EMPLOYMENT TRIBUNALS

Claimant: Wendy Frost

Respondent: Insight Dynamics Ltd

Heard at: Exeter (by video)

On: 21 and 22 September 2026

Before: Employment Judge Hastie

Representation

Claimant: In person
Respondent: In person

JUDGMENT

The Claimant's claim of unfair dismissal is well founded and succeeds.

REASONS

1. The Claimant brings a claim of unfair dismissal against her former employer, the Respondent, Insight Dynamics Ltd. The Respondent contends that the Claimant was fairly dismissed for gross misconduct.

2. The Claimant commenced employment with the Respondent as a support worker on 16 August 2022. She was dismissed for gross misconduct on 12 June 2025.

3. ACAS early conciliation commenced on 27 June 2025 and concluded on 8 August 2025. The ET1 claim form was presented on 21 August 2025. The ET1 was presented in time. No issue as to time limits was raised at the hearing.

The Hearing

4. The hearing took place by way of video hearing with both parties joining remotely. Neither party was legally represented.

5. I was assisted by a bundle of 97 pages. I was also provided with witness statements from the Claimant, Ms Jennie Scott, Mr Josh Weber, and Mr Ken Weber. Ms Scott, Mr J Weber, and Mr K Weber were witnesses for the Respondent.

6. The Claimant and the Respondent's witnesses gave evidence and were cross-examined. Mr J Weber also presented the case for the Respondent. Both the Claimant and Mr J Weber made closing submissions.

7. In reaching my decision, I have carefully considered the oral and documentary evidence and the closing submissions. The fact that I may not have referred to a document in the bundle does not mean that I have not considered it.

Preliminary issues on 21 September 2026

8. At the start of the hearing, there was a discussion about the Claimant's submission that she is unable to use computers. Helpfully, she had dialled in to the hearing at the home of her friends, Mr and Mrs Baxter. Mr and Mrs Baxter did not join the hearing but were available to assist the Claimant with any technical issues. Mr Baxter helped the Claimant to identify how to put her computer on mute and turn her camera on and off. Other than that, and a short issue with Ms Scott's connection, there were no significant technical issues during the hearing. Both parties confirmed that they were content with a video hearing.

9. There was further discussion in relation to an email that the Claimant had sent to the Tribunal on Friday 18 September 2026. The Claimant had stated that she had just found out about the hearing, had not had an opportunity to access the bundle, and that her support/representative, Ms Bailey, was not able to attend on 21 and 22 September. In her email, the Claimant sought a short postponement of the hearing. At the hearing, the Claimant confirmed that she was not seeking any postponement and wanted to proceed with the hearing on 21 and 22 September.

10. The Claimant said that she had been sent the bundle by the Respondent and had forwarded it to the Tribunal. She said that she was dyslexic and could not retain written information. The Claimant said she did not want or need access to the bundle during the hearing. The Claimant confirmed that she had access to the bundle on her phone. A significant part of the morning on 21 September was used to explore with the Claimant whether she was able to proceed or would prefer a postponement. The Claimant was clear that she wanted to proceed and was not seeking any delay. The Claimant was content that she had access to the bundle but that she was unlikely to refer to it as she wanted to put her case orally. I determined that the hearing should proceed. There was no request for a postponement from either party. The Claimant stated that she was anxious for the proceedings to be resolved and wanted to proceed.

11. The submissions concluded at approximately 3.30pm on 22 September 2026. Owing to the lack of time available to give an oral decision on 22 September, caused in some measure by the discussions on the morning of 21 September 2026, and because the Claimant specifically asked that the hearing conclude at 3.30pm, and an oral decision not be made. I reserved judgment so that these written reasons could be provided.

12. Throughout the hearing I had regard to the overriding objective and the need to deal with the case fairly. The parties and witnesses took breaks when needed. Regular check-ins were made with the parties, and individual circumstances were accommodated.

Findings of Fact

13. Much of the factual basis for the claim is not in dispute. Where required, I have made findings of fact on the balance of probabilities having heard the evidence and considered the documents. These findings are limited to those relevant to

the issues and necessary to explain the decision reached. Where there is disagreement between the parties on matters of fact, I explain below the evidence I prefer and the reasons for doing so.

