



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002434/2025

Held in Dundee on 3, 4 and 6 August 2026

Employment Judge P Rae

Dr G Gardner

**Claimant
In Person**

Tayside Health Board

**Respondent
Represented by
Ms Craik
(Solicitor)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the Claimant was not unfairly dismissed and the claim is therefore dismissed.

WRITTEN REASONS

Background

1. The Claimant presented an ET1 on 10 October 2025 with a complaint of unfair dismissal contrary to section 94 of the Employment Rights Act 1996 (“**ERA**”).
2. The Claimant was summarily dismissed by the Respondent on 16 June 2025 for the stated reason of misconduct. He engaged in early conciliation with ACAS between 15 August 2025 and 11 September 2025. Accordingly, the claim was brought in time. An ET3 was lodged on 11 November 2025.
3. The parties had prepared and agreed a joint bundle extending to 726 pages. A supplementary bundle was also prepared, extending to 45 pages. Page numbers in brackets “(xx)” are references to these bundles.

4. The parties prepared and agreed a list of issues.

Preliminary Issues

5. At the outset of the proceedings the Tribunal sought to establish whether there were any outstanding preliminary issues. It was identified that the Claimant had an outstanding application to amend his claim. That application is addressed below.
6. There were no other preliminary issues raised.

Amendment Application

7. An amendment application was presented to the Tribunal on 20 July 2026, some 14 days before the final hearing. The application sought to amend the claim to add a protected disclosure claim under s47B (detriment) and/or s103A (dismissal) ERA.
8. The relevant parts of that application read *"In the course of my employment, I made disclosures which I reasonably believed were in the public interest and related to legal compliance with statutory regulations, namely the Ionising Radiation (Medical Exposure) Regulations 2017.... Following these disclosures, I suffered detrimental treatment and dismissal. These matters fall squarely within the statutory definition of protected disclosures... Details of my protected disclosures and subsequent victimization were not included in my original submissions to ACAS on the 15th August 2025. However they were identified during the appeal hearing (2nd December 2025)"*.
9. The Claimant submitted that the protected disclosure claim was not new information. He said that he had not included it because he had been focused on an internal appeal and had raised it on appeal. He had anticipated a preliminary hearing would have been listed where he could have advanced that claim.
10. Ms Craik provided skeletal written submissions and developed them orally. The Respondent objected to the amendment on the basis that such a claim ought to have been within the Claimant's knowledge at the point he submitted the ET1. Ms Craik suggested the Claimant could also have amended his ET1 at the conclusion of the internal appeal, he did not (December 2025). Ms Craik submitted that the Claimant had no reason to expect a preliminary hearing to have been listed as he contended. However, she argued, he could have requested one, if he required one. He did not.
11. Ms Craik further founded upon the lack of specification in respect of the amendment itself. She submitted it was lacking in the basic detail which could

sensibly be responded to. Ms Craik submitted that the Respondent did not (in its current form) have fair notice of the Claimant's (amended) case. Ms Craik submitted that such claims are likely out of time, but in the absence of specification, she could not properly say or assess that.

12. Ms Craik recognised that the amendment matter was being considered on the first day of a three day hearing. The witnesses were called to respond to the unfair dismissal claim in its current guise only. They were present or otherwise had made themselves available over the next three days. She argued that the amendment would require the case to be adjourned and re-listed. That was unsatisfactory and carried cost and inconvenience to the Respondent and its witnesses.
13. I had regard to the legal principles involved in an amendment application.
14. The ET1 is the document that must contain the relevant case against the respondent.
15. In ***Chandhok v Tirkey [2015] ICR 527*** the Employment Appeal Tribunal noted, *"The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013 (now 2024), the claim as set out in the ET1."*
16. The leading authority dealing with amendment is ***Selkent Bus Co Ltd v Moore [1996] IRLR 661***, building on ***Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650***. These cases tell a Tribunal that the overarching test is looking at the relative hardship to each party between granting or refusing the amendment, having regard to all the circumstances (***Vaughan v Modality Partnership 2021 ICR 535***) and of course consideration must be given to the Tribunal's overriding objective of *"dealing with cases fairly and justly"*.
17. Per ***Selkent*** some of the key relevant factors will include:
 - (a) the nature of the amendment – is it a typographical error or are additional or new facts or claims being advanced? Is there a simple re-labelling of the existing claim(s) or are the amendments wider?
 - (b) the applicability of time limits, if a new claim is being advanced, is it in time? If not, might time be extended under the relevant statutory provisions?

- (c) The timing and manner of the application – there is no fixed time limit for making an amendment, the Tribunal should explore why the application wasn't made earlier. The closer the proximity to the hearing the more cause for explanation, particularly if the facts were already known at the point the claim was submitted.
18. This is, however, not a 'check-list' exercise, but an exercise of balancing the hardship to each party if the amendment application is granted or refused and keeping in mind the overriding objective.

