

Neutral Citation Number: [2026] EAT 141

Case No: EA-2024-001540-RS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building,
Fetter Lane, London,
EC4A 1NL

Date: 17 September 2026

Before :

**HIS HONOUR JUDGE JAMES TAYLER
(DEPUTY PRESIDENT)**

Between :

Damien Burke

Appellant

and

The Harrow Club

Respondent

Damien Burke the **Appellant** in person
Grace Nicholls (instructed by Worknest Law) for the **Respondent**

Hearing date: 19 August 2026

JUDGMENT

SUMMARY

Unfair dismissal

The Employment Tribunal did not err in law in dismissing a complaint of unfair dismissal. The correct approach to assessing the reason for dismissal considered.

HIS HONOUR JUDGE JAMES TAYLER (DEPUTY PRESIDENT):

The Issue

1. The issue in this appeal is whether the Employment Tribunal erred in law in its assessment of whether the respondent had acted fairly in concluding that the claimant had undertaken first aid – a conclusion that formed part of the reason for his dismissal.

2. An Employment Tribunal must determine the factual reason, or if more than one, the principal factual reason, for dismissal in a complaint of unfair dismissal before deciding whether that reason falls within one of the potentially fair categories of reasons for dismissal. Deciding what was the reason, or principal reason, for dismissal is an everyday decision for Employment Tribunals, but it is not always as straightforward as it sounds.

The judgment appealed

3. The appeal is against a judgment of Employment Judge Glennie sitting at London Central on 30 and 31 October 2024. The judgment was sent to the parties on 13 November 2024. Written reasons were sent to the parties on 18 December 2024.

The facts

4. I take the facts from the reasons of the Employment Tribunal and a limited number of the relevant documents.

5. The parties are referred to as the claimant and respondent as they were before the Employment Tribunal.

6. The respondent runs youth clubs in London. The claimant worked as a youth worker at the respondent's youth club in Old Oak, West London ("the club"). The claimant was a longstanding employee of the respondent. The Employment Tribunal felt unable to determine the claimant's start date but accepted that the claimant had worked for the respondent for at least 13 years. The claimant worked 14 hours a week.

7. The claim arose out of events that occurred in the evening of 10 July 2023. Two young

people, A and B, were involved in an altercation. The Employment Tribunal accepted that there were three stages to the altercation.

8. The first stage occurred in the club. The claimant intervened and tried to calm the situation down.

9. A and B went outside. The second stage of the altercation was captured on CCTV. One of the young people fell to the ground. The claimant successfully intervened. The young people then left the environs of the club.

10. The third stage happened away from the club. The claimant did not see the third stage and it was not captured on CCTV. A and B fought. A was injured; he was punched in the face and lost a tooth.

11. A returned to the club after the fight. The claimant was present with two more senior colleagues, described in the judgment as the claimant's manager, Dwayne, and Jay, a qualified first aider. The claimant told me that Dwayne and Jay were present when he spoke with A, although the Employment Tribunal only found that the "two colleagues were still there". A was bleeding and/or had dried blood around his mouth. The claimant gave A some tissue to wipe the blood away. The claimant knew that A had lost a tooth in the fight. The claimant and A briefly went outside to look for the tooth.

12. The Police were contacted about the fight and an investigation commenced. The local authority designated officer ("LADO") also investigated. After the Police and LADO investigations were completed, Edward Simpson, Joint Chief Executive Officer of the respondent, commenced an internal investigation, in late 2023 or early 2024.

13. The respondent has a "Serious Youth Violence Incident Procedure" which includes provisions that staff should "Attend to the young person/people involved and administer first aid if trained" and that staff should "Write up an incident report using template and send to Senior Programmes Manager and the CEO the same evening". The procedure requires that the

Police are contacted.

14. The claimant had provided an initial statement in late September or early October 2023, in which he said:

I was unaware of the situation in question and did not see what happened, before the situation I was aware of an altercation between the boys which was arguing with each other, to which I jumped into the middle of both. It was then sorted between them, they later left Club to go home, which is when I think this situation happened.

