Case No: 6014626/2024

EMPLOYMENT TRIBUNALS

Claimant: Donna Williams

Respondent: Copthorne Care Homes Limited

Heard at: Bodmin **On:** 27 – 31 July 2026

Before: Mrs Blake, Mrs Skillin and Employment Judge Barton

Representation
Claimant: In person
Respondent: Miss Z. Ahmad, litigation consultant

JUDGMENT and summary oral reasons were given at the hearing on 31 July 2026. The written judgment was sent to the parties on 21 August 2026. Written reasons were requested on 26 August 2026; this request was communicated to me on 14 September 2026. The following reasons are now provided.

References in parenthesis are to pages in the bundle.

REASONS

INTRODUCTION

1. The Claimant was employed by the Respondent between 12 August 2012 and 27 June 2024 as a night-time care assistant. The business was sold to Mr. Rahim in 2022. The Claimant alleges that the original staff had mostly left following the sale. Following the second disciplinary, the Claimant was signed off sick from work, with anxiety and work-related issues. She says that two nights after her return to work she was suspended again for neglect. She was subsequently dismissed for misconduct. The Claimant denies that she had committed any misconduct. The Claimant alleges that she was dismissed because of her disability or something arising from it. She says that when she asked for her notice pay the reason for her dismissal was changed to gross misconduct.

2. The Respondent asserts that the Claimant was subject to a final written warning following concerns being raised about her actions in March 2024. The Claimant appealed but the sanction was upheld. The Respondent

says that following the Claimant's return from a period of sick leave she was again suspended for allegedly bad mouthing a colleague and failing to change a resident's pad, which was found saturated the following morning. The Claimant was suspended and there was a disciplinary hearing, which resulted in the Claimant's dismissal. The Claimant appealed and the sanction of dismissal was upheld. The Respondent asserts that it had evidence of misconduct and that a fair process was followed. The Respondent denies disability discrimination. The Respondent accepts that it suspended and dismissed that Claimant.

3. The claim form was presented on 10 October 2024. The Claimant commenced the Early Conciliation process with ACAS on 29 August 2024 (Day A). The Early Conciliation Certificate was issued on 10 October 2024 (Day B). Accordingly, any act or omission which took place before 30 May 2024 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

4. Rule 4 of the Tribunal Rules provides the Tribunal must, wherever practicable and appropriate, seek to encourage the use by the parties of the services of ACAS, judicial or other mediation, or other means of resolving their disputes by agreement. The Claimant attempted to engage in Judicial Mediation. The Respondent did not reciprocate. Neither party expressed interest in obtaining a judicial assessment of their respective cases.

THE HEARING

5. The hearing was conducted in person over the course of five days. Adjustments were made throughout the hearing for the Claimant to acknowledge that she is a litigant in person. These adjustments included rearranging the seating in the courtroom, frequent breaks, and the appropriate clarification and explanation of matters arising during the hearing. Judgment and oral reasons were given on 31 July.

6. We heard evidence from the Claimant. We also heard from the Respondent's witness; Anna Billinger, manager. We did not hear from the Respondent's second witness, Emma Boase, as she was unavailable to attend the hearing. We were provided with a final hearing bundle (226 pages), a supplementary bundle (v5) (98 pages) and a witness statement, cast list and chronology bundle (32 pages). The representative for the Respondent made oral submissions, as did the Claimant.

THE ISSUES

7. Preliminary hearings took place on 28 November 2025 and 8 June 2026 before Judge Rayner. The issues in relation to the claim were settled and included in the Case Management Order from the 28 November hearing and sent to the parties on 22 January 2026 (the "CMO"). At paragraph 20 of the CMO, the parties were required to write in to the Tribunal by 9

January 2026 to raise with the Tribunal if they thought the List of Issues was wrong or incomplete. No such correspondence was received by the Tribunal. The five issues as set out in the CMO are reproduced below.

(i) Time Limits

8. This issue was conceded by the Respondent.

(ii) Unfair dismissal

9. Was the Claimant dismissed?

   What was the reason for the dismissal?
   The Respondent asserts that it was a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

   Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances?
   The burden of proof is neutral here, but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified as follows;

   - The Claimant alleges that she did not commit any of the misconduct alleged, but that the Respondent did not believe her. She alleges that the Respondent's real reason for dismissing her was her disability.
   - She says there were two people responsible for using the hoist and for the resident, but she was the only one disciplined
   - Claimant says that the Respondent did not take into account that she had restricted movement as a result of her disability when considering the matter
   - The Respondent changed the reason for dismissal from d (sic) misconduct to gross misconduct when the Claimant asked for payment of her notice.
   - Her long service was not taken into account

   Did the Respondent adopt a fair procedure?
   The Claimant challenges the fairness of the procedure as set out above

   If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

   If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct?
   This requires the Respondent to prove, on the balance of probabilities, that the Claimant actually committed the misconduct alleged.

