would have told the Claimant that he was too old to do this training, and for this reason and the reasons given above, I find that this did not happen as alleged.

23. On 10 October 2023, the Respondent sent the Claimant a message on the team group chat wishing him a happy 50th birthday. The Claimant responded "Many *Thanks to You All. God Bless you. 50th is next year by the grace of God. It's 49th today".* The message was responded to with a heart emoji; it is not clear by whom.

24. The Claimant was offered and accepted a role as a home care worker directly employed by the Respondent, commencing on 18 December 2023. His offer letter, which he counter-signed on 7 November 2023, included the following relevant terms:
    (a) the work location was West Sussex and Surrey (urban and rural area);
    (b) the Claimant must be a driver and willing to drive in the UK;
    (c) the Claimant must obtain a full UK driving licence within the first year (the Claimant had only an international driving licence);
    (d) if the Claimant accepted the offer, the Respondent would provide him with various benefits, including "support you to obtain a UK driving licence"

25. During his first month of employment, the Claimant was awarded "Employee of the Month" by the Respondent for commitment and exceptional work.

26. In January 2024, the Claimant's payslip referred to a payment of £83.31 for mileage, but the amount the Claimant was ultimately paid had this sum deducted. It is agreed that the Claimant was at this time driving the "company car" referred

to below. In February 2024, the Claimant was paid the full amount stated on his payslip.

27. On 13 March 2024, the Claimant attended a meeting conducted by Ms Egbonimali, Mr Dixon and Ms Jameel, amongst others. At the meeting, Ms Egbonimali stated that mileage would be paid at 25p per mile, but would not be paid to carers with provisional licences, or to carers using the "company car". She told the meeting that all domiciliary carers should be driving. Ms Egbonimali also said that if carers were running late, they should call the office to inform them, and that this was particularly important. Both Ms Egbonimali and Ms Jameel reminded carers to check the app for the care plan for the particular patient.

28. The Claimant booked a driving test on the Isle of Wight for 22 March 2024. The Claimant's driving instructor was not available to accompany him to the test, and he needed an experienced driver to attend with him. The Claimant alleges that Ms Egbonimali offered to do this on several occasions, then, on the day before the test, when the Claimant was no longer able to change the booking, she told him to speak to her husband.

29. Ms Egbonimali's evidence was that she never agreed to accompany the Claimant to his driving test. She said she would not have been able to leave the very busy office for a whole day, or even overnight, to go to the Isle of Wight. I accept Ms Egbonimali's evidence on this point. It is inherently unlikely that she would have agreed to such an onerous task.

30. The Claimant also alleges that he was told he could use the company vehicle to take his driving test, but was told the day before his test, by Ms Egbonimali's husband, that he could not use the vehicle because he was not insured to drive it. Ms Egbonimali said that in fact the Claimant was never told he could use the car, but that it was insured, including for other drivers. She agreed that the car was insured in her name and her husband's name, but insisted it was still a "company car". I accept that the Claimant was told that there was an issue relating to the car insurance, as there is in the bundle a WhatsApp exchange between the Claimant and Ms Egbonimali's husband, dated the day after the Claimant's test, where the Claimant suggests that he could be added to the insurance as a "named driver". This is also supported by the statement of Michelle Maguire (one of the Claimant's witnesses) who says he attended on her son on the day he had booked off for a test and told her he could not take his test using the Respondent's company car because he was not insured to drive it. On the balance of probability, I accept that the Claimant was led to understand that he could use the "company car" to do his driving test, and that he was told by Ms Egbonimali's husband shortly before the test that he could not do this, because he was not insured to drive the car.

31. I find that the Claimant continued to use, and the Respondent continued to allow and indeed encourage the Claimant's use of, the car after 22 March 2024. I have not seen any documents confirming the insurance status of the car; however, I accept that the Claimant was led to believe that he was not insured to drive the car; he did not have the means to purchase his own vehicle, and he was also told on multiple occasions (in accordance with his contract) that if he could not drive, he would not be able to continue working for the Respondent.

32. The car failed its MOT on 17 April 2024. The Claimant says, and I accept, that he was not told that this had happened. The Claimant continued to use the car.

33. On 31 March 2024, the Claimant was paid £217.93 less than the sum stated on his payslip. The Respondent says this was a payroll error. It is agreed that this sum was repaid to the Claimant after he brought his claim, in August 2025. The Claimant was paid the correct sum in April 2024.

34. On 24 April 2024, the Claimant attended a new client, T, for the first time. T lived with his wife, R, who was in her 90s, and was receiving end-of-life care in his home.

35. The Claimant says that T's care plan was not available to him. I do not accept the Claimant's evidence that no care plans were ever made available to him, as I find that, had this been the case, he would have raised a concern about it in writing, as he did about many other matters. I accept that, on the day of this first visit, it is possible that T's care plan had not been uploaded to the app, but I do not think it is necessary to determine this for the purposes of the present claim. The care plans applicable to T were provided to the Tribunal, and I find that the care plan prepared by the NHS on T's discharge from hospital (dated 12 April 2024) stated that single-handed care was sufficient at that time, but this would quickly rise to two people. I accept Miss Jameel's evidence that she was aware that, at the time of discharge, two district nurses were visiting T on a transitional basis. The Respondent's initial care plan, prepared by Miss Jameel on 19 April 2024, provided for single person care in accordance with the NHS care plan.

36. There is no dispute that, on 24 April 2024, when the Claimant attended on T, T and his wife told the Claimant that they did not want him to provide care, and that they had asked for two female carers. The Claimant reported this to the office. I do not accept the Claimant's case that he reported that the care plan asked for two female carers. If the Claimant is correct and he had not seen the care plan, he could not have made any disclosure by reference to the care plan. If the care plan was already available on the app, it would have been immediately apparent to the Claimant that the care plan did not provide for double-up care.

