EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000342/2026

Held in Glasgow on 9 and 10 July 2026
Deliberations on 13 and 14 July 2026

Employment Judge D Hoey

Ms C Uzoho	**Claimant** **In Person**
Lerue Healthcare Ltd	**Respondent** **Represented by:** **Ms L Doyle - Solicitor [Day 1] then Ms L Mabhena - Chief Executive**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. Of consent the respondent shall pay to the claimant, within 14 days, the sum of **£1,091** in respect of the claim for payment. The respondent shall be at liberty to deduct from this sum prior to making payment to the claimant such amounts of Income Tax and Employee National Insurance Contributions (if any) as it may be required by law to deduct, and if it does so, duly remits such sums so deducted to HM Revenue and Customs, and provides to the claimant written evidence of the fact and amount of such deductions and of the sums deducted having been remitted to HMRC, and payment of the balance to the claimant shall satisfy this judgment.

2. The claimant's dismissal was not automatically unfair.

REASONS

1. The claimant brought a claim for automatically unfair dismissal and for payment of sums said to be due to her. The respondent disputed the claim.

2. Regrettably this was a challenging case as neither party had properly prepared for the hearing. The claimant was unable to set out precisely what was claimed (and why) and the respondent (and their agent) were unable to assist with regard to identifying relevant documents and information. For

example neither party could identify the dismissal letter (which was in fact in the bundle as the Tribunal identified on day 2). The parties had also not worked together and engaged to ensure the productions included what was needed and that the claim and defence was clear and explicable. The respondent's agent withdrew from acting in the afternoon of the first day with Ms Mabhena representing the respondent who had been present for the duration of the proceedings and was able to represent the respondent.

3. The parties were afforded time and many breaks to consider their cases and ensure the position was clear with regard to the case and defence being presented. Having been given time to consider the ET1 and general position the claimant was able to confirm that there were 2 complaints that she was advancing before the Tribunal (with the other material within the ET1 background or matters not within the power of the Tribunal, with some matters she will raise elsewhere, for example, with HMRC regarding the respondent's alleged nonpayment of tax due).

4. The **first complaint** the claimant wished to advance was in respect of unlawful deduction from wages for a period the claimant was given no work. Following discussion with the respondent's agent it was conceded that in terms of the claimant's contract, the claimant had a guaranteed entitlement and accordingly of consent the respondent will pay the claimant the sum of £1,091 less deductions required by law.

5. The **second and only other complaint** was whether the sole or principal reason for the claimant's dismissal was that she had raised non payment of sums due to her (and in good faith). The claimant sought compensation.

6. At the start of the Hearing the overriding objective and the need for both parties to work together to assist the Tribunal in ensuring that everything that was done was fair and just with due regard to cost and proportionality was discussed. A discussion took place as to how evidence was taken and the importance of ensuring relevant questions were put to each witness to ensure both parties cases were fairly put to each other's witnesses and that relevant evidence was led. The parties were reminded that the Tribunal would only consider evidence that had been agreed or that was led before it. The parties understood the need to ensure their case was put to each witness and factual disagreements were raised.

Evidence

7. The parties had produced a joint bundle of 153 pages. Regrettably this was single sided and included many documents that were not needed. Neither party fully knew what documents had been included (and what had not) which caused much uncertainty and some additional documents being relied upon.

It is obviously important in presenting a case that a party takes the time to carefully check each of the important documents on which a case is based is included and can be read. In the productions some of the emails were incomprehensible as the text was too small. Some flexibility was afforded to the parties including as to including other documents but even at the submissions stage the parties referred to material that they had not included in the productions nor brought to the Tribunal's attention. As the key issue in this case was the reason for the claimant's dismissal and the other productions did not directly deal with that, there was no prejudice to either party in progressing expeditiously (and avoiding delays).

8. The Tribunal heard evidence from the claimant and Ms Mabhena (who made the decision to dismiss the claimant). The claimant had given oral evidence and Ms Mabhena provided a written witness statement, with the consent of both parties, which ensured the claimant was able to provide the evidence she wished the Tribunal to take into account. Relevant questions were put to both witnesses with the Tribunal's assistance to ensure the parties' respective cases were tested and that relevant questions were answered.