(iii)Wrongful dismissal; notice pay

10. What was the Claimant's notice period?

Was the Claimant paid for that notice period?

If not, was the Claimant guilty of gross misconduct, or did she do something so serious that the Respondent was entitled to dismiss without notice?

(iv) Direct disability discrimination (Equality Act 2010 section 13)

11. Did the Respondent do the following things:
    - Suspend the Claimant
    - Dismiss the Claimant for misconduct

Was that less favourable treatment?

The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who she says was treated better than she was and therefore relies upon a hypothetical comparator with a different disability or no disability.

If so, was it because of disability?

Is the Respondent able to prove that the treatment that occurred was for a non-discriminatory reason not connected to disability?

The Tribunal will decide in particular:

- Was the treatment an appropriate and reasonably necessary way to achieve those aims;
- Could something less discriminatory have been done instead;
- How should the needs of the Claimant and the Respondent be balanced?

(v) Discrimination arising from disability (Equality Act 2010 section 15)

Did the Respondent treat the Claimant unfavourably by:

- Suspending her on to occasions
- Subjecting her to disciplinary action on two occasions
- Dismissing her;

Did the following things arise in consequence of the Claimant's disability?
The Claimant's case is that a because of her arthritis

- she was less able to lift her arm, or to push or lift, and that she was not able to use the hoist on her own.
- That she could not hang out washing, that she could not take heavy washing out of the machine but could do ironing and folding, and that she could not push wheelchairs or the heavy hoover.

Was the unfavourable treatment because of any of those things?

Was the treatment a proportionate means of achieving a legitimate aim?

The Respondent will set out any proportionate ai (sic) relied upon in its amended ET3.

The Tribunal will decide in particular:

Was the treatment an appropriate and reasonably necessary way to achieve those aims;

Could something less discriminatory have been done instead;

How should the needs of the Claimant and the Respondent be balanced?

Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

UNDISPUTED MATTERS

12. The Claimant worked nights at the care home. The care home ran on reduced staffing during night shifts. Service users have differing levels of mobility. Some service users have dementia, which can also have an effect on their continence. Some service users require personal care in relation to toileting. Crash pads are used to cushion a service user if they fall out of bed. Handovers took place between the night and day staff. Controlled drugs were stored at the home. These pain killing drugs came in the form of pain patches.

Christmas 2023

13. Not all staff members received a Christmas bonus. The Respondent had a policy of rewarding people assessed as going "above and beyond". This was different from the previous owners who gave all staff a Christmas bonus.

January 2024

14. The Claimant was invited to an investigatory meeting with Anna Billinger and Emma Boase on 3 January about potential disciplinary matters. The matters discussed were vegetable preparation (a whole swede left in a pan and not covered with water), discussing the Christmas bonus with colleagues, and not sitting in the side conservatory while waiting to start her shift. The Claimant attended a disciplinary hearing on 26 January. Anna Billinger conducted the hearing with Alison Davies as a note taker. The Claimant received a written warning for the three matters. The Claimant was also told not to discuss the bonuses again and to go back to sitting in the side conservatory.

February 2024

15. A risk assessment of the Claimant recorded health conditions and discussed adjustments. These included that the Claimant should not manoeuvre a hoist or "sara steady" independently and should act as the second person during hoist transfers (107).

March 2024

16. The Claimant was investigated for allegations concerning matters on 5, 10, 12 and into the morning of 13 March (139). Please also see supplemental bundle page 8 and 10.

17. There are screenshots of messages on 13 March between the Claimant and another employee Chris Alcock (147). The messages show communication with Chris Alcock regarding a pain relief patch, a resident who had a fall and that the Claimant was being accused of not documenting matters. The Claimant then asks whether she told Lucy Billinger in the handover or before handover. Chris Alcock replies to say that he was doing the handover and that the Claimant was the one who had raised this matter (148).

18. On 19 March there was an investigation meeting into "alleged neglect connected to shifts on 5 and 12 March 2024". See page 8-9 of the supplemental bundle. Alison Davies and Anna Billinger were present. The allegations were:

    - on 5 and 12 March a service user was left in a chair for the entire night
    - on 10 March the Claimant noticed a service user had no pain relief patch on. The Claimant did not replace this and made no one aware of this situation
    - on 12 March following a resident having a fall the Claimant did not complete the required paperwork and telephoned a colleague at 03:00
    - on 12 March the Claimant noticed that the same service user still did not have a pain relief patch on and again took no action

    The Claimant was suspended with pay on the same day.