Decision on Amendment

19. I had regard to the hardship to each party in allowing or refusing the amendment.
20. Applying **Selkent**, this was not a relabelling exercise, this was advancing a different claim (automatically unfair dismissal/detriment) which contains different legal tests from those under the extant claim. I had regard to time limits. The Claimant was dismissed on 16 June 2025. Early conciliation commenced on 15 August 2025 (day A) and ended 11 September (day B). The whistleblowing complaint ought to have been raised by 12 October 2025. Instead it was being raised some 9 months later. The reasons advanced by the Claimant (focusing on the internal appeal and awaiting a preliminary hearing) did not indicate that there was an adequate explanation for the delay so as to justify an extension of the time limits. It appeared to me that it would have been reasonably practicable for the Claimant to have presented the claim timeously or within a reasonable period thereafter. That had not happened.
21. I had regard to the timing and manner of the application. The parties were ready to proceed. The Tribunal had been listed for three days and parties had attended with witnesses (or otherwise arranged for witnesses to attend, over the coming 3 days). The application was made on 20 July 2026, 14 days before the substantive hearing in this case.
22. I accepted the Respondent's position that allowing the amendment would require vacating the current hearing with consequential inconvenience and costs to parties and witnesses. I considered that the proposed amendments would indeed require further detailed specification of the amended complaints and likely further cases management. The Respondent would require the opportunity to investigate the issues complained of and amend its own ET3. The Respondent would also have to consider what additional witnesses and evidence would be required to deal with the amended claim. These factors would delay the proceedings and increase cost.

23. I had regard to the EAT's guidance that the core test in considering an amendment application is the balance of injustice and hardship in allowing or refusing the amendment (**Vaughan**). I agreed with the Respondent that the proposed amendments were not minor or simple: they fundamentally changed and expanded the Claimant's case and how it would be presented and defended. In all the circumstances, including the lack of a satisfactory explanation for the timing of the application, amendment ought reasonably to have been sought earlier than two weeks before the hearing.
24. I considered the fact that if the proposed amendments had merit, the Claimant may be denied a remedy and may be unjust. That was a factor potentially in favour of granting it.
25. The Respondent on the other hand will experience the hardship of having to elicit further particulars from the Claimant before responding. Thereafter it will likely need to significantly revise its own pleadings. The amendments would likely require new witnesses to the case, who had until now, not been engaged in proceedings.
26. I found the greater hardship fell on the Respondent who was otherwise prepared and ready, with witnesses, to proceed on the first morning of the listed hearing. I considered the overriding objective and in particular the requirements that giving effect to the overriding objective includes: *"dealing with cases in ways which are proportionate to the complexity and importance of the issues"*; *"avoiding delay, so far as compatible with proper consideration of the issues"*; and; *"saving expense"*.
27. I considered the application came too late and therefore significantly prejudiced the Respondent. Delaying the proceedings was not in keeping with the overriding objective. On balance and in all the circumstances, I refused the amendment and determined the case should proceed as listed.

Findings in Fact

28. The following material findings in fact were either admitted, not disputed or otherwise made by the Tribunal:
29. The Respondent is the NHS authority for Tayside. It is a large employer. Its primary place of operational business is Ninewells Hospital, Dundee, which is where the Claimant was based. It operates in various other locations in the locality as well.
30. The Claimant was employed by the Respondent as a Clinical Scientist between 1 December 2009 and 16 June 2025 when he was dismissed by the Respondent for gross misconduct. The Claimant had some 15 years' service

with the Respondent and had spent in excess of 30 years within the wider NHS.

31. In August 2023 clinical concerns were raised regarding the Claimant in relation to advice he had given to a patient concerning her breastfeeding whilst undergoing treatment. It was alleged that the advice in question was erroneous and concerns were expressed by management, in particular his then line manager Ms Bassett-Smith, Head of Nuclear Medicine Physics and Mr Worrall, Head of Medical Physics. I will refer to this as the 'clinical advice incident'.
32. The Claimant had a difficult relationship with Ms Bassett-Smith and Mr Worrall. Ms Bassett-Smith had raised a grievance against the Claimant for bullying on 4 September 2023. The Claimant had also submitted a separate grievance alleging bullying by Ms Bassett-Smith on 26 September 2023. The Claimant had also raised a grievance against Mr Worrall. No grievances (by or against the Claimant) were upheld.
33. As a result of the clinical advice incident, consideration was given to suspending the Claimant whilst the matter was investigated. A "*Risk Assessment*" and options paper (page 142-149) was prepared by Mr Worrall and Ms Bassett-Smith. Suspension was initially the recommended course of action. However, having taken advice from Human Resources, an alternative to suspension was agreed – that being the Claimant's transfer to work on a non-clinical programming project directly for Mr Worrall (I will refer to this as his "*alternative duties*"). That arrangement involved the removal of the Claimant from front-line clinical duties and the nuclear medicine department focusing on a sole specific programming task for Mr Worrall. The Claimant's work location was to be changed to a small office where he was expected to work alone on the project task, whilst the clinical matter was investigated.
34. On 15 August 2023, the Claimant was invited to an "informal meeting" with Mr Worrall. There is no written record of that meeting and the Claimant was not accompanied or given that option. During that meeting the Claimant was informed of the clinical concerns raised and advised that he was being temporarily assigned to the programming task, being repointed to Mr Worrall and having his working location moved outside of the Nuclear Medicine Department. He was advised that this was an alternative to suspension whilst the clinical matter was investigated further.
35. Immediately after that meeting Mr Worrall wrote to Ms Bassett-Smith on 15 August 2023 (p122) explaining that the Claimant had "*accepted the task I have given him and his new location*". Mr Worrall explained "*I have asked that any current important work Glen is doing be sent by email to you and that any emails he receives over the coming weeks be forwarded to you*". Mr

Worrall concluded that the Claimant was *“returning to the NM {Nuclear Medicine} department now to gather his things and move across”*.