15. In this initial statement the claimant made no reference to youth A having returned to the club with a tooth missing and blood on his face, that A said had resulted from a fight with B. Although the claimant had not seen the third stage of the altercation, he had been told by A about the fight, realised that A had lost a tooth and provided some tissue so that A could wipe away the blood. Nothing about the third stage of the altercation or A's return to the club was referred to in the claimant's first statement.

16. As part of the investigation undertaken by the respondent, the claimant gave a second more detailed statement. The claimant explained that A had returned to the club seeking assistance, that A said that he had lost a tooth and that the claimant took him to the bathroom and provided a wet tissue to wipe away the blood, then went outside with A to try to find the missing tooth.

17. On 9 February 2024, the claimant was invited to attend a disciplinary hearing to answer charges:

1. On 10 July 2023, you failed to follow safeguarding protocol and Serious Youth Violence Incident Procedure of reporting that two Young People under your care were involved in an altercation that resulted in a Young Person being admitted to Hospital for medical treatment.

2. On 10 July 2023, you failed to follow Serious Youth Violence Incident Procedure. Specifically, you administered first aid without training or permission and failed to notify a trained first aider.

3. You were dishonest when providing your initial witness statement and relaying the version of events for the incident on 10 July 2023. Specifically, you failed to mention that you had observed a fight, provided first aid and

assisted a Young Person under your care to look for a tooth.

18. The disciplinary hearing was held on 22 February 2024. During the disciplinary hearing the claimant said that “this was a really small thing, and that it happened all the time” and that “they deal with it at the club and it was not that bad; they don't report these things because they deal with it”.

19. The outcome of the disciplinary hearing was provided in a letter dated 1 March 2024. Michael Defoe and Mr Simpson, the joint CEOs of the club, decided that the claimant would be dismissed summarily:

In response to the first allegation, you confirmed that you understood the procedures but believed that that due to your line manages being present that they bore responsibility and was management's responsibility to report which you accepted was different from the policy.

In response to the second allegation, you said that you did have first aid qualification, but it was from a 'long time ago and did not have the paper'. You said that provided 'minimal assistance by offering wet tissue to clean a wound' which you felt your line manager should have done.

In response to the third allegation, you said that the 'initial account pertained solely to a verbal altercation between the boys'. That you did not witness the subsequent events and felt that you could not report it because you did not directly see it. From my further questions you said that you did witness one of the boys falling to the ground but did not witness any physical blows exchanged.

In closing you said that these were 'really small things' and it was not that bad and that these do not get reported as they are dealt with at the time.

Following our hearing, we adjourned and investigated as appropriate. For the avoidance of doubt, we can find no evidence including from speaking to your colleagues that similar or same incidents 'are not reported all the time' and reject this as assertion from you.

In relation to the first allegation, taking into consideration your submissions and the evidence before me, we uphold it against you.

We believe that you were aware of procedure and from your admissions that you choose not to follow it. From investigation with the Designated Safeguarding Leader, they have confirmed that you did not contact them and reject that it is only your managers responsibility when you were directly involved in the incident. We believe that you failed to follow procedure which has resulted in services users under your care being put at risk. We

therefore for the aforementioned reasons, uphold this allegation against you.

In relation to the second allegation, taking into consideration your submissions and the evidence before me, we uphold it against you.

We can find no evidence that you are qualified first aider and from investigation with the duty first aid, they have confirmed that you did not report the incident to them or seek assistance from them.

We reject that providing 'minimal assistance' of cleaning a wound does not amount to first aid- the young persons had a missing tooth which through your admissions you were providing medical assistance of cleaning their wound whilst neither qualified nor had permission in breach of the procedure. We would also note that your version of events has changed overtime; during the investigation meeting on 19 January 2024, you said that you 'didn't feel I needed to report as he was dealing with it as much as I was', however during the hearing you said others should have dealt with it rather than you. We believe that you are deliberately attempting to cover your failure of following procedure. We therefore for the aforementioned reasons, uphold this allegation against you.

