EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002788/2025

Final Hearing held at Aberdeen on 30 and 31 March, and 6 and 7 July, both months in 2026

Employment Judge A Kemp

Mrs P Ibhagbosoria	**Claimant** **Represented by** **Ms R Tait** **Solicitor**
Greymate Care Ltd	**Respondent** **Represented by** **Dr M Onochie** **Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal finds that:

1. **The claimant was unfairly dismissed by the respondent contrary to section 94 of the Employment Rights Act 1996.**

2. **The claimant is awarded the total sum of THREE THOUSAND ONE HUNDRED AND SIXTY FIVE POUNDS NINETY FOUR PENCE (£3,165.94) payable to her by the respondent.**

3. **The claims of unauthorised deductions from wages and of breach of contract are not well founded and are dismissed.**

REASONS

Introduction

1. This was a Final Hearing held in relation to claims of unfair dismissal, unauthorised deductions from wages on the basis that the claimant was not paid for at least 39 hours per week, which she claims was her entitlement, and breach of contract on the same basis. The respondent admitted that it dismissed the claimant and argued that the dismissal was for the potentially fair reason of conduct, and that it was fair. It denied that it had made unauthorised deductions or was in breach of contract.

2. The claimant was represented by Ms Tait, and the respondent by Dr Onochie. At the start of the hearing I explained that as the respondent was not legally represented I could assist the respondent to an extent under the overriding objective in Rule 3 but not as if acting as its solicitor. I explained how the evidence would be given, that documents in the file or Bundle were not read unless referred to in evidence, and that all evidence relevant to the issues required to be given at this hearing as doing so later was permitted only in exceptional circumstances. I explained about the giving of evidence in chief, cross examination, that there may be questions from the Tribunal and then re-examination. I also explained about submissions.

3. Case management orders had been issued on 30 January 2026.

Issues

4. The issues for the Tribunal were confirmed at the start of the Hearing and are:

   (i) What was the reason or principal reason for the dismissal?

   (ii) If potentially a fair reason under sections 98(1) and (2) was the dismissal fair or unfair under section 98(4) of the Employment Rights Act 1996 ("the Act")?

   (iii) Had the respondent made any unauthorised deductions from wages under section 13 of the Act, or was it in breach of contract?

   (iv) If a claim succeeds, to what remedy is the claimant entitled?

Evidence

5. The parties had prepared a single Bundle of Documents, most but not all of which was referred to in oral evidence. Additional documents were added to that without objection. There was objection taken to a Schedule of Loss intimated on 26 March 2026. I decided to reserve a decision on whether or not to allow it until I had heard evidence.

6. The parties had also prepared a Statement of Agreed Facts, which has been incorporated in this Judgment with some amendment to the wording to confine it to facts.

7. Oral evidence was given by Dr Onochie, who was permitted to use an aide memoire for that, and was the only witness for the respondent. The clamant gave evidence herself. Her evidence in chief finished shortly before 4pm on the second day of the hearing, and two additional days were arranged to complete the evidence. I asked questions of both witnesses to elicit facts under Rule 41.

8. On the third day of evidence, and after there had been exchanges of messages between the parties sent to the Tribunal on the matter, the respondent sought to add further and additional documents. After hearing the parties further it was in essentials agreed that they be received, but that Dr Onochie be recalled to be cross examined about them, and then with the opportunity for re-examination, before the claimant's evidence continued. That was done.

9. The case concerns in part two service users who are elderly and vulnerable. I considered that in the circumstances it was appropriate to refer to them anonymously by initials, which is what the parties themselves had done. I consider that that is appropriate having regard to Rules 3 and 49.

Facts

10. I considered all of the evidence given and found the following facts, which are I consider material to the issues, to have been established:

Parties

11. The claimant is Mrs Precious Obhagbosoria. Her date of birth is 20 June 1988.

12. The respondent is Greymate Care Ltd. It is a company incorporated under the Companies Acts. It was incorporated in 2022. It provides healthcare support to vulnerable adults in their own home. It has about twenty staff of whom four are in the administration side of the business. It has two directors Dr Miriam Onochie and Mr David Onochie. Mr Onochie is described in the respondent's documentation as a Scottish Solicitor.

13. The claimant is Nigerian. In order to work in the UK she requires an appropriate visa.

14. She commenced employment with the respondent on or around 15 March 2023. At that time she was a student at Robert Gordon's University, Aberdeen undergoing a course in care work, and worked for the

respondent under a student visa. That visa entitled her to work but restricted her to 20 hours per week during term time.

Background

15. Funding for the work carried out by the respondent is provided by Aberdeen City Council ("the Council"). The arrangements for that funding can change at short notice, for example if someone who had been cared for at home requires to go to hospital for a period, or permanently. Audits of the respondent's records are carried out by the Council regularly.

16. The respondent is regulated by the Care Inspectorate. The respondent requires to be registered and licenced to provide such care. If the care does not meet the standard required, the licence can be revoked. When providing care to service users as vulnerable adults the respondent requires to comply with statutory regulation in relation to safeguarding. Those carrying out the care work are regulated by the Scottish Social Services Council ("SSSC").

17. The records maintained by the respondent of the care given to service users require to be accurate. The respondent uses an app to maintain much of the record keeping, with is called OnCare. The care worker who provides care records each visit on that app. If a visit is cancelled by the service user or a member of the family of that service user, that requires to be entered on the app, which then flags that up for the respondent to check that the cancellation is appropriate and not a safeguarding issue. Where a visit take place the details are recorded, which include the time the visit started and ended, how the service user appeared, what care was given, what medication was given, and other details. Those details require to be accurately recorded by the care worker concerned. They are capable of being reviewed by the respondent, Council, Care Inspectorate and SSSC.

Work documents

18. The respondent issued the claimant an offer letter on 16 March 2023 offering her the post of Home Care Support Worker. It had a blank for the number of hours of work per week, and referred to rates for pay of £10.50 or £12 per hour.

19. The claimant was provided with a statement of main terms of employment at the time of the offer letter. It did not state a commencement date. It referred to a rate of pay of £10.50 to £12 per hour and to normal working hours of 8am to 1pm, 4pm to 9pm and normal working day of Monday to Sunday. It did not state that hours were variable, and in a section as to full or part time working where there was a choice of yes or no that choice had not been indicated. Payment was to be made weekly. Disciplinary rules and an appeals procedure were stated to be contained in the staff

handbook. The claimant acknowledged receipt of the statement in writing on 15 March 2023.

20. The respondent's intention was that £10.50 per week was paid for non-complex care on week days, and that £12 per week was paid for weekend or on call period, co-ordinating a work audit care plan or for additional care.

21. The staff handbook had a section for disciplinary matters. It had provision for suspension on full pay. It referred to disciplinary allegations and a hearing. It referred to sending a letter to the claimant with details including the right to be accompanied. No less than 5 days' notice would be given unless otherwise agreed. There was also reference to sending "relevant documentation" to the employee in advance of the hearing, including the "investigation report, statements and supplementary evidence being referred to." Outcomes included a formal warning, final written warning, and dismissal. In each case there was reference to the possibility of appeal being set out in the outcome letter. The list of gross misconduct offences included "deliberate falsification of any records."

22. The claimant underwent an induction period with the respondent, and commenced to carry out work on 27 March 2023. The training she received included working as a shadow of another worker during the week commencing 3 April 2023.

23. After the claimant had commenced employment her course at University finished. The claimant could then apply for a Postgraduate visa or a Skilled Worker Visa in order to remain in the UK. The former was for 2 years, the latter for 5 years and had the potential for settled status, including for her family but required sponsorship from an employer She raised with the respondent whether they would sponsor her for employment for the purposes of the skilled worker visa. They agreed to do so. Documentation was completed for that purpose.

24. In about June 2023 the respondent sent the claimant a link for applying in relation to skilled worker status. An application form was completed in relation to the claimant.

25. The UK Visas and Immigration department of the Home Office issued a Certificate of Sponsorship in relation to the parties, with the respondent as the sponsor and claimant as a skilled worker. It was effective on 17 July 2023 for a period of five years. The hours of work on that certificate were stated to be 39 per week, which guidance indicated was an average. The gross annual salary was stated as £22,000. The restriction on hours that applied to the student visa no longer applied.

26. One aspect of the sponsorship of the claimant was that a form of deposit was required to be paid by the employer to the Home Office in relation to the claimant and three of her children. The sum required was about £30,000. The respondent asked the claimant to contribute the sum of

£8,000 towards that deposit. The claimant made that payment to the respondent on the understanding both had that it would be repaid when her employment ended.