14. The Respondent is a day service for adults with learning disabilities and a supported living service that includes the provision of personal care. The Respondent has about 18 employees, overseen by one registered manager, Mr J Weber.

15. It is helpful here to state that Mr J Weber is the registered manager of the Respondent. Mr J Weber's partner is Ms J Scott. Ms Scott is a senior support worker with the Respondent. Mr J Weber's father is Mr K Weber. Mr K Weber is the managing director of the Respondent. Kieran is Ms Scott's son. Kieran was a support worker for the Respondent.

16. On 26 September 2023, the Claimant received a verbal warning in relation to sending a message that the Respondent considered may risk damaging staff trust in management. The verbal warning was to remain 'live' until 25 March 2024. The letter confirming the verbal warning states that any further misconduct of a similar nature would lead to further disciplinary action and the possibility of a written warning. The Claimant did not appeal this decision. The Respondent accepted in evidence that a clear plan of action should have been established to support the Claimant during her employment, but that this did not happen.

17. On 27 February 2024 during a supervision meeting, the Claimant was told not to ruffle the hair of service user DD. The Respondent accepted in evidence that the performance management policy was not fully adhered to during the Claimant's employment. The Claimant did not have three monthly supervision meetings. The 27 February 2024 meeting was the only formal supervision meeting that the Claimant had. There were informal conversations with the Claimant rather than the supervision stipulated in the policy.

18. The Respondent accepted that induction, training, and development for the Claimant was not delivered as it should have been. The training that was available, learning disability, and autism training, was online. The Claimant cannot easily use a computer, and the training was therefore not available to her. The Respondent stated that Oliver McGowan training was available for staff. At the time of the Claimant's employment, Oliver McGowan training was not available to the staff. The Respondent described this as a 'major gap in our training'. The Respondent further described the situation with the Claimant's lack of training as a 'shortfall' and not the Claimant's fault.

19. By letter dated 19 March 2024, the Claimant was invited to a disciplinary meeting on 28 March 2024. This was regarding an incident of ruffling DD's hair on 12 March 2024. The letter states that the possible consequence might be a written warning. The Respondent took no further action in relation to the hair ruffling allegation.

20. On 18 March 2025, the Claimant attended the Salvation Army Centre with a group of service users. Ms Scott, a senior support worker, was also present as was another support worker, Grace. The group went to the shop that is within the Centre. Service user, DD, wanted to take the Claimants arm. The Claimant gestured DD away and said that DD was perfectly capable of walking by herself.

21. The Claimant accepts that this exchange took place. She denies the description of the incident as asserted by the Respondent. The Respondent describes DD being gestured away as 'shaking DD off'. I find that the Claimant merely gestured

DD away as she was already supporting other service users. I do not accept that any physical contact occurred. The Claimants evidence was persuasive that she did not touch DD. The Respondent could not detail the exact way this 'shaking off' occurred. Nothing was said to the Claimant about the incident at the time.

22. On arrival at the shop, which was down some steps and across the hall, DD wanted to go back and get her purse. The Claimant told her she could get it herself. On the Respondents evidence, the Claimant is said to have made contact with DD. The Respondent variously describes this contact as ‘gesturing away – not with force’, a 'dismissive push', a ‘little shove’, or a ‘nudge with the back of her hand’.

23. I accept the Claimant’s evidence that at the time, the Claimant was supporting two other service users. Ms Scott accepts that the Claimant had at least one service user on her arm when she told DD to get the purse herself. Further, the Claimant stated at the meeting of 5 June that she was supporting two other service users, one of whom had just fallen. There is no evidence presented to me other than the recollection of Mr J Weber, who was not present, that contradicts the Claimant’s recollection. The Respondent asserts that this service user fell on another occasion. I accept though, the Claimant's clear and unambiguous assertion that she was trying to support a service user after a fall. The Claimant accepts that she was a little dismissive of DD. I further accept that DD had arrived at the Centre with Ms Scott and other staff were on hand to support DD in retrieving her purse. It is the case that Ms Scott supported DD to get her purse and return to the shop. Again, nothing was said to the Claimant at the time.