36. After sending that email, Mr Worrall emailed the Claimant's colleagues (p123) and explained that for the *“foreseeable future”* the Claimant would be *“working on a project for me across in the main medical physics and will therefore not be available to the nuclear physics department”*. The Claimant's colleagues were instructed that matters for which the Claimant was usually responsible should be directed to Ms Bassett-Smith in the meantime.
37. The task Mr Worrall asked the Claimant to perform was documented (p85). However, no written follow up or confirmation of the alternative duties arrangement was sent to the Claimant beyond that. The Claimant's systems access was not restricted during this time, Mr Worrall concluding that due to the temporary nature of the arrangement, it was not necessary to do so.
38. The Claimant then had a period of sickness absence between 3 November 2023 and 16 April 2024.
39. Upon the Claimant's return to work he met with Mr Worrall and a representative from Human Resources. He was accompanied by a Unite representative. During that meeting the Claimant suggested that the programming tasks he had been assigned before going off sick had been *“menial and are not related to nuclear medicine”* (p139).
40. The Claimant discussed returning to some of the audit work that he had previously been responsible for (in his substantive role) and Mr Worrall undertook to *“discuss whether this work was being undertaken by other colleagues”*. Mr Worrall did not instruct or permit the Claimant to undertake such work. The Claimant also explored timescales relating to the clinical matter investigation and it being concluded. Mr Worrall told the Claimant that on his return from sick leave he was to *“be located within Medical Physics and you are not to attend the nuclear medicine department”* (p139). Whilst the Claimant was resistant to returning to the alternative duties, Mr Worrall said *“the tasks set are useful, commensurate with your job description and it would be a shame to cast the work aside with almost 3 months having been spent on it”* (p139). It was made clear to the Claimant that his removal from the nuclear medicine department (and his associated work therein) was to continue. He was to focus on the assigned programming work.

Patient Record Access Concerns

41. On 3 May 2024 a colleague of the Claimant's from Nuclear Medicine, Ms Duncan, was using the patient records system known as 'CRIS' when she recognised that another user was in the record she was accessing, that was

the Claimant. Ms Duncan had previously received the email from Mr Worrall explaining the Claimant had been assigned project duties, so queried with Mr Worrall why the Claimant was accessing clinical records.

42. Mr Worrall instructed a review of the Claimant's access to the CRIS system and his access of clinical patient records. That review revealed that whilst assigned to the alternative duties with Mr Worrall, the Claimant had accessed almost 400 patient records on CRIS, some on multiple occasions.

Stakeholder Meeting

43. The access issue was escalated. On 12 May 2024 a meeting was convened with senior stakeholders to discuss the potential that a 'data breach' had occurred and that may be reportable to the Information Commissioner. That meeting was attended by a representative from Human Resources, Information Governance and the Associate Director – Access and Assurance, Ms Jennifer Henderson.
44. It was agreed that the matter would be reported to the Information Commissioner's Office (the I.C.O.). The I.C.O. suggested that the police be informed and that the impacted patients (some 386) were informed of the fact that their records appeared to have been accessed, without authorisation.

Disciplinary Investigation

45. Ms Richardson, Director of Allied Health Professions, was appointed to undertake an investigation into the matter in accordance with the NHS Scotland's Workforce Policies Investigation Process (p679). She had experience of investigations and had received training in respect of the same. She had never met the Claimant until the investigation commenced. Ms Richardson was supported by Ms Davidson (HR Business Adviser) who had been present at the 12 May meeting.
46. On 29 May 2024 the Claimant was invited to an investigatory meeting on 24 June 2024 with Ms Richardson at Ninewells (p357-358). The Claimant was informed of his right to be accompanied and of the allegation under investigation – *"inappropriate access to patient records on CRIS between 16 August and 3 November 2023 and 16 April and 6 May 2024"*. The Claimant was reminded that the process was confidential and that he should avoid discussing it with anyone other than his representative to ensure confidentiality.
47. The Claimant was advised that he would be provided with *"copies of the relevant documentation 14 days in advance of the meeting"* and offered the opportunity to make further representations in writing.