27. No amendment to the statement of main terms of employment was provided to the claimant at the time of the Certificate of Sponsorship being issued to her.

28. Immigration Rules issued by the Home Office had provisions for the claimant's skilled worker status which included that the applicant's salary equal or exceed each of three criteria, the first being a salary of £20, 350 per year for the period up to 11 July 2023 and £20,960 per year for the period from 12 July 2023 onwards. The national minimum wage applied. Initially in order to meet the minimum salary requirement working an average of 39 hours per week was required. That reduced to 37.5 hours per week when the minimum salary requirement increased to £20,960.

29. Guidance stated that reduction of salary required to be intimated to the Home Office, one circumstance being where "the reduction coincides with a temporary reduction in the worker's hours, or a phased return to work, for health reasons. Provided

- This is supported by an occupational health assessment, and ….."

30. Throughout her employment with the respondent the claimant was paid on the basis of the hours that she worked. The number of hours per week varied. The standard rate of pay for the claimant increased to £10.90 per hour [the date of that increase was not given in evidence]. Time for each visit was calculated on the basis of blocks of time of 30 minutes. Rotas were provided to the claimant for each day of work detailing which service users to visit and when. On occasion the claimant sought to change arrangements proposed for her, and discussions took place by WhatsApp in relation to the same.

31. For a majority of the weeks of work the claimant was paid for less than 39 hours per week. For a minority of weeks the claimant was paid for more than 39 hours per week.

32. The claimant did not raise a grievance in writing, or in writing informally, as to any underpayment of her pay when paid below 39 hours per week either in individual weeks or as an average during her employment.

33. The claimant asked about how mileage was paid for in April 2023. Initially the claimant was paid a set amount of £4 per week. At that stage she was visiting one service user. On 27 April 2023 the respondent sent messages to the claimant to explain about how to complete a mileage sheet. Detailed correspondence between them continued into May 2023, with the respondent sending examples of mileage sheets.

34. An issue over payments for mileage was raised by the claimant in about July 2023. The respondent sent the claimant a mileage form to complete, the claimant did so, and a payment of about £50 was made to the claimant to increase the sums that had to date been paid for mileage on estimates. From and after July 2023 the mileage payment was calculated automatically by OnCare using the addresses for service users on the rota. The journey to the first service user of the day, and from the last one, was not paid. The arrangements conformed with industry practice and HMRC guidelines. The parties had further messages exchanged between them as to mileage in August 2023 and April 2024.

35. The claimant made various requests for rota arrangements to be changed during her employment. One was made in June 2023 and referred to her not wishing to work with service users who had cats or dogs as pets as she was frightened of them. Another was a request not to attend a particular area because of the distance to travel. Others related to issues such as her childcare arrangements.

36. The messages between the parties included exchanges in July 2023. The claimant raised an issue over whether 35 hours per week was sufficient for the terms of her visa. The respondent replied “Yes at your current hourly rate 35hrs meets the salary threshold for your sponsored occupation code so that’s fine.” [typographical errors corrected]. That was a reference to the minimum salary divided by the hourly rate and converted into hours per week.

37. On 21 August 2023 when the claimant asked about remaining on certain rounds for her own flexibility the respondent replied stating that it was not for the claimant to decide, and that it was the respondent’s responsibility to make sure that she had “enough hours per week.”

38. On 11 October 2023 the claimant received a final written warning. It was to remain on her file for 12 months, and there was reference to a right of appeal.

2024

39. On 12 February 2024 the claimant was at hospital for surgery. She exchanged messages with the respondent. The respondent removed her from a WhatsApp group of staff that day. The claimant was concerned that her employment had been terminated because of that.

40. On 9 May 2024 at the claimant’s request in relation to an issue over an Immigration Health Surcharge the respondent issued a letter of confirmation of employment. It stated that the post was a permanent contract of 39 hours per week at the rate of £12 to £12.50 per hour. It referred to her statement of terms of employment.

41. On 7 November 2024 the claimant raised whether she had been properly paid. She spoke with Mr Onochie, and he asked her to email with further details. Messages were exchanged. Mr Onochie said that the claimant had been overpaid, and that they would stop adding hours as “no one acknowledges” and all that had been done had not been appreciated. The claimant replied “I’m sorry I missed [sic] calclulated”. She later emailed to say that she had spoken to Dr Onochie and repeated that she had miscalculated.

42. A further such letter was issued by the respondent on 14 November 2024, following a request by the claimant to allow her to go to Paris on holiday. It referred to her role as Senior Care Support Worker, that her employment had started on 3 April 2023, that she was on a permanent full time contract and stated that “her earnings are in the region of £22,000 per annum”.

First incident

43. On 15 May 2025, an incident arose in respect of service user JB, concerning the accuracy and/or content of the claimant’s recording of care. JB is an elderly male who lives at home with his wife who has dementia. His wife was formerly a nurse. JB is bed bound. The care arrangement is for visits at about 6.30am, 12.30pm and 6.30pm. For a period of about three months JB’s wife had cancelled care visits which were to be made at about 12.30pm and required two care workers to attend. Those doing so worked in two shifts on a form of back-to-back arrangement, such that there were four workers involved in providing the care. Those workers decided not to attend the home of JB for the 12.30 visit. That was not recorded on OnCare as a cancellation, but as if the visit had taken place.

44. The matter came to the attention of the respondent when JB’s son spoke to the respondent and said that the carers had stopped coming at lunchtime a long time ago, but that he wished them to do so the following day to move JB into a chair so that he could shave him. Dr Onochie checked the OnCare records which appeared to show two carers attending for visits around 12.30 from February 2025 onwards. One of those carers was the claimant. She was in a group of four carers who attended to JB at lunchtimes in various combinations of two carers according to those records.

45. Records of attendance on JB on OnCare showed that on 24 and 28 February, and 5, 6, 8, 9 12 and 13 March 2025 the claimant’s record of when she was visiting JB did not accord with those records of the second carer also said to have attended that day. GPS data for the second carer [not the claimant] indicated that the entries had been made over 1km away from the home of JB on occasion. As an exemplar on 6 March 2025 the claimant’s logged time visiting JB was 12.47 to 1.02pm, whereas that of her colleague was 12.04 to 12.25.

46. Dr Onochie organised a call by WhatsApp for all of the four carers together when she raised the claims made by JB'S son. It took place on 16 May 2025. Later that day a message was posted to a WhatsApp group for staff. It referred to workers not attending scheduled care visits, but fraudulently having logged them as completed. It stated "Let this serve as a final warning to all: All visits will be investigated to identify falsified logs….[the remainder of the message was not in the documents before the Tribunal]".

47. An investigation was conducted in mid May 2023. Dr Onochie spoke with all four of the carers involved individually. One of them was the claimant. No notes of those discussions were taken, nor was a statement of each person taken. The claimant's colleagues said that the workers had agreed that one person would attend and the other not do so, especially if they were running late.

48. Dr Onochie prepared an Internal Investigation Record dated 23 May 2025. It included the following:

> "The 4 carers involved in the collusion confirmed they did not attend most of the visits logged as completed. They stated the agreement to stop attending was due to the service user's wife telling them to go because he is sleeping and they should not move him every time they turn up for the visit. Precious denied not attending the visits and stated they agreed to cover for each other if one of them has other personal commitments, hence a visit which required attendance of two carers was often completed by one carer who then logs the visit as completed by two. Precious' version was not collaborated [sic] by the other 3 carers."

49. The outcome was recorded as formal disciplinary hearing and policy revision/staff retraining.

50. On 4 June 2025 Mr Onochie messaged the claimant asking for availability for a discussion regarding JB. The claimant replied. On 7 June 2025 Mr Onochie messaged the claimant to say that "you have a pending disciplinary on the 10th". The claimant replied "Regarding [name redacted]". Mr Onochie stated later that day "A report was made regarding 4 people including you on the 16th of May…..that you people miss out his afternoon visits occasionally". The claimant replied that she was confused.

51. A disciplinary meeting with the claimant took place on 10 June 2025. A message was sent to the claimant on 10 June 2025 which stated that the outcome of the disciplinary meeting was a written warning in place from 16 May 2025 to 16 November 2025. The claimant replied asking that it not be issued and assuring that it would not happen again.

Second incident

52. On 15 June 2025 the claimant visited another service user, CP. CP is female, elderly and vulnerable. The family of CP were present then and the claimant was told that the visit was not required that day or the following day. She logged on OnCare that she had not been able to deliver care.