37. In relation to subsequent events on 24 April 2024, I accept that the Claimant has a clearer recollection of this than the Respondent's witnesses, which is supported by some of the documents produced near-contemporaneously. I accept that the Claimant initially spoke to Ms Jameel and that she said she would get back to him. She did not do so until the evening, when she told the Claimant that he should do the evening call with T. I accept Ms Jameel's evidence that she told the Claimant that two female carers were not required, based on the assessment she had done on 19 April. I also accept the Claimant's evidence that he was told that he could be subjected to disciplinary procedures if he did not attend.

38. Both the Claimant and Ms Egbonimali agree that there was a later phone call between them, in which Ms Egbonimali told the Claimant she had spoken to T and his wife about the support they required, and that they had agreed that he could attend. On that basis, the Claimant agreed to return the following day, and did so.

39. Ms Egbonimali explained in oral evidence, and I accept, that the funding for the care for T was provided under a contract with the local authority. In order to

increase the care provision from one to two carers, this had to be agreed with the local authority. On 27 April 2024, Ms Jameel amended the care plan to include double-up care. The Claimant does not suggest that he was required to attend alone after that date. Ms Jameel agreed that this increase was partly based on the information provided by the Claimant.

40. The Claimant says that, over the following three weeks when he continued to care for T, he reported abuse of T by T's wife. I do not accept this evidence. Although I agree that the Respondent has not produced copies of the reports made by the Claimant and other carers regarding T over this period, I do not draw any inference from this as it was not clear, prior to the hearing, that the Claimant was alleging that he had reported abuse over a three-week period. There is no other documentary evidence – for example, in the form of WhatsApp messages from the Claimant's phone, which he has used to support other allegations – that the Claimant reported this. Further, in the documents I do have – for example, the Claimant's email of 15 May 2024 when he recounts the events of 14 May 2024, the impression given is that the first time the Claimant took the view that T's wife was (whether deliberately or inadvertently) providing poor care for him in relation to his catheter was on 14 May itself.

41. On 8 May 2024, the Claimant wrote to the Respondent complaining about uneven shift rotas and late notification of shifts, as well as a failure to provide rest days which he said was affecting his health. The Claimant sent a further email on the same subject on the evening of 14 May.
42. On 14 May 2024, the Claimant attended on T with Evelyn, another carer. On that day, there was a dispute with T's wife relating to the question of where soiled waste would be placed. I accept the Claimant's evidence that T's wife emptied the contents of the black bin on the kitchen floor, and told the Claimant and his fellow carer that someone would be coming to see what they had done. There is a video recording of a later portion of this incident, which was recorded by the Claimant. The recording, which I have viewed several times, shows a heated exchange between the Claimant and T's wife, in which both parties raise their voices. The Claimant is the first to do so, shouting "Listen!". He says he is recording because T's wife has lied against the carers, and has put the waste on the floor. After he says this, T's wife repeatedly asks the Claimant to leave. The Claimant remains in the house recording for more than a minute after being asked to leave, saying twice "Jesus Christ" in response to T's wife's comments.

43. Following this altercation, I accept that the Claimant spoke to Ms Jameel and another care co-ordinator called Kelly and sent Ms Jameel the video of the altercation. Ms Jameel denied speaking to the Claimant on 14 May, but I find her recollection of her conversations with the Claimant is less reliable than his, and the fact that the Claimant sent the video to Ms Jameel indicates that she was already involved in the discussion. The Claimant deleted the video shortly after sending it; he did not explain why during the hearing. I consider it likely that the Claimant deleted the video because he belatedly recognised that recording it it could reflect badly on him.

44. On the evening of 14 May 2024, the Claimant was rostered to return to attend to T. The Claimant attended and again, T was found to be wet with a problem with his catheter. A neighbour was present on this occasion and informed the Claimant

that he had seen T's wife causing the problem with the catheter shortly before the Claimant attended. T's wife refused care for T, and the Claimant called the office, placing the phone on speaker so the refusal could be heard. During the course of that call, Ms Egbonimali criticised the Claimant, describing him as unprofessional. Following the phone call, T's wife apologised to the Claimant.

45. I find that, during one or both of the telephone conversations on 14 May 2024, the Claimant informed Ms Jameel and/or Ms Egbonimali that T's wife had either caused or allowed his catheter to be detached, leaving him wet. I reach this conclusion because a photograph was taken of the catheter and patient T, which appears in my bundle together with photographs of the bin that it is agreed were taken on 14 May 2024 (albeit uploaded on one of the Respondent's WhatsApp groups on 17 May). Further, the Claimant refers to the catheter issues in his email dated 15 May 2024, which is the closest contemporaneous document I have available. I do not accept that the Claimant reported that T's wife had told him not to include this information in T's notes, as this is not referred to in any of the documentation. I also do not accept that the Respondent told the Claimant on this date not to include this information in the patient's notes. I understand that this allegation relates to the inclusion of information in a later reflection note.

46. On 15 May 2024, Fabienne Elumba, the Respondent's Recruitment and Compliance officer, emailed the Claimant stating that he was suspended due to his actions whilst at T's house combined with the manner in which he subsequently communicated with Ms Egbonimali. The Claimant was told that he should reflect on how his actions could have been handled differently, and that he would be contacted to attend a meeting.

47. In response, on the same day, the Claimant wrote a long email setting out his account of events. In the email, the Claimant sought to justify his actions by reference to the conduct of T's wife. He did not reflect on how he could have acted differently.

48. On 16 May the Claimant was invited to a meeting to take place on 17 May 2024 to discuss the circumstances around the suspension. The Claimant was asked to bring the company car to the meeting, demonstrating that he was still driving it.

49. Notes of the meeting on 17 May 2024 are in the bundle and I have also heard recordings of part of the meeting. The notes record that, when Ms Egbonimali expressed concern about the Claimant's conduct on 14 May, the Claimant said he believed that the client's wife was interfering with care delivery and preventing the Claimant and his colleague from performing their duties. When asked why he deleted the recording, the Claimant said he had done so because he had recorded the exchange without consent. During the meeting itself, I find that the Claimant did not acknowledge that he could have acted differently during the incident; this is apparent both from the notes and from the partial recordings I have heard). He was informed he would be suspended to allow him to reflect on his behaviour, and he was asked to provide a reflection note setting out a factual account of what occurred, actions he believes should have been taken, alternative approaches and lessons learned.