Facts

9. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it, both orally and in writing. The Tribunal only makes findings that are strictly necessary to determine the issues before it (and not in relation to all disputes that arose nor in relation to all the evidence led before the Tribunal). The Tribunal only records facts it found as necessary to determine the issues in this case.

10. There were few material facts in dispute and where there was a conflict in evidence, the conflict was resolved by considering the entire evidence and making a decision as to what was more likely than not to be the case with regard to what was written and said at the time (when viewed in context).

Background

11. The respondent provides support to service users and has around 14 employees. The business is close knit and Ms Mabhena, the chief executive, often made emotional decisions to support her staff rather than pure business decisions.

12. The claimant was engaged as a support worker from 18 August 2025 until 4 February 2026. Her employment was subject to a written contract guaranteeing her 40 hours per week with the potential to work additional hours. She worked on average around 58 hours per week. Ms Mabhena had supported the claimant, such as by providing accommodation for her.

13. The respondent is heavily regulated and subject to important regulatory standards and controls. These were standards that had been communicated to staff. Ensuring staff provide excellent standards of care lay at the heart of the respondent's business and was important to Ms Mabhena who wanted to ensure all staff provided the best possible care to service users.

Probation

14. The claimant was subject to a probation policy that made it clear that during a probationary period (which was initially 3 months which could be extended) performance would be assessed to ensure compliance with the care standards and that the worker was carrying out their work in a competent and safe way compliant with policy documents. The policy made it clear that a worker could be dismissed during or at the end of the probationary period (and recognised there were situations where despite being unable to claim ordinary unfair dismissal the claim of automatic unfair dismissal was available).

15. The claimant's initial probationary period was extended following a meeting on 10 December 2025. The respondent had a number of concerns as to the claimant's performance and as a result her probationary period was extended. Some of the concerns included time keeping, reliability, professionalism, compliance with policies and suitability for the role. The claimant knew that the respondent had concerns with her performance and was on her continued probationary period when her employment was terminated.

Issues with claimant's performance

16. On 14 November 2025 an issue was raised with the claimant because she had worn headphones when dealing with a service user. The claimant undertook not to wear headphones when carrying out her work. She understood that she had not acted professionally.

17. On a number of occasions the clamant had been late for her shift (which was often due to the claimant relying upon public transport). The claimant's timekeeping was a concern for Ms Mabhena as was the claimant's use of her mobile phone when working on shift.

18. On 16 January 2026 a service user had complained that the claimant had made inappropriate comments which were incorrect and had the potential to cause the respondent damage. The claimant did not accept she had done so but Ms Mabhena was concerned about language the claimant had used and how this could impact the business.

Ms Mabhena decides to convene a probation review meeting

19. Ms Mabhena had investigated the complaint that was made on 16 January 2026 and had learned from a number of colleagues that the claimant had

made comments that could be perceived as negative about the respondent to a service user's family. The respondent believed the claimant had made negative and untrue comments which could potentially damage the respondent's business. The family had previously been positive about the respondent but Ms Mabhena had noticed their approach to the respondent had recently changed which supported what her staff had said. While the claimant denied having said anything negative, Ms Mabhena was concerned about the claimant's conduct and professionalism which were reasons her probation had already been extended.

20. On the morning of 22 January 2026 Ms Mabhena concluded that a probationary review meeting was needed to explore the claimant's conduct and consider her future. Ms Mabhena accordingly asked her administration team to convene a meeting with the claimant. Ms Mabhena had decided to review the claimant's continued employment as a consequence of what had happened on 16 January 2026 and the concerns about the claimant. A meeting had been convened (which was initially called a disciplinary meeting in error and corrected). The claimant did not attend the meeting.