53. On 16 June 2025 the claimant was on the rota to visit CP.. On the OnCare system she recorded both a morning visit and a night visit. She stated that the service user was “cheerful” on both occasions. The claimant had not attended for a visit in the morning, but had recorded having done so between 10.19 and 11.15, and that she had given care including “supported with undressing and dressing into clean clothes”. She had not done so.

54. For the evening visit that day the claimant had forgotten that it had been cancelled, but had driven to the home of CP. She rang the buzzer on the door then returned to her car. She did not enter the property. She recorded having arrived at 21.31 and left at 21.32. She recorded for personal care “night wear on”, for toiled assistance “pad changed” for companionship/respite care “had chat” and housework “work areas tidied”. None of those matters had been carried out by the claimant. The claimant made the entry to ensure that she obtained payment for mileage for travelling to CP’s house.

55. The family of CP raised with the respondent a failure to deliver care by message late that same evening. The respondent checked the OnCare records. They noted that the claimant had been on the rota for both visits, and had recorded them as if they had taken place.

56. The respondent raised the allegation of falsifying the morning and evening records for CP during a telephone conversation with the claimant and later exchange of WhatsApp messages on 17 June 2025. The claimant said that she drove to CP’s house on 16 June 2025 “as I totally forgot the visit was cancelled”. She did not say that she had attended to give care for the morning visit that day. The claimant said “I agreed is a total error, I’m very sorry.”

Disciplinary Process

57. The formal written warning from the hearing on 10 June 2025 in respect of the recording of the care for JB was sent to the claimant on 17 June 2025 together with a copy of the Greymate Staff Handbook. It referred to a formal warning. A formal warning was also issued to the other three staff involved in relation to JB.

58. The letter to the claimant stated, inter alia,

> "During this meeting you admitted to erroneously completing the OnCare record. You stated that you recorded personally administering care when, in fact, the client's wife had provided the care. You further acknowledged that the correct procedure would have been to indicate "unable to deliver care" in the system. You also admitted to an arrangement with your colleague where only 1 staff attends the afternoon visit instead of 2 staff so that the other can attend to their child's swimming lessons.
>
> You were made aware that such practices constitute a serious offence, as it involves the falsification of official company records."

59. It referred to a "formal warning letter" being placed on her file for a period of six months. It did not refer to a right of appeal.

60. On 17 June 2025 the claimant was suspended on full pay pending an investigation into the allegations in relation to CP. It was confirmed by letter from Mr Onochie of that date, sent by WhatsApp message to the claimant. It referred to allegations of falsification of client visit records. It stated that during the investigation the claimant was prohibited from attending the respondent's premises, or contacting the respondent's employees or clients.

61. The claimant's access to the respondent's WhatsApp group for employees was suspended on that date.

62. Dr Onochie carried out an investigation into the CP allegation, and prepared an Internal Investigation Record. She dated it 24 June 2025. The report indicated that OnCare log had recorded visits in the morning and evening, and that the claimant had confirmed that she "did not turn up for the morning visit". It further noted that CP's daughter confirmed by email that visits on 15 June 2025 were cancelled and that CP's other daughter had left on that afternoon, such that she was not present on 16 June 2025. It stated that "Precious admitted both in writing through WhatsApp chat and verbally in a phone call that she did not complete the visits and that the visit report she logged with tasks completed are false." It had as the outcome that there should be a disciplinary hearing and referral to the SSSC.

63. The OnCare record for CP for 15 June 2025 noted a check in by the claimant at 23.33 and check out at 23.35. It noted that CP seemed cheerful, and that "unable to deliver care" was selected, as CP's "daughter was around with her family."

64. A letter inviting the claimant to disciplinary hearing was issued on 23 June 2025. It gave as reasons for that meeting:

> "1. That you falsified a visit record for [CP] on 16th June 2025, including documentation of tasks not carried out.

> 2. That you claimed the visit was cancelled by a family member, but no record or evidence of cancellation exists.
>
> 3. That this follows a pattern of similar misconduct currently under which you got a formal warning letter."

65. The letter stated her right to attend with a representative and opportunity to send in any additional evidence or a written statement in advance. It did not warn her of the possibility of dismissal. It did not have attached to it any documents.

66. The disciplinary hearing took place by Teams on the 1 July 2025, with Mr David Onochi and Dr Miriam Onochie participating in the call. The claimant was not accompanied. The claimant stated [in summary] that the family of CP had told her on 15 June 2025 that care was not required that day or the following day, a Monday. She had recorded unable to give care on 15 June 2025. On 16 June 2025 she had forgotten that she was not required to attend to CP and had attended the property of CP in the morning. She had rung the buzzer on the door. She had recalled that care was not required. She had entered the log entry because she was "already there" and if she recorded that she had been unable to deliver care she would not be paid mileage.

67. Dr Onochie queried why she thought that she would not be paid mileage, and the claimant stated [in summary] that she assumed that was the case. The evening visit was then raised with the claimant, which she did not directly respond to.

68. The claimant sent an email to Mr Onochie on 4 July 2025 stated "I have [sic] so sorry for all the errors. I assure you it won't happened again. I have learned from my mistakes please." He replied stating that the outcome would be intimated to her on Monday as had been intimated at the meeting.

Dismissal

69. The claimant was dismissed with effect from 7 July 2025 by letter sent to her on that date. It identified two specific reasons forming the basis of termination:

    (1) Falsification of Records and Collusion relating to JB (16 May 2025), treated as a formal warning; and

    (2) Repeat Offending: Falsification of Records relating to CP (16 June 2025), treated which was as gross misconduct and the principal reason for summary dismissal.

70. The letter of dismissal did not refer to the opportunity to appeal. A few days after the dismissal the claimant sent a letter to the respondent

refuting the allegations made against her, referring to JB stating that she was on leave on 16 May 2025, and for CP that “I did attend the morning visit and delivered the required care to [CP]. After the visit her daughter personally requested that I do not return for the evening visit, stating she would attend to the evening care tasks herself. I acted in good faith and documented the visit as instructed as per the guidance previously provided by the company, which states that all client interactions, including cancellations, should be noted in OnCare…..I demand a written retraction of the allegations or, at the very least, a formal review of the disciplinary outcome with independent oversight.”

71. Mr Onochie replied on 17 September 2025 stating that all payments due had been paid. He did not specifically respond to the reference to retraction or review.

SSSC

72. The Respondent submitted a referral regarding the Claimant to the SSSC [which was not before the Tribunal, but had been submitted shortly after the dismissal] identifying four allegations:

• Grounds 1 and 2 arising from the JB and CP incidents;

• Ground 3 alleging that the combined conduct amounted to dishonesty;

• Ground 4 relating to a medication error involving service user SM.

73. The SSSC by letter to the respondent dated 4 February 2026 found that the claimant was not impaired in her practice and it took no further action. The SSSC also found that the respondent’s decision to dismiss was “not a wholly unreasonable position”, and that “taking the second employer’s reference into consideration, most reasonable people would be content to give the worker the benefit of the doubt on this occasion…” The second employer is a reference to the employment she obtained with effect from 1 January 2026.

Losses

74. The claimant’s gross earnings in the tax year to 5 April 2024 were £17,183.21. The claimant’s gross earnings in the tax year to 5 April 2025 were £20,730.25. The claimant’s average pay in the period of twelve weeks prior to her dismissal was the sum of £513 per week gross, and £433 per week net. The respondent paid contributions for pension of 3% of her wages at that time. The claimant’s pay varied in the payslips she received dated 11 April 2025 onwards. The rate of pay was no less than £13 per hour. The hours recorded in that period were as follows:

Date	**Paid hours**

11//4	31
18/4	35
25/4	33
2/5	37.5
9/5	63.5
16/5	43.75
23/5	43.25
30/5	41.75
6/6	33.5
13/6	33.75
20/6	27
27.6	8.5
4/7	35
11/7	27 (suspended)
18/7	27 (suspended)

75. The claimant sought work with other providers after her dismissal. She found difficulty in doing so as the Certificate of Sponsorship applied to the respondent. She received a letter from the Home Office in or around September 2025 (which was not before the Tribunal) giving her notice of a requirement to leave the UK within 60 days. She commenced a period of employment with Healthright in late September 2025 but that did not continue as they did not wish to act as sponsor for her. The claimant found employment with Norvic Healthcare (Anglia) Ltd in Norwich with effect from 1 January 2026. Her income from that employer is greater than that with the respondent.

