



EMPLOYMENT TRIBUNALS

Claimant: Ms O. Nwala

Respondent: Anchor Handover Group

Heard at: Cambridge Employment Tribunal (in public; by CVP)

On: 27, 28 and 29 May 2026 (5 hearing days)

Before: Employment Judge Hutchings

Representation
Claimant: Ms Webster, counsel
Respondent: Mrs Cislariu, HR consultant and Employment Law Specialist

RESERVED JUDGMENT

It is the judgment of this Employment Tribunal that the complaint of direct race discrimination is well founded and succeeds. The claimant was dismissed because of her race.

REASONS

Introduction

1. The claimant commenced employment with the respondent, Anchor Handover Group, a not-for-profit organisation providing housing, care and support to people over 55 years old, as a Care Assistant at the Nelson Lodge Care Home (the "Home") on 22 December 2023, having been a casual bank worker at the Home since 18 July 2023. The claimant was dismissed without notice on 9 October 2024, the respondent says due to gross misconduct regarding her care of a dementia patient at the Home. The claimant says the allegations about her care of the patient are untrue and the reason for her dismissal was her race.
2. By an ET1 claim form and Particulars of Claim dated 6 March 2025 the claimant brought the following complaints:

- 2.1. Section 13 of the Equality Act 2010 ("EqA"): direct race discrimination;
 - 2.2. Section 26 EqA: race related harassment;
 - 2.3. Section 43B of the Employment Rights Act 1996 ("ERA"): protected disclosure (whistleblowing); and
 - 2.4. Unlawful deduction from wages – holiday pay.
3. Following a case management hearing before Employment Judge ("EJ") Warren on 11 July 2025 the claimant withdrew the complaints of race related harassment and whistleblowing and the claim for holiday pay. The tribunal has issued withdrawal judgments.
 4. The claimant's race is black. The complaint of direct race discrimination relates to the claimant's dismissal. She says that she was dismissed following an investigation when a colleague raised concerns to the Home's manager about the claimant's care of a service user with dementia (referred to in this judgment as "WW"). The claimant denies the allegations made and says she was dismissed because of her race
 5. ACAS consultation started on 3 January 2025 and a certificate was issued on 14 February 2025.
 6. By an ET3 response form and Grounds of Resistance dated 9 April 2025 the respondent denies the claims. The respondent says the reason for the dismissal was gross misconduct regarding the care the claimant gave to a dementia patient at the Home on 31 May 2024 and 10 June 2024.

Evidence and procedure

7. The case was listed for 3 days and considered liability only. I considered documents in a 155 page hearing file which the parties submitted in evidence.
8. The claimant was represented by Mrs Cislariu, HR consultant and Employment Law Specialist, and gave sworn evidence (days 1 and 2). The respondent was represented by Ms Webster of counsel, who called sworn evidence from the following witnesses:
 - 8.1. Jeanette Whitbread, the Home's manager (day 2); and
 - 8.2. Sean McCloskey, the respondent's regional support manager (day 3).
9. Prior to the start of the hearing on day 1 Mrs Cislariu sent a skeleton argument to the respondent and the tribunal. At the start of the hearing Ms Webster raised the following issues with the skeleton (in summary):
 - 9.1. paragraph 4: that the claimant seemed to be naming actual comparators when the case to date relied on a hypothetical comparator and this had been recorded in the agreed list of issues. Ms Webster told me that relying on actual comparators at this stage in the proceedings prejudiced the respondent as had the names of actual comparators been known to the respondent either at the case management hearing or at a reasonable time prior to the final hearing the respondent may have called those individuals to give evidence; and
 - 9.2. paragraph 16 and 17: that these paragraphs read as though the claimant was seeking to introduce factual allegations as detriments in the direct

discrimination complaint which had been part of other claims which had been withdrawn.

10. There followed a discussion about the concerns raised by Ms Webster. In summary:

10.1. The list of issues in EJ Warren's case management order records a hypothetical comparator. Mrs Cislariu told me that there was a discussion about comparators at the case management hearing and it was agreed the claimant would rely on a hypothetical comparator. I accept Ms Webster's submission that the names of the individuals in the skeleton were not put forward at that hearing or since; certainly there is no evidence before me that they were and in this regard. I accept Ms Webster's concern there may be prejudice to the respondent if the tribunal accepts at this late stage an actual comparator. In any event, Mrs Cislariu did not object to proceeding on the basis of a hypothetical comparator, which she confirmed to me had been the basis of the claimant's case at the outset and at the case management hearing.

10.2. In any event I make the observation that there is a body of case law that emphasises the primary question for a tribunal in a direct discrimination complaint is: why was the complainant treated as he or she was? Indeed, in their closing written statements parties referred me to this principle. Of relevance is the case of Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL, in which Lord Nicholls pointed out that there will "usually be no difficulty in deciding whether the treatment... was less favourable than was or would have been afforded to others". The key question is: did the complainant, because of a protected characteristic, receive less favourable treatment than others? Particularly relevant, given the issue in this case is an alleged discriminatory dismissal, are the comments of Lord Mummery in Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA,:

"I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed. If it was on the ground of disability, then it is likely that he was treated less favourably than the hypothetical comparator not having the particular disability would have been treated in the same relevant circumstances. The finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment."

10.3. As to detriments which are not part of the direct discrimination complaint, for me to consider them as part of the claim would require an amendment application and a decision that the requested amendment is allowed. It is evident from the list of issues in EJ Warren's case management order and the tribunal's subsequent dismissal judgments that the factual allegations referred to at paragraphs 16 and 17 were alleged in the other complaints, do not form part of the direct discrimination complaint, and have been dismissed. The only detriment the claimant relies on in her direct race discrimination complaint which is recorded in the list of issues is her dismissal (the list of issues reflecting the details of the direct discrimination complaint in the Particulars of Claim). Therefore, the only issue for the tribunal is was the claimant dismissed because of her race.

The extent to which other facts are relevant to the determination of this issues is a matter for the tribunal in deliberation.

- 10.4. There followed a discussion as to whether the claimant is relying on the other factors as the “something more” to link the dismissal to her race and, if so, exactly what she says the something more is. We took a break for Mrs Cislariu to take instructions as the claimant does not identify the reason she says the dismissal was because of her race in the Particulars of Claim, nor is the “something more” identified in the list of issues agreed at the case management hearing. Following the break, Mrs Cislariu explained to me why the claimant says the dismissal was because of her race. I updated the list of issues with the parties and the final list is set out below. As the “something more” had not been identified by the claimant until now (which I note is not unusual in direct discrimination complaints), we took an early, longer lunch break to allow Ms Webster to take instructions about the facts identified by the claimant.
11. On day 2 both representatives told me that they would be submitting written closing statement. At the end of the evidence on day 3 we took a longer lunch break to allow representatives to finalise, exchange statements and send them to the tribunal, after which I heard short closing statements from both representatives. I had also asked Ms Webster to take instructions as to who wrote the manuscript amendments on the disciplinary hearing notes. At the end of the hearing she told me that they were amendments made by the note taker at the request of the claimant.
12. There was no time in the allocated hearing for me to make my decision or give judgment, therefore judgment was reserved. After the hearing, in reviewing my notes I reflected on the manuscript amendments to the disciplinary hearing notes and the respondent’s explanation. For the reasons explained in my findings of fact below I consider these amendments relevant as the claimant’s case is the typed note of the disciplinary hearing is inaccurate where it records the claimant accepted that she tapped WW. Therefore, mindful of rule 3 of the Employment Tribunal Rules 2024 I considered it fair to allow the claimant to respond to this explanation. After the hearing I asked Tribunal administration to send the following direction to the claimant, copied to the respondent.
- “EJ Hutchings notes the explanation provided, at the tribunal’s request, by the respondent about the manuscript amendments on the notes of the disciplinary hearing. By 5 June 2026 the claimant’s representative must write to Tribunal, copied to the respondent’s representative, to confirm whether or not she asked the respondent [Danielle Vernon] to make these amendments to the disciplinary hearing notes and, if so, when. The response should request an urgent referral to EJ Hutchings.”
13. On 3 June 2026 I received the following reply on behalf of the claimant:

“The Claimant wishes to confirm that she asked the respondent [Danielle Vernon] to make the amendments to the disciplinary hearing notes. She made the request on 19 September 2024 the same day the Disciplinary Hearing took place.

This was because she was not allowed to leave the venue until the meeting notes were printed and given to her to read and sign, in spite of the fact she

was quite distressed and distraught as a result of going through the disciplinary hearing.”