50. During the meeting, it was pointed out to the Claimant that he was providing a bad example to another carer who was present, who was described as “junior”. The Claimant did not accept this.

51. I accept the evidence of Mr Dixon that, after the meeting, when he spoke to the Claimant, the Claimant acknowledged that if he had known this would happen, he would have acted differently. Mr Dixon told the Claimant that he could not have his cake and eat it, as because he had disclosed the video (before deleting it), it was now necessary to have an investigation.

52. On 17 May 2024, the Claimant wrote an email in which he said that having listened to different views and assertions of the staff members in attendance at the meeting, which varied from his own, he agreed that he could have acted in a more appropriate and acceptable way to addressing his concerns. He continued by saying that it was immminent that the service user (T) was safeguarded from continuous deprivation of care support needs, and he added that the incessant refusal of T’s wife to allow carers to carry out duties of care support was a great concern that needed to be reported to the appropriate authorities.

53. On 20 May 2024, Fabienne Elumba emailed the Claimant to say that his previous email did not address the required point, and asked for a required email including what he had done, what he could have done better, and lessons learned.

54. The Claimant sent a lengthy further email on 20 May 2024, with headings “What happened and what I did”, “What I could have done better” and “Lesson learned”. The first, lengthy section focuses almost entirely on the conduct of T’s wife. Under the heading “What I could have done better”, the Claimant said *”As at the critical time of these incidences, the best available option of approach adopted to prove veracity of realities against obvious wilful act of allegation by service user’s wife are explained in above paragraphs. I explained that the approach was acting in good faith”.* Under “Lesson learned” the Claimant said that he had been told that the communication he had with Ms Egbonimali, placing the phone on speaker whilst in the client’s house was not appropriate and acceptable. The Claimant did not comment on whether he agreed with this, nor did he comment on his more general conduct on the relevant occasion.

55. On 21 May, Fabienne Elumba wrote to the Claimant to say that from what he had written, he did not fully understand the gravity of his actions or recognise what he had done wrong or what he had done better, so would not be allocated shifts after today and would be placed on a stand-down. The Claimant responded on 21 May indicating that he considered he had supplied what was required. On 22 May, Ms Egbonimali wrote to the Claimant stating that he was to step down until a reflection note was prepared. The Claimant again referred back to the note he had written on 20 May.

56. On 25 May, the claimant wrote a further, much shorter note where he said that he was told the approach of calling the office whilst in the service user’s house, placing the phone on speaker and the way he spoke to Ms Egbonimali was unacceptable. He said he wished to agree to the views that he could have acted in more appropriate and acceptable way by going outside to make the call to address his concerns.

57. A recording of a conversation between the Claimant and Ms Egbonimali on 29 May 2024 was provided by the Claimant. In the call, Ms Egbonimali says that she has been contacted by the local authority again in relation to patient T. She asks the Claimant to produce a note that does not make comments on T's wife and focuses on what he did, and what he could have done better and lessons learned. She says she is giving the Claimant a last chance due to the length of their association, and that if the note is not provided, she will have to make a decision rather than keeping the Claimant on suspension, either taking him back or letting him go. The Claimant responds that he has heard Ms Egbonimali. On the same day, the Claimant wrote a further short email stating that he now understood that making calls in the client's house to make reports awas not appropriate and acceptable, and he had learned that he could have done better by going out of the house to reach out to the office.

58. Following this, the Claimant's suspension ended and he returned to work.

59. The Claimant's case is that on 23 May 2024 he reported "various breaches" to the CQC, one of which he says related to the care plan of patient T and the other to being asked to use a hoist alone for other patients when two people were required by their care plans. I accept that the claimant spoke to the CQC on 23 May 2024, but I do not accept that he told the CQC that patient T's care plan had been breached, for the reasons I have already given above. The Claimant has given no evidence of what, if anything, else he said to the CQC on that date. He said in cross-examination that the disclosure about sending one person to hoist a two-person patient (relating to another patient, P), was made on a separate date, 7 June 2024. There is no evidence before me to suggest that these matters were ever pursued by the CQC and the Claimant did not tell the Respondent he had raised these matters with the CQC. I find that the Respondent was not aware of this alleged disclosure at any time before the claimant's dismissal.

60. On 31 May 2024, the Claimant's pay was again short by, he says, £949.12. It is not clear how this sum has been calculated, as the sum shown on the payslip is what the Claimant was paid. However, the Claimant agreed that the missing sum had been paid by the Respondent following the commencement of proceedings, in August 2025.

61. The Claimant says that he queried the issues with his pay with the Respondent's accountant on 30 May 2024, and was told that he owed Ms Egbonimali money, and the accountant had been instructed to deduct around £200 from his wages each month. I do not accept this. Firstly, the amounts by which the wages were short, according to the Claimant, were odd numbers: the March deduction was over £200 and the May deduction over £900. Secondly, no deduction was made in April. The pattern of short pay does not reflect what the Claimant says the accountant told him.

62. On 1 June 2024, the Claimant's international driving licence expired. The Claimant returned the "company" car, which I accept he had continued to use, to the Respondent.

63. On 3 June 2024, the Claimant spoke to Ms Jameel to complain that he had been allocated to a shift for a service user which he could not complete using public transport. Ms Jameel agreed to look into this for him.

64. On 4 June 2024, there was a phone conversation between the Claimant and Ms Egbonimali, in which Ms Egbonimali notified the Claimant that she had been contacted by the "authority" (by which she says, and I accept, she meant the local authority) regarding a report from the mother of a client, M, that the Claimant was being exploited. Ms Egbonimali told the Claimant to answer, in writing, a question she had asked (which he had previously refused to answer), whether she had taken a penny from him. She told him that if he didn't answer the question, she would take his shifts away.