24. I do not accept that the Claimant pushed, shoved, nudged, or in any other way had physical contact with the service user. The Respondent’s description of this incident is inconsistent, and although the Claimant accepts that a verbal exchange took place, her evidence in relation to whether she had touched the service user in any way was persuasive. I do not accept that she did so. The Respondent chose not to make enquiries of others that were present at the time, Grace, Salvation Army staff, and possibly service users.

25. In the afternoon of 18 March, the group had returned to the Respondents Day Centre. Ms Scott later reported to Mr J Weber that the Claimant made a comment to someone about a service user going 'on and on and on'. The Claimant accepts that she made this comment but that it was taken out of context. Nothing was said to the Claimant at the time. The Respondent chose not to make enquiries of others that were present at the time that the comment was made.

26. Ms Scott made a further allegation against the Claimant. On 1 April 2025, the Claimant accompanied a male service user to the accessible toilet. The Claimant asked him if he would prefer a man to assist him and he said he would. The Claimant told the service user to lock the door while she went to find assistance from a male colleague. The Claimant accepts that she did not check that the toilet door was locked. The Claimant went and spoke to Kieran, Ms Scott's son, who also worked for the Respondent. She accepts that she said words to the effect that the service user 'needs help with his bum'. Kieran did not go to assist, but Ms Scott went instead. Ms Scott found the door closed but unlocked. Ms Scott later raised a concern with Mr Weber that the service user had been left exposed should someone have opened the door. Kieran was not interviewed as part of the Claimant’s disciplinary process. Nothing was said to the Claimant at the time.

27. The incidents in relation to the Claimant not allowing DD to take her arm, the

comment about getting the purse herself, the asserted *push*, the 'on and on and on' comment, and the toilet incident, were all reported to Mr Weber by Ms Scott. The Respondent could not say when or where these reports were made. Ms Scott completed three witness statements on 1 April 2025.

28. On 1 April 2025, Mr J Weber observed the Claimant to make a comment in relation to a colleague providing 1:1 support for a particular service user that they 'drew the short straw'. The Claimant accepts that she made this comment but that it was a joke and that the service user was present and laughed. The Claimant's colleague, Grace, confirms that the comment was said in jest. Mr J Weber completed a statement in relation to this incident on 3 April 2025. I find, based on the Claimant's evidence, that she meant the comment in jest. I find that the Respondent was concerned as to the potential effect such a comment might have on a service user. No one was spoken to in relation to this incident. Nothing was said to the Claimant at the time.

29. On 7 April 2025, the Claimant was suspended without pay by letter and invited to an investigation meeting with Mr J Weber. The basis for the suspension was stated in the letter to be concerns regarding conduct at work. Specifically, the allegation that the Claimant had spoken to and about service users in a manner that may be considered unkind, inappropriate, and unprofessional. There is no mention in the letter of 7 April as to any allegation of physical contact. As the allegation that the Claimant had made physical contact with the service user was the more serious allegation, it is not clear why it is not mentioned in the letter. I do not find that any allegation of physical contact formed the basis of the suspension. The Respondent's main concern was the way she had spoken to and about service users.

30. The letter of 7 April 2025 states that the Claimant was entitled to be accompanied at the investigation meeting by a work colleague or trade union representative. It also states that the Claimant was not permitted to discuss the details of the investigation with colleagues, service users, or others outside the organisation. These two entries in the letter of 7 April are inconsistent with each other. On the one hand, the Claimant was permitted to be accompanied by a colleague or trade union representative. On the other, she was precluded from discussing the investigation with colleagues and others for fear of further disciplinary action.

31. In the event, the Claimant made enquiries of colleagues to see if anyone would accompany her to the meeting on 15 April. None of the colleagues that she asked would accompany her. The Claimant was not a member of a trade union.