14. The tribunal took regular breaks, starting at 10am and finishing around 4pm each day. Neither party’s witnesses required reasonable adjustments. Towards the end of day 1, when giving evidence, the claimant became visibly upset. I stopped the hearing and asked the claimant if she could attend tomorrow with a friend or family member for support, as she had told me she was alone at home. On day 2 she reassured me she was fine and wanted to continue. Her representative had also located a hard copy of the hearing file for her to use, rather than the electronic versions she had been provided with on day 1.

List of issues

15. At the case management hearings before EJ Warren. This was updated on day 1 to reflect discussions with parties about the “something more”.

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

1.1. The claimant’s race is black.

1.2. The claimant relies on her dismissal without notice on 9 October 2024 as the act of discrimination. The respondent accepts it dismissed the claimant on this date.

1.3. Was the claimant’s dismissal 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 they were treated worse than someone else would have been treated.

The claimant has not named anyone in particular who they say was treated better than they were.

1.4. If so, was the dismissal because of the claimant’s race?

1.5. Can the claimant prove primary facts from which, in the absence of any other explanation, the tribunal could decide that the dismissal was because of the claimant’s race? The claimant says the dismissal was because of her race as:

- 1.5.1. Mrs Whitbread, the disciplinary officer, did not take account of the inconsistencies in the statements made by Grace Bundy, Ella Rowland and Hannah Cogram during the investigation process and gave extra weight to the accounts of the incident on 10 June 2024 given by these witnesses;

1.5.2. The respondent failed to follow a proper investigation process as it did not consider CCTV footage in vicinity of WW's room nor did it check whether there were any bruises on WW's body; and

1.5.3. On 29 November 2024 Mr McCluskey, the appeal officer, said to the claimant:

1.5.3.1. "why would be disbelieve 3 staff"; and

1.5.3.2. "[her] kind of person does not know how to talk but are good in care jobs".

1.6. If the claimant proves these primary facts, what is the respondent's explanation for the dismissal? Can they prove a non-discriminatory reason for the dismissal? The respondent says the claimant was dismissed for gross misconduct in her care of WW on 10 June 2024.

Findings of fact

16. Having considered all the evidence, on the balance of probabilities, my findings of fact relevant to the issues in dispute are below. Where events are not agreed and I have had to make a finding on the evidence, I explain my reasoning.
17. The claimant's period of employment and job role are agreed and set out in the introduction above. It is agreed that the Home cares for dementia patients and as a result all staff were subject to safeguarding policies and responsibilities. In oral evidence the claimant accepted she had undertaken the respondent's safeguarding training.
18. It is agreed that on 31 May 2024 and 10 June 2024 the claimant gave personal care to WW, an 86 year old (at the time) dementia patient who was a resident patient at the Home. Parties accept that WW could present with angry and physical behaviours as a result of her dementia and had a care plan in place requiring her care givers to leave her room should she become agitated, upset and/or physical towards them. Parties also accept that WW became upset and physical while the claimant was giving her personal care on these dates. The claimant accepts that, when WW became upset and agitated, she did not leave the room, as required by the care plan, telling me (and the respondent during the investigation and disciplinary processes) that WW was soaked in her own urine and she did not consider it appropriate to leave her in this condition. I find that the claimant did not follow the care plan when WW became upset and physical, remaining in the room until she was satisfied that WW was "decent". The other care givers in the room on these occasions did not leave the room either. It is evident to me from her evidence to the tribunal and the consistency of the claimant's explanation from the outset of the complaint, that the claimant's motivation for not following the care plan was the dignity of WW.
19. It is also agreed that three of the claimant's colleagues (Grace Bundy, Hannah Cogram, and Ella Rowland, together the "Witnesses"), who are white, gave evidence to the Home's deputy manager, Pauline Davies, about the claimant's care about their concerns with the claimant's care of WW on these dates. On the day concerns were raised Pauline Davies undertook a body map of WW.

While there is no evidence of the body map in the investigation report, or before the tribunal, the respondent accepts that there were no bruises on WW's body.

Claimant's suspension on 19 June 2024

20. On 19 June 2024 Pauline Davies met with the claimant to discuss the care given to WW by her on these dates and the concerns raised by the Witnesses. The claimant was suspended with pay and Pauline Davies undertook an investigation.

Findings of investigation

21. The introduction to the investigation report summarises the reason for the investigation:

21.1. On 10 June 2024 Ella Rowland told management that she had been told by Grace Bundy that the claimant assaulted WW when giving personal care on 10 June 2024: the report records this was confirmed directly by Grace Bundy to management on 10 June 2024; and

21.2. On 10 June 2024 Ella Rowland told management that the claimant had assaulted WW when giving personal care on 31 May 2024.

22. The report annexes records of interviews with and statements made by the Witnesses.

23. The claimant says that CCTV footage of the incidents should have been considered as part of the investigation process. Mrs Whitbread told me there are no CCTV cameras in the Home. This was not challenged by the claimant in cross examination, nor has the claimant provided any evidence that there are cameras in the Home. I find that there are no CCTV cameras the respondent could have checked as part of the investigation process.

First disciplinary hearing on 19 September 2024

24. Mrs Whitbread, the Home manager, was appointed disciplinary officer. She made the decision to dismiss the claimant.

25. Mrs Whitbread met with the claimant on 19 September 2024. Before the meeting she received a copy of the investigation report from Pauline Davies.

26. I have seen a copy of the minutes of this meeting, which are signed by the claimant, Mrs Whitbread and the notetaker. The claimant accepts that she received a copy of the minutes at some point after the meeting, she thinks when she received a file of documents sent to DBS. Mrs Whitbread told me that the minutes would have been emailed to the claimant after the meeting as this was the respondent's standard approach. There is no email in the hearing file and it is not clear from the evidence before me when the claimant received the minutes. In response to my request for clarification about the notes, the claimant informed the tribunal that before she left the hearing the minutes were printed, she requested the amendments and then signed them. Certainly her evidence on when she received the minutes is inconsistent but she accepts she received, requested amendments and signed them. When she did so is immaterial to the issues in dispute.

27. The claimant says that the discussion about tapping noted on the third page of the minutes (the first being the title page) is not accurate. The note records the following:

“JW: So, Hannah says WW was quite agitated during personal care on that day. Hannah felt you were being rough with WW. Hannah describes it that you were tapping WW to stop resisting.

ON: I was tapping WW to stop. I wouldn't beat WW for any reason, I wouldn't do that”

28. In her witness statement the claimant recalls the conversation as:

“On 19 Sept 2024, A disciplinary hearing was conducted by the manager of the home Jeanette Whitebread where she asked me questions based on the accounts of Hannah. She said Hannah felt I was I was being rough with Wendy and described it that I was tapping Wendy to stop her from resisting, but I told her I wouldn't do that, and I didn't do that.”

29. At the hearing she told me that the record in the note “is a typographical error – I told the appeal hearing that I was referring to what the manager was saying. I told the manager that I did not tap, I would not have done that to her” and that “[she] never said tapping to Mrs Whitbread”.

30. Mrs Whitbread disagrees, telling me the minutes are an accurate record of the meeting and in signing them the claimant did not raise any issues with the record of this exchange.

31. Mrs Whitbread's recollection is not entirely accurate. I noted that there are manuscript amendments on the copy of the minutes in the hearing file. Neither party addressed this in evidence. Therefore, I asked both parties at the end of the hearing to provide an explanation of the manuscript amendments. The respondent says that these were made by the note taker at the claimant's request. The claimant says this request was made having received a printed copy of the notes at the end of the meeting.

32. I have considered the manuscript notes. They are amendments to what the claimant said at the meeting. The amendments clarify who the claimant was working with and the reason she did not leave WW when she became agitated and physical. The amendments accord with the claimant's evidence in her witness statement about who she was working with in May as follows:

- 32.1. In her witness statement the claimant told me:

“Unknown to me Ella had told Pauline that I did abuse Wendy on the 31st May 2024, despite the fact that Ella was not there when Hannah and I gave personal care to Wendy.”

In the notes of the disciplinary hearing the names of who the claimant was working with on 31 May 2024 are amended from typed “Grace and Ella” to manuscript “Hannah and Joe”.

- 32.2. In her witness statement the claimant told me:

"In process of conducting the personal care [WW] became agitated, because she was soaked in her own urine on her bed. Leaving her in that state, she could catch cold or infection so we went ahead and finished the personal care, creamed, changed her pad and dressed her up, afterward put her in her armchair in her room and served her breakfast in her room.

In the notes of the disciplinary hearing a manuscript addition "soaked on the bed" is added to the typed record "We were part way through so I did not want to leave her".

