



EMPLOYMENT TRIBUNALS

Claimant: Ms J Drew
Respondent: Moulton Medical Centre
Heard at: Midlands East Tribunal
On: 3 and 4 June 2026
Before: Employment Judge Brewer

Representation

Claimant: In person
Respondent: Mr A Williams, Solicitor

JUDGMENT

The judgment of the Tribunal is that the claimant's claim of unfair dismissal fails and is dismissed.

REASONS

Introduction

1. This case came before me for a final hearing over two days. The claimant represented herself and the respondent was represented by Mr Williams.
2. We had a bundle of documents and witness statements from the claimant and for the respondent from Dr Lindsay Watson and Gemma Wrights, Practice Manager.
3. The bundle became something of an issue. Despite the claimant confirming she had the bundle, after about 45 minutes of her cross examination of Dr Watson it became apparent that she was using a draft version of the bundle, not the final version, although she agreed that this had been sent to her. The claimant said she had not had time to print the bundle and could not download it as she did not have the facilities to do so.

4. Ms Wright offered to print a copy of the bundle at the GP Surgery and the claimant could pick that up and use it. The claimant lives around 15 minutes from the surgery and she readily agreed to the proposal. We therefore adjourned the hearing to allow for this.
5. Prior to that adjournment, the claimant alleged that she had provided a number of relevant documents which the respondent had failed to include in the bundle. I asked the claimant to explain what these were. Save for one missing email, none of these documents were relevant to the issues I had to decide. In relation to the 'missing' email, I allowed the claimant to read that out and took a note of the relevant part which I have taken account of in reaching my decision.
6. In her brief submissions at the end of the evidence the claimant said that the bundle omitted vital evidence. The problem I have with that submission is that the claimant was sent the final bundle and made a conscious decision to ignore it and instead to use an out of date draft. Had she engaged with the process she might have been able to provide this alleged vital evidence.
7. At the outset of the hearing I set out the issues I had to decide. I explained the purpose of cross examination to the claimant and asked her, as far as possible, to stick to the issues I had outlined during her cross examination. However, much of the cross examination focussed on matters which pre-dated the claimant going off on sick leave which were either not, or only peripherally relevant to the reason for dismissal. I deal with this in more detail below but mention it here because on a number of occasions I had to remind the claimant what the issues were and to ask her to explain the relevance of some of her questions, which I am sure she found irritating but in the interests of ensuring best use of our limited time I did feel it necessary to try to keep the cross examination within reasonable limits given the narrow scope of the case.
8. The respondent's case was completed at the end of the first day. The claimant was cross examined in the morning of day two. I then heard submissions and retired to consider judgment. I delivered a brief oral judgment but agreed to provide full reasons which I set out below.

Issues

9. The broad issues in this case are:
 - 9.1. what was the reason for dismissal
 - 9.2. if the reason was the claimant's long term ill health absence, as the respondent says,
 - 9.2.1. was the decision to dismiss within the band of reasonable responses and
 - 9.2.2. was the procedure followed which led to the dismissal within the band of reasonable responses.
10. A more detailed expression of the legal issues is set out below.

Law

11. The law relating to unfair dismissal relevant to this hearing is set out in the Employment Rights Act 1996 as follows:

“98General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do...

(3) In subsection (2)(a)—

(a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality...”

12. There are two key aspects to a fair dismissal for long-term illness or injury involving long-term absence from work. First, where an employee has been absent from work for some time, it is essential to consider whether the employer can be expected to wait any longer for the employee to return (see **Spencer v Paragon Wallpapers Ltd** 1977 ICR 301, EAT. According to the Court of Session in **S v Dundee City Council** 2014 IRLR 131, Ct Sess (Inner House), the tribunal must expressly address this question, balancing the relevant factors in all the circumstances of the individual case. Such factors include:

12.1. whether other staff are available to carry out the absent employee’s work,

12.2. the nature of the employee’s illness,

12.3. the likely length of his or her absence,

12.4. the cost of continuing to employ the employee,

12.5. the size of the employing organisation; and

12.6. (balanced against those considerations), the unsatisfactory situation of having an employee on very lengthy sick leave.