32. There was a delay in taking action against the Claimant. There was a delay of almost three weeks between the 18 March incidents and the suspension. There was a delay of six days between the toilet incident and the suspension. The Respondent accepts that the suspension should not have been without pay and has sought to rectify the arrears. The Respondent accepts that the toilet incident alone did not lead it to consider disciplinary action against the Claimant. The Respondent asserts that the delay was wholly caused by the intervening ill health of another service user. I do not accept that the delay between the incidents and the suspension was reasonable. If the Respondent had safeguarding concerns such as it describes, it would have been incumbent on it to take action against the Claimant sooner than it did.

33. Prior to the investigation meeting of 15 April 2025, the Claimant requested details of the allegations that were being made against her. This was refused by the Respondent. The Respondent informed the Claimant that she would be presented with the relevant information at the meeting. This was despite the

Respondent accepting that it knew of the Claimants' dyslexia during the entirety of her employment.

34. On 15 April 2025, the Claimant attended the investigation meeting with Mr J Weber. The Claimant told Mr J Weber at the meeting that none of the staff that she asked would accompany her to the meeting as they were 'scared of the repercussions'. The witness statements were provided to the Claimant at the start of the meeting. The Claimant said that she would read them after the meeting. The amended minutes of the meeting confirm that the Claimant reminded Mr J Weber of her dyslexia at the meeting. Further, it was known that she could not retain written information. Mr J Weber confirmed that he was aware of the Claimant's dyslexia in that meeting. No enquiry was made by the Respondent to accommodate the Claimant being accompanied. I accept the Claimant's assertion that she could not process the written information presented to her at that meeting.

35. The notes of the meeting of 15 April refer to three incidents and an observation being discussed. In summary, these are described in the notes as,

    a) Incident 1 as the arm and purse incidents on 18 March 2025.
    b) Incident 2 as the 'on and on and on' comment on 18 March 2025.
    c) Incident 3 as the toilet incident on 1 April 2025.
    d) Observation by manager of the short straw comment on 1 April 2025.

36. On 19 April 2025, the Claimant was invited by the Respondent to submit any further information by 22 April 2025, and the investigation meeting would be reconvened.

37. On 30 April 2025, the investigation was reconvened. The Respondent concluded that the matter would progress to a disciplinary hearing. The disciplinary hearing was scheduled for 6 May but subsequently rescheduled for 20 May 2025 at the Claimants request because the 6 May was not one of her usual working days. In summary, the letter of 30 April 2025 that invites the Claimant to the disciplinary hearing states that the purpose of the hearing was to consider the following allegations,

    a) Inappropriate behaviour towards a service user – dismissive conduct and the short straw comment.

    b) Use of language that may amount to social exclusion or bullying – the 'on and on' comment.

    c) Failure to protect service user dignity and privacy (the toilet incident).

    d) Potential pattern of conduct – including a previously addressed matter from March 2024 (the hair ruffling).

38. On 3 and 16 May 2025, the Claimant requested that an independent note taker be present at the meeting of 20 May. In her email to the Respondent of 3 May, the Claimant states her view that there was a conflict of interest as Ms Scott was Mr J Weber's partner. On 15 May Mr J Weber agreed that a notetaker would make the process easier and help. The Claimant requested that an independent person conduct the disciplinary process. On 20 May, the disciplinary meeting was conducted by Mr J Weber. There was no notetaker at the meeting. The meeting was recorded. There is no explanation in the notes as to whether the Respondent had considered that an independent person should conduct some or all of the process.

39. Again, at this meeting (20 May 2025), the Claimant said none of the staff she had asked had been willing to accompany her as they thought life would be more difficult for them if they did so. No further enquiry was made by the Respondent to try and accommodate the Claimant in her wish to be accompanied.

40. In the meeting of 20 May 2025, the Respondents concerns were put to the Claimant as,

    a) Allegation A – a pattern of behaviour toward a service user (DD). The Respondent confirmed that no witnesses had been spoken to about any of the incidents. The hair ruffling was referred to, and Mr J Weber stated that he would have seen it as affectionate if DD's hair had not been left standing up.

    b) Allegation B – the toilet incident. Mr J Weber confirmed that the incident may require training or informal discussion.