48. On 21 June 2024 the Claimant emailed Ms Richardson explaining that he had not received the documents and asked if the meeting was to be cancelled. Ms Richardson identified there had been an administrative oversight meaning the Claimant had not received documents required within the 14 days. The Claimant was given the options of postponing the meeting or continuing, waiving the 14-day requirement. The Claimant opted for the former and so the meeting was postponed.
49. The investigatory meeting took place on 30 July 2024 and a minute was produced (p125). The Claimant was represented by a Trade Union representative.
50. At that meeting the Claimant admitted to accessing the records in question. The Claimant disputed that his role had been changed and told Ms Richardson that, in respect of his reassignment of duties, *"no discussions were held that my role was changed, just my location"*. He told Ms Richardson that he had not been instructed *"in writing"* not to use CRIS. The Claimant asserted that removal from the Nuclear Medicine department was assumed by him to be a *"change of location"*. The Claimant asserted *"This was a verbal discussion and there was no written communication following the discussion / meeting. He [Mr Worrall] gave me a software task to occupy my time"* (p126). He explained to Ms Richardson that he was not informed that he should not be accessing patient data on CRIS.
51. The Claimant told Ms Richardson that he had explanations for accessing the records in question. These included undertaking a "PET audit" and performing an audit of breastfeeding patients. The Claimant explained to Ms Richardson that he had not *"recorded the audit as yet"* and would *"do this on my return to the department when my clinical systems had been reinstated"*. The Claimant did not provide Ms Richardson with a satisfactory explanation as to why access was undertaken to the data or evidence of his use of the data for legitimate reasons
52. The emails between Mr Worrall and other staff members relating to the Claimant's removal from the department were not initially available at the outset of the investigation but were produced later in the process as evidence was collated.
53. Ms Richardson also interviewed the following witnesses:
- (a) Mr Mark Worrall, Head of Medical Physics.
 - (b) Dr Gillian Duncan, Consultant Radiologist and Clinical Lead.
 - (c) Ms Victoria Bassett-Smith, Head of Nuclear Medicine Physics.

54. The Claimant was interviewed a second time by Ms Richardson on 21 October 2024, again accompanied by a Trade Union official. Ms Davidson (HR) was also in attendance. In advance of that second meeting the Claimant submitted (on 18 October 2024) a statement and 13 documents for consideration by Ms Richardson (p97). At the start of the meeting the Claimant was reminded that he could also “*submit any additional evidence or personal statement that they wished the investigation team to consider*”.
55. That interview was intended to ask the Claimant to respond to inconsistencies between his account and those of the other witnesses. A minute of that second meeting was produced (p131 – 136). The Claimant took the opportunity to expand on further representations and referred to documents he had submitted before the meeting (on 18 October 2024).
56. Having concluded the investigation and interviewed the Claimant twice, Ms Richardson prepared a detailed report (p73 – p124). This report was completed on 21 October 2024 and published on 2 December 2024.
57. Ms Richardson concluded that the “*evidence supports the finding that [the Claimant’s] methods and clinical working practices include inappropriate means of accessing data including inappropriate access of patient records.*”
58. The outcome of the investigation was a recommendation that the case proceed to a disciplinary hearing in accordance with the NHS Scotland Conduct Policy (p344). There is a section in that policy that reads where a conduct hearing is required: “*to ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case*”,

Disciplinary Process

59. Ms Henderson, Associate Director – Access and Assurance was appointed to hear the disciplinary case. She had attended the 12 May 2024 meeting (detailed above).
60. Ms Henderson had previous experience of dealing with disciplinary and HR matters and has both legal and HR qualifications.
61. On 28 January 2025 a letter was sent to the Claimant inviting him to a Disciplinary Hearing on 24 March 2025 (p367-369). The allegation against him was “*inappropriate access to patient records on CRIS between 16 August and 3 November 2023 and 16 April and 6 May 2024*”. The invitation letter set out the right to be accompanied. The letter detailed that dismissal may be a consequence. The Claimant was advised of his right to be accompanied and his entitlement to call witnesses.

62. Given the volume of documentation being made available to the disciplinary panel there were instances where the Claimant had to make representations about documents and version control. An example was a witness statement being included in duplicate rather than a first version and second version bearing the Claimant's comments. Once identified by the Claimant the matter was resolved and the correct documents exhibited.
63. The Disciplinary Hearing took place on 24 March 2025. A minute was produced (p60 – 72). The Claimant attended and was accompanied by a trade union representative. Ms Henderson formed part of a panel of three, including Ms McPherson (professional member) and Ms Davidson (HR Business Adviser). Ms Henderson was, however, the sole decision maker.
64. The management case was presented by the Investigating Officer, Ms Richardson. This involved reference to the investigation report and its appendices. The Claimant had the opportunity to ask questions and challenge that case. The Panel also had questions.
65. After conclusion of the Management Case, the Employee Case was presented (p65-68). The Panel asked questions.
66. The Claimant's defence centred around him not being removed from clinical duties and not being instructed by Mr Worrall not to access patient records in CRIS whilst he was undertaking the alternative duties. The Claimant's case was that he thought he was undertaking a 50:50 split between his substantive role and the project work.
67. It was not possible for an outcome to be delivered on the day so the meeting was adjourned.
68. During the adjournment period, Ms Henderson sought to properly understand the position in respect of what the Claimant had been told (and understood) in respect of his reassigned duties and access whilst undertaking the project work with Mr Worrall.
69. Ms Henderson had been made aware of a grievance raised by the Claimant which specifically related to his temporarily assigned duties, during the clinical investigation. She believed the grievance to be relevant to the issues under consideration.
70. Ms Henderson sought advice from HR about access to the grievance which she considered relevant (p218 – 219). She received a redacted version of the grievance (p220).
71. Ms Henderson was surprised to learn that the nature of the grievance was around the Claimant's removal from clinical duties and reassignment to a project to perform, what he described in his grievance, as a "*menial*" task.