In relation to the third allegation, taking into consideration your submissions and the evidence before me, we uphold it against you.

We believe that you were either deliberately dishonest in a belief that you can do as your please or tried to hide your failings of following a procedure which you admitted you were aware of.

Again, we would note that your version of events changes over time. In our hearing you said that you did witness the fight, yet in the investigation meeting you categorically denied this *'The initial statement I gave was based on the incident in the club, where the scuffle happened, and I separated the 2 of them. I did not speak about the other incident on the scrubs later as I was not there and did not witness it. I think this is where it has been confused'*. We believe that on the balance of probabilities from the evidence available to me and your submissions through the statements, investigation meeting and our hearing, that you did observe a fight outside of the club, and **there was a secondary fight which you did not observe, and you did provide first aid to one of the young people after this secondary fight.**

We are satisfied that you were dishonest in your initial statement when Ed asked you to provide a report on what happened that night and when investigated further, you then provided another version of what you observed. We believe that you deliberately choose to conceal this and when investigated over discrepancies have given continually contradictory responses to conceal procedures that you were aware of but choose not to follow. We therefore for the aforementioned reasons, uphold this allegation against you.

Given the above findings, it is my decision regarding allegations you be dismissed with immediate effect without notice or payment in lieu of notice.

We have considered alternatives to dismissal, namely a written warning, but have decided that these are not appropriate because of the seriousness the Organisation views your conduct, your clean indignation towards the procedures, with a belief that you can do as you choose and lack of honesty. We find there has been a breach of trust and confidence as a result of these actions and believe there is no other option but to proceed with a dismissal on this basis to avoid similar incidences happening in the future. Your actions has placed young children under your care at risk and us as an Organisation as failing in our duty of care and safeguarding. [emphasis added].

20. On 1 March 2024, Dwayne was dismissed for gross misconduct, including failing to report the incident with youths A and B. Jay was not subject to disciplinary proceedings.

21. The claimant appealed. The appeal was heard by Chris Martin, a trustee of the club, on 28 May 2024. The appeal was dismissed by letter dated 29 May 2024.

The conclusions of the Employment Tribunal

22. The Employment Tribunal set out its conclusions as follows:

30. **I turn then to my conclusions. First, what was the reason for the dismissal? I find that it was that the Respondent, in the person of Mr Simpson and upheld on appeal by Mr. Martin, found that the Claimant had committed misconduct in the three respects identified in the outcome letter.** There really is no competing suggestion as to what the reason might have been. The nearest that the Claimant has come to this was a suggestion that he was the scapegoat for the incident, meaning that the two managers were let off or exonerated, or whatever, but essentially that he was made to pay the price for the incident out of the three of them.

31. It seems to me, having seen the dismissal letter relating to Dwayne, was certainly not applicable to him because this incident was included in the reasons why he was dismissed. In any case, taking the Claimant's expressed view on its own terms, that seems to me to be accepting that the reason for dismissal was the one given by the Respondent, while challenging its validity.

32. **My finding about the genuineness of the reason for the dismissal relied on by the Respondent leads me also to conclude that Respondent had a genuine belief that the Claimant had committed the conduct concerned.**

33. **I then have to consider whether there were reasonable grounds for that belief, in relation to each of the three points were found against the Claimant.**

34. In respect of the first point, I find that it is the case that the Claimant had not followed the relevant procedures. He did not make the necessary report. Was it reasonable to regard this as misconduct? The Claimant accepts that he

knew about the procedures. In the present hearing he said that he had done what he had always done in the past, in other words report incidents to his manager. He said (and I paraphrase) that Mr Simpson had come to the organisation more recently and had changed things around. I would observe that perhaps he did, but I find that employers are entitled to make changes to the procedures that are operated. Indeed, it can be necessary for them to do so especially in areas such as safeguarding, in which the expected standards can change with the passage of time.