65. The Claimant submitted an early conciliation notice on the same day.

66. Despite this conversation, the Claimant continued to be allocated shifts during June and July 2024. I accept the Claimant's evidence that he was allocated more distant shifts during the latter part of his employment, although he has not produced any evidence to show that his shifts were 40 miles away as he alleges in the list of issues. However, it is also apparent from the Claimant's own evidence that some of his clients (e.g. T and patient M) ceased to be clients of the Respondent, and I accept the Respondent's evidence that, in such circumstances, the Claimant needed to be allocated different clients in order to fill his working hours. I also accept that the Claimant was on occasion allocated clashing shifts; however, I find (based on the evidence given by Ms Jameel) that when this happened, he contacted the office and the problem was resolved.

67. I accept the Claimant's evidence that on 7 June 2024 he contacted the CQC and informed them that a patient (P) required two to hoist him and the Claimant had attended to him alone. As with the disclosures on 23 May, the claimant did not inform the Respondent of this and there is no record of any CQC involvement. I accept the Respondent's evidence that they were not aware of this disclosure at any point prior to the Claimant's dismissal.

68. On 24 June 2024, Fabienne Elumba wrote to the Claimant to tell him that he needed to be driving within the next 28 days. He was told to contact the team if he had questions. The Claimant responded that he was unable to do this as his international driving licence had expired, and his practical test was now in the second week of the next three months away.

69. From 3 July 2024 onwards, the Respondent scheduled several meetings with the Claimant. Meetings were held on 4, 9 and 22 July. There are minutes of all three meetings.

70. At the meeting on 4 July, Ms Egbonimali said that it was to discuss ongoing concerns regarding the Claimant's conduct and performance, including incidents involving clients and staff, allegations of coercion in writing reflection notes, claims of bullying and discrimination, issues relating to rota scheduling, time off, pay deductions and ACAS (as the Claimant had made a statement to ACAS by this point). There was a discussion about each of these issues. In relation to bullying and discrimination, the Claimant referred to his address not being updated and the

allegation that he had breached GDPR by recording T. The meeting notes record, and I accept, based on other evidence of the Claimant's demeanour during high-tension situations, including this hearing, that the Claimant became agitated, visibly frustrated, and at times struck the table for emphasis. He also sought to leave the meeting before it had finished, and paced around the office, until he was asked to leave the premises.

71. At the second meeting on 9 July 2024, there was a continued discussion about the previous issues, and about the Claimant's behaviour at the last meeting. The notes record, and I accept that the Claimant denied exhibiting any aggressive behaviour or raising his voice. The meeting ended without a clear conclusion.

72. Prior to the final meeting on 22 July 2024, on 18 July 2024, the Claimant was sent an agenda informing him that formal proceedings had been commenced. It set out allegations against him, namely (1) being verbally aggressive to a client and a client's family member on 14 May 2024, which resulted in the Respondent losing the client; (2) being late on several occasions and failing to inform the office, which played a part in the company losing a second client; (3) giving a client false information about his employment and making the client believe he was being exploited; (4) being verbally aggressive towards staff and management on 3 July when called to attend a meeting; (5) being rude, verbally aggressive and abusive in the 4 and 9 July meetings; (6) breach of trust and confidence. The Claimant was informed that dismissal was a possible outcome.

73. The meeting took place as planned on 22 July 2024. The above concerns were outlined and the Claimant said that they had been addressed in previous meetings and that he had no further comments. He continued saying that he disagreed that the Respondent had lost a client due to his actions. In relation to the points about his behaviour in previous meetings, the Claimant raised concerns that these had been brought up as new allegations, and described the incident in a previous meeting, when he was asked to drop his bag, as unfair.

74. Later the same day, Fabienne Elumba wrote to the Claimant terminating his employment, with a week in lieu of notice (to 28 July 2024). A detailed letter providing reasons for the dismissal was sent on 26 July 2024. This letter referred to the matters set out in the agenda, all of which were upheld and were said to form the basis for the dismissal. It informed the Claimant of his right of appeal. On 28 July 2024, the Claimant wrote to Ebeneezer Dixon challenging the contents of the letter; however, he did not raise any appeal.

Submissions

75. Both the Respondent and the Claimant made oral submissions, of which I took a careful note. I have considered the submissions and refer to them where appropriate in my conclusions below.

The Law

Protected Disclosures

76. Under s. 43A ERA 1996, a "protected disclosure" is a qualifying disclosure (as defined by s. 43B) which is made by a worker in accordance with any of sections 43C – H.

77. Section 43B(1) provides as follows, so far as is relevant:

> *(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(a) that a criminal offence had been, was being or was likely to be committed;*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject…*
>
> *(d) that the health or safety of any individual had been, was being or was likely to be endangered…*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

78. A disclosure of information conveys facts. A statement which is general and devoid of specific factual content cannot be said to be a disclosure of information tending to show a relevant failure; see *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] ICR 325 at paragraphs 23 – 25 and *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 at paragraphs 35 – 6.

79. The Tribunal must assess whether the Claimant reasonably believed that the information disclosed tends to show a relevant failure. The test of reasonable belief is a mixed subjective and objective test. The Tribunal must determine whether the Claimant subjectively believes that the information disclosed tends to show one of the relevant failures, then whether, objectively, that belief was reasonable. (*Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, EAT, paragraphs 61 – 2).

80. The breach of a legal obligation (as referred to in s. 43B(1)(b)) does not include a breach of guidance or best practice, or something that is considered merely morally wrong (see e.g. *Eiger Securities LLP v Korshunova* [2017] ICR 561).

81. A qualifying disclosure will be a protected disclosure if it is made to the worker's employer (s. 43C(1)(a) ERA 1996). A disclosure will also be protected if it is made to a person prescribed by an order of the Secretary of State for the purposes of s. 43F ERA 1996, and the person making the disclosure reasonably believes (i) that the relevant failure falls within any description of matters in respect of which that person is prescribed; and (ii) that the information disclosed, and any allegations contained in it, are substantially true.