19. On 28 March Anna Bellinger wrote to the Claimant requiring her to attend a disciplinary hearing on 2 April. In this letter the alleged disciplinary matters were:

    - a resident was left in their chair the entire night without any pressure cushion
    - secondly on the 10 March the service user did not have a pain relief patch, and you did not replace this or hand it over resulting in the service user being left without pain relief for three days
    - thirdly an alleged failure to follow a health and safety and care plan that on the 13 March the Claimant moved a service user on her own without assistance from a colleague

20. On 29 March (154) Emma Boase texted the claimant to ask her to come in for what she referred to as the "grievance hearing".

April 2024

21. On 1 April the Claimant texted the office asking if Chris Alcock could be present during the hearing. This was because he was present when the Claimant handed over to Lucy Billinger and he was also present on the night of the 5 March. Alison Davies replied to say that the Respondent would not permit Chris Alcock to be present at the meeting as they were waiting for a statement from him.

22. There is a screenshot of a statement from Chris Alcock dated the 1 April (166) in which he says that the service users pain patch was on the floor and that the Claimant raised the matter during the morning handover and that he Chris Alcock commented on it as well. Chris Alcock goes on to refer to the service user being left in the chair all night he says in his statement that this service user was asleep on their arrival on shift. This person usually woke up frequently during the night and the plan was to move her after she woke. However, on this night she slept right through.

23. There is a document which is titled "Grievance Meeting with Donna Williams 02.04.2024" (page 21 of the supplemental bundle). Although this document is titled as being a record of a grievance meeting it was in fact the disciplinary hearing. There was no mention in these minutes of an allegation regarding a pressure relief pad being put to the Claimant. A typed document that was key to this meeting was a question-and-answer style record of an investigation meeting with Myrna Waters regarding the Claimant (64, 204 and 217). Alison Davies was the decision maker, and she sent the Claimant a final written warning on 4 April.

24. The Claimant asked Alison Davies to extend the time for lodging an appeal due to her being signed off as unfit to work. The Claimant was signed off from 5 April to 6 May and then between 6 May and 10 June. The Claimant submitted her appeal by letter on 11 April. Within that appeal she raised a grievance about the way the Respondent dealt with matters in January 2024. This grievance was not addressed by the Respondent (161-162).

25. On 15 April the Respondent queried with the Claimant whether her letter of 11 April was to be taken as an appeal. The Claimant confirmed that it was and the Respondent sent a letter inviting the Claimant to a disciplinary appeal hearing scheduled for 19 April (205). This letter states that the appeal will be conducted by way of a review of the original decision. The minutes of the appeal are at page 26 of the supplementary bundle. On 23 April the Respondent wrote to the Claimant to confirm that her appeal had been dismissed (122). The letter is signed by Alison Davies but says "...to confirm that the original decision taken by Alison Davies stands...". However, on page 9 of Anna Billinger's witness statement she says that she conducted the appeal on 19 April, not Alison Davies.

May 2024

26. Claimant remains unfit for work.

June 2024

27. 10 June was the last day of absence. On 12 June there was a back to work interview (171) the Claimant's first shift would be 14 June. The Claimant was told that she could sit in the office with all the other staff, not in the side conservatory. The notes of the back to work interview reflect that the Claimant was asked not to discuss the previous disciplinary matters with colleagues.

28. The Respondent wrote to the Claimant on 19 June suspending her pending an investigation for bad mouthing a colleague and related matters

(172 and 206) and supplementary bundle page 28. Anna Billinger is named as the investigator. In the bundle there are several statements from members of staff most of which are dated 19 June. The Respondent required the Claimant to attend an investigation meeting (180 and 199) to be conducted by Anna Billinger with Emma Boase as the note taker. This letter stated that the temporary paid suspension was to investigate three allegations:

- neglect of a service user and
- discussing confidential information with colleagues and
- bad mouthing a colleague who was involved in the disciplinary process.

29. The investigation meeting took place on the 21 June (see supplementary bundle page 30). The Respondent then invited the Claimant to a disciplinary hearing on 26 June. This letter identified the areas to be discussed at the hearing;

- failure to check a service users' pad, the allegation being that when the Claimant handed over, she said that the pad did not need to be changed and that later that morning the service user was found to be wet
- the Claimant had been bad mouthing a colleague causing a hostile environment for that colleague
- failure to follow a reasonable management instruction when the Claimant was instructed not to discuss her suspension with anyone.