35. The Claimant said that, although the incident was serious, it was not the most serious he had ever come across or that he could contemplate. I accept that it is not too difficult to imagine more serious situations, and I accept the Claimant's submission to the effect that he had indeed witnessed more serious situations than this over the years that he worked with the Respondent. This does not, however, in my judgement detract from the need to follow the procedures required. The Claimant also said that his manager was responsible for the situation. Again, so far as it goes, I accept that the manager was responsible for the situation but saying that does not mean that the Claimant was not responsible for it.

36. On the second point I find that the Claimant did indeed give what amounted to first aid and that, whatever the status of his qualifications may have been, he did so without that being authorised by the Respondent. I find it important to note that there was a first aider present at the time, namely Jay. This was not a case of someone acting when confronted by an emergency and when the first aider was not immediately available.

37. I also find that handing a tissue or piece of tissue to wipe blood, whether it was dried blood or a modest quantity of flowing blood may not have been the most technical piece of first aid, but was something that the Respondent was entitled to regard as its first aid nonetheless.

38. It seems to me to be important that any need for first aid should be assessed [and] any first aid required given by the authorised person. Again I find that this is a matter that the Respondent was entitled to take seriously because there can be repercussions if inadequate or inappropriate first aid is given by someone who was not authorised to give it.

39. I accepted Mr Simpson's evidence that all of this is particularly important when dealing with minors, as was the case here. I therefore found that there were reasonable grounds for the Respondent to believe that the Claimant had given first aid when not authorised to do so, and to find that it amounted to misconduct.

40. The third point concerns the finding that the Claimant had not been honest in his first statement. As I have said, I find that there was some degree of confusion over the two physical parts of the incident and what was being said or not said about those, but that was resolved at the appeal stage. I find,

however, that there were reasonable grounds for the Respondent, and Mr Simpson in particular, to believe that the Claimant had not given a full account initially in September or October 2023. This is because he omitted reference to A returning to the club, to there being blood, whether dried or otherwise, and to his having lost a tooth.

41. Having heard the Claimant's evidence and his representations both in terms of cross examination and in what he said directly to me by way of submissions, I am inclined to accept that he gave an honest account in that first statement. He concluded that short handwritten statement with the words that "they left" which ... I think refers to A and B and probably the other attendees as well [going] home, and then "which is when I think this situation happened". It therefore seems to me that the Claimant was indicating that there was more to what happened that night than what he had included in that statement because he said, "which is when", meaning after they had gone, "I think this situation happened". This suggested that something else had happened beyond what was written in that statement.

42. Having said that, I find that this is an example of the sort of situation where I should not go behind a reasonable belief and substitute my own belief on the basis of what I have heard about the matter in the course of this hearing. I find that there were reasonable grounds for Mr Simpson to believe that the Claimant had not in the first instance given a full account of the events of that evening, and that in doing so he was trying to cover up his failings in terms of the procedures.

43. I therefore find that there were reasonable grounds for the genuine belief that Mr Simpson held.

44. There were no procedural failings that I can detect. The Claimant had the opportunity to answer the allegations against him. I asked Mr Simpson about the debriefing notes which had not been referred to in the witness statements, and he explained that they could not be obtained and why that was. I am satisfied that Mir Martin conducted the appeal independently of Mr Simpson, and gave the matter proper consideration.

45. Was dismissal within the range of reasonable responses? The Claimant was a long serving and valued employee. At first sight dismissal might seem harsh. But was dismissal outside the range of responses open to a reasonable employer, acting reasonably? I find it impossible say that it was outside that range. This was a serious incident, wherever precisely on the scale of serious incidents one might put it. A young person had suffered a significant injury in the shape of a wound, probably a small one, but a wound nonetheless, and the loss of a tooth. In my judgement it is important to have a contemporaneous record of an incident like this from the person with responsibility for the young people involved and who had the best knowledge of what had happened. The Claimant failed to provide a written account of that nature.

46. The Claimant had also failed to take the proper approach regarding first aid. I find that he should have asked Jay to take over when he saw that there

was a need of such assistance. The Respondent was entitled to take a serious view of that failing. The Claimant also failed to give a full account of the events in the first instance when asked about it, and again I find that the Respondent was entitled to take a serious view of that.