33. As the manuscript amendments mirror the evidence the claimant gave in her witness statement and at the hearing, I find that she was given the opportunity to check the notes and she requested these manuscript amendments to ensure the notes were accurate before she signed them.
34. For this reason I find that the copy of the minutes of the disciplinary hearing before the tribunal is accurate. It is simply not plausible that if the claimant considered the record of her discussion about tapping inaccurate she would not have raised this as part of this review and, when requesting the other amendments, subsequently made, she would not have requested that the record be changed to the recollection she relies on before the tribunal (that there was a discussion about tapping not an admission by her that she tapped WW).
35. Given the importance of this admission (physical contact of tapping which is not permitted for a dementia patient based on expert guidance of dementia organisations) it is simply not feasible that the claimant would not have requested this correction when she requested the others. I find she did not do so as she did tell Mrs Whitbread that she tapped WW in an attempt to calm her down when she became agitated and physical. I have no doubt having listened to the claimant's evidence that her intention in so doing was well meaning and she tapped WW to calm her. However, the fact remains that she did not follow WW's care plan and leave the room when WW became agitated and physical. Instead, she tapped WW, a physical contact which is prohibited by this care plan for dementia patients who have become during the course of care distressed, upset, agitated and/or angry.
36. While the claimant's evidence about the tapping exchange invariably affects my overall view of her credibility, I have borne in mind that untruthful evidence may be given to a tribunal in an attempt to fortify innocence. Given how adamant the claimant was throughout the investigation, disciplinary and in her evidence to the tribunal that she did not do the things alleged by the Witnesses (that the claimant did to WW what WW had done to staff, namely scratching, attempting to bite, slapping, pinching and kicking out) and how upset she became during the internal processes and the hearing when denying this, I consider her evidence to the tribunal that she did not admit tapping an example of this.
37. The claimant says the statements of the Witnesses appended to the report are inconsistent with each other and inconsistent individually over time. In cross examination Mrs Cislariu took Mrs Whitbread to examples of where the claimant says the statements are inconsistent. Mrs Whitebread accepted that the Witnesses' accounts are inconsistent with each other. I find these

inconsistencies were apparent from the documents to which Mrs Whitbread was referred.

38. Therefore, it is not necessary or proportionate (given the single issues before me, what was the reason for the claimant's dismissal) for me to make specific findings about those inconsistencies. Mrs Whitbread accepts that she took into account the contents of the statements in making her decision and she accepts that they contained inconsistencies. Mrs Whitbread also accepts that the Witnesses' individual accounts of the claimant's care for WW were not consistent and changed over time. Again, this is apparent from the documents to which Mrs Whitbread was referred.
39. Mrs Whitbread also accepts that not all the Witnesses were present on both occasions and, therefore, some of their accounts are not directly of what an individual witness saw, but are based on what they have been told by one of the other Witnesses.
40. Mrs Whitbread told me that she adjourned the disciplinary hearing to investigate the inconsistencies in the evidence raised by the claimant. The claimant has not suggested there was another reason for the adjournment. I find this was the reason Mrs Whitbread did so and in so doing, at this time, Mrs Whitbread knew the Witnesses' evidence was inconsistent.

Second disciplinary hearing and claimant's dismissal on 9 October 2024

41. A second disciplinary hearing took place on 9 October 2024. I have considered the minutes of this hearing which are signed by the claimant, Mrs Whitbread and the notetaker. The claimant has not challenged the accuracy of these notes. It is evident from the minutes that Mrs Whitbread had in her mind at that meeting the concerns the claimant had about the Witnesses' evidence. She starts the meeting by telling the claimant:

"I wanted to reinterview some witnesses retrieve some background knowledge. I wanted to go over why you think 3 staff members say you abused WW"

42. I find it curious that, given the Witnesses allege that the claimant did to WW what WW had done to staff (scratching, attempting to bite, slapping, pinching and kicking out) and the seriousness of the alleged behaviour, Mrs Whitbread did not put these specific allegations to the claimant in either disciplinary meeting. She either refers to abuse or assault but not the actual allegations themselves.
43. Mrs Whitbread offers no information about who she has interviewed during the adjournment, what they have said nor does she provide the claimant with any written record of these further conversations, to the claimant in the reconvened meeting. The minutes record the claimant telling Mrs Whitbread she does not know why the Witnesses would have made allegations of abuse or why the claimant says some people don't like her; the claimant suggests that some people not liking how she works. Mrs Whitbread does not explore the actual inconsistencies or how these may, or may not, have been clarified by any further conversations she may have had.
44. At the hearing Mrs Whitbread told me she took further statements from the Witnesses during the adjournment. However, the respondent has not disclosed

any such statements and could not locate them at my direction. When Mr McCluskey received a file of documents to consider the appeal, it did not contain any additional statements taken during the adjournment.

45. I find that while Mrs Whitbread told the claimant she adjourned the disciplinary hearing to consider the claimant's concern about inconsistencies in the Witnesses' evidence, the exercise she undertook is wanting at best. It is apparent to the tribunal that the Witnesses' evidence and initial statements are inconsistent and their recollections changed over time. This warranted further investigation, a written record of that investigation and a discussion of the inconsistencies with the claimant. There is no written evidence before me that Mrs Whitbread actually spoke to the Witnesses during the adjournment and her recollection of this time is vague at best. Furthermore, there is no record that she took the inconsistencies seriously and explored the reasons for them with the Witnesses or the claimant.
46. I find that any further conversations served no purpose not least as no information about the conversations was provided to the claimant at this meeting, other than a suggestion they had taken place. It is simply not feasible that additional statements were taken and not provided to Mr McCluskey as part of the appeal process given a key factor on which the claimant based her appeal is the inconsistency of the Witnesses' evidence.
47. For these reasons, I find additional statements were not taken from the Witnesses and Mrs Whitbread did not investigate the inconsistencies in the Witnesses' evidence. Given the lack of any evidence that Mrs Whitbread engaged in a meaningful way with the inconsistencies, the lack of analysis in her reasoning at the hearing for dismissing the claimant and the dismissal letter, as to why she did not consider the inconsistencies relevant (or otherwise), I find that she did not take account of the inconsistencies in reaching her decision to dismiss the claimant. She accepted the evidence of the Witnesses without challenge and preferred their explanation to the claimant's without any reasoning.
48. In this regard both the investigation and disciplinary process were manifestly deficient. A fair investigation would have required the respondent to resolve the inconsistencies in the Witnesses' evidence, making findings about what actually happened with WW's care on those dates based on the evidence of everyone present, and explain why these findings led to the decision to dismiss.
49. Following an adjournment in the second disciplinary meeting Mrs Whitbread informs the claimant she is dismissed, telling her:

"We have met twice and you have put forward everything you want me to know and take in to account and I can only go off the evidence in front of me and what the witnesses have said and unfortunately I am going to terminate your employment at Nelson House"
50. She refers to what the Witnesses have said, but not to what the claimant has said, and makes no mention of the inconsistencies in the Witnesses' evidence. She does not make any findings about whether the claimant scratched, attempted to bite, slapped, pinched and/or kicked WW, the allegations made by the Witnesses.

51. In her evidence to the tribunal Mrs Whitbread told me the claimant's admission at the first disciplinary hearing that she tapped WW was a key factor in her decision to dismiss the claimant. She makes no mention of this when telling the claimant she is dismissed. This is curious, given the emphasis by the respondent in these proceedings that tapping was a key factor in Mrs Whitbread deciding to dismiss the claimant. The omission speaks for itself. I find that Mrs Whitbread did not have in her mind the claimant's admission that she tapped WW when she dismissed her at the end of the second disciplinary hearing. It is evident from Mrs Whitbread's own words at the end of the meeting, which are the clearest and most contemporaneous indicator of her thought process when she made the decision to dismiss the claimant, that the key fact in her mind was that the Witnesses had accused the claimant of scratching, attempting to bite, slapping, pinching and kicking WW., things which Mrs Whitbread had not explored specifically with the claimant.
52. Indeed, this thought process, or rather lack of it, runs through the meeting. At the start Mrs Whitbread wants to go over why the claimant thinks the Witnesses say she abused (without specifics) WW. She does not, in this meeting, want to go over why the claimant tapped WW, which is odd given Mrs Whitbread's insistence at the tribunal hearing this was a key factor in her decision to dismiss the claimant.
53. Ms Webster submits that in oral evidence Mrs Whitbread was adamant that she considered all the evidence. Indeed Mrs Whitbread told me she was. However, Mrs Whitbread's evidence was vague in relation to the additional statements. When asked where the tribunal could see copies of the additional statements she says she took during the adjournment she told me "I don't know, they should be in the hearing file." They are not. When asked about the inconsistencies in the Witnesses' statement she told me "I'm sorry I cannot recall what my thought process at that time", when she was asked whether she considered if conversations had taken place between the Witnesses, she replied: "I'm sorry I cannot recall what my thought process at that time".
54. In my judgement, Mrs Whitbread could not recall her thought processes at the time, as is evident from her responses. In this context it is simply not credible that Mrs Whitbread could be adamant about anything she did or thought at the time, not least what she considered. It is simply not credible that she can be adamant about one thought and vague about everything else. Which takes me back to the best evidence of her thought process being what she said to the claimant when dismissing her.
55. For this reasons I place little weight on Mrs Whitbread's evidence that she "didn't place any greater weight on the witness evidence because of their race. I assessed evidence on its won content and relevance to the allegations. If there were discrepancies I examined them further." She did not assess all the evidence; she did not assess the inconsistencies in the Witnesses' evidence, make any findings about these, making any findings about the specific allegations of attempting to bite, slapping, pinching and kicking or compare the Witnesses' recollections to that of the claimant. While a respondent's process does not have to be perfect, it has to be fair to both parties involved. Mrs Whitbread's was not; she certainly favoured the Witnesses' recollection with no explanation as to why other than the fact there were three of them (who were not, in fact, saying the same thing).

