# EMPLOYMENT TRIBUNALS

**Claimant:** Joshua Aderemi

**Respondent:** Hesley Group Limited

**Heard:** in Sheffield on 8,9,10,11 and, in chambers, on 12 September 2025

**Before:** Employment Judge Ayre
Mr M Taj
Ms I Duducu

**Representation**

**Claimant:** in person
**Respondent:** Mr S Irving, solicitor

# RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The respondent did not subject the claimant to detriment on health and safety grounds. The complaint of unlawful detriment under sections 44 and 48 of the Employment Rights Act 1996 is not well founded. It fails and is dismissed.

2. The claimant is not disabled within the meaning of section 6 of the Equality Act 2010. The Tribunal does not therefore have jurisdiction to hear the complaint that the respondent failed to make reasonable adjustments.

3. The respondent did not discriminate against the claimant because of race. The complaint of direct race discrimination is not well founded. It fails and is dismissed.

# REASONS

## Background

1. The claimant issued this claim on 9 July 2024 following a period of ACAS early conciliation that started on 8 May 2024 and ended on 19 June 2024. He initially issued his claim against two individual respondents as well.

2. The claimant also issued two other claims raising the same issues. on 9 July 2024 he issues claim number 6005409/2024 (subsequently allocated case number 1806672/2024) against Alan Wordsworth. On 20 July 2024 he issued claim number 1806675/2024 against Bekim Redenica.

3. On 5 September 2024 Legal Officer Singh ordered that all three claims should be heard together.

4. The claimant subsequently withdrew the claims against Mr Wordsworth and Mr Redenica. In a judgment sent to the parties on 20 January 2025 claims number 1806672/2024 and 1806675/2024 were dismissed on withdrawal.

5. A Preliminary Hearing for case management took place on 17 January 2025. At that hearing:

    1. There was a discussion about the claims that the claimant is bringing and a list of issues was agreed;

    2. The claimant withdrew his claims against the individual respondents;

    3. The case was listed for final hearing; and

    4. Case Management Orders were made. .

6. The claimant says that he is disabled due to latent TB. The respondent does not admit that the claimant meets the legal definition of disability.

## The hearing

7. There was an agreed bundle of documents running to 485 pages. At the start of the hearing the respondent applied to introduce two additional documents into evidence. The claimant objected to the introduction of those documents, and we heard representations from both parties as to whether they should be admitted. Having considered those representations it was the unanimous decision of the Tribunal that the additional documents should be admitted into evidence because they appeared to be relevant to the issues that the Tribunal would have to determine. The documents are short and we could see no prejudice to the claimant in admitting them.

8. We heard evidence from the claimant and, on behalf of the respondent from:

    1. Andrew Mason, Director of People and Culture;

    2. Tracey McKay, Induction Manager;

3. Bekim Redenika, former Deputy Care Manager;

4. Sarah Ware, Workforce Development Manager; and

5. Alan Wordsworth, Care Manager.

Application to amend the claim

9. At the start of the hearing both parties confirmed that the issues for the Tribunal to determine were those set out in the Record of the Preliminary Hearing in January 2025. The Tribunal adjourned to read the witness statements. The claimant's witness statement contained reference to complaints of disability related harassment and victimisation under sections 26 and 27 of the Equality Act 2010. When the Tribunal reconvened the claimant was asked whether the references to victimisation and to harassment were background or whether he wished to pursue separate complaints of victimisation and harassment. The claimant told the Tribunal he wished to pursue complaints of victimisation and harassment. He was informed that he would need to apply to amend his claim.

10. The claimant was asked to set out the amendments that he wished to make to his claim, which he did verbally. The respondent objected to the claimant being given leave to amend his claim. Both parties made submissions on the application to amend and the Tribunal adjourned to make its decision.

11. The Tribunal has the power to allow the parties to amend a claim or response as part of its general powers of case management set out in Rule 30 of The Employment Tribunal Procedure Rules 2024 which provides that:

"*(1) Subject to rule 32(2) and (3) (postponements), the Tribunal may, on its own initiative or on the application of a party, make a case management order.*

*(2) The particular powers identified in these Rules do not restrict that general power.*

*(3) A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.*"

12. Rule 41 of the Rules also states that:

"(1) *The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective.*
*(2) The Tribunal must seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence.*

*(3) The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.*
*(4) this rule is not restricted by any other rule contained in this Part."*

13. The Tribunal has a broad discretion to allow amendments at any stage of the proceedings, either on the Tribunal's own initiative or if a party applies for leave to amend. The Tribunal must carry out a balancing exercise taking account of all of the relevant factors, of the overriding objective and the interests of justice, and of the relative hardship that would be caused to the parties by granting or refusing the application to amend.