76. The claimant did not receive benefits during the period of not being employed.

77. The claimant’s contribution to the deposit was repaid to her by the respondent after her dismissal on 15 July 2025.

Early Conciliation

78. The claimant commenced early conciliation on 8 September 2025. The Certificate was issued on 16 October 2025. This Claim was presented on 14 November 2025.

Submissions

79. Both parties very helpfully had prepared written submissions, which were delivered to me when the evidence concluded and were both of a high standard. I am grateful to both for the industry clearly involved in preparing them, and have taken all that was said in them into account. The respondent also sent a supplementary document in relation to losses, which I also took into account.

The law

(i) The reason for dismissal

80. It is for the respondent to prove the reason for a dismissal under section 98(1) and (2) of the Employment Rights Act 1996 ("the Act"). Fair reasons include conduct. In ***Abernethy v Mott Hay and Anderson [1974] ICR 323***, the following guidance was given by Lord Justice Cairns:

> "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

81. These words were approved by the House of Lords in ***W Devis & Sons Ltd v Atkins [1977] AC 931***. In ***Beatt v Croydon Health Services NHS Trust [2017] IRLR 748,*** Lord Justice Underhill observed that Lord Justice Cairns' precise wording was directed to the particular issue before that court, and it may not be perfectly apt in every case. However, he stated that the essential point is that the 'reason' for a dismissal connotes the factor or factors operating on the mind of the decision-maker which caused him or her to take that decision.

(ii) Fairness

82. If the reason for dismissal is one that is potentially fair, the issue of whether it is fair or not is determined under section 98(4) of the Act which states that it

> "(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating [that reason] as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case."

83. The terms of sub-section (4) were examined by the Supreme Court in ***Reilly v Sandwell Metropolitan Borough Council [2018] UKSC 16***. In particular the Supreme Court considered whether the test laid down in

BHS v Burchell [1978] IRLR 379 remained applicable. Lord Wilson considered that no harm had been done to the application of the test in section 98(4) by the principles in that case, although it had not concerned that provision. He concluded that the test was consistent with the statutory provision. Lady Hale concluded that that case was not the one to review that line of authority, and that Tribunals remained bound by it.

84. The ***Burchell*** test remains authoritative guidance for cases of dismissal on the ground of conduct in circumstances such as the present. It has three elements

    (i) Did the respondent have in fact a belief as to conduct?

    (ii) Was that belief reasonable?

    (iii) Was it based on a reasonable investigation?

85. It is supplemented by ***Iceland Frozen Foods Ltd v Jones [1982] ICR 432*** which included the following summary:

> "in judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what the right course to adopt for that of the employer;
>
> in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;
>
> the function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

86. Lord Bridge in ***Polkey v AE Dayton Services [1988] ICR 142***, a House of Lords decision, said this after referring to the employer establishing potentially fair reasons for dismissal, including that of misconduct:

> "in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and hears whatever the employee wishes to say in his defence or in explanation or mitigation."

87. Guidance on the extent of an investigation was given by the EAT in ***ILEA v Gravett 1988 IRLR 497****,* that "at one extreme there will be cases where the employee is virtually caught in the act and at the other there will be situations where the issue is one of pure inference. As the scale moves towards the latter end, so the amount of inquiry and investigation which

may be required, including the questioning of the employee, is likely to increase."

88. The manner in which the Employment Tribunal should approach the determination of the fairness or otherwise of a dismissal under s 98(4) was considered and the law summarised by the Court of Appeal in ***Tayeh v Barchester Healthcare Ltd [2013] IRLR 387***. What is required is consideration of that which is reasonable in all the circumstances, as explained in ***Shrestha v Genesis Housing Association Ltd [2015] IRLR 399.*** In ***Sharkey v Lloyds Bank plc UKEATS/0005/15*** the EAT explained further that

> "…procedure does not sit in a vacuum to be assessed separately. It is an integral part of the question whether there has been a reasonable investigation that substance and procedure run together."

89. The focus is on the evidence before the employer at the time of the decision to dismiss, rather than on the evidence before the Tribunal: ***London Ambulance Service v Small [2009] IRLR 563***.

90. The band of reasonable responses has also been held in ***Sainsburys plc v Hitt [2003] IRLR 223*** to apply to all aspects of the disciplinary procedure.

91. Although there is an onus on the employer to prove the reason for dismissal, there is no onus on either party to prove fairness or unfairness.

92. The Tribunal is required to take into account the terms of the ACAS Code of Practice on Disciplinary and Grievance Procedures under section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992. It includes the following provisions:

> "4. Employers should carry out any necessary investigations to establish the facts of the case…..
>
> 9. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification…
>
> 12. …….. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be

> given an opportunity to raise points about any information provided by witnesses. …….
>
> 23. Some acts ,termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct….
>
> **Provide employees with an opportunity to appeal**
>
> **….**
>
> 27 The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case."

(iii) Remedy

93. In the event of a finding of unfair dismissal, the Tribunal requires to consider firstly whether to make an order for re-instatement under section 113 of the Employment Rights Act 1996. The matter is further considered under section 116.

94. The tribunal requires also to consider a basic and compensatory award if no order of re-instatement or re-engagement is made, which may be made under sections 119 and 122 of the Employment Rights Act 1996, the latter reflecting the losses sustained by the claimant as a result of the dismissal. The amount of the compensatory award is determined under section 123 and is "such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer". The Tribunal may separately reduce the basic and compensatory awards under sections 122(2) and 123(6) of the Act respectively in the event of contributory conduct by the claimant. The test for each is not identical.

95. Guidance on the amount of compensation was given in ***Norton Tool Co Ltd v Tewson [1972] IRLR 86.*** When assessing the amount of loss, account should be taken of the requirement to mitigate loss. The tribunal should decide when the employee would have found work and take into account any income which the tribunal then considers she would have received from that other source (***Peara v Enderlin Ltd [1979] ICR 804*; *Gardiner-Hill v Roland Berger Technics Ltd [1982] IRLR 498*)**. The issues that arise are: (a) what steps were reasonable for the claimant to have to take to mitigate their loss; (b) did the claimant take reasonable steps to mitigate their loss; and (c) to what extent would the claimant have mitigated their loss had they taken those steps? That approach was

confirmed by the EAT in Scotland in ***Hakim v Scottish Trades Unions Congress UKEATS/0047/19.***

96. In respect of the assessment of the compensatory award it may be appropriate to make a deduction under the principle derived from the case of ***Polkey,*** if it is held that the dismissal was procedurally unfair but that a fair dismissal would have taken place had the procedure followed been fair. That was considered in ***Silifant v Powell 1983 IRLR 91***, and in ***Software 2000 Ltd v Andrews 2007 IRLR 568,*** although the latter case was decided on the statutory dismissal procedures that were later repealed.

97. In ***Nelson v BBC (No. 2) [1979] IRLR 346*** it was held that in order for there to be contribution the conduct required to be culpable or blameworthy and included "perverse, foolish or if I may use a colloquialism, bloody minded as well as some, but not all, sorts of unreasonable conduct." Guidance on the assessment of contribution was also given by the Court of Appeal in ***Hollier v Plysu Ltd [1983] IRLR 260***, which referred to taking a broad, common sense view of the situation, in deciding what part the claimant's conduct played in the dismissal. At the EAT level the Tribunal proposed contribution levels of 100%, 75%, 50% and 25%. That was not however specifically endorsed by the Court of Appeal. Guidance on the process to follow was given in ***Steen v ASP Packaging Ltd UKEAT/023/13.)***

98. If a contribution deduction is made as well as one for ***Polkey*** the Tribunal should consider whether there is an overlap between them and adjust accordingly (***Lenlyn UK Ltd v Kular UKEAT/0108/16).***

99. If there is a breach of the ACAS Code the Tribunal may consider an increase or reduction in compensation. It is found in section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, as follows:

> "**207A Effect of failure to comply with Code: adjustment of awards**
>
> (1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.
>
> (2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
>
> (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
>
> (b) the employer has failed to comply with that Code in relation to that matter, and
>
> (c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employee has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.

(4) In subsections (2) and (3), "relevant Code of Practice" means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes………"

(iii) Unauthorised deductions from wages and breach of contract

100. The provisions as to unauthorised deductions from wages are found in Part II of the Act, particularly sections 13, 23 and 27. The wages require to be "payable" to the worker. That connotes some form of legal obligation to do so, which does not require to be founded only on the contract of employment.

101. The Tribunal has jurisdiction over certain aspects of breach of contract claims by virtue of the Employment Tribunals (Extension of Jurisdiction) (Scotland) Order 1994.