13. Secondly, a fair procedure is essential. This requires, in particular:

- 13.1. consultation with the employee,
 - 13.2. a thorough medical investigation (to establish the nature of the illness or injury and its prognosis), and
 - 13.3. consideration of other options; in particular, alternative employment within the employer's business.
14. An employee's entitlement, if any, to enhanced ill-health benefit may also be highly relevant.

Reasonableness of dismissal.

15. The essential framework for considering whether dismissal on account of ill-health absence falls within the band of reasonable responses open to an employer was set out by the EAT in **Monmouthshire County Council v Harris** EAT 0332/14. There, Her Honour Judge Eady observed: 'Given that this was an absence-related capability case, the employment tribunal's reasoning needed to demonstrate that it had considered whether the respondent could have been expected to wait longer, as well as the question of the adequacy of any consultation with the claimant and the obtaining of proper medical advice'.
16. In addition, where the employer operates a detailed attendance policy, it will be expected to adhere to its provisions to ensure procedural fairness, although inconsequential departures from the policy will not necessarily be fatal (see **Sakharkar v Northern Foods Grocery Group Ltd (t/a Fox's Biscuits)** EAT 0442/10).

Consultation with the employee

17. In the context of long-term sickness absence, consultation has a number of purposes, which include:
- 17.1. establishing the true medical position,
 - 17.2. keeping the employer abreast of the employee's progress, and
 - 17.3. keeping the employee up to date with the employer's position, which is particularly important if the employer is considering dismissal.
18. Since warnings are not normally considered to be appropriate in cases of long-term sickness, given a total absence of fault on the employee's part, consultation assumes greater importance. As Lord McDonald stated in **Taylorplan Catering (Scotland) Ltd v McInally 1980** IRLR 53, EAT: 'It would be absurd to apply a procedure of formal warnings to cases of genuine ill health.' This reinforces the view that the Acas Code of Practice, with its in-built system of warnings, does not apply to long-term ill-health dismissals

Medical position

19. In **East Lindsey District Council v Daubney** 1977 ICR 566, EAT, Mr Justice Phillips stated that ‘in one way or another steps should be taken by the employer to discover the true medical position’ prior to any dismissal. In most cases this will involve consultation with doctors. A failure to seek proper medical advice (where this is appropriate) is likely to result in a finding of unfair dismissal.
20. Note that, while **East Lindsey District Council v Daubney** is considered the leading authority on medical investigation in the context of a fair capability dismissal, the sufficiency of the employer’s belief in the grounds for dismissal is still governed by **British Home Stores Ltd v Burchell** 1980 ICR 303, EAT. Although that case was decided in the context of a conduct dismissal, it set down general principles of reasonableness with wider application — namely, that the employer must genuinely believe in its stated reason for dismissal, having conducted a reasonable investigation which yields reasonable grounds for the employer’s conclusion. The EAT in **DB Schenker Rail (UK) Ltd v Doolan** EATS 0053/09 emphasised that, while **Daubney** requires an employer to establish the ‘true medical position’ before deciding to dismiss, that should not be read as requiring a higher standard of enquiry than required for a misconduct dismissal. The **Burchell** approach, requiring that a reasonable investigation into the matter be carried out, still applies.
21. When deciding whether to dismiss an employee for lack of capability, an employer must take into account not only the employee’s current level of fitness but also his or her likely future level of fitness.

Findings of fact

22. I make the following findings of fact (references are to pages in the bundle).
23. The respondent is a two partner GP practice. At the material times the partners were Dr Dias and Dr Watson. The practice employs around 22 staff of which 7 or 8 work in the Dispensary. The practice list is around 5,700 and the practice filled around 95% of its patients’ prescriptions. The practice receives income from the filling of prescriptions and in such a small practice this income stream is significant.
24. The claimant commenced employment as a Dispenser at the respondent on 18 April 2022.
25. On 6 August 2024 the respondent received an email raising concerns about the claimant’s conduct [112/113].
26. On 27 August 2024 the claimant was sent an invitation to a performance meeting [115].
27. The performance meeting was held on 2 September 2024 and an action plan was implemented. The meeting notes and plan are at [116/117].