Detriment

82. Section 47B(1) and (1A) ERA 1996 provide that a worker has the right:

(a) not to be subjected to any detriment by any act or any deliberate failure to act by his employer; and
(b) not to be subjected to any detriment by any act or any deliberate failure to act done by another worker of his/her employer done in the course of that other worker's employment,

done on the ground that the worker has made a protected disclosure. In the situation set out at (b) above, the act of the other worker will be treated as done by the worker's employer (s. 47B(1B) ERA 1996.

83. Section 48(2) provides that, in a complaint made under s. 47B, it is for the employer to show the ground on which any act or failure to act was done; although it remains for the employee to show that she made a protected disclosure, that there was a detriment, and that the employer subjected her to that detriment. Liability will arise where the protected disclosure is a material (i.e. more than trivial) factor in the employer's decision to subject the claimant to a detrimental act (*Fecitt v NHS Manchester* [2012] ICR 372 at [43]).

Time Limits

84. Section 48(3) ERA 1996 provides that a claim must be presented before the end of the period of three months (subject to the early conciliation extension) beginning with the date of the act or failure to act, or, where the act or failure is part of a series of similar acts or failures, the last of them. Time may be extended for such further period as the Tribunal considers reasonable where it was not reasonably practicable for the complaint to be presented in time.

Automatic Unfair Dismissal

85. Section 103A ERA 1996 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

86. The burden of proof in a s. 103A case was set out in *Kuzel v Roche* [2008] ICR 799 at paragraphs 58 - 60 as follows:

(a) The employee must produce some evidence to suggest that his dismissal was for the principal reason that he made the protected disclosure.
(b) The burden then shifts to the employer to show the dismissal was for a potentially fair reason;
(c) If the employer fails to show the reason for dismissal, then the employment tribunal may draw an inference (where such inference is appropriate) that the true reason for the dismissal was as suggested by the employee.
(d) The identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. An employer may fail in its case of fair dismissal for an admissible reason, but that does not mean the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason.

Age-Related Harassment

87. Section 26 EqA 2010 provides that a person (A) harasses another (B) if (a) A engages in unwanted conduct related to a relevant protected characteristic and (b) the conduct has the purpose or effect of (i) violating B's dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether the conduct has the proscribed effect, the court must take into account the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

88. Section 40 EqA 2010 provides that employers must not harass their employees.

89. Not all unwanted conduct will reach the threshold of violating dignity; see *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 at [22]:

    "We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

90. The question of whether particular conduct is "related to" a protected characteristic is a broader and more easily satisfied test than the "because of" test used for direct discrimination (see e.g. *Tees Esk and Wear valleys NHS Foundation Trust v Aslam* [2020] IRLR 495*).* The broad nature of this test means it is not always necessary to make findings about the motivation of the individual concerned. However, there must be, in any given case, some feature or features of the factual matrix identified by the Tribunal which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim.

91. Section 136 EqA 2010 provides that, where there are facts from which the court could decide, in the absence of any other explanation, that person A contravened a provision in the Act, the court must hold that the contravention occurred, unless A shows that A did not contravene the provision.

92. In *Warby v Wunda Group Plc*, as quoted by Simler J in *General Municipal and Boilermakers Union v Henderson* [2015] IRLR 451, the EAT considered the application of the burden of proof in harassment claims and held as follows:

    "...when a Tribunal is considering whether facts have been proved from which it could conclude that harassment was on the grounds of sex or race, it is always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on the grounds of sex or race. The context may, for example, point strongly towards or strongly against a conclusion that harassment was on the ground of sex or race. The tribunal should not leave the context out of the account at the first stage and consider it only as part of the explanation at the second stage, after the burden of proof has passed."

93. Under s. 212(1) EqA 2010, the Claimant may not rely on the same matters as acts of detriment (for the purposes of his direct discrimination claim) and acts of harassment.

Direct Age Discrimination

94. Section 13 Equality Act 2010 provides that a person (A) discriminates against another (B) if because of a protected characteristic, A treats B less favourably than A treats or would treat others. Age is a protected characteristic (s. 5).

95. In a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case (s. 23 EqA 2010).

96. Employers must not discriminate against employees in the way they afford them access, or by not affording them access to opportunities for promotion, transfer or training or for receiving any benefit, facility or service; by dismissing them or by subjecting them to any other detriment (s. 39(2((b) - (d) EqA 2010).

97. Under the burden of proof provisions set out in s. 136 EqA 2010, it is for the Claimant to prove facts from which the Employment Tribunal could conclude, in the absence of an adequate explanation, that the Respondent committed an unlawful act of discrimination (see *Madarassy v Nomura International Plc* [2007] ICR 867). The Court of Appeal in that case explained what is meant by "could conclude" (referring to the words in a previous version of this section, in the Sex Discrimination Act 1975):

> *56. The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. 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.*
>
> *57. "Could conclude" in section 63A(2) must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory "absence of an adequate explanation" at this stage, the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by section 5(3) of the 1975 Act and available evidence of the reasons for the differential treatment.*

98. The Supreme Court confirmed in *Royal Mail Group Ltd v Efobi* [2021] 1 WLR 3863 that this approach continues to apply following the passing of the Equality Act 2010, which contains slightly different wording as to the burden of proof (see paragraph 30).

99. Where the protected characteristic relied upon is age, the Respondent has a potential defence to direct discrimination where the treatment can be shown to be a proportionate means of achieving a legitimate aim (s. 13(2) EqA 2010). The Respondent in the present case does not rely on this defence, and I therefore need say no more about it.

Time Limits: Equality Act 2010

100. Section 123(1)(a) EqA 2010 provides that a complaint may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates. Where the complaint is of conduct extending over a period, the act is treated as having been done at the end of that period (s. 123(3) EqA 2010). If a complaint is brought out of time, the Tribunal may hear the complaint if it is brought within such other period as the Tribunal thinks is just and equitable (s. 123(1)(b)).