102. Contractual interpretation is a matter on which there are both Inner House and Supreme Court authorities. The position was summarised in the Outer House in ***HFD Glasgow 3 Ltd v Student Loans Co Ltd [2025] CSOH 101*** which helpfully set out the principles of contractual interpretation as the parties had agreed applied, which were said to be overlapping, as follows:

"1. Contractual interpretation is a unitary and iterative process.

2. What one is looking for is what a reasonable person having all of the background knowledge that would have been available to the parties would have understood the words of the contract to mean.

> 3. It involves looking for the objective meaning of the language of a contract, in its documentary, factual, and commercial context.
>
> 4. The court should give effect to the natural and ordinary meaning of the words.
>
> 5. The contract requires to be read as a whole.
>
> 6. If the language of a contract contains no ambiguity, the court must apply it and should guard against any temptation to rewrite what some might perceive as a bad bargain for one side or the other.
>
> 7. If the language of a contract does contain some form of ambiguity, the court can prefer the interpretation which most accords with business common sense or can test any competing constructions with reference to business common sense."

103. These comments are in the context of commercial litigation, but also of there being a written document comprising the terms of the contract. Contracts of employment which are litigated in the Employment Tribunal are potentially at least different, particularly where there is an inequality of bargaining position but also where the contractual documentation is less clear. A statement of particulars of employment is not a contract of employment but can be evidence of its terms, as can other documents.

Discussion

104. I was satisfied that the claim was within the jurisdiction of the Tribunal. It was for unfair dismissal and sums said not to have been paid when due. I took into account that the sole witness for the respondent was Dr Onochie, although Mr David Onochie was present throughout the hearing and had authored several of the documents put in evidence, and was present at meetings or discussions with the claimant. Before me was an automatically generated transcript of the discussion between the parties at the disciplinary hearing that led to dismissal. It was not fully accurate, but there was no other note or minute of the hearing, and not a great deal was said about that hearing in evidence, although there was some from both witnesses. I have had to make the best of the position in light of that.

105. Where there was a factual dispute between the evidence of the claimant and Dr Onochie I generally preferred the evidence of Dr Onochie. That is firstly as the claimant has I found falsified records on the occasions set out above. Not only is that a serious matter, but falsifying records in such circumstances of the care of elderly and vulnerable persons is not the act of a credible and reliable witness in my view.

106. I did not accept her evidence as to the allegations concerning JB. Her explanation for different timings recorded for visits by the two carers she

said were both present at the same time, one of who was her, was that there could be no internet coverage or a phone not working. It seemed to me that that might possibly occur once, but for it to occur so often with different carers on different dates and with such different timings was most unlikely. More likely was that the group of four carers had agreed matters between themselves, as three of them at least had admitted to the respondent. It seemed to me that the claimant’s evidence on this was not credible. I also did not accept her argument that as she had not been on the rota on 15 May 2025 she should not have been involved in matters, and they had been fabricated against her. It seems to me that Dr Onochie’s evidence of what JB’s son had said to her, of staff not attending for lunchtimes for a long time, is supported by the fact that almost immediately afterwards a call was convened of all four carers involved. If the complaint was only about 15 May 2025, as the claimant alleged, it would not have made sense to involve other than the carers on that day. It is also in my view not credible that Dr Onochie only spoke about that single day, as the claimant alleged, when the written record of the message sent to the staff afterwards is more general. In short I considered that the claimant was seeking to find a way to explain her role in matters, and deflecting attention from the earlier allegations to one only for the day of the matter being disclosed.

107. Secondly the answers the claimant gave in relation to the allegations of falsifying records as to CP were I considered obviously wrong. There was a clear disparity between what the claimant said both at the disciplinary hearing and a message on 17 June 2025, and her evidence before me. She was insistent before me that she had attended and given care on the morning of 16 June 2025, but when it was alleged that she had not in a message on 17 June 2025, both for the morning and evening, she had not said in reply that she had been present in the morning. Her answers in the disciplinary hearing did not suggest any attendance in the morning. When asked about that in cross examination she said that she had been confused. It did not appear to me from the evidence of that hearing that she was. In one section she spoke for over four minutes without interruption explaining her position. I concluded that her evidence was neither credible nor reliable in relation to that, and that in relation to CP she had falsified records for the morning visit on 16 June 2025. It did not occur.

108. So far as the evening attendance is concerned, again the evidence was entirely inconsistent. Initially she said in evidence that she had not entered the property. Later she said that she had, and had spoken to the service user. She argued that she had given some aspects of care because the daughter said that she had done so. But that is not care by the carer, and did not appear to me credible or reliable evidence. It was not consistent with the message from CP ‘s daughter which was that the other daughter had left on 15 June 2025. It seems to me that the email from CP’s daughter

was a straightforward explanation of events from their perspective, and not likely to have been fabricated or amended from what had taken place and when. If either daughter had been present as the claimant alleges it seems to me more likely that the email would have said so, and would not have been in the terms that it was. From all of the evidence before me I concluded that what the claimant alleged took place that day had not. The record of that evening visit that day she had falsified.

109. Thirdly whilst she gave evidence of her perception of abusive conduct and a form of bullying behaviour, which appeared to me an attempt to explain lack of challenges or why her conduct had been as it was, and there was some basis for an element of that from the evidence before me, I concluded that it was exaggerated. I do appreciate that being a foreign worker under a certificate of sponsorship can put that worker in a vulnerable position, but it was notable that she did not raise any issue in writing at the time, but was prepared to raise other issues. I did not accept the argument that she had had to enter the records for 16 June 2025 as she had in order to claim mileage, because of what Dr Onochie had told her. At the disciplinary hearing she said twice that it was an “assumption”. But in my view it was an attempt to explain why the records had been falsified to avoid blame for that. It was also notable that for 15 June 2025 the claimant had correctly recorded unable to deliver care.

110. Fourthly there were a number of aspects of the oral evidence of the claimant which I consider were contradicted by written evidence. They included evidence of reasonable conversations between the claimant and Dr Onochie in the period after October 2023, which is when the claimant said that she was receiving abusive treatment; the claimant accepting that after the alleged abusive behaviours she asked about the respondent employing her friends and family, which I regard as inconsistent with such allegations; the claimant alleging that she had not had a period of shadowing when the payslips for the period 3 – 9 April 2023 has a specific entry for that, at £84; the claimant alleging that a payment in that payslip for mileage was an error when the same figure was used in the preceding and succeeding payslips for a period, when the claimant had one service user to visit; and the claimant alleging that the respondent did not respond to questions about mileage when there are several pages of messages in relation to mileage where the respondent does precisely that – gives guidance and assistance including an example mileage sheet and other advisory comments which the claimant maintained had not happened even in the face of those documents being raised with her. She also alleged that she had appealed the 2013 final written warning, but that was not put in cross examination nor was the email she said had been sent provided in the documents before me. She said that she had verbally raised the issue of not being paid for 39 hours with Mr Onochie, but that was not something she referred to in any of the messages, and it seems

to me contradicted by the messages above including those about the 35 hour week sufficing for the minimum salary.

111. Considering all of the evidence I heard, including the written materials, it seemed to me that a material part of the claimant's evidence was given in an effort to succeed with her claim, and that at times it was neither credible nor reliable.

112. I turn to address the claims, and shall deal with each issue in turn:

(i) What was the reason or principal reason for the dismissal?

113. I find that conduct was the sole reason for dismissal. It was clearly established from the evidence of Dr Onochie, which I accepted on this point, and the written documentation, that it was the belief that the claimant had falsified records. The suggestion that the reason had been fabricated because of a falling out following challenges over mileage and pay, and the sponsorship payment, I reject. In this regard I accepted Dr Onochie's evidence.

114. The claimant argued that her appraisals changed from positive ones to there being a final written warning in October 2023. The basis for that warning appears from its terms to be the claimant not working when required, which was said to be contrary to the staff handbook. The claimant was told of her right of appeal, but did not exercise that (she said in oral evidence that she had sent an appeal email but that was not in the documents before me, was not put in cross examination, and in light of all of the evidence was not I considered credible or reliable evidence). I did not consider that there had been the change in treatment alleged, and in any event there was a long gap in time until the events in June 2025.

If potentially a fair reason under sections 98(1) and (2), was it fair or unfair under section 98(4) of the Employment Rights Act 1996 ("the Act")?