14. When deciding whether to give a party leave to amend its pleaded case, the Tribunal may take account of the guidance given by Mr Justice Mummery in ***Selkent Bus Co Ltd v Moore [1996] ICR 836***. He set out relevant factors which include:

1. The nature of the amendment;

2. The applicability of time limits; and

3. The timing and manner of the application: an application should not be refused just because there has been a delay in making it, although delay is a relevant factor.

15. More recently, in ***Vaughan v Modality Partnership [2021] ICR 535*** the EAT confirmed that the most important question when deciding applications to amend is the balance of injustice and hardship of allowing or refusing the application. The Tribunal may consider what the real, practical consequences of allowing or refusing the amendment will be.

16. Having considered the submissions of both parties, and applying the above principles, it was the unanimous decision of the Tribunal that the claimant's application to amend his claim should be refused for the following reasons.

17. The nature of the amendments that the claimant sought to make is to add two new legal claims which had not been pleaded previously or even referred to prior to the claimant's witness statement. The amendments include new factual allegations which would require new factual enquiry and, most likely, the calling of additional witnesses. Those witnesses are not present at this hearing because the allegations involving them were not made previously. The amendments are substantial, they are not just a relabelling of existing claims or the correction of administrative errors.

18. The Tribunal considered the timing and manner of the application to amend. It was made verbally on the first day of the final hearing, and only in response to questions by the Tribunal. It was made after the claimant had previously confirmed at the start of the hearing that the issues to be decided are as set out in the Record of the Preliminary Hearing.

19. All of the new allegations are substantially out of time. No explanation has been provided as to why they were not referred to previously, other than that the claimant is a litigant in person. This is not a case in which new facts have come to light which have given rise to the application to amend. The claimant has been aware of the facts giving rise to the allegations since he presented his claim form.

20. The balance of injustice and hardship favours refusing the amendment. If the amendment were allowed, the respondent would have to be given time to file an amended response, and to produce evidence, including potentially new witnesses, to respond to the allegations. This would inevitably incur additional legal costs as the respondent is legally represented.

21. The practical consequences of allowing the amendment would be significant. One of those consequences would be that this hearing could not proceed and would have to be adjourned. This would result in further delay and cost.

22. The injustice and hardship to the respondent of allowing the amendment outweighs, in the Tribunal's view, any injustice and hardship to the claimant of refusing it. The claimant will still be able to pursue his existing complaints, and the new complaints, if upheld, are unlikely to result in any substantial increase in compensation. The claimant is still employed by the respondent.

23. The claimant has had the list of issues for some time and has not sought to amend them. He is a member of a trade union and was represented by a trade union representative during the grievance process. This suggests that he has had some access to advice or support.

24. The claimant is clearly an articulate and intelligent individual. He has some knowledge of employment law as he is able to quote from the relevant provisions of several statutes in his witness statement.

25. The application to amend the claim was therefore refused.

<u>Cross examination of the respondent's witnesses</u>

26. The first witness called by the respondent was Bekim Redenika, former Deputy Care Manager. During the course of cross examining Mr Redenika the claimant asked some questions that were not relevant to the issues that the Tribunal will have to decide, and some questions which were unfocussed.

27. The Employment Judge sought to assist the claimant to ask relevant and focussed questions. The claimant told the Tribunal that he believed his questioning was being constrained.

28. The Employment Judge sought to reassure the claimant that she was not seeking in any way to constrain the questions put to the witness. The hearing adjourned briefly to give the claimant time to consider whether he had any further questions for Mr Redenika. The claimant was given a further opportunity to put questions to Mr Redenika after the Tribunal had asked its questions of the witness. The claimant indicated that he had no further questions for the witness.

## The issues

29. It was agreed at the start of the hearing that the issues for determination at this hearing are as set out in the Record of the Preliminary Hearing, namely the following:

Health and safety information (Employment Rights Act 1996 section 44(1)(c)(i))

1. Did the claimant bring to his employer's attention by reasonable means circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety?

2. Did he do so in circumstances where there was no safety representative or committee or it was not reasonably practicable for him to raise these matters through such representative or committee?