47. Given the importance of safeguarding of young people and the Respondent's obvious need to be able to demonstrate that it requires youth workers to follow the relevant procedures, it would be wrong for me to say that no reasonable employer in the Respondent's position could have dismissed the Claimant.

48. All of this means that the complaint of unfair dismissal fails and will be dismissed. [emphasis added]

The appeal

23. The claimant appealed the judgment of Employment Judge Glennie on multiple grounds. Only one limited ground was permitted to proceed by John Bowers KC, Deputy Judge of the High Court, by an Order sealed on 16 April 2025:

3. On appeal the Appellant takes the point that "I also did not agree with the judge agreeing that me giving someone a piece of tissue to wipe a piece of visible dried blood would be me giving first aid. It's just a normal thing you may do if you see someone may need a piece of tissue, I did ask him before giving if he wanted a piece of tissue. As I could see a bit off blood, I did not think I was doing first aid".

4. Normally I would not view an attack on a finding of fair dismissal as raising a point of law but here the decision turned on whether what the Appellant did amounted to first aid and I do think that this point (and this point only) is reasonably arguable.

24. The other grounds of appeal raised by the claimant were dismissed pursuant to Rule 3(7) of the **Employment Appeal Tribunal Rules 1993 (as amended)** ("EAT Rules"). The rejection of the other grounds was not challenged by the claimant pursuant to Rule 3(10) **EAT Rules**. The claimant sought to relay on additional matters at the hearing but, as I explained, I am limited to determining the ground of appeal that had been permitted to proceed and can not consider those that had been dismissed.

The Law

25. I expect that anyone who has sat as an Employment Judge will have asked a

representative of a respondent in an unfair dismissal complaint, “what does the respondent say was the reason for dismissal” and been told that the reason was “conduct”; or more likely that the claimant was dismissed for “misconduct”. Conduct is not a reason for dismissal, but one of the potentially fair categories of reasons for dismissal. The reason or reasons for dismissal are the reason or reasons that actually operated in the mind or minds of the person or people who decided to dismiss, that resulted in the dismissal. If an employee is dismissed for stealing that is the reason for dismissal. It is a reason that relates to conduct and so is a potentially fair type of reason for dismissal.

26. The above analysis is clear from reading Section 98 **Employment Rights Act 1996** (“**ERA**”). As His Honour Peter Clark reminded us, there is much to be said for drinking from the clear water of the statute.

27. Section 98 **ERA** provides:

98 General.

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
 - (a) **the reason (or, if more than one, the principal reason)** for the dismissal, and
 - (b) that **it** is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if **it**— ...
 - (b) **relates to the conduct of the employee, ...**
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of **the question whether the dismissal is fair or unfair** (having regard to the reason shown by the employer)—
 - (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 **it** as **a sufficient reason for dismissing** the employee, and
 - (b) shall be determined **in accordance with equity and the**

substantial merits of the case. [emphasis added]

28. There are a number of points that are clear from the wording of section 98 **ERA**:

- 28.1. The employer must establish what was its reason or, if there was more than one, the principal reason for dismissal
- 28.2. The word “it”, which does a good deal of heavy lifting in the section, refers to either the reason, if there was only one reason for dismissal; or the principal reason, if there was more than one reason for dismissal – on a proper analysis of the section there can only be one reason in respect of which the fairness of the dismissal is assessed
- 28.3. The reason or principal reason for dismissal is the reason operating as a matter of fact in the mind of the person or persons who decide to dismiss
- 28.4. For the dismissal to be fair, the reason or principal reason must fall within one of the potentially fair categories of reasons for dismissal, one of which is conduct
- 28.5. It is the reason, or principal reason, that is considered when determining whether the dismissal is fair or unfair

29. In **Croydon Health Services NHS Trust v Beatt** [2017] ICR 124, Lord Justice Underhill considered what is meant by the term “reason” for dismissal, at Paragraph 30:

30. What tends to be treated as the classic expression of the approach to identifying the “reason” for the dismissal of an employee for the purpose of section 98 and its various predecessors is the statement by Cairns LJ in *Abernethy v Mott Hay & Anderson* [1974] ICR 323, at p. 330 B-C, that:

“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.”