72. The grievance read: *"I have been suspended from my duties in Nuclear Medicine"* (p221). It went on (p224) to complain about the *"removal of my duties and responsibilities in Nuclear Medicine, I was relocated to another area of the hospital and given menial – for me – imaging processing task"*.
73. Ms Henderson considered the contents of the grievance to be at fundamental odds with what the Claimant's assertion that he did not understand there had been a change to his responsibilities. Ms Henderson considered that the accounts of Mr Worrall, Ms Bassett-Smith, Ms Duncan, the emails of 15 August 2023 to both staff and Ms Bassett-Smith, and the grievance amounted to a "triangulation" of evidence, supporting Ms Henderson's conclusion that the Claimant knew he had been removed from clinical duties and as such should not be accessing patient clinical records.
74. Ms Henderson considered that the Claimant had been *"dishonest"* or misleading to her in his account of what he understood his responsibilities were during the relevant period. She considered the grievance appeared to make clear what tasks the Claimant was expected to perform when he was assigned to the alternative duties.
75. The Claimant was invited to a reconvened disciplinary hearing on 12 June 2025 (p69). The Claimant was given the opportunity to respond to issues relating to the grievance and his knowledge of what his responsibilities were at the time. He had the opportunity to address Ms Henderson's perceived inconsistencies. Ms Henderson adjourned to consider her findings.
76. Ms Henderson considered the Claimant's position, in respect of not being aware that he was not to undertake clinical duties, to be wholly inconsistent with his grievance, which, she found, was about the very fact that he had been assigned alternative *"menial"* tasks and was not permitted to undertake his day-job.
77. Ms Henderson set out her findings in her outcome letter dated 16 June 2025 (p55 – 59). She recognised that, whilst there had been a missed opportunity for Mr Worrall to set out the Claimant's temporary responsibilities in writing, she had formed the view that the Claimant knew that he had been removed from clinical duties and so (as a consequence) should not access clinical records without permission. Ms Henderson concluded the Claimant *"understood you were not to undertake clinical duties or access patient information from the point this was discussed with you on 15 August 2023 to date"*.
78. She concluded that had been a *"triangulation"* of evidence from different sources that supported her finding that the Claimant knew and had properly been instructed to discontinue clinical activities and concentrate on one

specific project (that did not require access to patient data). She concluded (p58) that *“there was no legitimate reason for you to access these patient records”* and *“we have no clear understanding of what you were doing when you were accessing the patient records”*.

79. Ms Henderson informed the Claimant (p58) *“I fully uphold the allegations made against you in relation to the inappropriate access to patient records”* and her conclusion was that the Claimant was to be dismissed for gross misconduct. She found that the Claimant’s reasons for accessing the data did not conform to duties that he had been instructed to perform nor were they otherwise satisfactory in the circumstances.
80. Ms Henderson concluded that there had been 497 examples of inappropriate access. Ms Henderson recognised that *“breaches of confidentiality”* and *“inappropriate access and use of IT systems”* were examples given by the Respondent in its disciplinary policy of gross misconduct.
81. Ms Henderson considered alternatives to dismissal. She had regard to the Claimant’s length of service and otherwise clean disciplinary record (the clinical matter having since been resolved). She considered these as mitigants. She considered aggravating factors which included, the Claimant maintaining his defensive position, his dishonesty, not demonstrating insight into the misconduct and her concern that there was a risk of repetition.
82. Ms Henderson was aware that patients were being written to concerning the matter and this was of serious concern to her.
83. The Claimant’s dismissal for gross misconduct took effect from the date of her letter (16 June 2025)

Appeal

84. The Claimant intimated an appeal on 30 June 2025 (p240 – 241).
85. Ms Henderson prepared a response to that appeal (p39 – 54).
86. Dr Andrew Thompson, a non-executive (medically qualified) director of the Respondent, was appointed to hear the appeal. He had previously heard an appeal for the Respondent and had experience of decision making based on his portfolio career. He had never met the Claimant.
87. An appeal hearing took place on 20 October 2025 and the Claimant was accompanied by a Unite representative. A minute of that hearing was prepared (p287 – 328).
88. The hearing reconvened on 2 December 2025, this time the Claimant had not exercised his right to be accompanied (p328 - 343).

89. The hearing was chaired by Dr Thompson. Ms Sharkey (Nurse Director, Acute Services) and Mr McFarlane (HR Business Lead) were also Panel members but, as was the case with the disciplinary case, they were not decision makers.
90. Ms Henderson, as the original decision maker, attended and spoke to her "Appeal Report" responding to the Claimant's grounds of appeal (p39-54). She also presented the management case and called the following witnesses to give oral evidence:
- (a) Mr Worrall, Head of Medical Physics
 - (b) Ms Richardson, Investigating Officer
 - (c) Mr Donnelly, Depute Data Protection Officer (Information Governance)
91. The management case was presented by Ms Henderson, the Claimant questioned the management case and the panel asked questions. Thereafter the Claimant presented his case, management had the opportunity to respond and there was the opportunity for panel questions.
92. The Claimant had the opportunity to call witnesses, but did not. Ms Monaghan, the Claimant's wife and former colleague, had intended to attend but was unable to do so due to illness. Instead, she prepared a witness statement. Dr Thompson had regard to that statement in his decision making. Notes of the appeal meeting were made (p287 -343).
93. The appeal hearing could not be concluded in one day and so was adjourned until 2 December 2025. Dr Thompson recognised that there were various acceptable reasons for delays during the process both to accommodate the Respondent's witnesses, the Claimant and his union representatives.
94. Dr Thompson, supported by Human Resources prepared an outcome letter dated 5 December 2025 (p281 – 286). He had regard to the evidence of the witnesses before him, representations by Ms Henderson at the appeal hearing and the Claimant's submissions.
95. Dr Thompson addressed the appeal under separate headings:
- (a) Adherence to policy:
 - (b) Impartiality:
 - (c) New Evidence:
 - (d) Challenge of evidence / outcome:
 - (e) Severity of Sanction.