56. The reason put forward by the claimant for this failure on the part of the respondent is that the Witnesses are white and she is black. She says this resulted in Mrs Whitbread giving more weight to the Witnesses evidence than the claimant's. She did give more weight to the Witnesses' evidence without reasoning or explanation. Having spoken to the Witnesses during the adjournment, I find she knew they were all white.
57. The dismissal outcome letter dated 17 October 2024 sets out in chronological order, in summary, references to the following: safeguarding training, reports of the Witnesses, the fact WW was agitated, WW's care plan, the adjournment; this part of the letter refers to the first meeting. There is no reference to the claimant's admission that she tapped WW. The second part of the letter summarises the reconvened meeting. Mrs Whitbread states that she made her decision:
- "based on the statements from the witness' and your account of the incident and therefore having concluded that the allegations proven against you are considered an act of gross misconduct, I have reviewed all the evidence presented, including our discussion, and have reflected on all options available to me. I have determined that the most appropriate sanction is to dismiss you, without notice or payment in lieu of notice, from your post as a Care Assistant at Nelson Lodge effective from 9th October 2024, in line with our Disciplinary policy and procedure."
58. There is no reference in the letter to a finding that the claimant tapped WW, or that she bite, slapped, pinched and kicked WW and that any of these things amounted to gross misconduct under the respondent's policy or that the claimant's admission she tapped WW was the reason she was dismissed.
59. I find that the letter evidences that the reason Mrs Whitbread decided to dismiss the claimant: inconsistent evidence of the Witnesses. Indeed the letter reflects my findings about her thought processes at the reconvened hearing.

Claimant's appeal

60. On 23 October 2024 the claimant emails an appeal letter to the respondent. In it she refutes the allegations, states that she did not have an adequate opportunity to defend herself and that the respondent did not have a genuine belief in the allegations made against her. She also says that the respondent failed to consider her work record, mitigating factors, that the sanction was unreasonable and disproportionate, and that there was a failure to explore whether alternative courses of action could have been considered. The claimant does not suggest that she has been dismissed because of her race.

Appeal hearing 29 November 2024

61. Mr McCluskey considered the claimant's appeal and met with her on 29 November 2024.
62. Mr McCluskey accepts that he asked the claimant: "why would we disbelieve three staff?" Furthermore, this question is recorded in the minutes of the meeting. I find this is a reasonable question to ask given the claimant raises in

her appeal her concern that the respondent has focused on the evidence of the Witnesses and says the respondent has given more weight to this than her own evidence (a finding I have made).

63. The claimant also alleges that Mr McCluskey told her: “[her] kind of person does not know how to talk but are good in care job, that [she] should go back and gather [her] thoughts and do a reconsideration letter, telling him why I should be reconsidered”. Mr McCluskey denies saying this, but accepts he suggested the claimant should put her concerns in writing, telling me she became very upset at the hearing and he felt she could not verbalise herself, and the meeting had to be adjourned twice as a result so he did not feel she was giving him the appropriate information and he wanted to give her the opportunity to tell me and this is why he asked her to write in.

64. I have considered the notes of the appeal hearing. They record breaks but there is no record of the claimant becoming upset. However, a break is taken following an exchange about tapping, the claimant denying the allegations and suggesting the Witnesses are collaborating against her. In my judgment, on balance, and given the timing of the break after this exchange, I find that the claimant did become upset. I find Mr McCluskey’s explanation credible in this context. The claimant did put something in writing as I have seen her letter to Mr McCluskey dated 2 December 2024 which starts with:

“Following the appeal meeting that was held on Friday, 29th November 2024 regarding my position as Care Assistant at Nelson Lodge, I am writing to you regarding why I believe I should be reconsidered on the decision taken by the Home Manager.”

65. The claimant told me she did not see the meeting minutes until this hearing. This is incorrect. The email dated 12 December 2024 sending her the outcome of the meeting minutes attaches the minutes. She has had plenty of time to review them and did not raise concerns about this record until she brought the claim to the employment tribunal. Had the comment about kind of people have been made, on balance I consider the claimant would have raised the fact the notes were not accurate (as indeed I have found she did with the disciplinary notes) and taken issue with such an offensive comment at the time. She did not. For these reasons, and taking account of the claimant’s credibility in recalling what was said in the disciplinary meetings, I find this comment was not made by Mr McCluskey

66. Turning now to Mr McCluskey’s approach to the appeal. Again his focus is the Witnesses’ evidence. He admits being aware of the inconsistencies at the time. Yet, Mr McCluskey does not explore this in the appeal hearing nor does he make further enquiries about Mrs Whitbread’s conversations during the adjournment. In this regard Mr McCluskey failed the claimant. Indeed he touched on this in his evidence: he told me that he “had no reason to doubt the

investigation at the time [of the appeal]”; when he was asked by Mrs Cislariu: “did you doubt it later”, he told me “only after the tribunal claim”.

67. The contents of the appeal letter dated 12 December 2024 are limited. Mr Mcluskey does not address each ground of the claimant’s appeal in her appeal letter or her reconsideration letter. Having read the outcome letter I question the purpose of Mr McCluskey asking the claimant to write a reconsideration letter. He does not arrange another meeting to discuss its contents nor does he reference the concerns she raises in the reconsideration letter. There is a total disregard of the contents of the claimant’s 2 December letter. Mr McCluskey writes:

“After carefully considering the facts and documents you presented at the appeal hearing, I am writing to confirm my decision to uphold the original decision.

In reaching my decision I concluded that the evidence presented during the investigation indicated a clear case of abuse, which is currently under police investigation.

Therefore, the sanction was deemed reasonable and proportionate.

Given the severity of the findings, no alternative course of action was appropriate, based on the above points, the decision of the disciplinary hearing is upheld. This concludes the appeal process.”

68. The conclusion that there is a clear case of abuse is made in the context of an acceptance by Mr McCluskey that at the time he knew the Witnesses’ evidence was inconsistent. Mr McCluskey concludes there is a clear cause of abuse without having any findings about whether the claimant bite, slapped, pinched or kicked WW. What is clear is that a decision is made to dismiss the claimant based on no findings and inconsistent evidence of the Witnesses.
69. What is inconsistent is to conclude that there is a clear case when the evidence of witnesses is inconsistent. For these reasons, on balance, I find that Mr McCluskey did not give any real thought to the claimant’s appeal, specifically the claimant’s concerns about inconsistent evidence.
70. The claimant suggests Mr McCluskey took the approach he did because of her race and the fact the Witnesses were all white. Mr McCluskey told me he did not know any of the parties involved before he was appointed as appeals officer, and never met the Witnesses. I accept this (he may have done had he explored the inconsistencies) and find he did not know their race. Mrs Cislariu suggested he should have concluded their race from their names. She did not put forward a basis for this assertion other than they sounded white. This assertion simply does not stand up in today’s multi-cultural society. Mrs Cislariu’s submission is simply not sufficient for a tribunal to draw an inference

that Mr McCluskey had considered their race, or reached a conclusion about the colour of their skin from the names.

Appeal outcome 12 December 2024

71. Mr McCluskey did not uphold the claimant's appeal. On 12 December 2024 he writes to the claimant, informing her of his decision to uphold her dismissal and states:

"In reaching my decision I concluded that the evidence presented during the investigation indicated a clear case of abuse, which is currently under police investigation. Therefore, the sanction was deemed reasonable and proportionate.

Respondent's policy on misconduct

72. In cross examination the claimant accepted that under the respondent's policy a finding of gross misconduct will usually result in dismissal without notice and that gross misconduct includes physical abuse.

73. It is accepted by the respondent that the claimant had an unblemished record of care at the time of her dismissal.

Relevant law

Section 39 Equality Act 2010: discriminatory dismissal

74. Section 39 of the EqA provides that:

.....

(2) An employer (A) must not discriminate against an employee of A's (B)—

.....

(c) by dismissing B;

(d) by subjecting B to any other detriment.