28. A planned follow-up meeting was scheduled for 9 September 2024 but was delayed. The meeting should have taken place on 13 September 2024.
29. However, on 12 September 2024 an incident with colleague, Helen Di Bella (“Helen”), occurred which resulted in that colleague making a formal complaint against the claimant.
30. On 13 September 2024 the claimant commenced her sickness absence.
31. In an email dated 17 September 2024 the claimant explained why she was off sick and she also raised a formal complaint [118/119]. In the email the claimant says that Helen had spoken to her *“in a loud, aggressive and abrupt manner”* and that her tone was *“confrontational”*. Although the claimant asserts that this was a *“final straw”* and that *“this incident was the final episode I could endure”*, she gave no examples of previous unacceptable behaviour.
32. The above email was acknowledged by the then Practice Manager on 23 September 2024. She said she would investigate [122].
33. On 11 October 2024 a welfare email was sent to the claimant [129].
34. The claimant responded to that email on 14 October 2024. She said she was feeling anxious about *“what has happened”* with no further elucidation. She went on to say that she needed *“clarity and transparency”* specifically about:
- 34.1. the manner in which she felt she had been spoken to by Helen,
 - 34.2. why the claimant had to attend the meeting on 2 September, and
 - 34.3. what she called the lack of “consistency within the team” (although she does not say what this refers to).
35. The claimant also asked for minutes of the meeting of 2 September and said she felt targeted [129].
36. On 16 October 2024 the respondent replied to the claimant to explain that the issue between her and Helen could not be addressed as both were absent from work. However the email assured the claimant that she had not been targeted [128].
37. The respondent sent wellbeing emails to the claimant on:
- 37.1. 18 October 2024 [128],
 - 37.2. 22 October 2024 [127],
 - 37.3. 25 October 2024 [126],
 - 37.4. 1 November 2024 [125] and
 - 37.5. 15 November 2024 [131/132].

38. In response to these emails the claimant said that she had heard that staff had been gossiping about her and that someone had said she was going to be sacked [127/128] and that the 2 September 2024 meeting “*played a huge role*” in the way she was feeling” [125]. The respondent assured the claimant that there was no plan to dismiss her.
39. In her response to the wellbeing email of 15 November 2024, the claimant stated that as well as the concerns she had raised, “*I do have other worries that I have not as yet made you aware of...*” [131].
40. I find that at this point the claimant had raised only one concern about her interactions with colleagues which was the incident with Helen on 12 September 2024. At no point since has the claimant been specific about any other such issues.
41. On 9 December 2024 the claimant was sent an invitation to a wellbeing meeting to be held on 23 December 2024. That did not take place as the claimant declined the invitation. A second wellbeing meeting invitation was sent on 23 December 2024 to meet on 7 January 2025 [134/135]. That meeting took place over the ‘Teams’ platform.
42. On 28 January 2025 the claimant was referred for an Occupational Health appointment [140].
43. Gemma Wright became the Practice Manager in March 2025.
44. The Occupational Health report was received on 3 March 2025 [141 – 143]. The report states that:

“Ms Drew has been absent from work since September 2024 due to stress/anxiety. She has described some work related stressors to me today that have impacted her mental health over the past year, causing heightened anxiety and a poor sleep pattern...”

In my clinical opinion, Ms Drew is temporarily unfit for work. I unable to predict when she will be in a position to return to work, as her symptoms persist...

To better understand the work related issues, I recommend a stress risk assessment is conducted with Ms Drew and either an HR representative or alternative manger. This will help formulate an action plan and initiate discussion around her perceived stressors. Her condition is likely to improve as a result...

It is my opinion, based on the assessment today, Ms Drew is capable of understanding what people are saying, is able to recall information given the opportunity and is capable of responding to questions coherently.