115. Conduct is a potentially fair reason for dismissal. I concluded that the dismissal was not fair for the following reasons. They are in many respects sufficient individually for a conclusion of unfairness, but collectively the position is I consider all the greater:

(a) The investigation was not a full or fair one, using Lord Bridge's words quoted above. What had happened and why was investigated in a limited manner. No written witness statements were taken. The investigation report for each of two matters is very brief at best. For the PB matter written records of when the claimant attended that service user, what records of care were prepared by her, and in what respect they were deficient which were before me were not provided to her or considered in detail during the hearing. Her own involvement, and its extent, she had disputed. For CP there was a similar Report but it was brief and did not address the position in detail as would be expected of a reasonable employer. Again relevant records which existed and were before me were not provided to the claimant.

(b) There was no letter to invite the claimant to a disciplinary meeting for the JB allegations, setting out for example her right to be accompanied and details of the allegations made. That was required by the respondent's own procedure, but also that form of process is within the ACAS Code. The claimant simply received a message by WhatsApp with limited details of what it was for, and without referencing the right to be accompanied. No documents were sent to the claimant, although they existed including the report, OnCare records, and rota records. There was a delay of seven days before the written record of that warning was provided, and it did not refer to a right of appeal but clearly ought to have done so.

(c) The letter calling the claimant to the disciplinary hearing for the CP allegation did not include the material documents which the respondent had in its possession and were germane to the points being addressed as noted above, in particular the entries from OnCare relevant to the issues on 15 and 16 June 2025, the emails with the family of CP, and the Internal investigation report. These are matters that I consider obviously important for a fair hearing, particularly if not provided to the claimant at the investigation stage, and ought to have been provided having regard both to the respondent's own procedure and separately to the ACAS Code at paragraph 9. No reasonable employer in these circumstances would have failed to do so in my opinion.

(d) Dr Onochie was investigator and, with Mr Onochie, the decision maker. Whilst it is a small company, it was obvious that there was an issue that could lead to dismissal, and that an appeal might be required both under the respondent's own procedure and the ACAS Code. It would have been possible to have had the investigation undertaken by one person, such as one of those in an administrative role, either of Dr or Mr Onochie then conduct the disciplinary hearing and the other the appeal. That is often carried out even by small companies such as the respondent. It seems to have been what happened with the warning issued in October 2023 by Mr Onochie acting alone. If a step in the process is not possible to conduct internally it is not uncommon for a third party to be asked to do so.

(e) The manner in which the disciplinary hearing was conducted, gained from the automatic transcript so far as that was appropriate [some detail was clearly wrong, but its terms could be gleaned from what was there and the context] and from the oral evidence, appeared to me not to be within the band of reasonableness. There was more than an element of badgering of the claimant. She was not encouraged to give her version during the hearing, which is what the respondent's disciplinary procedure stated, and her comments were not only disregarded but on a number of occasions contradicted immediately. There was a form of argument raised over her remarks, rather than conscientious consideration of what she was saying. Dr Onochie for example interrupted the claimant saying repeatedly “excuse me”, and on another occasion repeating the word “no” eleven times, with the word “please” interposed once. The respondent during the meeting on a number of occasions referred to fraud, or equivalent terminology, and making remarks inferring prejudgment such as “it doesn’t change anything because there is a statement from the family saying this.” She was not shown at it the documentation that the respondent had, even though that ought to have been done with the invitation letter. Whilst it would have been very late it was not even done at that stage.

(f) The claimant not being informed of the right of appeal was said to be an administrative error, but in my view it was a serious one, repeated on two occasions. Appeal is a matter that the respondent’s own procedures, and statement of main terms, refers to. It is also set out in the ACAS Code. It is an important aspect of fairness. In simple terms the claimant ought to have been offered a right of appeal, and not doing so was outwith the band of reasonableness.

(g) Taking all the evidence I heard in the round, and testing all of what occurred against the band of reasonable responses, I concluded that the dismissal was one that was materially outwith that band, and was unfair under section 98(4) of the Act.

116. For completeness I add that although both parties referred to the SSSC correspondence and related documents I did not consider that that assisted me in to any material extent my determination. On the issue of fairness the test is what was before the respondent at the time of dismissal, and how the respondent conducted the disciplinary process. The process before the SSSC is a different one under different provisions, conducted in a different manner, and no evidence from a decision-maker in that process was provided to me. When it comes to matters such as contribution what matters is the evidence I heard, and although I took into account the SSSC findings to the extent that I considered appropriate in my view its weight was very limited.

Did the respondent make unauthorised deductions from wages or is it in breach of contract?

117. There is no written contract of employment. There was an offer letter but it had a blank as to hours. There was a statement of terms document provided to the claimant, which was signed, but with some aspects such as full or part time working unclear as no choice between those two had been made, as the form clearly indicated should have been made. At that

point the claimant was working on a student visa and limited to 20 hours per week. It was at that point inferred that she was a part-time employee.

118. Matters changed when the Certificate of Sponsorship was issued, but no amendment to those terms was issued. She was now able to work in effect unlimited hours, and in practice as there was a requirement for a minimum salary level, which had to be maintained unless there was illness or similar intervention intimated to the Home Office, that meant that she was in effect to be a full time worker. There were also two letters of confirmation of employment as I shall come to. There are other documentary materials such as the payslips which recorded hours worked each week, and payment made for those hours, and there was no written grievance or complaint in relation to pay of less than 39 hours per week when those matters occurred.

119. I have required to consider matters from the evidence before me, both from the written documentation and oral evidence, seeking to ascertain what the terms of contract were between the parties. That has not been the most straightforward task as the material before me is not complete for example with a blank in the statement of particulars, matters are not consistent, and the manner in which the evidence was led was not as easy to follow as it might have been. That is partly as the claimant did not answer many questions simply and shortly, but at times in a lengthy and discursive manner which did not candidly address what had been asked, and partly as the respondent was represented by Dr Onochie its Director such that it has not had the benefit of professional representation. She did not appear to appreciate that the documentation was limited, and deficient in some respects as against the requirements of the Employment Rights Act 1996 sections 1 -4, although no claim under these provisions was before me.

120. I have concluded that the claimant has not established that she had a right to be paid for no less than 39 hours of work per week which was what the claimant had pled. There are a number of reasons for that.

121. Firstly when she joined the respondent there was no set amount of hours, and by her visa she was not entitled to work for more than 20 hours per week in term time. The statement of terms did not state that it was for variable hours, but the blank as to hours tends to suggest that no minimum or set number of hours was anticipated. There was reference to an hourly rate. That is consistent with variable hours rather than some form of set salary arrangement.

122. Secondly, when the sponsored visa arrangement commenced, on 17 July 2023, no amendment to the statement of terms was sent to her, and the implication is that those terms remained. They were not for a minimum number of hours per week. There were two letters sent as confirmation of employment later, but reading them in context it did not appear to me that

they amounted to a minimum of 39 hours per week as a condition of contract. The first referred to the statement of terms document. The second did not state 39 hours. There was I consider an intention that the hours worked be at or around that level, essentially to fulfil the initial requirements of the Certificate of Sponsorship for a minimum annual salary, but those requirements changed when for example the national minimum wage was increased, such as the indicative hours of 39 were reduced to 37.5. That was also assessed again in the context that the respondent paid slightly higher rates than the national minimum wage, and the claimant could remain within the salary threshold working around 35 hours per week. That is consistent with some messages exchanged between the parties where there is reference to 35 hours per week where the claimant asked in effect if that was enough, and the respondent replied that it was. The claimant did not then respond to state that she required to have a minimum period of 39 hours per week by her contract. This evidence indicates in my view that a set and minimum level of hours per week at 39 was not what the parties had contracted for.

123. Thirdly, it is material that the claimant did not make any written allegation of breach of such a minimum number of hours until after the dismissal. When there was an issue raised it was about mileage or whether the hours worked had been accurately recorded. Had the terms of contract been of a minimum of 39 hours per week, once the hours worked reduced below that amount on an averaging basis one would expect some form of protest about that at that time. There was none. I did not consider that the claimant's evidence that that absence of challenge was because of a fear that she would lose her sponsorship status, or the abuse received, in broad summary, was to be accepted. She did challenge some matters including what rounds she did, what days she worked, and as to mileage for example, such that there was not consistent evidence of her feeling unable to raise matters of concern.