.....

Section 13 Equality Act 2010: direct discrimination

75. Section 13 of the EqA sets out the legal test for direct discrimination and provides that:

(1) 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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

- (6) If the protected characteristic is sex—
(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;
(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy, childbirth or maternity.
(7)
(8) This section is subject to sections 17(6) and 18(7).

76. Section 9 EqA establishes that race is a protected characteristic and it is unlawful to discriminate against any person due to their race.

77. In a complaint of direct discrimination, first a claimant must establish facts to evidence they were treated less favourably a real or hypothetical comparator in materially the same circumstances of the claimant but without the protected characteristic relied on by the claimant (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337; Governing Body of Sutton Oak Church of England Primary School and ors v Whittaker EAT 0211/18)).

78. In other words, the relevant circumstances of the complainant and the comparator must be either the same or not materially different. Comparison may be made with an actual individual or a hypothetical individual.

79. It is often appropriate to first consider whether a claimant has in fact received less favourable treatment than an appropriate comparator, and then consider whether this less favourable treatment was because of the protected characteristic, in this case that is race. In some cases, particularly if there is only a hypothetical comparator relied upon, it may be appropriate to first consider the reason why the claimant was treated as they were. Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 (paragraph 8). The following guidance of Lord Nicholls is helpful in this regard:

“.....employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others.”

80. Given that a tribunal may take into account a wide range of factors including circumstantial evidence, there may be cases where there is someone who, whilst materially different to a claimant, may be of assistance as an evidential comparator. They may, depending upon the circumstances and in conjunction with other material, justify a tribunal drawing an inference that a claimant was treated less favourably than he or she would have been treated.

81. The case of Burrett v West Birmingham Health Authority [1994] IRLR 7 confirms that a claimant's subjective belief that he or she has been less favourably treated is not sufficient to establish less favourable treatment. There must be a link (consciously or unconsciously in the mind of the perpetrator) between the protected characteristic relied on by the claimant and any less favourable treatment found by the tribunal.

82. When considering direct discrimination, the tribunal must examine the “reason why” the alleged discriminator acted as they did. This will involve a consideration of the mental processes, whether conscious or unconscious, of the individual concerned (Amnesty International v Ahmed [2009] IRLR 884).
83. Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877 (at 886), notes that it is not necessary for the claimant’s protected act to be the sole reason for any established less favourable treatment, unwanted conduct or detriment, noting that liability may be established if a protected characteristic (or a protected act) is a significant influence/more than trivial reason for the treatment complained of. The discriminatory reason need not be the only or even principal reason for the employer’s actions. If the protected characteristic was a substantial cause, a tribunal can find that the action was discriminatory. The question is whether it was an “effective cause” (O’Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor [1996] IRLR 372). The reason for decisions or treatment can often be for more than one reason.
84. Provided that the protected characteristic (here race), or the protected act, had a significant influence on the outcome, then discrimination will be made out – per Lord Nicholls in Nagarajan v London Regional Transport [1999] IRLR 572. Addressing the “reason for the treatment” the Tribunal may need to consider the mental processes of the alleged discriminator, and whereas this is often referred to as motivation, it is not to be confused with motive as this is not a relevant consideration. Motive is irrelevant. The tribunal must consider what consciously or subconsciously was the decision maker’s reason for the decision. The case of Nagarajan confirms that this is a subjective test and a question of fact. It follows, therefore, that is possible for an employer to discriminate unlawfully even with a benign motive – Amnesty International v Ahmed UKEAT/0447/08.
85. Bad treatment per se is not discriminatory; what needs to be shown is worse treatment than that given to a comparator.- Bahl v Law Society 2004 IRLR 799 (CA). Unreasonable behaviour alone cannot found an inference of discrimination but if there is no explanation for the unreasonableness, the absence of an explanation may give rise to this inference of discrimination.
86. The Court of Appeal said that proof of equally unreasonable treatment of all is one way of avoiding an inference of unlawful discrimination, but it is not the only way. At paragraph 101 Gibson LJ said quoting from Elias J in the EAT in the same case:
- “ The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made.”
87. The fact that a claimant has been treated less favourably than an actual or hypothetical comparator is not enough to establish discrimination. Something more is required, In Madarassy v Nomura International Plc (2007) ICR 867, Mummery LJ said;

“ The base facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, a sufficient material from which a tribunal could conclude that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.

88. If there are facts from which the court or tribunal could conclude that discrimination occurred, the burden of proof shifts to the respondent to provide an adequate non-discriminatory explanation for its actions.
89. Very little discrimination today is overt or deliberate, and those accused of discrimination are usually unlikely to accept that they have done so, and possibly will be unlikely to recognise it in themselves. In cases of direct discrimination or victimisation, an examination of the “reason why” someone was treated as they were should not be reduced to a simple “but for” question. It is therefore not appropriate to ask but for the protected characteristic (here it is race) would the claimant have been treated better? Rather we must conduct a more rigorous inquiry into the mental processes 38 of the respondent to establish the underlying core reason for the treatment. This might be easier in cases where there is an overt or obvious reason for the treatment, however in other cases are more detailed analysis of the facts will be necessary. As per Sedley LJ in Anya v University of Oxford and another [2001] ICR 847:

“Very little direct discrimination is today overt or even deliberate. What King and Qureshi tell tribunals and courts to look for, in order to give effect to the legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias.” (paragraph 11).

90. In determining whether discrimination has taken place, the tribunal must enquire as to the conscious or subconscious mental processes which led the alleged discriminator to take a particular course of action in respect of the claimant, and to consider whether a protected characteristic played a significant part in the treatment (Nagarajan v London Regional Transport and others (1999) ICR 887 (HL)).

91. In the case of Dr. C. Anya v University of Oxford and Anr. 2001] EWCA CIV 405, 2001 WL 415496 the Court of Appeal provides guidance on how a tribunal should draw inferences from the primary facts as following in a complaint of direct race discrimination (citing Qureshi v University of Manchester:

91.1. Did the act complained of actually occur? In some cases there will be a conflict of direct oral evidence. The tribunal will have to decide who to believe. If it does not believe the applicant and his witnesses, the applicant has failed to discharge the burden of proving the act complained of and the case will fail at that point. If the applicant is believed, has he brought his application in time and, if not, is it just and equitable to extend the time?

91.2. If the act complained of occurred in time, was there a difference in race involving the applicant?

- 91.3. If a difference in race was involved, was the applicant treated less favourably than the alleged discriminator treated or would treat other persons of a different racial group in the same, or not materially different, relevant circumstances?
- 91.4. If there was difference in treatment involving persons of a different race, was that treatment “on racial grounds”? Were racial grounds an effective cause of the difference in treatment? What explanation of the less favourable treatment is given by the respondent?
92. Anya guides that in cases where there is an absence of direct evidence on the issue of racial grounds for the alleged discriminatory actions, the tribunal should consider what inferences may be drawn from all the primary facts. The process of inference is itself a matter of applying common sense and judgment to the facts, and assessing the probabilities on the issue whether racial grounds were an effective cause of the acts complained of or were not.”
93. In Amnesty International v Ahmed [2009] IRLR 884 the following was noted as relevant when a tribunal assesses less favourable treatment because of a protected characteristic:
- “The fact that a claimant’s sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason for that treatment.”
94. In Earl Shilton Town Council v Miller [2023] IRLR 532 the court provided further guidance on the approach to the reason why analysis in discrimination claims. Here HHJ Tayler noted that when considering whether treatment was due to a protected characteristic the tribunal spends much of its time considering the mental processes of the alleged discriminator in order to ascertain the reason why someone was treated as they were. However, the court held that there are at least two types of cases where it is unnecessary to consider the mental processes of the alleged discriminator, the first is where the reason was obvious, and the second is where a criterion is used which corresponds exactly with the protected characteristic. The court also concluded that a “good” motive will not prevent discrimination from having occurred.
95. In Chattopadhyay v Headmaster of Holloway School [1981] IRLR 487 the court noted the special nature of discrimination proceedings and that the person complaining of discrimination may face great difficulties when it comes to proof. The court held that where it may be appropriate to take into account evidence of hostility before and after the event (or act complained of) where it is logically probative of a relevant fact.
96. The term “detriment” should be given its broad ordinary meaning, and a detriment will exist if a ‘a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment – per Brightman LJ in Ministry of Defence v Jeremiah [1980] QB 87.
97. Section 39 EqA provides that an employer must not discriminate against its employee by dismissing them or subjecting them to any other detriment. 184.

Section 39 of that Act also provides that an employer must not victimise the employee by dismissing them or subjecting them to any other detriment.