41. The meeting was reconvened on 5 June 2025. Again, the Claimant repeated why she was not accompanied. The Claimant had only been provided with the minutes of the 20 May meeting on the afternoon of 4 June. The Claimant reiterated that she had dyslexia and had not had time to read the notes properly. Nevertheless, the meeting continued. The Claimant raised a concern that the notes of 20 May were not complete and omitted some information. This was because the Respondent had requested a summarised minutes format from the transcription company. In this meeting (5 June 2025), the allegations are referred to as

    a) Allegation 1 – a pattern of behaviour towards a service user (DD).
    b) Allegation 2 – the toilet incident.

42. Mr J Weber clarified at this meeting that he had not interviewed witnesses to any of the incidents. The Respondent's reasons included that it would be inappropriate to involve a service user in a disciplinary process. A service user may not recognise inappropriate behaviour. Further, an inconsistent account might be given. Another member of staff (Grace) had not been interviewed as a witness as 'her involvement does not alter the reliability or sufficiency of the evidence already provided'. Mr J Weber confirmed that he had explored whether Salvation Army staff would have been able to provide information, but Ms J Scott had said no one else would have been in a position to observe the interaction. Mr J Weber stated at the 5 June meeting that if there had been a clear suggestion that someone saw what happened, he would have followed that up. There was no explanation why Kieran was not interviewed about the 1 April toilet incident. Mr J Weber said that overall, he was satisfied that the Respondent had sufficient, consistent, and reliable evidence to proceed without further statements, and without involving service users in a disciplinary hearing. The only evidence that the Respondent relied on was the evidence of Ms Scott, and Mr J Weber himself. The Respondent disregarded the Claimant's request for witnesses to be interviewed.

43. On 12 June 2025, the Claimant was dismissed by letter for gross misconduct. The letter concludes that the Claimant showed a clear pattern of conduct that 'does not align with the role of a support worker, the Claimant did not meaningfully recognise how her conduct may have impacted others, there was a lack of learning following previous disciplinary processes, and trust and confidence had been irrevocably undermined'.

44. On 18 June, the Claimant notified the Respondent that she wished to appeal

against the decision to dismiss her. The Claimant was not notified of a date for an appeal hearing until over three weeks later, and only after she contacted Mr K Weber directly.

45. On 31 July 2025, the appeal meeting was held between the Claimant and Mr K Weber. Mr K Weber is Mr J Weber's father and Managing Director of the Respondent. Again, the Claimant asked why no witnesses had been interviewed about the incidents on 18 March and 1 April. This issue was not addressed. The Respondent concluded that witness statements had not been shown to be inaccurate, and the Claimant had not provided any new evidence that would alter the original findings. Mr K Weber's view was that the incidents individually may not have resulted in dismissal, but that there were several of them, the individual incidents could constitute training issues, but that a series of incidents showed a lack of concern by the Claimant.

46. On 7 August 2025, the Claimant requested that the Respondent inform her of the outcome of the appeal. On 11 August 2025 the appeal outcome was notified to the Claimant. The decision to dismiss was upheld. On 19 August 2025, the Claimant notified the Respondent that she had concerns about the appeal process.

Submissions

47. The Claimant's submission was straightforward. The Claimant mainly accepts that the incidents took place but that the Respondent has exaggerated them and/or taken them out of context. The Claimant adamantly denies that she made physical contact with DD on 18 March 2025 in the manner alleged. Her position is that the procedure leading to her dismissal was unfair for lack of independence, an absence of safeguards such as being able to be accompanied at the investigation and disciplinary meetings, and not being provided with information in advance.

48. The Respondent maintained that its procedure was fair, it is a small family company, and that the allegations against the Claimant, taken together with her previous actions, made dismissal a reasonable and fair outcome.

Law

49. Section 98 of the Employment Rights Act 1996 provides, so far as material:

    (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."

50. Section 98(2) provides that "A reason falls within this subsection if it,

    …

    (b) relates to the conduct of the employee".