124. Her allegations of bullying or similar conduct had not been pled. It did seem to me that there were some occasions on which the treatment she received was either harsh, overbearing or indicative of a power imbalance. In February 2024 the claimant was removed from a staff WhatsApp group which was not I consider adequately explained by the respondent, but that was relatively early in matters and the working relationship resumed and continued. The respondent did support the claimant in at least some respects. They accommodated many of her requests as to what work she did, and when. They assisted her in areas such as how to complete mileage refund forms, visa queries and otherwise. The exchanges between them in the lengthy WhatsApp messages reviewed included encouragement, and what might be described as friendly terms. Both the claimant and Dr Onochie are Nigerian, and exchanged messages in a degree of familiarity unusual in the UK, but indicative of a relationship not in the nature of the bullying style that the claimant complained of. It

appeared to me that the claimant's position was a substantial exaggeration.

125. Fourthly there is evidence of her requesting not to do work in various areas, both geographically and otherwise such as avoiding some days or not being available for some aspects of work. There was also evidence of what she described as phobias, a fear of cats and dogs being referred to, meaning that some forms of work she did not wish to do. That does not appear to me to be consistent with the claimant having an entitlement to a minimum number of hours if she was able to ask to decline work in such a manner but still be paid at a minimum of 39 hours of work. That does not make sense as an ordinary transaction, in my view.

126. Fifthly the claimant was in practice paid throughout her employment on the basis of the hours she worked, and those hours varied significantly, some were above 39 but many more were below that, including to some payslips I was taken to of 4 hours per week, and others were around 25 hours per week for example. That material difference in pay against the alleged minimum of 39 hours over a period of about two years, is I consider strong evidence that the parties' expectation had been, and was operated on the basis, that pay was for hours worked, whatever they were.

127. Sixthly I considered whether the provision of the Certificate of Sponsorship referring to 39 hours per week was evidence of that being an implied term of the contract. I considered that it did not meet the test for implication of an implied term. That is when it is required to give the contract business efficacy, in summary. That was not however required in my view, as payment for hours worked was the provision in the contract of which the Statement of Terms was evidence. The provisions as to sponsorship in effect changed with different minimum salary levels, paid hours under the national minimum wage or higher pay, and its impact on the minimum average number of hours per week.

128. In the event that the claimant considered that 39 hours per week was the minimum entitlement in contract whatever work she did or did not do it appears to me that she has acquiesced in the breach by her inaction in challenging it over a very lengthy period, even if it were to be considered a contractual term introduced at about the time of the Certificate of Sponsorship.

129. Both parties founded on an exchange of messages in November 2024. The claimant queried hours she had worked, the respondent replied, and in doing so in my view did make a form of implied threat to reduce hours. That was not easy to reconcile with the basis of the Certificate of Sponsorship with the minimum level of salary.

130. But the claim before me is not one of asserting a statutory right, and in any event that was a matter substantially out of time. At the time the claimant apologised for miscalculating. It may have been because of her concern

that hours would be reduced, but that is against the background of the minimum salary provisions. It seems to me that what the respondent did in this regard was simply improper. But it occurred in November 2024.

131. The claimant argued that there was a pattern of negative responses. I consider that that is not correct. There was it seems to me a dispute over the hours and pay, the respondent set out its position albeit in strident and not appropriate terms, and the claimant did not pursue matters at that point. Whilst it does not reflect well on the respondent, it did not have the character that the claimant argued it had in submission.

132. It is also not entirely clear exactly what the issue the claimant raised was, but from what was before me it appears to me that it was more an issue of hours worked against those paid, and not the 39 hour per week minimum hours that the claimant argued for. In the context of the claim made before me, it does not assist the claimant to the extent that she argued for in this regard either. Overall, as the response was I consider not a proper one by the respondent it seems to me that this aspect of the evidence is broadly to be assessed as neither supporting the claimant nor respondent to any significant extent.

133. For completeness I shall also address the claimant's argument about reporting a medication error in June 2025. This was not included as a part of the reason for dismissal, and the evidence in relation to it was both limited and confused. It had not been part of the claimant's pled case. I preferred Dr Onochie's evidence on this aspect to that of the claimant and did not consider that there was anything material for the purposes of this claim. That there was after the dismissal a report to the SSSC is not I consider of any moment for claims of unfair dismissal prior to that, or breach of contract or unauthorised deduction from wages also prior to that.

134. The claimant had a fall back position, which was to the effect that there was a requirement for a minimum of 35 hours per week. But that had not been pled at least clearly. The pleading for the breach of contract claim was specifically as to 39 hours per week. That for the s. 13 claim of unauthorised deductions from wages did not specify the 39 hour figure but that less than was properly payable had been paid. It was not however fully put to Dr Onochie in cross examination that 35 hours per week became a contractual provision, and it seems to me that much the same considerations as above apply. There was I consider no agreement as to a minimum number of hours, but the separate issue of the minimum salary for the Certificate of Sponsorship did arise.

135. That leads to a separate point. The respondent referred to and founded on Immigration Rules. They were the background to the parties' contract. They included one of three conditions, each of which required to be met, that the salary equals or exceeds £20,960 for the period from and after 12 July 2023.

136. The earnings shown by the P60 for the year to 5 April 2025 did not meet that amount, as it was £20,730. The respondent thought that the figure for the minimum salary was changed again, having been increased to that figure from a lower one, but did not provide the documentation for that and Dr Onochie when recalled could not state what the new figure was, and when it had been introduced. I have addressed matters on the evidence before me, which was that there was a requirement for a minimum salary of £20,960 which the parties were aware of for the period after 11 July 2023.

137. I consider that it was clear to both parties, and had been agreed from the terms of the correspondence, that the claimant's entitlement to pay was to that higher sum as a minimum salary. I noted that the respondent accepted in writing that they had to give her "enough hours", which I consider must mean sufficient to meet the salary threshold. It was based on the annual figure at 5 April 2025 from the tax certificate, but the evidence before me was that the position as at the date of termination was different with some higher earnings, for example there was one week with over 60 hours of work. I have considered the earnings in the payslips dated 11 April 2025 to 18 July 2025, and the hours of work shown in each. The total in that period is 520.5 hours, which equates to 34.7 hours per week, and that includes two weeks on suspension when 27 hours was paid. Albeit slightly lower than 35, this averaging does not significantly assist the claimant as using the hourly rate of £13 for those hours annualised produces a figure of £23,457.20 which is above the minimum.

138. As this line was not specifically pled, nor part of the case as presented including by way of cross examination and indeed did not feature in the submission, I have concluded that the claimant has not proved any breach of contract or unauthorised deduction from wages in this respect.

139. For completeness I add that it is possible that in the year to 5 April 2024 there may have been a similar unauthorised deduction, as the P60 showed gross earnings of £17,183.21, but the same general considerations as above apply, and in addition the claimant had a period of absence, and was in hospital. The period of that and impact on work was not clear from evidence, such that it was not clear how that impacted the assessment. It appeared also to be a matter that arose at that time in those circumstances and was not challenged or raised in any way on that basis at the time. It seems to me that if there was an argument over that matter, that the lack of a timeous challenge meant that the claimant had in law acquiesced in what happened, or affirmed the breach as it is also known. I therefore did not make any finding in relation to that earlier tax year.

140. The respondent argued that the Guidance issued by the Home Office was to the effect that that was not a minimum, as it could be varied if the hours were reduced. I do not consider that that is the proper interpretation of the

Guidance document, which I consider makes it clear that it applies where there is ill health. That arises grammatically from the manner in which the sentence is constructed, and the reference to an occupational health report being required for absence, which I consider qualifies the earlier provisions. Whilst the Guidance appears to be just that, the parties have proceeded on the basis that the immigration provisions underlie the terms of contract between them, and it seems to me that the minimum level of salary is sufficiently clear potentially to be incorporated as a contractual term. But in the absence of pleading and adequate evidence I have not found for the claimant in these regards, and the claims of breach of contract or unauthorised deductions from wages are dismissed.

To what remedy is the claimant entitled? In that regard the sub-issues included (a) had the claimant contributed to the dismissal (b) could there have been a fair dismissal by a different procedure (c) what losses did the claimant sustain as a result of the dismissal and (d) had the claimant mitigated her loss.

141. The claimant confirmed through Ms Tait in answer to a question from me at the start of the hearing that she did not wish to seek re-instatement or re-engagement if the claim succeeded. She sought a financial remedy accordingly. That is what the Schedule of Loss sought also.

142. I address initially the basic and compensatory awards, before considering contribution, the ***Polkey*** argument, and the failure to appeal.

143. It was agreed that the **basic award** is £1,014 subject to any deduction.

144. The **compensatory award** is more complex. I considered that it was appropriate to consider the disputed and more recent Schedule of Loss, but to do so against all of the evidence led. I did not therefore simply accept it as it stood, not least as there were concerns over the claimant’s evidence as have been noted above.