Section 136 Equality Act 2010: burden of proof

98. Section 136 EqA provides:

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to—
 - (a) an employment tribunal;
 - (b) the Asylum and Immigration Tribunal;
 - (c) the Special Immigration Appeals Commission;
 - (d) the First-tier Tribunal;
 - (e) the Education Tribunal for Wales;
 - (f) the First-tier Tribunal for Scotland Health and Education Chamber .

99. The burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another - *Hewage v Grampian Health Board* [2012] IRLR 870.

100. Guidance on the application of the burden of proof in discrimination complaints was provided by the Court of Appeal in *Igen Ltd v Wong* [2005] IRLR 258:

“(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of [the protected characteristic], since no discrimination whatsoever is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof....”

101. This guidance can be applied to a tribunal’s findings of fact as follows:

- 101.1. the claimant must prove, on the balance of probabilities, facts from which the tribunal could conclude that the employer has committed an act of discrimination, in the absence of an adequate explanation (para 79(1));

- 101.2. the outcome of stage 1 will usually depend on “what inferences it is proper to draw from the primary facts found by the tribunal” (para 79(4));
- 101.3. “in considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts” (para 79(6));
- 101.4. where the claimant has satisfied stage 1, it is for the employer to then prove that the treatment was in no sense whatsoever on the grounds of the protected characteristic and for the tribunal to ‘assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question’ (para 79(11)-(12)); and
- 101.5. ‘[s]ince the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof’ (para 79(13)).
102. In *Igen v Wong* the Court of Appeal cautioned tribunals “against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground” (paragraph 51). While this case refers to the law under the previous Sex Discrimination Act 1975 prior to the Equality Act 2010, the decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms this guidance also applies under the Equality Act 2010.
103. It is not sufficient for a claimant to merely to prove facts from which the tribunal could conclude that the respondent “could have” committed an unlawful act of discrimination. Rather a claimant must establish a prima facie case of discrimination. As was held in *Madarassy v Nomura International Plc* [2007] ICR 867:
- “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.” (paragraph 56)
104. The case of *Chief Constable of Kent Constabulary v Bowler* EAT 0214/16, a case in which the employment tribunal found there was procedural failings in the respondent’s internal processes, the EAT concluded that the tribunal had made an error of law by inferring direct race discrimination from these failings. P Simler at paragraph 97 gave the following guidance for employment tribunals:
- “ Merely because a tribunal concludes that an explanation for certain treatment is inadequate, unreasonable or unjustified does not by itself mean the treatment is discriminatory since it is a sad fact that people often treat others unreasonably irrespective of race, sex or other protected characteristic.”
105. *Madarassy* guides us that the ‘something more’ must not simply be something from which a tribunal ‘could conclude’ but one that ‘a reasonable tribunal could properly conclude’ that such an inference can be drawn.

Unreasonable treatment without more is not sufficient alone to infer discrimination (see *Bahl v Law Society* [2003] IRLR 640).

106. The court in *Madarassy* indicated that at the first stage the tribunal would need to consider all the evidence relevant to the discrimination complaint such as 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; and available evidence of the reasons for the differential treatment. The absence of an adequate explanation for differential treatment of the complainant is not relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. 204. At the first stage the tribunal should take into account all of the relevant evidence from both sides and usually disregard any explanation provided the respondent. The consideration of the tribunal then moves to the second stage whereby the burden is on the respondent to prove that it has not committed an act of unlawful discrimination.

107. The respondent may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If it does not, the tribunal must uphold the discrimination claim.

108. As regards the “something more” needed to shift the burden of proof onto a respondent, this will depend upon the facts of each case but it may include evidence of stereotyping, statistical evidence, lack of transparency or inadequate disclosure, or inconsistent explanations. However, mere unreasonable treatment by an employer “casts no light whatsoever” as to the question of whether an employee has been treated unfavourably – *Strathclyde Regional Council v Zafar* [1998] IRLR 36. This has also been followed by the Employment Appeal Tribunal in *Law Society and others v Bahl* [2003] IRLR 640 where it was held that mere unreasonableness is not enough as it tells us nothing about the grounds for acting in that way. 206.

109. In *Laing v Manchester City Council and others* [2006] IRLR 748 the EAT provided helpful guidance on the application of the burden of proof, and in particular the potential for a tribunal to move direct to the second stage where the evidence suggests that the employer had discriminated against the claimant:

“75. The focus of the tribunal’s analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, “there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race”.

76. Whilst, as we have emphasised, it will usually be desirable for a tribunal to go through the two stages suggested in *Igen*, it is not necessarily an error of law to fail to do so. There is no purpose in compelling tribunals in every case to go through each stage. They are not answering an examination

question, and nor should the purpose of the law be to set hurdles designed to trip them up. The reason for the two-stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the employer. But where the tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever.

77. Indeed, it is important to emphasise that it is not the employee who will be disadvantaged if the tribunal focuses only on the second stage. Rather the risk is to an employer who may be found not to have discharged a burden which the tribunal ought not to have placed on him in the first place. That is something which tribunals will have to bear in mind if they miss out the first stage. Moreover, if the employer's evidence strongly suggests that he was in fact discriminating on grounds of race, that evidence could surely be relied on by the tribunal to reach a finding of discrimination even if the prima facie case had not been established. The tribunal cannot ignore damning evidence from the employer as to the explanation for his conduct simply because the employee has not raised a sufficiently strong case at the first stage. That would be to let form rule over substance."

110. In a complaint of a direct discrimination claim, to shift the burden of proof from the claimant to the respondent, the claimant must prove:

- 110.1. difference in status;
- 110.2. a difference in treatment; and
- 110.3. evidence to satisfy the 'something more' test.

111. In summary, this involves the tribunal applying a two-stage test as follows:

- 111.1. Stage 1: the claimant must prove, on the balance of probability, facts from which a tribunal could conclude, in the absence of an adequate explanation, the respondent has discriminated against the claimant. From the established facts it must be possible for a tribunal to infer discrimination. If the claimant succeeds in doing so, they have shifted the burden of proof and the tribunal must consider stage 2. At stage 1 the tribunal must consider all relevant facts
- 111.2. Stage 2: the respondent must prove that the treatment had nothing to do with the claimant's protected characteristic. The respondent must prove that a non discriminatory reason was the only reason for the claimant's treatment and the protected characteristic played no part in the decision. Essentially the tribunal must ask: "why did the employer act as it did? Laing v Manchester City Council [2006] ICR 1519.

Analysis and conclusions

112. I have made my decisions below by reference to the list of issues. Parties respective positions can be summarised as follows: the claimant says that a colleague who is not black would not have been dismissed in similar circumstances; the respondent says the claimant was dismissed for gross

misconduct, the decision to dismiss had nothing to do with the claimant's race, and a colleague who is not black in similar circumstances to the claimant would have been dismissed.

113. Parties are agreed that the claimant's dismissal constitutes a detriment.

114. Based on my findings, in my judgement, in summary, the relevant circumstances are:

- 114.1. The Home cared for patients with dementia;
- 114.2. The respondent and its employees were subject to safe-guarding duties, as the Home cares for vulnerable patients;
- 114.3. The care for which the claimant was dismissed was her care of WW;
- 114.4. WW had a care plan which required any carer to leave the room if WW became agitated or upset;
- 114.5. WW became upset when receiving person care from the claimant;
- 114.6. The claimant did not follow the care plan when WW became upset;
- 114.7. The Witnesses made allegations about the claimant's care of WW alleging the claimant did to WW what WW had done to staff (biting, slapping, pinching, kicking);
- 114.8. The allegations related to two occasions when the claimant accepts she was caring for WW (31 May 2024 and 10 June 2024);
- 114.9. The respondent undertook a body map review of WW the day the concerns were raised and no bruises were found on WW's body;
- 114.10. The respondent conducted a single investigation into both allegations;
- 114.11. There were inconsistencies in the witness evidence of the three witnesses as against each other and individually over time and not all of the witnesses were present at both incidents, therefore some reports amounted to "hearsay" (the witness did not directly witness the incident alleged);
- 114.12. At the disciplinary hearing the claimant told Mrs Whitebread that she had tapped WW to stop;
- 114.13. The disciplinary hearing was adjourned to investigate the inconsistencies;
- 114.14. Mrs Whitbread accepted the Witnesses evidence without any meaningful challenge or exploration of the inconsistencies in this evidence;
- 114.15. There are no records before the tribunal of the findings of the investigations into the inconsistencies in the witnesses' evidence;
- 114.16. Neither when telling the claimant she is dismissed at the end of the second disciplinary hearing nor in the outcome letter does Mrs Whitbread state the reason for the dismissal is the claimant's admission she tapped WW;
- 114.17. There were no CCTV cameras in the Home;
- 114.18. Neither Mrs Whithead nor Mr McCluskey put to the claimant the specific allegations made by the Witnesses (that the claimant had bitten, slapped, pinched and kicked WW) nor did either make any findings about these;
- 114.19. Mrs Whitebread concluded there had been a [non-specific] "assault";
- 114.20. The claimant appealed the dismissal; the appeal did not further explore the inconsistencies in the witnesses' evidence;