96. Dr Thompson found that the Claimant simply having access to clinical data was not a justification for accessing it without authorisation or legitimate reason. He was also satisfied that the Claimant had not persuaded him that he had a legitimate reason for accessing the data and that there was no meaningful work output/product that showed it been accessed legitimately. Dr Thompson concluded that the Claimant did not have the appropriate permissions to access the patient records in question.
97. Dr Thompson considered that '*breaches of confidentiality*', '*unprofessional conduct*' and '*inappropriate access and use of IT systems*' were given by the Respondent in its disciplinary policy as examples of gross misconduct.
98. Dr Thompson decided not to uphold the appeal and confirmed the decision to dismiss. An outcome letter was sent to the Claimant dated 5 December 2025. That concluded the internal process.

Relevant Law

99. The law relating to unfair dismissal is set out in the Employment Rights Act 1996 ('the ERA'), in particular Section 98 with regard to the fairness of the dismissal.
100. Section 98(1) requires the Respondent to show the reason for the dismissal and that it falls within one of the potentially fair reasons, one of which is conduct S98(2)(b).
101. In circumstances where the reason for dismissal is disputed, the Tribunal has to determine the reason in terms of s 98(1) ERA. It is for the Respondent to prove the reason for dismissal and that it was a potentially fair one.
102. Section 98(4) provides that, once the reason for dismissal is established, the determination of the question as to whether the dismissal was fair or unfair 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 dismissal and shall be determined "in accordance with equity and the substantial merits of the case". Section 98(4) is neutral as to the burden of proof.
103. The relevant test in a misconduct dismissal is set out in ***British Home Stores v Burchell [1978] IRLR 379***. A Tribunal must be satisfied that (i) the Respondent genuinely believed the Claimant was guilty of the alleged misconduct; (ii) that belief was based on reasonable grounds; (iii) at the point the belief was formed, the Respondent had carried out as much investigation as was reasonable in the circumstances.

104. Both the sufficiency of the investigation and the decision to dismiss are to be judged against the range of reasonable responses per ***Iceland Frozen Foods Ltd v Jones [1983] ICR 17***. The Tribunal must not substitute its own view of what it would have done, the question is whether the dismissal fell within the range of responses that a reasonable employer might have adopted.
105. The ACAS Code of Practice on Disciplinary and Grievance Procedures is relevant to the fairness of the procedure followed. The Tribunal is required to have regard to that code in considering the procedure adopted by the Respondent. An unreasonable failure to comply with the Code may see an adjustment to any compensation awarded by up to 25%.

Witnesses

106. Ms Richardson gave evidence and was a credible and reliable witness. She was cross examined by the Claimant. She had a good recollection of the events, her process and rationale of undertaking the component parts of the investigation and reasons for interviewing each witness.
107. Ms Henderson gave evidence and was a credible and reliable witness. She openly accepted criticism levelled at her and, in particular, accepted in hindsight that she had not been as “independent” as the policy may otherwise have anticipated given her attendance at the initial stakeholder meeting. She maintained that she retained an open mind throughout and was credible in that regard. In particular, Ms Henderson gave genuine and thoughtful consideration to the sanction to be imposed, recognising its consequences visited on the Claimant. Ms Henderson also made clear concessions about Mr Worrall not having confirmed certain matters in writing on 15 August 2023 and that was an unsatisfactory position.
108. Dr Thompson was a credible and reliable witness. He kept to the issues and was willing to make concessions where appropriate or explain when he did not know the answer to a question.
109. The Claimant gave evidence on his own account. His lack of experience in such matters (which is not a criticism) required some intervention from the Tribunal to ensure that his evidence was relevant to the issues in hand and did not stray into a ‘rehearing’ of the disciplinary case. I found the Claimant to be honest and credible in his evidence, albeit somewhat guarded in his position under cross-examination. He maintained throughout that he had legitimate reasons for accessing the data.
110. Where there was dispute about a matter, the evidence of the Respondent’s witnesses was preferred in the circumstances. The main dispute(s) were in

respect of what the Claimant had been instructed to do whilst assigned to Mr Worrall whilst the clinical matter was investigated and whether the Claimant knew, or ought to have known, that he should not be accessing patient records whilst reassigned to alternative duties. Otherwise there was little factual dispute(s).