30. Following the disciplinary hearing the Respondent wrote to the Claimant on 27 June terminating her employment (see main bundle page 186). The Claimant messaged the care home as she had not received the 27 June letter.

July 2024

31. The dismissal letter was sent again and received by the Claimant on 5 July. The claimant writes to the respondent appealing on four grounds. An appeal meeting is arranged with Anna Billinger chairing (193 and 214). On 12 July the appeal is heard. The original decision was upheld (195).

FINDINGS OF FACT

32. When the parties disagree about a fact, it is our task to decide, based on the evidence presented, what happened. We have not set out to make findings about every matter that was raised in the hearing, only those points that are necessary and relevant. We will then apply the relevant law to our findings.

(i)Time limits

33. This issue was conceded by the Respondent.

(iv) Direct disability discrimination (Equality Act 2010 section 13)

(v) Discrimination arising from disability (Equality Act 2010 section 15)

34. We will set out our findings on discrimination related to disability before considering unfair dismissal and notice pay. The Respondent agreed that the Claimant's arthritis is a disability. The Claimant and Respondent did not agree when the Respondent had knowledge of the disability. We can understand why the Claimant has formed the view that her arthritis was a factor in the Respondents' approach to her and her dismissal. There was evident confusion on the part of the Respondent about the Claimant's health conditions. The Respondent incorrectly completed documentation related to the Claimant's condition, using incorrect terminology. The Respondent requested that the Claimant find an impartial GP to confirm her medical situation. In our finding this is at minimum an unusual request. We have no doubt that the Claimant's GP would take issue with anyone casting doubt on the objectivity of their diagnosis. Our finding is that there are no facts that lead to a conclusion of discrimination.

(ii) Unfair dismissal

35. There is no dispute that the Claimant was dismissed. The Respondent asserts that it was a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

36. Firstly, we must make findings of fact on the issue of whether the Respondent held a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances.

37. The Claimant raised specific issues about her alleged unfair dismissal;

    - The Claimant alleges that she did not commit any of the misconduct alleged, but that the Respondent did not believe her. She alleges that the Respondent's real reason for dismissing her was her disability.
    - She says there were two people responsible for using the hoist and for the resident, but she was the only one disciplined
    - Claimant says that the Respondent did not take into account that she had restricted movement as a result of her disability when considering the matter
    - The Respondent changed the reason for dismissal from d (sic) misconduct to gross misconduct when the Claimant asked for payment of her notice.
    - Her long service was not taken into account

January 2024

38. We find that the staff handbook (Disciplinary Procedures) is based on a presumption that staff "... are fully aware of the standards of performance, action and behaviour required..."; see supplementary bundle page 79. We find that there was confusion and poor communication surrounding the standards, action and behaviour required in relation to the alleged misconduct.

39. The Respondent provided us with no evidence that it had instructed staff. prior to the disciplinary proceedings, that discussion of the bonuses was forbidden. We accept the evidence of the Claimant that staff have discussed the bonuses every year for approximately 11 years. We also find that such an instruction would, if it had been given, be stretching the definition of a reasonable management instruction to a breaking point. While it is reasonable to instruct staff to maintain confidentiality about service users or 'trade secrets', we found it troubling that the Respondent was suggesting it was reasonable that staff members could not discuss their pay and conditions, a bonus being part of that subject area. In any employment situation the subject of pay will be a basic matter that staff may want to discuss amongst themselves. In the absence of evidence, we find that the Respondent did not issue this instruction prior to the disciplinary action against the Claimant in January 2024.

40. The Respondent provided no evidence of what the company standards were in January 2024 for the preparation of food overnight. Again, in the absence of any evidence on this point we find that whatever the standards may or may not have been there is no evidence that these standards were communicated to the Claimant.

41. The Claimant was singled out to sit apart from her colleagues in the side conservatory. The Respondent's explanation for this was that the Claimant would arrive early in the evening ahead of her handover for the night shift. Other staff members had raised with the Respondent that the Claimant was commenting on her colleague's performance and questioning how they had completed tasks. The Respondent's response to these matters was to ask the Claimant to sit alone in the side conservatory until her shift began. There was no direct evidence that this was a management instruction. Instead, this was referred to as an agreement. We find that this was an agreement between the Claimant and the Respondent (41 (at paragraph 6) and 114).

42. We find that the letter to the Claimant after the disciplinary process did not follow the process set out in the staff handbook (79). The sanction was not explained, and the expected improvements in the Claimant's behaviour were vague. The Claimant went on to raise a grievance about the way these matters were dealt with. The Respondent failed to address that grievance.