Therefore, I feel that she is capable of attending a management meeting. It is likely that she will find the proceedings distressing, but I acknowledge the Faculty of Occupational Medicine's Ethics Guidance which suggests that delaying the process for a prolonged period will likely be more damaging to her health, especially her mental health, than continuing with it.

It is my opinion that she is unlikely to return until the underlying work-related issues have been resolved to her satisfaction and I therefore feel that management should take steps to address the concerns..."

45. The respondent says that a risk assessment was prepared for implementation upon a return to work. The claimant did not participate in the assessment and it was not shared with her.
46. On 17 March 2025 the claimant was advised that her SSP would cease on 27 March 2025 and how she might source further support [144].
47. The claimant asked the respondent about its investigation and in response an email was sent to the claimant on 25 March 2025 summarising what had been done to date [145].
48. On 29 March 2025 the claimant submitted a formal grievance [146/147]. The grievance raised some 12 concerns.
49. On 3 April 2025 the grievance was acknowledged and a grievance hearing was arranged for 7 April 2025 [150/151].
50. On 15 April there was further wellbeing email to the claimant [152] which she responded to [152]. In her response the claimant said that there had been no change but that "*the best was to support me is to follow up from the grievance*".
51. On 2 May 2025 the grievance outcome letter was issued [153 – 157]. I do not need to set out here the entirety of the response save to say that although one or two of the concerns were partially upheld, the majority were not.
52. On what appeared initially to be the claimant's the concern, the outcome letter confirmed that the incident with Helen from September 2024 had not yet been fully investigated because of the claimant's absence [155].
53. On 12 May 2025 Ms Wright sent a wellbeing email to the claimant [160]. The claimant did not respond to that email. Ms Wright then attempted to contact the claimant on her mobile however, because of an administrative error the claimant's sister's number appeared as the claimant's and therefore a message for the claimant was left on her sister's phone. Ms Wright apologised for this error.
54. On 14 May 2025 a complaint was raised by the claimant about the above incident [164].

55. The claimant's complaint was investigated by Dr Dias and his outcome letter is at [174] and is dated 28 May 2025. It confirms that an error was made.
56. I find that the leaving of the message on the claimant's sister's mobile phone was a genuine error and not a deliberate act by Ms Wright designed to cause the claimant further stress.
57. On 30 May 2025 the claimant appealed the complaint outcome and raised a number of other matters.
58. On 6 June 2025 an Appeal outcome letter issued [175 – 177].
59. Further wellbeing meeting invitations were sent to the claimant on 10 June 2025 [180], 18 June 2025 [265], and 7 July 2025 [1284]. The claimant failed to respond to any of these offers.
60. On 14 July 2025 a letter was sent to the claimant noting her lack of engagement in relation to the various invitations to wellbeing meetings [185 – 187].
61. A further invitation to a wellbeing meeting was sent to the claimant on 17 July 2025 [189/190].
62. On 28 July 2025 the claimant was sent an invitation to attend a Medical Capability Meeting on 5 September 2025. The letter advised as follows:

"The purpose of the meeting is to discuss:

- your continued absence from work due to ill health;*
- the enclosed copy of a medical report from the Occupational Health Practitioner;*
- the likelihood of you returning to your job/work in the near future;*
- whether there are any reasonable adjustments that can be made to your job or in the workplace that would facilitate a return to work;*
- whether there is any alternative employment available that would be suitable for you.*

I have to inform you that if the meeting indicates that there is little likelihood of a return to work within a reasonable timescale and there are no reasonable adjustments that can be made or alternative employment available, then the outcome may be notice of the termination of your employment on the grounds of ill health. I sincerely hope that this will not prove to be the case, and for this reason if there is any relevant information which you believe we ought to consider, then it is in your own interests to make it available to us for the meeting.

You are entitled, if you so wish, to be accompanied by a fellow employee or Trade Union Official.”