3. The claimant says he made disclosures that it was unsafe for him to work with the service user DR on the following occasions:

    i. Verbally at the latest on 29 February 2024 to Mr Redenica, deputy manager;

    ii. Verbally again at a meeting with Mr Redenica on 24 May 2024;

    iii. In writing in a grievance on 12 June 2024; and

    iv. Verbally in a probationary review meeting with Mr Wordsworth on 13 June 2024.

Detriment (Employment Rights Act 1996 section 48)

4. Did the respondent, through Mr Wordsworth and Mr Redenica do the following things at a meeting on 29 June 2024:

    i. Make unsubstantiated accusations that 1 of 2 audio monitors was switched to a low volume and another switched off;

    ii. Repeatedly ask the claimant regarding his compliance with visa requirements;

    iii. Repeatedly ask the claimant if he was working elsewhere; and

    iv. Place a mug in the claimant's line of sight which read "*you may think I*

*am listening but in my head I am thinking of exterminating someone"*

5. By doing so, did it subject the claimant to detriment?

6. If so, was it done on the ground that the claimant raised the aforementioned health and safety concerns?

Remedy for health and safety detriment

7. What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

8. Is it just and equitable to award the claimant other compensation?

Disability

9. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? In particular:

    i. Did he have a physical or mental impairment: latent TB?

    ii. Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

    iii. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

    iv. Would the impairment have had a substantial adverse effect on his ability to carry out day-today activities without the treatment or other measures?

    v. Were the effects of the impairment long-term:

        1. Did they last at least 12 months, or were they likely to last at least 12 months;

        2. If not, were they likely to recur?

Reasonable adjustments

10. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

11. Did the respondent have the PCP (provision, criterion or practice) of requiring support workers to support all service users?

12. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the service user DR was prone to spitting and excreting bodily fluids from his nose and mouth such that the claimant's underlying impairment might be triggered causing him to experience symptoms of his impairment and anxiety at the risk of this occurring?

13. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

14. What steps could have been taken to avoid the disadvantage? The claimant suggests not being required to support the service user DR or any other service user who might create a similar risk to the claimant's health.

15. Was it reasonable for the respondent to have to take those steps and when?

16. Did the respondent fail to take those steps?

Direct race discrimination

17. Did the respondent do the following things:

    i. Delay in processing the claimant's NVQ qualification from 6 April until 19 April 2024 which was a prerequisite to the claimant's entitlement to additional remuneration?

    ii. Require the claimant to work with DR on 9 April 2024 despite a risk assessment to the contrary and before the provision of any PPE?

    iii. Did Mr Wordsworth threaten the claimant on 17 April 2024 that his job opportunities would be limited if he did not work with DR and tell the claimant that he did not have a choice as to where he would be assigned?

    iv. Did Mr Redenica ask the claimant if he was sure that this was the best job for him?

    v. On 21 June 2024 did Tracey McKay of HR verbally threaten to report the claimant to the Home Office in circumstances where there had been no breach of the claimant's visa requirements?

    vi. On 29 June 2024 did Mr Wordsworth verbally threaten to report the claimant to the Home Office in circumstances where there had been no breach of his visa requirements and keep asking if he was working elsewhere?

18. Was that less favourable treatment? The claimant says he was treated worse than Chris Mills, Jennifer and Mark, and a hypothetical comparator.

19. If so, was it because of race?

Remedy for discrimination

20. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

21. What financial losses has the discrimination caused the claimant?

22. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

23. Would it be just and equitable to award four weeks' pay?

## Findings of fact

30. The following findings of fact are made on a unanimous basis.

31. The claimant is employed by the respondent as a Support Worker. The respondent is a company that provides specialist and residential care, support and education for people with complex care needs. Many of the respondent's service users have autism, learning disabilities and challenging behaviours.

32. The respondent currently has approximately 1,200 employees, of whom 850 are Support Workers. Approximately 30% of staff are from minority ethnic backgrounds. The respondent requires all staff to undertake mandatory training in Equality, Diversity and Inclusion.

33. The claimant is a Nigerian national and describes his race as black African. He came to the United Kingdom in 2022 under a student visa, the terms of which allowed him to work up to 20 hours a week.

34. In January 2023 the claimant began working for the respondent through an employment agency. He worked night shifts up to 20 hours a week.