March 2024

Pain patch

43. A pain patch is a means for administering pain relief drugs over a period of time, without the need for injections or digestion by a service user. We find that the Claimant noticed that the service users pain patch was missing.

44. We accept Anna Billinger's evidence that handovers can be chaotic. Her evidence was that staff are only listening for their areas of concern. The scene was explained to us as various staff members sat or stood around, sometimes not even all in the same room. The evidence was that Lucy

Billinger (although not present as a witness) could not recall the handover in detail (supplementary bundle 47). She doesn't say that the issue was handed over, she doesn't say that it was not handed over. At best her evidence is inconclusive. The text message conversation between Alison Davies and the Claimant (146) shows that the Claimant stated on Wednesday 13 March that she had made Lucy Billinger aware of the missing patch. Chris Alcock's evidence is that the issue of the missing pain patch was handed over (147 and 166). We find that the issue of the missing pain patch was handed over to Lucy Billinger.

45. The Respondent asked the Claimant why she had not applied a new pain patch to the service user. We accept the Claimant's evidence that this was a task for a senior member of staff and that it had been many years since the Claimant had done anything like that. The Respondent provided no evidence of a system, process or other instruction that stated that a member of staff such as the Claimant should or should not apply a pain patch. In the absence of any evidence on this point from the Respondent, we find that the Claimant was correct.

46. On the Sunday morning the Claimant went home and that she was not on shift on Sunday 10 March or Monday 11 March. When the Claimant returned to work on 12 March, she noticed that the service user had no pain patch. We find that she raised this with a supervisor.

47. The Respondent provided no evidence as to why staff on duty while the Claimant was off duty did not notice that the pain patch was not applied. Somehow the Respondent sought to blame the Claimant even though she was not present. We could not understand and were provided with no explanation how the staff caring for this service user did not realise the pain patch was missing.

48. We accept Anna Billinger's evidence that there was no system in place for how a handover should be done. We find that the Respondent had multiple means of completing a handover. This was done verbally, in writing or on a tablet-based digital system. We find that this is another instance of the Respondent failing to have a clear process in place but also seeking to accuse the Claimant of misconduct for failing to comply with a confusing or non-existent process.

49. We were also told on behalf of the Respondent that Lucy Billinger had to create a daily audit system after this event because the Respondent had no system or process in place for tracking the pain patches which are classified as controlled drugs. We find that this is further evidence of the Respondent having inadequate or no process in place. Again, we find that the Respondent sought to discipline the Claimant for misconduct in relation to an area of the business which had no process, or at best a very unclear process in place.

Pressure relief cushion

50. A pressure relief cushion is an air-filled device used to help reduce or prevent positional pressure sores developing. We accept the evidence of Anna Billinger that the cushion had popped by the time the morning shift

had taken over. We find that this service user did have a pressure relief cushion as it was found by the morning shift.

Service user fall

51. A male service user had fallen during the nightshift when the Claimant was working. The Respondent viewed the way the Claimant handled this incident as a disciplinary matter. We find that the Claimant called the Ambulance Service, and they told the Claimant to stay with the service user. We accept the unchallenged evidence that the response time of the Ambulance Service could be many hours. We also accept the unchallenged evidence that the telephone system in the premises was adversely affected in stormy weather, the weather that night was stormy – this was not challenged by the Respondent. This meant that the Claimant had to use her own phone to make calls. We find that the Claimant called the ambulance service, the next of kin of the service user and called her colleague for help. The Respondent alleged that the Claimant had not filled out an incident form but had placed erroneous entries across the tablet-based digital system. We find that the Respondent provided no evidence of what it was the Claimant was expected to do in this situation. We were not shown any evidence of a process for dealing with a service user, with a head injury sustained in a fall, at night.

Moving a service user

52. The Claimant's disability meant that she should not do certain tasks alone. Service Users who were less mobile required a mechanical aid to move them from bed to chair for example. The risk assessment in February had identified limitations to what the Claimant could do.

53. The alleged misconduct here is that the Claimant moved a service user alone. The Claimant says that she and Myrna Waters moved the service user to her chair. The reason for this was because the service user had fallen out of bed onto the crash mat. She was then unsettled in bed, and it was decided to let her sit and watch television. Chris Alcock was also working on this occasion. His evidence was that the service user was content in her chair and unusually slept through the night.

54. This allegation is based solely on the evidence of Myrna Waters. Myrna Waters was spoken to by Anna Billinger and Emma Boase (164). Anna Billinger begins by saying; "I need to ask you, do you remember the night that you got K out of the bed with Donna? It was the same night S fell". We accept the evidence that Myrna Waters does not have English as her first language. Her evidence is the only evidence in a question-and-answer format. We find that the way Myrna Waters evidence was obtained is not reliable. The first question was a leading question. The rest of the questions are superficial at best. There was no effort to clarify or probe the answers given. However, the Respondent relied upon this as the only evidence that the Claimant used a hoist alone to move the service user.