145. The claimant did not obtain new employment until 1 January 2026. The period of loss is 25 weeks, being from date of dismissal to that date. Her net income prior to dismissal is £433 per week. The total for that period is £10,825. The pension loss is £12.99 per week, calculated at 3% contribution, and for 25 weeks the total of that is £324.75. The claimant sought notice pay of one week, but that is subsumed within the figures above. She also sought the sum of £750 for loss of statutory rights. I consider that that is a higher sum than appropriate. I consider that the sum of £500 for that head of loss is reasonable compensation. The total sum for the compensatory award, before deductions are considered, is therefore £11,649.75. It appeared to me that there was sufficient supporting vouching for the position, and that subject to the issues addressed below that claimant had proved losses in these sums.

146. The claimant stated that she did not receive benefits, which is a matter that is addressed in relation to the Recoupment Regulations referred to below.

147. I considered whether or not the claimant had **mitigated** her losses. The respondent argued that she had not and that there were many jobs available for care workers, that she had taken too long to find and start her new employment and that she had also been working for other employers both during and after employment with the respondent. In my view however the arguments on mitigation fail to take effect of the impact of loss of the Certificate of Sponsorship which resulted from the dismissal, and the reaction of employers to that matter in that they would be asked to sponsor her in substitution for the respondent, which the claimant spoke to in her evidence. The claimant's evidence was to the effect that she required to show any employer proof of her ability to work in the UK, or convince them to act as a new sponsor. I accepted that evidence, which I consider is essentially a matter of common sense if not of judicial knowledge, and concluded that the respondent had not proved that the claimant had not mitigated her loss.

148. I then considered the issue of whether or not the claimant had **contributed** to her dismissal. This is a matter on which the respondent has the onus of proof. In my view the respondent has discharged that onus, and proved that the caimant had contributed to her dismissal, to a material extent. Firstly she was involved with three others in not attending to a service user, but recording matters as if she had, as I have found above in relation to JB. A formal written warning had been issued for that for all of them, and the claimant was aware of that from the conversation on 10 June 2025 although the written record did not come until 17 June 2025. The claimant appeared to have acknowledged that that was wrong, and promised not to do so again, to summarise matters. It ought in any event to have been entirely apparent to a care worker in the claimant's circumstances that that was wrong.

149. On 16 June 2025 the claimant again made an entry in the records of care of another service user that was fabricated for two separate visits as found above. It indicated that steps had been taken which had not. In the context of the care of vulnerable adults this is a serious matter. Record keeping is vitally important for managing care.

150. Whilst the claimant argued that she had not done any wrong, I do not consider that that is right. She had been working for the respondent for two years. She had used the OnCare app for that period. She was aware from the Handbook that gross misconduct included falsifying records. The record for CP was falsified. What the claimant had set out had not happened.

151. I address the claimant's submissions on the two matters alleged against her, involving JB and CP. She argues that the respondent had not corroborated the claimant's version of events with JB's family, and had not called them as witnesses. Corroboration is a concept of the criminal law. I accepted Dr Onochie's evidence of what JB's son had told her. Whilst it would have been preferable for matters such as that to be recorded in writing at the time, not doing so is not determinative. The claimant similarly argues that a statement from CP's family was not provided to the claimant, which is true. There was no statement, but there was an exchange of emails, which could and should have been disclosed as part of the investigation and disciplinary processes. But they were in the documents before me and spoken to in evidence.

152. The claimant also referred to the respondent not calling the family of JB or CP as witnesses. It appears to me that that submission is misplaced. It would not be usual to call such witnesses and in my experience of cases involving care of others it has never been done. I was satisfied with Dr Onochie's evidence, and do not accept the arguments against her as the claimant put forward. Not calling such witnesses does not change my view on that.

153. I reject the claimant's assertion that there was a retaliatory motive. In my view the claimant had falsified two sets of records for two separate service users, that is what the respondent believed at the time, and there is, with the benefit of the evidence heard before me, a substantial basis to conclude that that is what had happened for the reasons addressed above.

154. I must consider the extent of her contribution to dismissal having regard to all the evidence I heard and what I have found. It appears to me that taking the CP issue alone there was a falsification of records, and in context of giving care to vulnerable and elderly adults that is substantial contributory conduct that could have amounted to a deduction of 100%. Taking a very broad brush approach given all that happened, and the evidence I had before me, I have assessed the level of contribution at 80%.. As the claimant not only had reasonable employment experience with the respondent by the time of the events, she was also someone qualified after her course at RGU, and she must have known, or ought reasonably to have known, of the importance of accurate record keeping. The assessment in this regard is not ungenerous to the claimant, but balances that against the matters in relation to the procedures adopted and position overall. I did not consider that the SSSC findings had particular weight, not least as they were issued long after dismissal, on the basis of what appears from the evidence I heard to be much less material than was before me.

155. The next question is whether there might have been a fair dismissal by a different procedure, the ***Polkey*** issue. I have concluded that there could

have been on the basis of the facts at the time of the dismissal. That would have taken a period for a proper investigation for both incidents, but in particular that in relation to CP, and that would have taken a month. I consider that from the evidence before me the respondent could have dismissed the claimant fairly after that further period. But there is in my view not certainty over that. What would have happened had there been a fair investigation, disciplinary procedure and appeal is not the same as the evidence led before me. I have concluded that there is a small prospect of the claimant having been able to avoid dismissal, had such a fair process overall been followed, and that is a matter that requires to be taken into account. But that would have taken a longer period, and that also requires consideration.

156. The claimant argues that the sanction of dismissal was outwith the band of reasonable responses. She argues that that should be taken into account. In my view however given that there was both a belief at the time of two separate sets of incidents of falsification of records, and my findings that those beliefs are what had occurred, dismissal is not outwith that band. In the context of care of services users such as JB and CP, and in light of the inclusion of falsification of records in the list of gross misconduct offences, it was within the band to dismiss.

157. I consider that taking account of all of the circumstances the deduction in this respect is properly assessed at 80%.

158. I then considered the two separate deductions and whether or not there would be any double-counting or similar such that a variation was appropriate, in short whether two separate deductions of 80% were just and equitable, and considered that it was not. I have concluded that it is appropriate to have a single deduction totalling 80% for the compensatory award to take account of both contribution and ***Polkey***. That means that the same contribution of 80% applies both to the basic and compensatory awards. That results in the awards being reduced to the figures of £202.80 and £2,329.95 respectively. The total award is the sum of £2,532.75.

159. I considered the issue of the claimant being summarily dismissed and not receiving notice. It appeared to me that the claimant was herself in material breach of contract in what occurred in relation to CP in particular. The principle of unity of contract means, in broad summary, that one party cannot enforce a contract in relation to notice where it is itself in material breach of that contract. In all the circumstances I do not consider that the termination of the claimant’s contract summarily was a breach of contract by the respondent. The claimant did act in a manner that was a material breach of contract by her in the falsification of records, and the respondent was entitled in law to rescind the contract by the summary dismissal because of that.

160. Finally it appeared to me that the respondent did fail to follow the ACAS Code of Practice. I have a discretion on whether to increase the award, which I can do up to 25%. In my view the failure was a material one, and made a significant contribution to what happened. But there was a procedure of some kind, and there was not a wholescale failure to follow the Code. I consider that in all the circumstances a just and equitable increase is of 15%. The total sum awarded is therefore increased to £3,165.94.

Recoupment

161. The claimant said that she had not received benefits after the dismissal, which I accepted. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not therefore apply to the award.

Conclusion

162. I make the findings and award set out above.

163. I did consider whether to address the issue of a penalty under section 12A of the Employment Tribunals Act 1996. The conduct of the investigation, disciplinary hearing and lack of appeal are fundamental matters, with what I regard as obvious and substantial failures of the respondent's own policy, but also the Code of Practice. Not without hesitation I have concluded that it is not appropriate to do so, as the test for that is a high one. The respondent may however wish to consider firstly the documentation it has for statements of particulars of employment and the documenting of changes thereto, secondly how it conducts investigations, thirdly how it conducts disciplinary processes and fourthly how it interacts with its staff.

164. There finally is an issue of whether seeking a contribution from a worker to the Certificate of Sponsorship in the amount of £8,000 is lawful or in breach of any conditions applying thereto. The claimant argues that the respondent had a legal obligation to pay the sponsorship fees. This is however not a matter within the jurisdiction of the Employment Tribunal, as the claimant properly accepted, and I have decided not to make any further comment about that aspect.

Date Sent to Parties: **21 July 2026**