Discussion and Deliberation

111. I had regard to the agreed List of Issues which had helpfully been prepared by the parties.
112. First, I had to determine the reason for dismissal. Both parties accept that, on the face of it the reason given was 'conduct', a potentially fair reason. The Claimant, however, asserted that this was motivated by a vendetta against him by Mr Worrall and Ms Bassett-Smith. Whilst there was apparent disharmony between the parties (as evidenced by the Claimant having raised grievances against both) those matters had been addressed and resolved through the internal grievance process. No grievances had been upheld against either party. On the other hand, looking at conduct, there was an apparent data breach incident, identified and escalated by Ms Davidson (who was not accused of having a vendetta), which ultimately gave rise to the misconduct investigation. The ensuing investigation was undertaken by Ms Richardson who was wholly independent.
113. On balance I was persuaded that "conduct" was indeed the reason for initiation of the disciplinary process and the ultimate dismissal. It was not the Claimant's position that the investigating officer, disciplining officer, nor appeal officer, were motivated or influenced in their decisions by any vendetta against the Claimant. This was not a case where those said to have 'vendetta' were eventually decision makers. They were not.
114. In considering whether the Respondent acted reasonably in treating 'conduct' as a sufficient reason for dismissal, I was mindful of the Claimant's consistent position that he had not received specific written instructions from Mr Worrall not to undertake clinical work (and so access patient clinical data).
115. It was openly accepted by Ms Henderson that the lack of written instruction from Mr Worrall was a weakness in the Respondent's case and unfortunate. Ms Henderson, however, referred to the 'triangulation' of other evidence that supported her finding that the Claimant knew that he was not to undertake clinical duties whilst undertaking the assigned duties (as an alternative to suspension) and so should not be accessing patient records. I found it reasonable for Ms Henderson to have concluded that, particularly given his

assertion in his own grievance that he had been “*suspended from my duties in Nuclear Medicine*” and given a “*a menial piece of work to do*” in an unsatisfactory room. Whilst I had no doubt that the Claimant was indeed keen to resume normal duties, as demonstrated by his request to start audit work when he returned from sick leave, no such request had been granted. I found that Ms Henderson had a reasonable basis for forming the conclusion she reached – that Claimant knew, or ought to have known, that he should not be accessing patient records whilst assigned to alternative duties.

116. The Claimant was critical of the fact that Mr Worrall did not remove his systems access when he was assigned to alternative duties, which would have prevented him from accessing the patient data in question. I was satisfied that Ms Henderson (and Dr Thompson, on appeal) had taken that into account. I was satisfied with her explanation that, given the temporary nature of the arrangement, restricting access was not deemed necessary. I found it reasonable for the Respondent to have formed the view that simply having access does not justify unnecessary access, when it was not required for the task assigned to the Claimant.
117. I also noted criticisms raised by the Claimant that the investigation did not involve interviewing his colleagues/peers during the investigation. He suggested this resulted in “*unfounded conclusions*” being drawn about the Claimant’s need to access clinical data. I was satisfied that the investigation process was confidential and that Mr Worrall, as Head of Department, was an appropriate person for Ms Richardson to engage to understand what it was, and was not, appropriate for Claimant to access during the period of alternative duties. I was mindful that Ms Duncan (a peer) had indeed been interviewed as the person who raised the concern. I find it was reasonable for the Respondent to accept Mr Worrall’s (as Head of Department) evidence in that regard.
118. Turning to the reasonableness of the investigation itself:
 - (a) The Claimant criticised the Respondent for failing to provide the investigation documents within 14 days. Ms Richardson accepted that oversight and offered the option of continuing with the investigation meeting as planned, or, to rescheduling it to allow the Claimant time to review the documents. The Claimant chose the latter. I find this was a reasonable approach for the Respondent to have taken and caused no unfairness or prejudice to the Claimant.
 - (b) The Claimant also criticised the failure, during the initial investigation, to provide him with the emails from 15 August 2023 between (i) Mr Worrall and Ms Bassett-Smith; and (ii) his colleagues / peers, in respect of his removal from the department and reassigned duties.

These emails became available later on in the investigation process. They were, however, produced and included in the investigation report (p122 and p123). Accordingly, they were available to the Claimant well in advance of the disciplinary hearing. On that basis I saw no unfairness or prejudice to the Claimant in the inclusion of those emails notwithstanding their late disclosure.

- (c) The Claimant was critical of having to remind the Respondent to include his own comments on an investigatory meeting minute and pass them to the disciplinary panel. The Respondent accepted that erroneously two copies of the same statement had been included in the disciplinary materials rather than the original version and then the Claimant's supplementary comments. That had been identified by the Claimant during the process. I was satisfied with the Respondent's position that this was an oversight and that that once highlighted by the Claimant it was immediately remedied (and the updated second document was provided to the panel). I was satisfied that there was no disadvantage or unfairness to the Claimant.
 - (d) The Claimant submitted that there had been a failure to examine evidence or otherwise that evidence had been "filtered". I understood this to mean that the Respondent had been selective in its investigation process. The Respondent directed me to the interviews of three witnesses (Mr Worrall on two occasions, 17 June 2024 and 13 August 2024, Ms Duncan on 18 June 2024; and; Ms Bassett-Smith on 21 August 2024). There were also two interviews with the Claimant on 30 July 2024 and 21 October 2024. It was apparent that various relevant documents were indeed produced and considered. The Claimant was afforded the opportunity to submit his own documents (and indeed did so) and make written submissions. This was documented in the minute. The investigation report was comprehensive and extended to 52 pages. I saw no evidence of a failure to examine relevant evidence or otherwise "*evidence filtering*". I found the Claimant had an adequate opportunity to challenge evidence, submit his own evidence and call witnesses as required.
119. In considering overall whether a fair procedure was followed, I had regard to the Claimant's criticisms of the duration of the disciplinary process. The investigation commenced on 27 May 2024 the outcome was finally reported on 2 December 2024. The disciplinary hearing was held on 24 March 2025 and 12 June 2025. Thereafter the appeal was held 20 October 2025 and 2 December 2025. The Claimant asserted that length of the process impacted on the overall fairness of the procedure. This was indeed a very lengthy process. I am cognisant of the ACAS Code which provides that investigation