55. We also find that a disproportionate amount of the disciplinary process was devoted to enquiring about why the Claimant telephoned a colleague at home at 0300am to get assistance. The Respondent appeared to be overly concerned about the impact of that staff member then not working a

full shift the next day and other staff having to fill in. The implication being that this had a money cost to the Respondent. We find that this had no relation to the matters that were the subject of the disciplinary process, but that the Respondent was disproportionally focused on this aspect of the events.

June 2024

Service user's pad

56. This alleged misconduct was that the Claimant at handover stated that a service user was dry. Another staff member found the service user to be wet. It is implied that some period of time elapsed between handover and the service user being found to be wet. We accept the evidence of Anna Billinger that the pads have a visual indicator and do not need to be physically checked. We also accept the evidence of the Claimant that the pads, once wet, will sag down which allows a visual check. We accept the evidence that it is common for some service users who are incontinent to be dry at the time of being checked but wet shortly after being checked. We accept the evidence of the Claimant that she did a visual check of the service user and could see no indication that the pad was wet.

57. The evidence gathered by the Respondent for this part of the investigation is vague. The statements are brief and untimed. There was no evidence of when the service user was found to be wet, or how long had elapsed since the Claimant last checked. We find that the Claimant did a visual check of the service user and at that time they were wearing a dry pad. We find that at some time after the Claimant checked the service user's pad became wet. We find that there was no misconduct on the part of the Claimant.

Bad mouthing

58. When the Claimant returned to work, she found that the owner Mr. Rahim had put her working with Myrna Waters on her first shift back at work. We accept the Claimant's evidence that she said that she did not trust Myrna Waters and did not want to work with her. This was on the basis that the Claimant believed that Myrna Waters had told a lie about the Claimant moving the service user alone with a hoist. The Claimant believed that she was stating her opinion, and this was not bad mouthing. The Claimant did not speak to Myrna Waters. The Claimant maintains that (the now retired) Alison Davies had been telling people in the pub all about what had been happening at the home. On this basis, the Claimant had formed the view that any confidentiality had been broken.

59. On 19 June the Respondent (in the form of Anna Billinger) wrote to the Claimant suspending her to allow an investigation following allegations of bad mouthing a colleague for being part of the disciplinary process. Anna Billinger identifies herself as the investigator. The minutes of the investigation meeting are in the supplementary bundle starting at page 30. Anna Billinger and Emma Boase are present. The entire minutes cover just over two sides of A4. The first page is mostly about the Claimant discussing her previous disciplinary, which the Respondent purported to have prohibited her from doing. The Respondent alleges that the Claimant

discussed this with Chris Alcock, who then discussed it with other staff members. The Respondent states that it is Chris Alcock who has told Myrna Waters what the Claimant said about her. The allegation of leaving the service user in a wet pad is covered in about nine questions, which do little if anything to progress the investigation, in our view.

60. In the bundle (208), there is a brief statement from Chris Alcock. He says that the Claimant let it slip that she had been suspended. He also says that the Claimant told him that she had said she would not work with Myrna as she couldn't trust her.

61. The Respondent chose to word the conduct allegation in this way. We find that bad mouthing is not specific and open to wide interpretation. It was not clear who had made the bad mouthing allegation. The Respondent provided no evidence from Myrna Waters on this matter. There is a statement from Ben Taylor (supplementary bundle 44) in which he says that someone had said that the Claimant said she was now refusing to work with that staff member (Myrna).

Failure to follow a reasonable management instruction

62. At the back to work interview on 12 June the Respondent's note (105) records: "Expressed to Donna that we do not want her to talk any staff about why she was off and reassured her that no staff are aware of any reasons as to why she was not here and not to discuss with any staff about her disciplinary". In the investigation meeting Anna Billinger says to the Claimant "...I asked you in the meeting, I sent you a letter asking you not to discuss it...". We do not find that this amounts to an instruction. It is an expression. The words used are not words of instruction. We also find that this is not reasonable. The Respondent provided no evidence of why it was reasonable to ask the Claimant to not discuss these matters. If this was intended to be an instruction, then that should have been made clear to the Claimant

Procedure

63. Templates were used and not completed accurately. An example of this is the letter (106) from Anna Billinger to the Claimant dated 24 June 2024, with an incomplete text field "(insert date)" in relation to the allegation of failing to check a service users pad. The letter of 19 March 2024 is another example. In relation to the service user who had a fall, the allegation is that "...on 12th March...you did complete the required paperwork...". In the context of the misconduct allegation at that time, we find that this should have said – did not complete.