[193/194]

63. The claimant could have been under no misapprehension that after almost a year off sick she was at risk of her employment being terminated.
64. On 2 September 2025 the claimant was sent a letter confirming who would be attending the meeting on 5 September 2025 and reiterating what would be discussed and the possible outcome [214/215].
65. The Medical Capability Meeting was held on 5 September 2025 as planned. A summary of the meeting was produced on 10 September 2025 and is at [224 – 229].
66. The report sets out who was spoken to, what documents were considered and concluded as follows:

“44 Having given full and thorough consideration to the information presented DD recommends that In light of the measures that have already been put in place and the fact that no other suggestions have been made of any other support they require to assist them to attend work more regularly, if the business is unable to sustain the current level of absence and the fact that there are no further adaptations that can be put in place, the employer will now have to consider the termination of employment on the grounds of capability.

45. If the decision is reached to terminate employment, there is an entitlement to receive one week paid notice for every year of service up to a maximum of twelve weeks or full contractual notice, whichever is the greater. They would also be entitled to any other contractual benefits including pension payments and payment for any accrued holiday for this period.

46. If the Employer decides to terminate their employment with the Company on the grounds of ill health, it will be necessary for the Employer to consider whether or not they are entitled to the benefit of any critical illness cover or other benefit that may be attached to any insurance policies or pension, if applicable, before notice or termination of employment is provided. If they are entitled to benefit under such a policy, employment should not be terminated until such time as the required procedure to claim the benefit are concluded.

47. A copy of this case summary in its entirety should be made available to JD with the appropriate cover letter and appendices.

48. It is a matter for the employer to decide whether they wish to accept any of DD recommendations.

49. JD will have the right to appeal the decision that is made, and this should be done in line with the existing Appeal policy."

67. On 11 September 2025 the claimant was dismissed by Ms Wright. The letter of dismissal is at [233] and is in the following terms:

"Dear Joanne,

As you know, we engaged an independent and impartial consultant to conduct a medical capability meeting on 5 September 2025.

Please find attached their report, which represents my decision.

Under these circumstances and taking into account the fact we need to find a permanent replacement for you, I have regretfully been left with no alternative other than to terminate your employment on the grounds of ill health.

This will take effect immediately and you will be paid one months' pay in lieu of notice plus your annual leave entitlement.

You have the right of appeal against my decision and should you wish to do so you should write to myself in the first instance within 7 days giving the full reasons as to the grounds of your appeal.

Finally, on a personal note, may I say how sad I am that your employment with us has ended in this way. I would like to take this opportunity to thank you for your contribution and service and to wish you well for the future."

68. The reason for the dismissal was the claimant's long term absence. I accept the evidence of the respondent about the impact the claimant's absence had on the business. Those impacts were:

68.1. the claimant's workload was backfilled using overtime where possible. The amount of overtime was around 700 hours which included some Saturday working. The relevance of that is that overtime on weekdays was paid at the employee's normal rate but Weekend working attracted time and a half, so increased wage costs to the business,

68.2. notwithstanding the overtime working, the turnaround time for prescriptions increased from around five days to between nine and ten days, as a result of which some patients took their prescriptions elsewhere to be filled which caused a direct loss of income,

68.3. some Dispensary staff were facing burnout,

68.4. the respondent could not 'replace' the claimant while the claimant remained employed.

69. On 14 September 2025 the claimant appealed her dismissal and on 23 October 2025 the Appeal hearing took place. The appeal was heard by Dr Watson who had not been involved in the dismissal process. A transcript of the appeal meeting is at [245 – 249].

70. The claimant commenced early conciliation on 25 September 2025 [4].

71. The Appeal outcome letter was issued on 3 November 2025 and the decision was made to reject the appeal [257 – 259].

72. The claimant received her early conciliation certificate on 6 November 2025 [4].

73. The claimant presented her claim to the Tribunal on 24 November 2025 [5 et seq.].

Discussion and conclusions

74. This case requires me to consider two broad matters.

75. First is the reasonableness of the decision to dismiss. That requires a consideration of,

75.1. the nature of the claimant's illness,

75.2. the length and/or likely length of her absence,

75.3. the cost of continuing to employ the claimant,

75.4. the size of the employing organisation;

75.5. whether other staff are available to carry out the claimant's work, and

75.6. (balanced against those considerations), the unsatisfactory situation of having an employee on very lengthy sick leave.