51. Section 98(4) provides: "where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

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

52. In a conduct dismissal, the guidance in British Home Stores Ltd v Burchell [1980] ICR 303 applies. The Tribunal must consider whether the employer believed the employee to be guilty of the misconduct alleged, whether it had reasonable grounds for that belief and whether, at the stage at which that belief was formed, it had carried out as much investigation into the matter as was reasonable in the circumstances.

53. The reasonableness of the investigation is not assessed by asking whether every conceivable step was taken, but by considering the gravity and nature of the allegations, the material available to the employer, and whether the overall investigation fell within the range of reasonable responses open to a reasonable employer.

54. The Tribunal is required to consider both substance and procedure. The question is whether dismissal fell within the band of reasonable responses open to a reasonable employer in these circumstances. It is not whether dismissal was the sanction the Tribunal would itself have imposed: Iceland Frozen Foods Ltd v Jones [1983] ICR 17 (Employment Appeal Tribunal).

55. In a misconduct case the Tribunal may take into account, where relevant, matters such as the seriousness of the allegations, the employee's length of service and disciplinary record, any training or guidance provided, whether responsibilities were clear, whether there were mitigating features, whether the employee was given a fair opportunity to answer the allegations, and whether an appeal formed part of an overall fair process.

56. The ACAS Code of Practice on Disciplinary and Grievance Procedures is not itself determinative, but it is relevant to the assessment of procedural fairness. The Tribunal considers the whole process, including any appeal. There is no rule that an employer must give first or final written warnings before dismissing for gross misconduct. Where the conduct is properly viewed as sufficiently serious to destroy trust and confidence or to amount to a serious and wilful breach, immediate dismissal for a first act may fall within the range of reasonable responses. Equally, the mere labelling of conduct as "gross misconduct" does not make summary dismissal reasonable or inevitable. The Tribunal must examine the context, including whether the rule or expectation was clear, whether the employee had been trained or warned, whether similar conduct had been tolerated or condoned, whether the employee had long service and a clean record, and whether a lesser sanction was one a reasonable employer could have adopted.

Application of the law to the facts

57. The five incidents relied upon by the Respondent can be summarised as,

1: The refusal to allow DD to take her arm on 18 March 2025.

2: The refusal to support DD to retrieve her purse and the 'push' on 18

March 2025.

3: The 'on and on and on ' comment on 18 March 2025.

4: The 'short straw' comment on 1 April.

5: The toilet incident on 1 April 2025.

58. I accept the Respondent's evidence that the Claimant was dismissed for misconduct, and that was the genuine reason for dismissal. There was no evidence to suggest that the dismissal was for any other reason. The real issue is whether the Respondent acted reasonably in treating that conduct as a sufficient reason to dismiss and whether it conducted a fair process. The question is not simply whether there were facts that concerned a reasonable employer. It is whether, taking those facts together and considering the context of section 98(4), the Respondent acted reasonably in treating them as misconduct of such seriousness as to justify dismissal.

59. The Respondent alleges a pattern of behaviour by the Claimant and includes the incidents of hair ruffling in March 2024. No issues of concern appear to have been raised for 12 months after March 2024. I do not accept that there was sufficient nexus between March 2024 and March/April 2025 to establish a pattern of behaviour across this period. The five incidents that are relied upon between March and April 2025 concern the same service user as the person involved in 2024, save for the toilet incident. I do not though find that there was any animosity or targeting of DD by the Claimant. It is the case that DD was a frequent user of the Respondents service and had extensive contact with the Claimant on her working days. I accept the Claimant's evidence that she was fond of DD and had a good relationship with her.

60. The Respondent believed that the Claimant had committed the misconduct, based on the word of Ms Scott and Mr J Weber. However, the Respondent did not consider that witnesses should be approached in relation to the allegations made against her in relation to the alleged nudge, the purse, the on and on comment, and the toilet incidents. In relation to each of these, there were potential witnesses, such as Grace, Kieran, Salvation Army staff, potential other users of the Centre's where the incident's took place. Mr J Weber accepted that he had taken the word of Ms Scott in determining that there were no witnesses that might be able to contribute some value to the investigation. I find that Mr J Weber considered the matter no further than accepting the word of Ms Scott, resulting in a lack of independence in his investigation. Further, Mr J Weber was the witness to the short straw comment. He was also the person who conducted the investigation and disciplinary process. There was no independence to the process in relation to the short straw incident, no witnesses were spoken to, and the involvement of an independent person was not adequately considered.