As I observed in *Hazel v Manchester College* [2014] EWCA Civ 72, [2014] ICR 989, (see para. 23, at p. 1000 F-H), Cairns LJ’s precise wording was directed to the particular issue before the Court, and it may not be perfectly apt in every case; but **the essential point is that the “reason” for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to take the decision** – or, as it is sometimes put, what “motivates” them to do so (see also *The Co-Operative Group Ltd v Baddeley* [2014] EWCA Civ 658, at para. 41).

[emphasis added]

30. It is only once the reason or reasons, in the sense of “the factor or factors operating on the mind of the decision-maker which cause them to take the decision”, is or are determined, that the Employment Tribunal can determine whether a single reason identified falls within the categories of potentially fair reasons for dismissal or, if there is more than one reason, which is the principal reason for dismissal, and whether that single principal reason falls within the categories of potentially fair reasons for dismissal. The Employment Tribunal then decides on a neutral burden whether the employer acted fairly or unfairly in treating that single reason or principal reason as a sufficient reason to dismiss.

31. In **Smith v Glasgow DC**, [1987] I.C.R. 796, Lord Mackay of Clashfern held that:

It is important to notice that the resolution of the question what is the reason or, if there is more than one, **the principal reason for the dismissal is important not only in relation to subsections (1) and (2) of section 57 but also in relation to subsection (3) for the question in subsection (3) is whether the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and it must refer back to the reason or the principal reason determined under subsection (1)**. As Lord Simon of Glaisdale said in *W. Devis & Sons Ltd. v. Atkins* [1977] I.C.R. 662, 682–683, referring to the predecessor of the present legislation:

“the employer must satisfy the tribunal that he acted reasonably in treating ‘it’ (i.e., the reason shown by the employer as the reason for the dismissal of the employee) as a sufficient reason for the dismissal. ... The reference to ‘equity and the substantial merits of the case’ “ — and I would add the reference to the circumstances including the size and administrative resources of the employer’s undertaking added by the Employment Act 1980 — “merely shows that the word ‘reasonably’ is to be widely construed; but they in no way affect the proposition that what must be shown to be reasonable and sufficient is the employer’s action in treating the reason shown by him (the employer) as the reason for dismissing the employee.” [emphasis added]

32. This may seem straightforward enough. The Employment Tribunal determines a single factual reason for dismissal, be it the only reason or the principal amongst a number of reasons, and then considers whether it falls within one of the categories of potentially fair reasons for dismissal. But life is rather more complicated than that.

33. There are cases in which a person is dismissed for a single incident of stealing money, so that there is a single reason for dismissal, that relates to the conduct of the employee. There may be cases where an employee is dismissed for an act of theft, but also because of ill health absences. Should the absences be a minor factor, the theft of the money will be the principal reason for dismissal, and so fairness is assessed by analysing whether the employer acted fairly or unfairly in treating that act of misconduct as a sufficient reason to dismiss. But what if the employee is dismissed for stealing on a number of occasions, days or weeks apart. Does each act of theft constitute a different reason for dismissal, so that the principal reason must be identified, or do they all form a single factual reason, theft, the individual occurrences of which are assessed together as giving rise to a single reason for dismissal related to the employee's conduct?

34. In such cases there is a factual decision for the Employment Tribunal to make as to whether there is a composite single reason for dismissal or a number of reasons, from amongst which the principal reason must be identified.