35. On 17 July 2023 the claimant became an employee of the respondent. He remains employed by the respondent as a Support Worker as at the date of this hearing.

36. The claimant's role involves working nights, supporting service users living in residential accommodation provided by the respondent. He has worked with a number of different service users, including, on occasion, one by the name of DR, who was considered to be particularly challenging. DR's behaviour can include spitting.

37. The respondent employs approximately 850 Support Workers. Its normal policy is that Support Workers can be required to work with any service users, and that they do not get to pick and choose which service users they support. The respondent is however flexible and if, for example, an employee is not able to work with a service user for medical reasons, will assign them to another service user or users.

38. That was the case for a Support Worker by the name of Jennifer King, who has worked with the service user DR. Ms King was diagnosed with stage 4 cancer and, following chemotherapy treatment, was immunosuppressed. When she returned to work following a lengthy absence for cancer treatment, Occupational Health advised that she should not work with DR, and she was moved to work with other service users.

39. DR was, at the time the claimant worked with him, assigned two to one support, which meant that there would always be two Support Workers assigned to him. He had a core team which comprised two white British employees. His care arrangements have now changed and he is assigned three Support Workers. The claimant has never formed part of DR's core team but has occasionally been assigned to support him.

40. In 2023 the claimant worked with DR on 8 occasions. He made no complaint about doing so. The claimant was provided with a face visor to wear when working with DR.

41. In 2024 the claimant worked with DR on 27 January 2024 and, for a quarter shift on 4 May 2024. He was assigned to work with DR on 9 April but objected and was reassigned to work with other service users.

42. Since 4 May 2024 the claimant has not been assigned to or worked with DR at all. He now works in a different building to the building where DR lives.

*The claimant's medical condition*

43. In December 2022 the claimant was tested for TB. The results of the test, dated 22 December 2022, stated that the claimant was 'borderline positive' for latent TB. The test results recommended that the claimant do another test, as the result was borderline. The claimant has not done so.

44. After receiving his test results in December 2022 the claimant met with his GP. He has had no further appointments about the latent TB since then. The claimant is not under any medical supervision for his TB and takes no medication for it. He did not inform the respondent about his latent TB diagnosis until January 2024.

45. Although the claimant says that the latent TB has a substantial adverse effect on his day to day activities he was, in evidence, very vague as to what that was. He has not provided a disability impact statement, nor has he disclosed his medical records. He told the Tribunal that the only documentary evidence he relies upon in support of his assertion that he is disabled within the meaning of the Equality Act is the December 2022 test result and an Occupational Health report dated 29 February 2024.

46. The claimant's evidence to the Tribunal was that if he walks for more than 30 minutes he experiences a build-up of flem and has to spit to clear it, and that he avoids some situations such as cold weather and cold food. There was no evidence before the Tribunal however of the latent TB having any other impact on his day to day activities.

47. In late January 2024 the claimant told his line manager, Bekim Redenica, that he did not want to work with DR because of health reasons. Mr Redenica asked the claimant what those health reasons were, and the claimant sent in the TB test result the next day. The claimant's evidence to the Tribunal is that he is

concerned that his latent TB may become active TB if DR spits on him, and that he experiences adverse health effects if he has to work with DR.

48. The TB test results were sent to Mr Redenica on or around 28 January 2024. After receiving the results Mr Redenica spoke to the claimant and asked him how the latent TB could affect him and others. The claimant was reluctant to provide that information. Mr Redenica wanted to find out more about the TB and how it could affect the claimant and service users. He referred the claimant to the respondent's Occupational Health providers who carried out an assessment of the claimant on 29 February 2024. Mr Redenica decided not to schedule the claimant to work with DR whilst advice was being obtained from Occupational Health.

49. On 29 February 2024 Occupational Health produced a report which included the following:

"…*he is asymptomatic and is not on any medication or medical monitoring….*

*I understand from Mr Aderemi he has normal day to day functionality and is able to undertake all aspects of his role*….

*Mr Aderemi advises that he is anxious when he is expected to work with the individual and is worried while undertaking care tasks in case he develops symptoms despite wearing his provide face visor*

*Mr Aderemi is fit for work in his full capacity albeit with some advice regarding his concerns working with an individual who spits….*

*Mr Aderemi has no limitations on his ability to undertake his full duties if his concerns regarding the impact working with an individual who spits can be taken into account….*

*I advise that you risk assess Mr Aderemi's role taking into account the impact working with the individual who spits has on Mr Aderemi's emotional health.*

*In my opinion it may be beneficial if you can discuss with Mr Aderemi the health history of the individual who spits, so this gives him some reassurance that the individual does not have a communicable illness….*"

50. Occupational Health were specifically asked to advise on whether alternative duties or redeployment were advised, and commented:

*"At this stage, I am unable to identify the need for alternative duties or redeployment*."