64. The investigations were done to a standard that fell far short of what was required in the circumstances. We were told that evidence was gathered from witness statements, care records, handover documentation, and staff interviews. However, the Respondent chose to only rely on brief, often undated notes (referred to as statements) that often contained no timings or detail of exactly which incident was being referred to.

65. The investigation meetings were inadequate. The questions asked were often muddled and combative. The minutes were brief, lacking in depth,

and reflected a dismissive tone in the language used and recorded in the minutes. The minutes had no timings recorded. There was no evidence that the Claimant was given the opportunity to check the minutes.

66. We also find that the Respondent unreasonably refused the Claimant's request for Chris Alcock to attend the meeting. This went against the Respondent's own policy. The statement from Chris Alcock is dated 1 April, the 'grievance meeting' took place on 2 April. Alison Davies says to the Claimant that he has not given a statement yet. Then she says that he (Chris Alcock) mentioned a couple of other things. We find that this was the Respondent being dishonest. Chris Alcock had already given a statement. The Respondent was aware of the content. The content was relevant to this disciplinary meeting. The statement was withheld from the Claimant.

67. The Claimant was told that the period for lodging an appeal was during the time she was initially signed off work. We find that this was not a reasonable approach adopted by the Respondent. Anna Billinger told us that this was an error – but her text message says that (HR) advice was taken first.

68. The letter inviting the Claimant to the appeal hearing says it is a review of the original decision. We find that the appeal was conducted by the person who made the original decision. We also find that this was not a rehearing. The appeal only considered the point raised by the Claimant and there was no review of the original decision.

69. Anna Billinger was asked if she wanted to amend her statement, if anything was wrong or incorrect – she said no – she confirmed that she has read her statement. However, we find that her statement was inaccurate in the following ways. It states that in 2021 Alison Davies informed Anna Billinger that Alison Davies and the new owner had spoken to the Claimant – but the business was not sold to the new owner until 2022. Paragraphs 11 and 12 are repeated in paragraph 15. Paras 49 and 50 are identical. In this statement at paragraph 25 Anna Billinger states that she asked the Claimant not to discuss matters relating to the disciplinary process with colleagues to maintain professionalism within the workplace. We find that this introduces ambiguity to her evidence. Was this a management instruction or a request?

70. Anna Billinger told us that the Respondent's HR company had advised throughout. We accept Anna Billinger's evidence that the HR company asked her what outcome was it that the Respondent wanted. We find this to be troubling evidence. In our view this is not indicative of an investigation. It is indicative of deciding on an outcome and then working backward to make sure that the desired outcome is evidenced.

71. We asked Anna Billinger if she had read the handbook for staff. She gave an ambiguous answer, which led us to find that it was unlikely that she had read the staff handbook recently or at all. We find this troubling as it would be a basic requirement for a manager to have read the staff handbook before embarking on a disciplinary process.

72. We find that Anna Billinger was inexperienced in HR matters. She relied heavily on advice from the HR company. We were not presented with any evidence of what the HR company was asked. We had no evidence of what advice the HR company gave, beyond what Anna Billinger told us in evidence.
73. We find that Anna Billinger was left to get on with matters and would have benefited from support and guidance. We find that the lack of evidence of processes, standards and documented systems put her at a significant disadvantage in addressing matters.

RELEVANT LAW

Burden and standard of proof

74. Where crucial facts are in dispute, the law imposes a burden of proof to determine which side has the ultimate responsibility of proving his or her case to the Tribunal. As a general rule in civil proceedings, the onus of proving the case is placed on the Claimant. The civil law standard of proof is on the "balance of probabilities".

Unfair dismissal

75. The Respondent's position is that the reason for the dismissal is conduct which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 ("ERA 1996"). Section 98 of ERA 1996 sets out the following:

    "(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"

76. The Tribunal must then determine whether the dismissal was fair or unfair pursuant to section 98 (4) of ERA 1996 which provides that:

    "…. 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".