35. In **Smith v Glasgow** the Lord Mackay accepted that there could be a composite reason for dismissal:

In terms of the statutory provisions applicable the industrial tribunal's first task was to determine the reason or, if there was more than one, the principal reason for Mr. Smith's dismissal. The industrial tribunal, as already mentioned, found that Mr. Smith was dismissed for a mixed reason relating to conduct and capability but they did not say in terms what that reason was. **This probably means that although the council's special committee had described their conclusion as founded on a number of distinct reasons the industrial tribunal regarded these in the statutory language as one single reason.** [emphasis added]

36. Lord Mackay concluded that there were three aspects of inadequate performance that together constituted the reason for dismissal:

In my view, as I have already stated, the special committee had reached the view that Mr. Smith's performance of his duties had not been satisfactory for reasons contained in their conclusions 1(a), (b) and (c). The industrial tribunal concluded that 1(b) had not been established and there is no finding that the special committee

were reasonably entitled on the evidence before them to reach the conclusion that it had been established.

37. Because there was no proper basis for finding that one of the factual reasons was established, the Industrial Tribunal should have found that the dismissal was unfair.

38. Mr Justice Langstaff (President) described the required analysis in **Ms D Robinson v Combat Stress** UKEAT/0310/14/JOJ:

17. It is often necessary in a jurisdiction which is entirely statutory to **remind ourselves of the wording of the statute**. Whatever glosses may be put upon it by cases, it is that wording which is central. Section 98 of the Employment Rights Act 1996 begins as follows:

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

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

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

18. Some observations. **First, the reason for dismissal is a set of facts, or it may be beliefs, which the employer actually has for making the dismissal which occurred when it occurred. The section requires identification of that reason, not whether there might have been a good reason for the dismissal which in fact occurred. Second, the reason is not “capability” or “conduct” or “redundancy” or “breach of enactment”, though it must be capable of falling within a category to which some or one of those labels would be appropriate. They are broad summary categories.** The reason to be focussed on by the Tribunal is **the reason which the employer actually had**, not the one which he might have had albeit that the same broad label could be applied to it. **Third, where the reason for dismissal is a composite of a number of conclusions about a number of different events, it is the whole of that reasoning which the Tribunal must examine**, for it is that which the employer held as the actual reason for its dismissal of the employee.

19. We turn to section 98(4) . The opening words provide:

“[Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(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 it as a sufficient reason for

dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.”

20. **The determination thus has to have regard to the reason. The reference to the reason is not a reference in general terms to the category within which the reason might fall. It is a reference to the actual reason. Where, therefore, an employer has a number of reasons which together form a composite reason for dismissal, the Tribunal’s task is to have regard to the whole of those reasons in assessing fairness.** Where dismissal is for a number of events which have taken place separately, each of which is to the discredit of the employee in the eyes of the employer, then to ask if that dismissal would have occurred if only some of those incidents had been established to the employer’s satisfaction, rather than all involves close evaluation of the employer’s reasoning. Was it actually that once satisfied of one event, the second merely leant emphasis to what had already been decided? There may be many situations in which, having regard to the whole of the reason the employer actually had for dismissal, it is nonetheless fair to dismiss. An example might be where there had been a chain of events in which it is suspected that an employee had his “hand in the till”. If only some of those events are sustained before a Tribunal, nonetheless that might be quite sufficient — indeed perhaps usually would be — for a dismissal for that reason to be sustained even if the employer believed that all the events had occurred whereas the Tribunal thought the employer was only entitled to consider that some had. Similarly, if an employer thought there to have been several different occasions on which racist language had been used by an employee, but a Tribunal concluded that some of those incidents did not bear close examination; or if the employer thought there had been a number of sexual assaults, but the Tribunal thought the number smaller, nonetheless a dismissal — “having regard to the reason shown by the employer” — might easily fall within the scope of that which it was reasonable for an employer to have done.