101. The question for the Tribunal in considering whether conduct found to have occurred constituted conduct extending over a period was summarised in *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530 at paragraph 52:

> *"...the focus should be on the substance of the complaint that the commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."*

102. The Court of Appeal in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194 held that in considering the "just and equitable" discretion to extend time, it will almost always be relevant to take into account (a) the length of and reasons for the delay; and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

Unauthorised Deductions from Wages

103. Section 13 ERA 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless (a) it is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract; or (b) the worker has previously signified his agreement in writing to the making of the deduction. Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount payable on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of the Act as a deduction made from wages on that occasion (s. 13(3)). Section 13(4) provides that s. 13(3) does not apply if the deficiency is

attributable to an error of any description on the part of the employer affecting the computation of the gross amount of wages properly payable by him to the worker on that occasion.

104. Section 23 ERA 1996 provides that any complaint under s. 13 must be presented to the tribunal before the end of 3 months beginning with the date of payment of the wages from which the deduction was made. Where the deduction is part of a series of deductions of payments, the time limit runs from the last deduction or payment in the series (s. 23(3)). This time limit may be extended under s. 23(4) where it was not reasonably practicable for the complaint to be presented in time.

Conclusions

Protected Disclosures

105. I start by dealing with the question of whether the Claimant made protected disclosures as alleged at paragraph 3.1 of the List of Issues

3.1.1.1: 24 April 2024

106. The disclosure alleged at 3.1.1.1 is that the Claimant called Ms Jameel to inform her that he was being asked to observe a man on end of life care (patient T) whose care plan asked for two female carers and therefore the Respondent was acting against his care plan by placing the Claimant with him. I have already concluded that the Claimant did not make any disclosure about patient T by reference to his care plan. Had the Claimant done so, he could not reasonably have believed that the information he was providing tended to show that a criminal offence had been committed, or that the Respondent had failed to comply with a legal obligation under s. 43B(1)(a) or (b) (which are the two sub-sections relied upon in relaiton to this disclosure, either because he had not checked the care plan, or because (if he had checked it), he knew there was no provision for double-up care at that time. Further, the Claimant's argument in relation to this disclosure is that the care plan put the Respondent under a legal obligation of compliance. If, as I have found, any disclosure was not by reference to the care plan, the Claimant again cannot have had any reasonable belief that the information he provided tended to show that a criminal offence had been committed, or that the Respondent had failed to comply with a legal obligation. This disclosure, then, was not a qualifying disclosure under s. 43B ERA 1996.

3.1.1.2: 23 May and 7 June 2024 (CQC)

107. The allegation in relation to 23 May 2024, as clarified in oral evidence, is that the Claimant disclosed to the CQC the same information regarding patient T as he had disclosed to the Respondent on 24 April 2024, namely that the Respondent was acting against his care plan. The Claimant has not provided any information at all about any other disclosures he says he made on 23 May 2024. For the reasons I have already given, I find that the Claimant did not make a disclosure to the CQC by reference to patient T's care plan, and even if he had, he cannot have held a reasonable belief that the information tended to show the matters set out at s. 43B(1)(a) or (b).

108. Technically, the disclosure said to have been made on 7 June 2024 (that the Claimant had been required to attend on a patient, P, alone, when the patient's care plan said he required double-up care to use a hoist) is not referred to in the list of issues. However, I accept that the Claimant made an error as to the date of this disclosure. I accept that the claimant disclosed this information to the CQC on that date, and that he reasonably believed that it disclosed a breach of a legal obligation, namely the duty of care (as the care provider) to provide appropriate care to a patient. I also consider that the Claimant reasonably believed this disclosure was made in the public interest. The disclosure was made to the CQC, a prescribed person, and I find that the Claimant had a reasonable belief that the issues disclosed fell within the matters in respect of which the person was prescribed, and that the disclosure was substantially true.

3.1.1.3: 14 May 2024

109. The disclosure alleged on 14 May 2024 is that the Claimant reported to his supervisors, Kelly and Ms Jameel, that T's wife was abusing T, and that T's wife had asked the Claimant not to write this in T's notes. I have already found above that the Claimant did report to either Kelly, Ms Jameel and./or Ms Egbonimali, on this date, that T's wife was causing or allowing his catheter to be detached, and to that extent, this disclosure was made. I have also found that the Claimant did not say that T's wife had asked him not to include this information in his notes. I find that the Claimant reasonably believed that the information disclosed tended to show that T's health or safety was being endangered, and that this disclosure was in the public interest. The disclosure was made to his employer, so falls within s. 43C.

Knowledge of Disclosures

110. The Respondent was clearly aware of the disclosure made on 14 May 2024, as it was made to the Respondent. However, I find, for the reasons already given, that the Respondent was not aware of the disclosure made on 7 June 2024 at any point prior to the Claimant's dismissal.

111. Thus the only disclosure that I have found meets the statutory conditions and was known to the Respondent is the disclosure on 14 May 2024.

Public Interest Disclosure: Detriment

4.1.1

112. The first alleged detriment is that the Claimant was told he had to pay £5000 to the Respondent in return for sponsorship from the Respondent, and paid an initial sum of £1600, followed by £100. The Claimant said in oral evidence, as set out above, that he was told the rest would be paid in instalments.

113. It is common ground that any request for money must have occurred before November 2023, as that is when the Claimant made his first payment to Ms Egbonimali's husband. The last payment was made on 1 February 2024. That pre-dates any protected disclosure, and therefore the money cannot have been asked for or paid because of any protected disclosure.

114. That disposes of the claim, and it is therefore strictly unnecessary for me to consider whether the money was requested at all. However, this point is relevant to other claims, and I have therefore formed a view in relation to it.

115. The Claimant is clear that the money was requested from him in respect of the COS. The Respondent denies that this was the case. Ms Egbonimali says that the Claimant was repaying sums given to him by her husband to assist his family in their immigration applications. There is no evidence whatsoever to support her assertion, and she was unable to specify which applications these were. There is no evidence from her husband, despite the fact that this matter was clearly raised in the list of issues.