should take place “*without unreasonable delay*”. I had regard to the timeline produced by Ms Richardson and her detailed chronology of events (p228). I was satisfied that there were satisfactory reasons offered for the delays, which included accommodating the Claimant and his various Union representatives’ availability and leave. Whilst the delay appears to have been lengthy, I was satisfied that it was proportionate to the matters and I was not persuaded that the fairness of the overall process was impacted by the delays or caused the Claimant any material prejudice.

120. The Claimant had raised the matter of impartiality, both on appeal and before the Tribunal. In particular, he focused on Ms Henderson’s involvement in the initial data-breach stakeholder meeting. Ms Henderson accepted in evidence that she had been involved in the meeting initially as a point of escalation in respect of the incident. However, thereafter she stepped back and allowed the investigatory process to take place independently by Ms Richardson. She was not a witness and her involvement extended to the incident having been brought to her attention, as a senior manager, when discovered. Ms Henderson was credible and consistent in her evidence that she had no preconceived outcomes. She accepted, in hindsight, she had at least *some* involvement in the process, but on account of her seniority and role. Whilst I have some concerns in respect of Ms Henderson’s involvement given her attendance at the stakeholder initial meeting, on balance, I do not believe it has been of such significance to have tainted the fairness of the entire process. Even if I am wrong on that, I am satisfied that any such deficiencies were raised by the Claimant on appeal and satisfactorily addressed by Dr Thompson, so as to resolve any unfairness.
121. To a lesser extent, the Claimant was critical of Ms Davidson’s (HR Business Adviser) involvement in the stakeholder meeting and then supporting the investigation interviews. That said, he accepted that she was not involved in the decision making. I saw no material unfairness arising from her involvement in the process initially.
122. The Claimant was also critical of Ms Henderson’s use of his grievance as part of the disciplinary process. He argued that it was confidential and ought not to have been used against him. I was satisfied that the Claimant’s grievance was relevant evidence in respect of the investigation and its redacted inclusion was reasonable. The content was relevant as to whether the Claimant knew (or ought to have known) that he had been removed from clinical duties and as such should not be accessing patient records. The grievance outcome was unhelpful to the Claimant’s case, but it appeared relevant nonetheless. As such I find its inclusion to have been reasonable and I believe it did not impugn the fairness of the overall process. I also note

that the Claimant was given the opportunity to respond to the perceived inconsistencies between his account and the grievance contents and did so.

123. The Claimant also asserted that the timing of the appeal outcome had been designed to allow the 3-month time limit for presentation of a claim to the Employment Tribunal to expire. Delay was indeed addressed by Dr Thompson in the appeal and he recognised that there had been delay on both sides, but with satisfactory explanations. The Claimant was dismissed on 16 June 2025. He appealed on 30 June and the appeal hearing started on 20 October and reconvened on 2 December. I was satisfied that availability of relevant stakeholders was the reason for any such delay and this included the Claimant and his representatives. There was no evidence to suggest a deliberate attempt to allow the Claimant's claim to time bar and I did not consider this relevant to the question of the fairness of the dismissal. In any event the Claimant presented his claim timeously, so there was no unfairness.
124. In summary, Ms Henderson believed that, during a period of restricted duties (as an alternative to suspension), the Claimant had without authority or legitimate reason accessed the patient records of 386 patients over 497 occasions. That matter had led to a referral to the Information Commissioner, the police and led to a recommendation from the ICO that the Respondent write to each impacted patient and inform them of the incident.
125. The Claimant admitted access to the records but suggested he had legitimate reasons for doing so. The Respondent, after the disciplinary process was not satisfied with the Claimant's explanations or that he had such legitimate reasons.

Decision

126. I remind myself it is not the Tribunal's role to undertake a re-hearing of the disciplinary case or to substitute my view. It is also not the Tribunal's role to make findings of guilt or innocence in respect of alleged misconduct.
127. A fair reason for dismissal was established. The Respondent undertook as reasonable an investigation as was appropriate in the circumstances. Considering s98(4) I was satisfied that the process was reasonable, having regard to the size and administrative resources of the employer. The Respondent formed a genuine belief that the Claimant had committed the misconduct in question. Alternative sanctions were considered. The Respondent had to report the matter to the I.C.O. who suggested engaging the police and writing to all impacted patients. This was a serious matter. The Respondent had concluded that the Claimant had been dishonest or

misleading in his account of events. The Respondent concluded there was a lack of insight and risk of repetition.

128. In all the circumstances of this case, determined in accordance with equity and the substantial merits of the case, I find that the Respondent acted reasonably in treating the Claimant's misconduct as a sufficient reason for dismissal and it adopted a fair procedure in so concluding. Dismissal was within the range of reasonable responses open to the Respondent.
129. The Claimant's dismissal was therefore fair in terms of section 98 ERA. Accordingly, the claim fails and is dismissed.

Date sent to parties

16 September 2026