Claimant raises concerns

21. On 22 January 2026 at around lunchtime the claimant was sent a payslip which she believed had a shortfall in that she was being paid less than the hours she had worked. She telephoned Ms Mabhena in the afternoon. No substantive discussion took place and the claimant was told to visit the office. She did not ultimately do so but Ms Mabhena asked her external payroll company to look into what the claimant had been paid. She was told that she had unlawfully deducted sums due to the claimant as she had deducted costs in relation to housing from the claimant's salary which was not permitted. Having learned that it was not permissible to do so, the correct sums were paid to the claimant. The underpayment was made on 18 February 2026. Ms Mabhena had no issue with the claimant raising the issue and dealt with it.

Probation meeting called

22. On or around 25 January 2026 Ms Mabhena considered the material before her in connection with the claimant's conduct. She issued a letter dated 25 January 2026 which noted that the claimant's probationary period had been extended but that there remained significant concerns which had not been resolved. Those included inappropriate comments, failure to meet essential role requirements, excessive use of a personal mobile phone and a lack of trust. The letter noted the matters had been raised with the claimant but that Ms Mabhena considered the improvement to have been insufficient. The letter noted that as the claimant had not attended the meeting, the formal outcome would be determined and issued in writing in due course.

Claimant dismissed with immediate effect

23. Ms Mabhena reflected upon how the claimant had carried out the role during the initial probationary period and during the extended period. On 4 February 2026 the respondent wrote to the claimant confirming that she had been dismissed with immediate effect due to Ms Mabhena's belief as to how the claimant had carried out her role. Ms Mabhena concluded that the claimant had not met the required standards to allow her employment to continue.

24. The claimant had in some regards been a good worker and Ms Mabhena had been aware of the claimant's ability to carry out her duties satisfactorily on occasion (evidenced by some comments following an earlier probation meeting). However, Ms Mabhena believed the concerns she had as to some areas of the claimant's work meant the working relationship could not continue. Ms Mabhena had previously tried to help the claimant, for whom she had empathy and sympathy, which was why the claimant had remained in employment (with her probationary period having been extended) rather than having been dismissed at that point. Ms Mabhena believed she had given the claimant a fair and reasonable opportunity.

25. The claimant's complaint about being paid incorrectly was not a reason for the claimant's dismissal. The payment issue was not connected to the dismissal. The reasons were as set out in the letter of 4 February 2026 which accurately set out Ms Mabhena's reasons for dismissal.

26. Following the claimant's dismissal on 4 February 2026 Ms Mabhena remained sympathetic to the claimant and considered whether or not the claimant could return. Ms Mabhena was sympathetic towards the claimant's personal situation and family issues and explored whether a return to work would be possible. Agreement could not be reached and the original decision stood.

Observations on the evidence

27. The Tribunal considered the evidence carefully and in context of all the evidence, both in writing and that presented orally.

28. The **claimant** fervently believed that she had been dismissed because of the concerns she had raised. She was warned, however, on a number of occasions when giving evidence about the importance of answering the questions put to her, rather than making points that she wished to make. She often avoided answering a question when she considered the answer to be detrimental. She did her best to set out the position as she understood it.

29. **Ms Mabhena** was clear and credible. She felt sympathy towards the claimant but equally believed that she had to do what she believed right for the business. She believed that she had done the right thing. She was clear and

consistent in showing the claimant's belief as to the reason for her dismissal was wrong and that the claimant's raising payment concerns had no influence upon the decision to dismiss.

30. The key **factual dispute** in this case was the reason for dismissal. There were some other disputes (such as whether the claimant received warning letters and some correspondence) but the key issue was whether or not the sole or principal reason for Ms Mabhena's decision was the claimant's raising of concerns. Having considered the evidence carefully the Tribunal concluded that the position set out by Ms Mabhena was more likely than not to be the case. Ms Mabhena was consistent in her approach to the claimant. She had shown sympathy and tried to support the claimant. While there were some disputes, the claimant accepted she was on probation at the time of her dismissal and accepted that there were a number of areas of her conduct that Ms Mabhena had concerns (even if the substance was disputed).