76. The second is the reasonableness of the procedure which includes,

76.1. the adequacy of consultation with the claimant,

76.2. medical investigation to establish the nature of the illness or injury and its prognosis, and

76.3. consideration of other options; in particular, alternative employment within the employer's business.

77. Before turning to those matters there is an issue I feel it necessary to address.

78. The claimant alleged during cross examination that the dismissal process was not unbiased or objective because the respondent was paying for the consultant to undertake part of the process and to produce the report which the respondent relied on to dismiss her.

79. Allegations of bias require evidence. Employment processes, particularly grievances and dismissals, are invariable undertaken by the employer. It is not an obvious or self-evident matter of bias that this is the case, nor is it an obvious or self-evident matter of bias that an employer pays for HR and other external assistance. If that were the case then the only possible unbiased processes would be those undertaken by people not employed or engaged by the employer, perhaps volunteers. That is an obviously absurd proposition.

80. The claimant provided no evidence of bias. Her argument was circular – because she was dismissed it shows bias; bias is to be inferred from the dismissal.

81. To be fair to the claimant, she also relies on what she says were shortfalls in the respondent's processes and I shall deal with those concerns below.

82. I turn now to the key issues and my conclusions.

Dismissal decision

83. The reason for the dismissal amounts to a dismissal for 'capability' which is a potentially fair reason for dismissal under section 98(2)(a) of the Employment Rights Act 1996.

Nature of the claimant's illness

84. Throughout her absence the claimant was off with work related stress. Whenever she was asked about her wellbeing she stated either no change or getting worse.

85. The claimant was not given any medication or any other treatment for the stress.

Length and/or likely length of her absence

86. The claimant went off sick on 13 September 2024.

87. At the date of dismissal she had been absent for almost exactly 12 months.

88. At the Medical Capability Hearing on 2 September 2025 it was confirmed by the claimant that her medical position had not altered. That is that there was no indication when the claimant might be able to return to work.

89. It is part of the claimant's case that the respondent did not put in place any, what she refers to as, workplace adjustments which would enable her to return to work. In that context the claimant referred back to her grievance.

90. I note that the claimant did not appeal against the grievance outcome. I shall return to the question of the respondent's actions below.

The cost of continuing to employ the claimant, the size of the employing organisation and whether other staff are available to carry out the claimant's work

91. I can consider these matters as a whole.
92. The respondent is by any measure a small employer. It has two partners, a Practice Manager and 20 or so other staff. It has a defined patient list size and therefore limited ways to increase income.
93. At the date of dismissal the claimant was in nil pay so other than minor administrative costs, there was really no direct cost to continuing to employ the claimant. The problem for the respondent was that the claimant's hours had to be covered, and covered by existing staff. I have set out in my findings of fact what the negative impact of this was on the respondent's business
94. Filling prescriptions is an extra income stream for the respondent and that was being directly adversely affected by the claimant's continued absence, so I accept the respondent's argument that this situation could not continue.

The adequacy of consultation with the claimant

95. As I have set out above, consultation with the claimant should be with a view to,
- 95.1. establishing the true medical position
 - 95.2. keeping the employer abreast of the employee's progress, and
 - 95.3. keeping the employee up to date with the employer's position, which is particularly important if the employer is considering dismissal.
96. The true medical position was never an issue in this case. The claimant was always absent because of work related stress. There are numerous emails in the bundle showing the respondent asking the claimant for updates on her situation and endeavouring to invite her to wellbeing meetings (the claimant only accepted one such invitation which was many months prior to dismissal). Despite the respondent's best efforts the claimant did not engage meaningfully with their attempts to meet with her to discuss a possible return to work.
97. One of the odd aspects of this case is the disconnect between what the claimant described a number of times as a toxic work environment and the contemporaneous documentation. Other than a few WhatsApp messages of support for the claimant indicating some friction between some members of staff, there is no evidence to support such a harsh description of the respondent's workplace. Moreover, the genesis of the claimant going off sick was a complaint made against her and a meeting to discuss her performance to which she seems to have taken great exception although has never adequately explained why.