- 114.21. Mr McCloskey asked the claimant to write down her concerns as she became very upset in the meeting; he did not refer to “[her] kind of people”;
- 114.22. Mr McCluskey did not explore in any meaningful way the points of appeal raised in the appeal letter and did not address the points in the reconsideration letter at all: he followed the conclusion reached by Mrs Whitbread, that the assault must have happened as three (inconsistent) Witnesses said so;
- 114.23. The claimant’s record of care was unblemished; and
- 114.24. Under the respondent’s policy a finding of gross misconduct will usually result in dismissal without notice. Gross misconduct includes physical abuse.
115. I have found that both Mrs Whitbread and Mr McCluskey failed the claimant by not taking seriously her concerns about the inconsistencies in the Witnesses’ evidence. Without doubt, the fact the claimant drew this to their attention at the time and both accept they were aware of it warranted more than Mrs Whitbread adjourning a meeting and having a chat with the witnesses, with no record when this happened or what was said. I have found no evidence the inconsistencies were explored in a meaningful way and no findings of fact were made about what actually happened when the claimant cared for WW on 31 May and 10 June 2024.
116. Certainly the process of investigation, the discussions in the disciplinary meetings and the respondent’s approach on appeal, were wanting at best. However, this is not an unfair dismissal complaint and I remind myself that in a complaint of direct discrimination bad treatment, as here, alone is not discriminatory and unreasonable behaviour by a respondent, as here, cannot found an inference of discrimination. I note that if there is no explanation for the unreasonableness, however, the absence of an explanation may give rise to an inference of discrimination. I explore this below in the context of my findings of fact and the relevant circumstances.
117. I consider the case of Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA and the guidance of Lord Mummery particularly relevant to my analysis in this case as there is some analogy. In Stockton the Court of Appeal considered that:
- “the decision whether the claimant was treated less favourably than a hypothetical comparator was intertwined with identifying the ground on which the claimant was dismissed. If it was on the ground of disability, then it is likely that he was treated less favourably than the hypothetical comparator not having the particular disability would have been treated in the same relevant circumstances. The finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment.” [my emphasis]
118. I also direct myself to the guidance of Lord Nicholls in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 that employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was.
119. Based on the guidance in these two cases, first it appropriate to consider whether the reason is for the claimant’s dismissal was because of her race.

Therefore, I start my analysis by examining the facts the claimant relies on that she says link her dismissal to her race.

120. The claimant says the respondent failed to follow a proper investigation process as it did not consider CCTV footage in the vicinity of WW's room nor did it check whether there were any bruises on WW's body. I have found there is no CCTV footage in the Home. Therefore, I do not need to consider whether this amounts to "something more" linking the claimant's dismissal and her race.
121. The respondent accepts that there were no bruises on the claimant's body following the body map examination undertaken by Pauline Davies on 10 June 2024. Therefore, as a matter of fact there was no failing by the respondent in the investigation process in the manner alleged by the claimant, so this allegation cannot amount to "something more" in the complaint of direct discrimination.
122. I have found that Mr McCluskey's did not say to the claimant "why would be disbelieve 3 staff" and told the claimant that "[her] kind of person does not know how to talk but are good in care jobs". As the comment was not made, it cannot amount to "something more".
123. The claimant says that Mrs Whitbread did not take account of the inconsistencies in the Witnesses' statements during the investigation process. I agree. I have found that, while she did adjourn the meeting to speak to the Witnesses, there is no written record before me that she put the inconsistencies to them or made any findings about the extent of the inconsistencies, how this compared with the claimant's recollection of the incidents and what actually happened on 31 May and 10 June 2024. Mrs Whitbread told me she could not recall what was said in these further conversations.
124. I have found Mrs Whitbread's evidence to me at the tribunal that she took account of these inconsistencies in reaching her decision to dismiss the claimant simply not credible. She is not a reliable witness. She was adamant she did not take account of the claimant's race but then apologetic that she could not recall most of her other thought processes at that time. How can she be so certain about her thought processes concerning the key factor in this case (whether she considered the claimant's race in reaching her decision to dismiss) and yet so vague about what she was thinking in reaching the decision.
125. Therefore, I conclude that the decision to dismiss the claimant was made on the basis of inconsistent, and therefore unreliable, accounts of the care the claimant gave to WW. It was also made without any findings of what the claimant did, or did not do, to WW on those dates. Did she bite, slap, pinch or kick WW as alleged? I do not know (and whether she did or not is not a matter for the tribunal) and neither did Mrs Whitbread or Mr McCluskey at the time of the dismissal as neither addressed the specific allegations made. They simply accepted that an assault had taken place.
126. Given the lack of analysis, findings, the failure to address the specific allegations with the claimant and her conclusion in the oral and written decision to dismiss that Witnesses had reported the claimant assaulting WW, I conclude that Mrs Whitbread took the word of the Witnesses over the word

of the claimant without findings, reasoning or proper explanation. Certainly she preferred the Witnesses' (inconsistent) accounts, as is evident in the reasons she gave the claimant for her decision. She says the weight was in the fact there were three Witnesses. This rationale is simply not credible when the evidence of three people is inconsistent and not explored.

127. I disagree with the respondent that the weight given to the Witnesses' evidence is insufficient to move the burden of proof to the respondent at stage 1. In my judgment, the claimant has proven, on the balance of probability, the fact that Mrs Whitbread accepted inconsistent evidence from the Witnesses in reaching her decision to dismiss. There is no adequate explanation before me as to why Mrs Whitbread did not properly address these inconsistencies or make findings about the specific allegations made.
128. For these reasons, I conclude that the claimant has shifted the burden of proof to the respondent to prove the claimant's dismissal had nothing to do with her race and that a non discriminatory reason was the only reason for the claimant's dismissal.
129. For the following reasons I disagree with the respondent that, on the balance of probabilities, the respondent's explanation that it dismissed the claimant only because of a finding of gross misconduct is credible. There was no credible finding made by Mrs Whitbread or Mr McCloskey at the disciplinary hearings or the appeal hearing nor is a credible explanation recorded in the disciplinary outcome letter or the appeal outcome letter to reach a conclusion of gross misconduct. No findings was made, or communicated, about the specific allegations of biting, slapping, pinching and kicking. No finding was made, and communicated, that the claimant's admission she tapped WW amounted to gross misconduct. The only "finding" made is a general one of abuse / assault because three inconsistent witness accounts said so.
130. The respondent submits that the claimant accepted an assault is a safeguarding issues and that it is not right to tap or abuse any user. She did. However, the finding that tapping amounted to assault was the case advanced by the respondent at this hearing. It was not the case properly put to the claimant during the internal process nor was it the reason given to the claimant when she was dismissed. Neither Mrs Whitebread nor Mr McClouskey made a finding that the claimant had tapped WW and that the manner in which she had tapped WW amounted to assault and therefore gross misconduct under the respondent's policies. Why not? I conclude they did not because the claimant's admission of tapping WW was not the reason Mrs Whitbread dismissed her. The reason was Mrs Whitbread accepted the Witnesses evidence fait accompli without any meaningful investigation of the inconsistencies and without making any findings about what actually happened in the care of WW on 31 May and 10 June 2024.
131. I consider the analysis by both parties of the use of the words patting and tapping of little relevance. This is a matter of semantics. Patting is defined as: touching or striking lightly or gently. Tapping is defined as: to hit lightly and gently. The fact remains that the claimant admitted tapping WW and her admission she did so was not explored nor given as a reason for her dismissal at the time.