31. The proximity of the dismissal to the claimant's raising of the concerns was a powerful indicator in support of the claimant's position but that was overtaken by the evidence of Ms Mabhena and the facts. The Tribunal considered that the service user complaint that had been raised shortly following the decision to dismiss the claimant was the cause of the claimant's dismissal.

32. The Tribunal took account of the points made by the claimant and her fervent belief. The Tribunal also took into account that in some respects the claimant had been a good worker. However, Ms Mabhena was clear that the negative aspects of the claimant's approach led to the conclusion that her employment could not be continued. That was entirely separate from and not related to the complaints the claimant had raised (which Ms Mabhena had resolved).

The law

33. Section 104 Employment Rights Act 1996 states:

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee— (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or (b)alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1)— (a)whether or not the employee has the right, or (b)whether or not the right has been infringed; but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) *It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.*

34. Section 104(4) goes on to set out the relevant statutory rights for the purpose of the act, an unauthorised deduction from wages being one of those statutory rights.

35. Section 13 of the Employment Rights Act 1996 says: An employer shall not make a deduction from wages of a worker employed by him unless— the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.

36. Section 13(3) states: Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

37. The principal reason for the dismissal is "a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee" (**Abernethy v Mott, Hay and Anderson** [1974] ICR 323). The focus must be on the knowledge, or state of mind, of the person who actually took the decision to dismiss, as observed by the Supreme Court in **Royal Mail Group Ltd v Jhuti** [2019] UKSC 55, at paragraph 60 and **Beatt v Croydon Health Services NHS Trust** [2017] IRLR 748.

Submissions

38. Both parties made submissions which have been fully taken into account. The claimant's position was that she was dismissed because of the complaint she made about underpayment. The respondent's position was that the complaint was not connected with the dismissal, which was solely because of concerns Ms Mabhena had about the claimant's suitability for the role.

Discussion and decision

39. The issue was whether the sole or principal reason for Ms Mabhena's decision to dismiss the claimant was the claimant's raising of the underpayment complaint. The respondent conceded the claimant had been dismissed and the statutory right was a relevant one which was raised in good faith.

40. As set out above, the claimant believed that Ms Mabhena had dismissed her because of the deductions complaint she had made. The fact the dismissal

was close in time to when the claimant raised the complaint was a powerful indicator that suggested the complaint could be a reason for her dismissal. The Tribunal looked at the context and the reasons given together with the evidence led from the dismissing officer to determine whether that was the sole or principal reason for the dismissal.

41. Ms Mabhena had supported the claimant. She had recruited the claimant and given her a job and other support. She had extended the claimant's probationary period even although there were concerns about the claimant's performance and conduct. Ms Mabhena could have dismissed the claimant sooner (rather than extending her probationary period) but instead sought to work with her to provide support.

42. A number of issues had arisen shortly before the dismissal in connection with the claimant's conduct at work and the impact upon the respondent's business. These were serious issues and in some respects issues which mirrored the concerns that had led to the claimant's probationary period being extended in December. The dismissal was as close in time to those issues as the dismissal was to the claimant's raising of the complaints.

43. The event on 16 January 2026 was the reason why Ms Mabhena decided to review the claimant's continued employment. This was another example, for Ms Mabhena, of the claimant acting unprofessionally (even if disputed by the claimant). That was the act which tilted the balance when viewed with the other areas the claimant had not performed to the required standard.

44. The Tribunal looked at the evidence and considered whether the claimant's raising of the underpayment complaint was the principal or sole reason for her dismissal. The Tribunal was satisfied the claimant's complaint was not the sole or principal reason for dismissal. The complaint was not a reason for the dismissal. Ms Mabhena sorted out the underpayment once she understood the position. The underpayment was not an issue for Ms Mabhena and did not influence her decision to dismiss, which decision was because of Ms Mabhena's belief about the claimant's conduct and how she did her work.

45. While the claimant believed her complaint had been the reason why she had been dismissed, from the evidence before this Tribunal, Ms Mabena had dismissed the claimant because of her concerns about the claimant's conduct and the automatic unfair dismissal complaint is accordingly dismissed.

Date sent to parties **<u>20 July 2026</u>**