98. The complainant, Helen, remained employed and so it is difficult to see what the claimant expected the respondent to do to assist the claimant's return to work.
99. I asked the claimant about this and her response was that mediation could have addressed her concerns although from the contemporaneous documents it is clear that the claimant at no point suggested this would be the case and the evidence is she failed to engage with the respondent's efforts to meet and discuss a possible return to work for many months.
100. The claimant also referred to the respondent introducing a bullying policy. That policy already exists, it is at page 39 of the Employee Handbook [89].
101. The claimant said that she needed someone she could go to if she had concerns and she was never told who that might be. I specifically asked the claimant about the two partners and the Practice Manager and she had reasons why she would not go to the partners and said that she had not been told she could speak to Ms Wright. I find this to be somewhat disingenuous.
102. The fact is that the partners are the employer and would be obliged to take her concerns seriously. In my view an employee does not have to be told she can speak to a manager if she had concerns, it is self-evident, particularly in a small business.
103. But if the claimant's position was that she could not or did not want to speak to her employer, it is impossible to understand what she did expect the respondent to do. They were unable to replace the claimant while she remained employed so it was extremely unlikely that if she returned to work, they could afford to employ someone just to have a person available for the claimant to complain to.
104. The point was made during the hearing that of the three people the claimant now seems to have had an issue with, two had left the business while the claimant was off sick. The claimant complains she was not told about that. Perhaps she ought to have been, but given that as far as the contemporaneous documents are concerned, all the respondent knew about the claimant going off sick was that it related to Helen, who remained employed. As I have set out above, the most the claimant ever said beyond that was in a response to a wellbeing email of 15 November 2024, in which the claimant stated that as well as the concerns she had raised, *"I do have other worries that I have not as yet made you aware of..."* [131].
105. It is hard to see how the respondent can be criticised for not dealing with concerns they had not been made aware of.
106. I am entirely satisfied that in this case there was more than adequate consultation with the claimant and if there is any fault in the consultation that rests at the claimant's door as it was she who regularly failed to engage with the respondent.

Medical investigation to establish the nature of the illness or injury and its prognosis

107. I have dealt with this above. The reason for the absence was clear, it did not change and the prognosis at the date of dismissal was that there was no return to work on the horizon.

Consideration of other options, in particular, alternative employment within the employer's business

108. I accept the respondent's evidence that there were no options for other work in the business. This is a small employer and there is no evidence that they had any other work for the claimant.

109. In her submissions the claimant said that the respondent could have provided her with a temporary alternative role, but that simply ignores the economic reality. The respondent was already incurring extra cost replacing the claimant dispensing hours. To provide her with a non-earning temporary role would simply add cost to the business. So in my judgment it was not unreasonable for the respondent not to do that.

Conclusion

110. On any measure the respondent carried out a detailed and reasonable process.

111. The claimant's absence was monitored through wellbeing emails and other correspondence between the parties. Meetings were offered and declined.

112. The claimant grievance was addressed reasonably and reasonably promptly, and her complaint about the phone message was addressed and an apology made.

113. There was clarity on the medical position, both diagnosis and prognosis.

114. There was a detailed investigation by the consultants into the medical capacity issue and the decision to dismiss, based on their findings, took into account relevant matters and ignored irrelevant matters.

115. I am satisfied that both the procedure and the dismissal were within the band of reasonable responses and for those reasons the claim of unfair dismissal fails and is dismissed.

Employment Judge Brewer
Date: 4 June 2026

JUDGMENT SENT TO THE PARTIES ON
13.06.2026
Hrishiraj Pramanik

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FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>