61. The Respondent accepted the word of Ms Scott, that she did not consider anybody else to have observed the incident. That is not the point, the Respondent decided to accept the word of Ms Scott as consistent and persuasive and did not consider that an alternate explanation may have been forthcoming from another person who was present. I accept that the Respondent made a judgment as to not speaking to the service users involved. It did not though, consider approaching anyone else who may have been able to contribute evidence about what had occurred. The Respondent was well able to identify and speak to potential witnesses for each incident. It did not carry out as much investigation into the matter as was reasonable in the circumstances. The size and resources of the Respondent were such that it could easily have undertaken

a fair investigation by approaching witnesses. When considering the potential consequences for the Claimant, that she might be dismissed, the need for a fair investigation was clearly necessary.

62. A process may be genuine and still fall short of what fairness requires. No external Human Resources, legal, or other support was sought by the Respondent. It did nothing more than conduct some online research as to disciplinary processes and contact ACAS. There was no genuine attempt to identify someone independent of the family to conduct the disciplinary process. Thought was given to the way the meetings were recorded to ensure that the minutes were accessible to the Claimant. The meetings were reconvened to enable the Claimant to consider the information provided. The Respondent was a well-established company that employed 18 people at the time of the Claimant's dismissal. Although not a large company, the Respondent can be said to employ a sufficient number of people for it to be able to conduct a more reasonable and fair investigation than it did here. The decision not to involve anyone independent of Mr J Weber in any part of the disciplinary process was said to be down to cost and resources. Although the Respondent was not obliged to involve anyone else, the Claimant consistently requested someone other than, or in addition to, Mr Weber to be involved. The absence of any independent person was not explained to the Claimant. The Claimant consistently said that she wanted to be accompanied in the meetings but that no one she asked would attend. This was not addressed by the Respondent. The meetings proceeded despite the Claimant saying that colleagues were concerned about the consequences of attending.

63. The correspondence to the Claimant altered the way in which the allegations were described in circumstances where the Respondent was aware that the Claimant has dyslexia and cannot easily process written information. In the correspondence, the allegations are variously described as incidents, observations, and allegations, and the numbering of them changes. This absence of consistency in the way that the allegations were put to the Claimant, in circumstances where the Respondent was aware of her difficulties with written information, caused additional unfairness.

64. The Respondent was entitled to be concerned. However, the Claimant had not had any training. The previous warning had not been followed up with a support plan or ongoing supervision. The Respondent is not justified in saying that further training or warnings would not adequately address the concerns raised. It was not entitled, acting reasonably, to treat the matters as sufficient to justify dismissal at the highest level of sanction without first considering and giving proper weight to mitigating features such as the lack of a comprehensive induction, the lack of training, the lack of supervision, the lack of a clear procedure in relation to supporting with toileting, the Claimant's dyslexia, the length of service and experience, and positive contribution to the business as recognised in the Respondents notes of conversations with the Claimant.

65. Although the Respondent had genuine concerns, and some basis for them, it did not act reasonably in all the circumstances in treating the matters as sufficient reason for dismissal. There was no independent evidence of the incidents in circumstances where this could have been sought. The Respondent failed adequately to address the Claimants request to be accompanied in circumstances where no colleague that she asked would accompany her to any meeting, no note taker was present at the meetings, the information was not provided to the Claimant sufficiently in advance for her to properly consider it, witnesses were not spoken to, the word of Mr J Webers partner, and Mr J Weber himself, was taken as the only evidence upon which to find the allegations proven. No genuine consideration of instructing separate people to conduct the

investigation and disciplinary, such as an external agency, was made, the appeal was conducted by Mr J Weber's father. The Respondent carried out an inadequate investigation, not least by its failure to interview witnesses and Mr J Webers acceptance that his partner's interpretation of events was correct and no alternate explanation or context to the incidents could be sought or provided. Disputed facts were not clarified with witnesses, and those disputes of fact remained at the date of dismissal and appeal. The Respondent accepted that it had no legal or HR advice and proceeded on the basis of phone contact with ACAS and an internet search of how to proceed.