116. On balance, I find that the payments made by the Claimant were in respect of costs associated with his employment, arising from his immigration status, and this is why he made the complaint of "exploitation" to patient M's mother. It is clear that the allegation of exploitation related to the payment of money to the Respondent from the voice recording in which Ms Egbonimali (contrary to the denial in her witness statement) insists that the Claimant provide a letter stating that the Respondent has not taken a penny from him. I find that, despite these requirements, the Claimant took on permanent employment with the Respondent because it was his universal experience that employers were demanding payment of immigration-related expenses.

117. I should interject at this point that it is my own understanding that, at the time of these events, it was not unlawful for employers to seek the cost of some (but not all) immigration-related requirements, including the COS, from workers. That position changed for some workers in December 2024. Because it is not an issue in this case, I make no comment on the lawfulness of any ways in which this might be achieved.

4.1.2

118. The second allegation of detriment is that the Respondent asked the Claimant to write a letter saying they had not taken any money from him for sponsorship, and if he did not do so, they would delete his shifts. As I have already found, I accept this occurred on 4 June, which post-dated the Claimant's protected disclosure.

119. However, I am wholly satisfied that this detriment was not in any way related to the claimant's protected disclosure about alleged abuse of patient T. The sole reason for the request that the Claimant write the letter, and the threat to remove his shifts, was the fact that the Claimant had made an allegation of exploitation (i.e. being required to pay money in respect of his work-related immigration expenses) to patient M's mother, which she had relayed to the local authority, and the Respondent wanted to rebut that allegation. Although I have found that the Claimant's account of paying money was accurate, this was not relied upon as a protected disclosure, and it is difficult to see how it could be, since it was made not to the Respondent or a prescribed person, but to a service user's mother. This detriment was not, therefore, done on the ground that the Claimant had made a protected disclosure, and the claim must therefore fail.

120. For completeness, as this incident occurred on 4 June 2024, the claim was made in time.

Automatic Unfair Dismissal: section 103A ERA 1996

121. I move now to the question of whether the Claimant's dismissal was automatically unfair within s. 103A ERA 1996.

122. In order for the Claimant to succeed in this claim, I must conclude that the Respondent's sole or principal reason for dismissing the claimant was the disclosure he made on 14 May 2024.

123. The Respondent's case is that the Claimant was dismissed for the reasons set out in the letter dated 26 July 2024, which are enumerated above.

124. I find that the Claimant has not adduced any evidence to suggest that the principal reason for his dismissal was the protected disclosure made on 14 May 2024. For the reasons I will go on to explain, I do not entirely accept the Respondent's position, but on the balance of probabilities, I find that the Claimant's disclosure on 14 May 2024 played no part in his ultimate dismissal, which occurred for some of the reasons set out in the Respondent's dismissal letter dated 26 July 2024.

125. The Claimant has relied heavily on the fact that he was asked to rewrite his reflection note following the incident on 14 May 2024 to include no reference to T's wife. I accept this, for the reasons I have already given above. However, I do not accept the Claimant's position that this is because the Respondent wanted to conceal any issues relating to T's wife's alleged mistreatment of him. It is clear from the emails I have seen and the voice recording that the Respondent wanted the Claimant to reflect on his own role in the incident and what he could have done better, and this was what he was expected to do in his reflection note. That was a reasonable request, in line with common practice in medical settings. I have set out the exchanges in some detail in my findings of fact because it is clear that this was what the Respondent was asking for, and it is also clear that the Claimant did not do this. His initial accounts almost entirely omitted his own role and contained no reflection. It was only in his final account that he accepted some defects in his own performance and acknowledged these. I find that this was why he was repeatedly asked to re-draft his reflection note.

126. Ms Egbonimali said in her oral evidence that the local authority had raised the topic of the Claimant's role in the 14 May incident again shortly prior to his dismissal, and that was why it was raised again some weeks after he had returned to work following suspension and was mentioned in his dismissal letter. I find that Ms Egbonimali's recollection is at fault here; it is clear from the recorded phone call on 29 May 2024 that the renewed contact from the council happened on 28 May 2024, and this prompted her to give the Claimant a last chance to write a reflection note that acknowledged his own part in the incident. After he did so, the Claimant was permitted to return to work and did so for some 6 weeks.

127. In addition to the above, the Respondent's own formal notes of meetings refer to the allegations of mistreatment by T's wife and obstruction of care, as do emails that have been disclosed in these proceedings. If the Respondent had genuinely

been so concerned to conceal the Claimant's disclosure as to dismiss him for making it, it is most surprising that they would have voluntarily referred to his allegations in their own notes.

128. Instead, based on the chronology set out in my findings of fact, I find that the Respondent was happy for the Claimant to return to work after he had acknowledged his errors on 14 May in the final reflection note. However, Ms Egbonimali discovered shortly thereafter that the Claimant had been complaining of exploitation by the Respondent to a service user, which gave rise to an issue with the local authority. The claimant was also unable to drive, from 1 June 2024, which limited the clients he could usefully see, and raised repeated complaints about his rostering. When he was summoned to meetings on 4 and 9 July to discuss these issues, I accept that – no doubt because of the strength of his feelings – he behaved in a disruptive and agitated manner. I find that it was a combination of the matters which occurred from 1 June onwards which formed the principal reason for the claimant's dismissal. The behaviour complained of by the Respondent was also the type of behaviour complained of by patient T and his wife in the incident on 14 May 2024, and I find that was why the 14 May incident was included as forming part of the reasons for dismissal in the letter of 26 July 2024. The disclosure made on 14 May 2024 played no part in it.

129. The claim for automatic unfair dismissal therefore fails.

Age-Related Harassment

130. I agree with the Respondent that it makes sense first to consider the allegation of age-related harassment before moving on to direct discrimination.

131. The allegation is that, between January and July 2024, the Respondent allocated jobs to the Claimant which were over 40 miles away rather than local, and that this was harassment related to age.
132. I do not accept that the Claimant was allocated to jobs over 40 miles away, but I do accept that in June – July 2024, the Claimant began to be allocated to jobs that were further away.