21. **All must depend upon the employer’s evidence and the Tribunal’s approach to it. But that approach must be to ask first what the reason was for the dismissal, and to deal with whether the employer acted reasonably or unreasonably by having regard to that reason: that is, the totality of the reason which the employer gives.** [emphasis added]

39. This line of authority has recently been considered by the President, Lord Fairley, in **Chand v EE Limited** [2026] EAT 17 and **Devon and Somerset Fire and Rescue Authority v Hunt** [2026] EAT 123, in which he summarised the necessary analysis:

35. Where there is more than one element of conduct that makes up “the reason” for dismissal, **the employer must either prove what was the “principal” reason or, alternatively, show that all elements of a composite reason were statutory reasons**, reasonably held and, in combination, justified the sanction of dismissal (*Smith v. Glasgow City District Council* [1987] ICR 796; *Chand v. EE Limited* [2026] EAT 17). [emphasis added]

40. Summarising the above, it is for the Employment Tribunal to apply its good sense to

identify what factually is the only reason for dismissal, a composite reason for dismissal or, if there is more than one, the principal reason for dismissal. That is a factual assessment. But if the Employment Tribunal does not undertake that assessment, but merely considers the categories of potentially fair reasons for dismissal, it will almost certainly go wrong: **Kristensen v Portman Healthcare Limited** [2026] EAT 127, at paragraph 66. As Lord Fairley put it in **Devon and Somerset Fire and Rescue Authority v Hunt**:

In the absence of a clear determination of the section 98(1)(a) question as to the reason (or principal reason) for the dismissal, the Tribunal could not properly have made any assessment of whether or not such reason (whatever it was) was one of the potentially fair reasons set out in section 98(1)(b) or 98(2) **ERA**, nor could it properly address fairness in terms of section 98(4).

Analysis

41. The Employment Tribunal found that the respondent dismissed the claimant because he (a) failed to follow the respondent's safeguarding protocol, (b) administered first aid, and (c) was dishonest when providing his initial witness statement.

42. The Employment Tribunal did not analyse whether these were three separate reasons for dismissal, from which the principal reason should be identified, or whether there was a composite reason. This is not a point that was raised by the respondent. Accordingly, I assume that it is accepted that, without expressly stating it was doing so, the Employment Tribunal concluded that there were three components of a composite reason for dismissal, because all related to how the claimant had reacted to youth A returning to the club having been in a fight and having lost a tooth. Accordingly, if the respondent acted unfairly in respect of the first aid component of the reason, that could have rendered the dismissal as a whole unfair. Therefore the appeal is not academic.

43. The Employment Tribunal held that the respondent had been entitled to conclude that the claimant "did indeed give what amounted to first aid" and did so while "there was a first aider present at the time" so that it was not "a case of someone acting when confronted by an

emergency and when the first aider was not immediately available”. The Employment Tribunal noted that “handing a tissue or piece of tissue to wipe blood, whether it was dried blood or a modest quantity of flowing blood may not have been the most technical piece of first aid” but that “the Respondent was entitled to regard [it as] first aid”. First aid often includes an element of providing immediate assistance and triage to assess whether further medical assistance is required. The Employment Tribunal held that it is “important that any need for first aid should be assessed [and] any first aid required [be] given by the authorised person” and that “there can be repercussions if inadequate or inappropriate first aid is given” which is “particularly important when dealing with minors”. The Employment Tribunal concluded that the respondent believed on reasonable grounds that the claimant “had given first aid when not authorised to do so, and to find that it amounted to misconduct”. While it might be argued that handing a person a piece of tissue to dab away some blood, or dried blood, falls short of first aid, that was not all that the Employment Tribunal held that the respondent was entitled to conclude had occurred. The claimant knew that youth A had lost a tooth and so the Employment Tribunal held that the respondent was entitled to decide that the claimant should have ensured that A received proper medical treatment for a serious injury.

44. The ground of appeal identified by Judge Bowers does not explicitly state the point of law. I consider it must be that the respondent was not entitled to conclude what the claimant did amounted to first aid. Considering the full context, and what the respondent concluded had occurred, I cannot see that there was any error of law in the decision of the Employment Tribunal that the conclusion that the respondent reached, that the claimant had conducted first aid, was open to it. The decision cannot be said to be perverse.

45. I accept that the claimant was genuinely committed to the youths who attend, or attended, the club, who come from the estate where he lives. However, I am limited to considering the one ground of appeal that was permitted to proceed. The appeal is dismissed.