77. The Tribunal must apply the range of reasonable responses which was summarised by Mr Justice Browne-Wilkinson in Iceland Frozen Foods Ltd v Jones 1983 ICR 17, EAT:

"We consider that the authorities establish that in law the correct approach for the… tribunal to adopt in answering the question posed by [S.98(4)] is as follows:
(1) the starting point should always be the words of [S.98(4)] themselves;
(2) in applying the section [a] tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the… tribunal) consider the dismissal to be fair;
(3) in judging the reasonableness of the employer's conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;
(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;
(5) the function of the… tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

78. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. Applying British Home Stores Limited v Burchell 1980 ICR 303, EAT, a helpful approach in most cases of conduct dismissal is to identify three elements (as to the first of which the burden of proof is on the employer; as to the second and third, the burden is neutral): (i) that the employer did believe the employee to have been guilty of misconduct; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. Applying Sainsbury's Supermarkets Ltd v Hitt [2002] EWCA Civ 1588, the band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.

79. When considering whether a dismissal on the grounds of conduct is fair, it is important to consider only matters which the employer was aware of at the time of the dismissal; the question is whether the employer reasonably concluded that the misconduct occurred at the time of dismissal, not whether the misconduct actually happened (Devis (W) & Sons Ltd v Atkins [1977] HL).

Wrongful dismissal; notice pay

80. Any dismissal by an employer in breach of contract will give rise to an action for wrongful dismissal. This includes dismissal with inadequate notice where summary dismissal cannot be justified. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 gives the Tribunal power to deal with breach of contract claims including wrongful dismissal.

Discrimination arising from disability

81. The provision relating to discrimination arising from disability is set out at section 15 (1) of the Equality Act 2010 (the "EqA"). A person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. Under section 15(2), this does not apply if A shows that A did not know and could not reasonably have been expected to know that B had the disability.

Direct disability discrimination

82. The Claimant has made a complaint of direct discrimination, under section 13(1) of the Equality Act 2010 ("EqA"). As set out in Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913, the following three issues may arise in respect of any specific complaint of discrimination.

"(1) Did the alleged act occur at all?
(2) If it did occur, did it amount to less favourable treatment of the claimant when compared with others?
(3) If there was less favourable treatment, what was the reason for it? In particular, was that reason discriminatory?

Accordingly, there may be cases in which the tribunal never has to address question (3), because it is not satisfied that it has been proved on the evidence that the alleged act took place at all; or it may not be satisfied that there was less favourable treatment."

CONCLUSIONS

Unfair dismissal

83. In our finding, the reason for the dismissal was misconduct, which is a potentially fair reason within section 98(2)(b) of ERA. We find that the Respondent did not have a genuine belief that the misconduct had occurred. The Tribunal finds, applying the range of reasonable responses test, that the Respondent's belief was not based on reasonable grounds. Some of the misconduct allegations were flawed because there was no evidence of the alleged underpinning procedure or policy. For example, there was no evidence of an instruction not to discuss bonuses, and there was no evidence of a policy or procedure governing handovers. If such evidence existed, it was not presented.

84. The Tribunal considers that in the circumstances there was insufficient evidence for the Respondent to conclude that the Claimant had committed

the misconduct as alleged. We find that it was not within the reasonable range of responses to form the belief that she had done so.

85. The Tribunal considers that the disciplinary investigations were not as reasonable as was warranted in the circumstances. There were clear shortcomings with the investigations.

86. We find that the Respondent did not adopt a fair procedure. For example, the Respondent denied the Claimant's request to have Chris Alcock present. Furthermore, we find that the Respondent's dishonesty with regard to the existence and content of Chris Alcock's statement was detrimental to the Claimant.

87. We find that the Claimant would not have been fairly dismissed in any event. On the basis of the evidence presented there was insufficient evidence to found any of the allegations of misconduct.

88. In these circumstances, the Tribunal finds that it was not within the range of reasonable responses to dismiss the Claimant.

89. The complaint of unfair dismissal is well founded and is upheld.

90. To make a finding of contributory fault, we must make a finding of fact as to whether we consider that the alleged conduct has been proven. We consider that there is no evidence before us from which we could conclude that the Claimant committed the misconduct as alleged.

91. It is the Respondent's burden of proof in relation to contributory fault. The Respondent has not discharged this burden.

Notice pay

92. The Claimant is owed notice pay.

Discrimination

93. We find that there are no facts from which a discriminatory intention could be inferred. The Claimant could not identify any evidence that the "reason why" was linked to her disability. Being treated unfavourably is not, in itself, evidence of discrimination.

ACAS Code

94. Tribunals are able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the ACAS Code of Practice. This means that if the Tribunal finds that an employer has unreasonably failed to follow the guidance set out in the Code an award they have made may be increased by up to 25 per cent.

95. We find that the Respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015, and it is just and equitable to increase compensation payable.

96. We have taken the size and resources of the Respondent into account when making our finding and we have reminded ourselves that it may

sometimes not be practicable for all employers to take all of the steps set out in the Code.

Employment Judge Barton
Date: 31 October 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
4 November 2026