133. Leaving aside for the moment the question of whether this conduct otherwise fits the statutory test for harassment, there is no obvious link between age and this treatment. The Claimant's allegation that it was related to age rests on the following points:

    (a) He was told he was too old to complete NVQ or MAPA training. I have already found on the balance of probabilities that this did not happen.
    (b) He was wished a happy 50th birthday by someone at the Respondent's office on the WhatsApp group, when he was only 49, and when he corrected this, he received no acknowledgement. The Claimant was wished a happy 50th birthday, but when he corrected the author, there was a response, of a heart emo
    (c) He was called "boss" on several occasions by someone in the Respondent's office when he communicated with them on WhatsApp above his shifts. The Claimant contends that this was an age-related insult. I can find no basis

whatsoever for this assertion. The exchanges referred to are respectful, and the use of the word “boss” is normally regarded as a sign of respect.

(d) He was told by Miss Egbonimali at the meeting on 17 May 2024 that he had set a poor example to a junior carer by his conduct on 14 May 2024.

134. I cannot draw an inference from any of the above that the Claimant’s allocation to more distant jobs towards the end of his employment was related to age. There is no prima facie case of discrimination.

135. Furthermore, there is an obvious and clear explanation for the increase in more distant jobs, which is that the Respondent had lost certain clients serviced by the Claimant who were closer by, and he needed to be allocated to other clints to make up his work hours.

136. The claim of harassment therefore fails.

Direct Age Discrimination

6.2.2

137. This second allegation of direct age discrimination (the allocation of more distant jobs) must fail for the reasons I have given in relation to harassment above. The test of “because of” is more stringent than “related to”, so if the claim fails on the looser test, it must also fail on the more stringent test.

6.2.1

138. The first claim of direct age discrimination is that the Claimant was deprived of the opportunity to use the company vehicle to take his driving test in. I accept that the claimant had at the very least been allowed to understand that he could take his driving test in the company vehicle, and, as I have set out above, that he was told the day before that he was not insured to drive the vehicle.

139. There is, however, no evidence before me on the basis of which I can find that a person of a different age would have been treated any differently. The Claimant has not, for example, advanced any evidence that others were permitted to use the company car for their driving tests.

140. For the reasons I have already given, the points relied upon by the Claimant as background evidence to show that he was treated less favourably because of his age cannot support any such inference.

141. It is true that the Respondent allowed the Claimant to use the company car on a day-to-day basis, despite any insurance issues. It is clear that the Respondent wanted the Claimant to use the car because it served their purposes in getting work done, even though it appears he was not insured to use it. It would obviously be much more of a risk to allow the Claimant to use a vehicle on which he was uninsured to take his driving test. This is not commendable conduct, but there is nothing from which I can conclude that it has anything to do with the Claimant’s age.

142. The claims of direct age discrimination must also fail. I should add that the first claim is (6.1.1) out of time, and the claimant provided no basis on which it would be just and equitable to extend the time limit, so, had it been necessary, I would not have extended the time limit for the bringing of this claim.

143. A deposit order was made in respect of the age discrimination/harassment claims. Those claims have failed for the reasons set out in the deposit order, namely, the absence of any apparent causal link between the Claimant's age and the alleged treatment. The deposit paid by the Claimant will therefore be paid to the Respondent.

Holiday Pay

144. The Claimant advanced no evidence in relation to his holiday pay claim. He said repeatedly that he did not accept that the amount he was paid for accrued holiday pay was correct, but also said that he had not been through it, so he did not know whether or by how much it was wrong. The burden of proof lies on the Claimant and he has not shown that he has been paid less holiday pay than he was entitled to. In his submissions, the Claimant indicated that he was not actively pursuing this claim. In any event, there is no evidence to support it, and I therefore dismiss it.

Unauthorised Deductions from Wages

145. The Claimant's first claim is in respect of monies he says were deducted from his pay in October – December 2023 under the guise of national insurance, but were never paid to HMRC.
146. Firstly, this claim has been brought well out of time. The last in this alleged series of deductions occurred, at the latest, on 31 December 2023. The Claimant notified ACAS of his claims on 4 June 2024. The Claimant has advanced no evidence to show it was not reasonably practicable to bring this claim within time. There is no basis on which I can extend time. The claim must therefore be dismissed for that reason.

147. Secondly, even had the claim been brought within time, there will, under s. 13(3), only be a deduction if the amount paid to the worker <u>after deductions</u> is less than he should receive on any given occasion. The Claimant has not said that the deductions made in his payslip were incorrect; he simply argues that they were not paid on the HMRC. It does not seem to me that this is a deduction within the meaning of the section.

148. Finally, whilst the Claimant has produced a statement of payments by the Respondent to HMRC allocated to particular months, it is not clear from the documentation whether later payments made to HMRC balanced out the amounts that do not appear to have been paid in earlier months. Ms Egbonimali said in her evidence that sometimes there are unevenesses in the deduction of monies (based on tax codes) that even out at a later date. As the Claimant has not supplied any information as to the full amount of national insurance paid by the Respondent over the whole period of his employment, he has not proved on the balance of probabilities that these sums were not paid.

149. The Claimant's second claim is for short pay in March and April 2024 (from the payslips, I think this should in fact refer to March and May 2024). The Respondent acknowledges that the Claimant's pay was short, which is said to have been due to payroll errors, and the Claimant was paid what he accepts to be the full shortfall in August 2025. There are therefore no amounts still owing, and the claim is dismissed. I should add that, if the reductions were due to payroll errors, which I think most likely, they would not form the basis for an unauthorised deductions claim in view of the provisions of s. 13(4) ERA 1996.

Breach of Contract

150. The Claimant's claim for breach of contract relates to failure to pay mileage expenses. This claim can be dealt with shortly. Neither the Claimant's offer letter nor his contract of employment entitled him to mileage expenses. Mileage expenses were paid to employees who used their own vehicle, but the Claimant did not. He had no legal entitlement to mileage expenses, and cannot now bring a claim for them.

Conclusion

151. The Claimant's claims therefore fail, and are dismissed.

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Employment Judge A. Beale KC
Date: 8 May 2026

Judgment sent to the parties and entered in the Register on: 14 May 2026

For the Tribunal Office:

P Wing