66. I have considered whether the unfair dismissal was rectified on appeal. Mr K Weber gave clear and honest evidence of his involvement in the process. The evidence though, reflected that the process followed by Mr K Weber was inadequate. The matters identified by Mr J Weber in the investigation and disciplinary process were not revisited. Mr K Weber took the view that his involvement was to consider the dismissal as a sanction for the incidents. The Claimant was again not accompanied at the appeal hearing. There was no independent person present at the meeting. Mr K Weber accepted without question the statements made by Ms Scott and Mr J Weber. He did not address the Claimant's concerns that others should have been interviewed. The appeal did not overcome the defects in the investigation and disciplinary process.

67. It follows that the unfair dismissal complaint succeeds. The Respondent has shown conduct as the reason for dismissal, and I accept that it believed the Claimant had committed misconduct. But, taking the matter in the round, the Respondent did not act reasonably in all the circumstances in treating the matters as sufficient reason for dismissal.

68. The Respondent has failed to show that had there been a fair procedure, the Claimant would still have been dismissed. The process resulted in a substantively unfair dismissal. Having considered all the allegations against the Claimant, I find that she would not have been dismissed had the process been substantively and procedurally fair. The obtaining of witness statements may have provided an alternate interpretation of the incidents in the Salvation Army Centre and the toilet incident. The Respondent had insufficient evidence, with inconsistent detail, to establish that there was physical contact with the service user. The Respondent accepted that the toilet incident was a training issue rather than a disciplinary issue. The Claimant had not received adequate induction, training or supervision in relation to her use of language with the service users, or in relation to personal care. I conclude that it is inappropriate to make any deduction for Polkey.

69. In relation to the issue of contributary fault, the Claimant accepts that the comments and toilet incident took place but were taken out of context by the Respondent. The Respondent accepts that the toilet incident was a training issue. Further, I have found that there was no physical contact between the Claimant and DD on 18 March as alleged by the Respondent. I do not find though that she caused or contributed to her dismissal, due to the lack of induction, training, and supervision available to her during her employment. The Claimant was not given any support or opportunity to alter her approach to the way she spoke to the service users on 18 March and 1 April 2025. There was no breach of clear workplace rules. The hair ruffling incident of 2024 was not actioned, the Claimant was not supported to change, and the behaviour was not repeated. The Respondent accepted in evidence that the hair ruffling would not have been a disciplinary matter if the service user's hair was not left standing up. None of the Claimants conduct justified dismissal. I do not consider that it would be just and equitable to reduce the Claimant's compensation for contributory

fault.

70. The Respondent contacted ACAS for guidance whilst conducting the disciplinary process against the Claimant. It is a small family company and made attempts to comply with the ACAS code. It did not though deal with the issues promptly or carry out an appropriate investigatory procedure. It did not fully address the issue of Mr J Weber and his father being the people conducting the entire process. The Respondent did not adequately address the Claimant's request to be accompanied at the meetings or for an independent person to be present. The Respondent did not adequately explain why a final written warning did not suffice. The Respondent will have an opportunity to address these issues at the remedy hearing.

71. Having found in the Claimant's favour in her claim for unfair dismissal, the parties are encouraged to try and reach a settlement in this matter to avoid the need for there to be a hearing on the issue of remedy. The Claimant is reminded that the statutory cap applies in this case, and the compensatory award is capped at a maximum of one year's pay.

72. The case will be listed for a remedy hearing. The parties must contact the tribunal to vacate that hearing if they reach a settlement. A separate case management order will be sent to the parties.

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Employment Judge Hastie

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Date 20 October 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
9th November 2026
FOR THE TRIBUNAL OFFICE