132. Given the inconsistencies, the severity of the accusations, the claimant's unblemished record and what was at risk to her, exactly what happened in the care of WW on 31 May 2024 and 10 June 2024 warranted further exploration and findings to be made by Mrs Whitbread. Why not did she not explore, record and resolve the inconsistencies and discuss these with the claimant? I conclude because she accepted without explanation or meaningful challenge the Witnesses allegations.
133. Despite the inconsistent Witness evidence before him Mr McClouskey did not investigate the inconsistencies nor is there any indication that he considered the contents of the reconsideration letter he asked her to write. Why not? I conclude that he accepted Mrs Whitbread's decision fait accompli, failing to address the points in the claimant's appeal or reconsideration letter.
134. The respondent also submits that the three Witnesses witnessed an assault. Their allegation, in summary is they witnessed the claimant doing to WW what WW had done to staff when she became agitated (biting, slapping, pinching and kicking). Yet there is no evidence that, despite the inconsistencies, this evidence was tested nor a finding made that the claimant had done any of these things. Why not? I conclude because Mrs Whitbread had already accepted the Witnesses evidence fait accompli without any meaningful investigation of the inconsistencies and without making any findings about what actually happened in the care of WW on 31 May and 10 June 2024.
135. Indeed, in closing submissions the respondent seeks analyses who was present at each incident and how this conflicts with the claimant's account. To do this exercise now is too late in the day. It was not an exercise Mrs Whitbread undertook at the time of the disciplinary hearings.
136. There is no credible explanation before me for the unreasonableness of the investigation and Mrs Whitbread's decision. Given the, absence of an explanation case law directs me that this may give rise to an inference of discrimination.
137. Mrs Whitbread knew the race of all parties from the outset. As the case law confirms, very little discrimination today is overt or deliberate, and those accused of discrimination are usually unlikely to accept that they have done so, and possibly will be unlikely to recognise it in themselves. Given I have found Mrs Whitbread's approach and decision lacked fairness, reasonableness of rationale, I consider that the circumstances of this case fall within this category. In such a case the mental processes of the decision maker are key. The case law requires me to consider any indicators from a time before, during or after the decision to dismiss the claimant which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias.
138. In this case, based on my findings, I consider the following indicators relevant:
- 138.1. three Witnesses gave inconsistent evidence of an alleged assault by the claimant;
 - 138.2. the Witnesses were white and the claimant black;
 - 138.3. Mrs Whitbread knew they were white;

- 138.4. Mrs Whitbread did not make any findings about the inconsistencies nor the specific allegations;
- 138.5. Mrs Whitbread did not tell the claimant at the time (orally or in the outcome letter) that she was being dismissed because she had admitted tapping WW or that tapping amounts to gross misconduct under the respondent's disciplinary policy;
- 138.6. Mrs Whitbread accepted the allegations of the Witnesses that the claimant had assaulted (biting, slapping, pinching and kicking) as a fait accompli without testing their accounts or making any findings about what the claimant had (or had not) done in her care of WW on 31 May 2026 and 10 June 2024); and
- 138.7. Mr McClusey did not address the concerns raised by the claimant in her appeal or reconsideration letter, accepting Mrs Whitbread's conclusion.
139. An act of dismissal is not in itself discriminatory. The mental process of Mrs Whitbread in concluding that the claimant must have done as alleged by the Witnesses renders the decision to dismiss discriminatory if her mental process at the time (whether conscious or unconscious) included consideration of the claimant's race. Anya guides that in cases where there is an absence of direct evidence on the issue of racial grounds for the alleged discriminatory actions (as here), the tribunal should consider what inferences may be drawn from all the primary facts. The process of inference is itself a matter of applying common sense and judgement to the facts, and assessing the probabilities on the issue of whether racial grounds were an effective cause of the acts complained of or not." When considering direct discrimination, the tribunal must examine the "reason why" the alleged discriminator acted as they did. This will involve a consideration of the mental processes, whether conscious or unconscious, of the individual concerned, Mrs Whitbread (Amnesty International v Ahmed [2009] IRLR 884).
140. I conclude the fact that Mrs Whitbread did not explore the inconsistencies in any meaningful way, consider them by reference to the claimant's recollection, make findings about the specific allegations, tell the claimant she was being dismissed for tapping and this amounted to gross misconduct lead me to an inference that the claimant's race was in her mind when she decided to dismiss the claimant and it was more than a trivial factor in that decision, albeit subconsciously. Mrs Whitebread's explanation to the tribunal that she dismissed the claimant for tapping and considered all factors simply does not make sense or stand up in the context of the facts as I have found them at the time she decided to dismiss the claimant.
141. Given my findings, I consider the core question is: why did Mrs Whitbread, consciously or subconsciously, decide to dismiss the claimant without making any findings of what had actually happened and instead accepting the Witnesses' inconsistent evidence. I have found she did not dismiss the claimant because the claimant had tapped WW as this is not mentioned as a reason for the dismissal the time. In my judgment, these facts justify the inference that Mrs Whitbread believed the Witnesses over the claimant, notwithstanding the evident inconsistencies in their accounts, because they are white and she is black. That is because, objectively, it does not make sense that a decision maker would not take account of the inconsistencies in a meaningful way and make findings about what actually happened in the care of WW (did the claimant attempt to bite, kick, slap pinch, WW as the

Witnesses alleged), when something as serious as an alleged assault on a dementia patient is concerned and someone's job is at stake. In preferring the Witnesses' inconsistent accounts in these circumstances, Mrs Whithead is accepting that the claimant did bite, slap, pinch and/or kick WW (the allegations the Witnesses made).

142. I conclude the inept manner in which Mrs Whitbread handled the process and the emphasis placed on the Witnesses accounts indicates that a factor in the claimant's dismissal reason was her race. Mrs Whitbread chose to believe the inconsistent accounts of the white Witnesses over the claimant's account; she does not explain why she preferred their accounts and only plays lip service to investigating the inconsistencies. The reasons she gives the claimant at the hearing and in the outcome letter focus on the evidence of these Witnesses. Ironically, neither in her verbal reasoning at the hearing or in the outcome letter does Mrs Whitbread make any reference to the claimant's admission she tapped WW, she does not make any finding about this nor any conclusion that action constitutes assault under the respondent's policies.

143. At the hearing Mrs Cislariu referenced stereotypical assumptions (of a black woman being angry) suggesting this was commonly accepted. Mrs Whitbread denied this. No documents were put forward to support this stereotype. In Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA, Lord Justice Mummery cautioned tribunals against concluding that liability for discrimination has been established simply by relying on an unproven assertion of stereotyping persons who share the same particular protected characteristic as the claimant. His Lordship emphasised that direct discrimination claims must be decided in accordance with the evidence, not by making use, without requiring evidence, of a verbal formula such as 'institutional discrimination' or 'stereotyping' on the basis of assumed characteristics. There must be evidence from which the tribunal could properly infer that wrong assumptions were being made about that person's characteristics and that those assumptions were operative as part of the conscious or subconscious motivation for the respondent's detrimental treatment, such as a decision to dismiss.

144. In Gould v St John's Downshire Hill 2021 ICR 1, EAT, Mr Justice Linden made the following observation:

"[I]n many cases of direct discrimination the influence of the protected characteristic is that it causes the discriminator to make, and then act on, assumptions about people who have that protected characteristic based on conscious or subconscious beliefs about, or attitudes to, such people. However, it is important to note that in this type of case, as in any other case of direct discrimination, the mind of the decision maker has been directly affected or influenced by the protected characteristic in deciding to act as they did. In most cases this is because the reason for the discriminator's assumption or belief is that the person has the relevant protected characteristic.... In such cases there is less favourable treatment because the same assumption would not be made, or belief or attitude held, about a person who did not have that characteristic or associate with a person who had that characteristic.'

145. I have found Mrs Whitbread's recollections vague and unreliable, and in this regard she is not a credible witness. I have found her decision to dismiss

focused on inconsistent accounts of white Witnesses. While she denied that she was influenced by stereotypes, given my findings on the credibility of her evidence and the circumstances as I have found them at the time, I conclude that the claimant's race was a factor in her mind when she made the decision to dismiss. She concluded without proper investigation that the claimant had assaulted (attempted to bite, kick, slap and/or pinch) WW. The evidence (in particular the lack of investigation into the Witnesses' inconsistent accounts) speaks to the fact that she concluded a black women would have done this to WW and white Witnesses should be believed without any real scrutiny of what they were saying.

146. Based on my findings, I conclude that there is evidence from which the tribunal could properly infer that wrong assumptions were being made about the claimant's characteristics. That evidence is Mrs Whitbread's conclusion, without proper investigation and making findings, that the claimant assaulted (bite, slapped, pinched, kicked) WW based on inconsistent evidence of white Witnesses. In my judgement, and given these findings, the fact the claimant is black (and the Witnesses white) was an operative part of Mrs Whitbread's decision making process. She accepted untested, inconsistent evidence of white employees, and assumed a black employee must have done the things alleged.
147. I have found that Mr McCluskey accepted this decision without addressing the points raised by the claimant in her appeal letter, and (at his request) her reconsideration letter. Mr McCluskey did nothing to challenge or scrutinise an evidently flawed decision.
148. For these reasons I find that the claimant's race played a more than trivial role in Mrs Whitbread's decision to dismiss her. The respondent would not have concluded that a white care worker had treated WW in the manner alleged when the accusers' evidence was inconsistent, without first resolving the inconsistencies and deciding what actually took place. Therefore a white care worker would not have been dismissed had the same allegations been made against them.
149. For these reasons I conclude that the claimant was dismissed because of her race.

APPROVED BY:

Employment Judge Hutchings

8 June 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
10 June 2026

FOR THE TRIBUNAL OFFICE

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