51. The Occupational Health report identified that the main barrier to the claimant working with DR was an emotional one rather than a physical one linked to the latent TB.

52. Although Occupational Health did not advise that redeployment away from working with DR was necessary, Mr Redenica took steps to limit the claimant's

work with DR. In error, however, the claimant was scheduled to work with DR on 9 April 2024. This was during a period when Mr Redenica was on holiday and someone else had prepared the rota.

53. When the claimant attended work on 9 April he refused to work with DR and was moved to work elsewhere. Another colleague was assigned to DR instead of the claimant.

54. On 16th April 2024 Mr Redenica ordered additional PPE for the claimant in the form of anti-viral face masks.

55. The claimant alleged that on 17 April 2024 Mr Wordsworth threatened him that his job opportunities would be limited if he did not work with DR, and that he did not have a choice as to where he would be assigned.

56. Mr Wordsworth denied making those comments, although he accepted that generally staff do not have a choice as to where they are assigned. Mr Wordsworth also told the Tribunal that he did not have a conversation with the claimant on 17th April.

57. On balance we prefer the evidence of the respondent on this issue. The claimant's evidence was vague and, at times, evasive, and he had poor recollection of key events. In contrast we found Mr Wordsworth to be a credible witness who had a good recollection of discussions with the claimant.

58. On 26 April 2024 Mr Redenica met with the claimant to carry out a risk assessment, in line with the Occupational Health recommendation to that effect. During that assessment Mr Redenica sought to reassure the claimant that DR did not have any communicable illnesses. He also told the claimant that masks were being ordered for him, and that when supporting DR the claimant should wear the mask and eye protection to prevent the likelihood of coming into contact with spital.

59. It was agreed that there would be a phased return to working with DR. The claimant signed the risk assessment to indicate his agreement to it. In his evidence to the Tribunal the claimant said that he had signed the risk assessment under duress. He made no complaint about it however in his grievance or grievance appeal, during which he was represented by a trade union representative. The first time he suggested duress was during these proceedings. We find on balance that the claimant was not subjected to any pressure to sign the risk assessment and did so of his own free will.

60. On 4 May 2024 the claimant was assigned to work with DR for a quarter of a shift. That was the last time he has been asked to support DR.

61. The claimant was provided with a face mask and visor, but did not like wearing them. He told the Tribunal in evidence that 'it wasn't working for me'.

62. The claimant alleged that he raised concerns about working with DR during a

meeting with Mr Redenica on 24 May 2024. Mr Redenica had no recollection of such a meeting, and we accept his evidence on that issue. It was supported by the documentary evidence before us showing the shifts worked by the claimant. The claimant was not rostered to work that day. We find that there was no disclosure to Mr Redenica on 24 May 2024.

*The claimant's grievance*

63. On 12 June 2024 the claimant raised a grievance. In the grievance the claimant wrote that his grievance was about "*how going through the Phase Return with DR is impacting my physical and emotional health.*

*My request as stated in previous mails is simply that I work at other place(s) I have been working before and have been working for some time now, like in the VG area….*

*I am only bringing up all these because the discrimination and unfair treatment is getting too glaring….*"

64. Sarah Ware, Workforce Development Manager, was appointed to hear the claimant's grievance. She held a grievance meeting with the claimant on 8 July 2024. The claimant was accompanied at the meeting by a trade union representation. During the meeting the claimant expressed concerns about discrimination, victimisation, and the impact on him of working with DR.

65. After the meeting Ms Ware carried out an investigation on the concerns raised by the claimant. On 18 July she wrote to him to inform him of her decision on the grievance. In summary, Ms Ware concluded that:

1. Supporting DR was an expectation of all support workers, and there was no operational reason to exempt the claimant from that duty;

2. The claimant had not been discriminated against because of his visa limitations; and

3. The claimant was not receiving more observations from management than other colleagues and was not being victimised.

66. Ms Ware partially upheld one of the grievance points, because she recognised that the claimant felt his emotional health was impacted by working with DR. She suggested that the claimant was supported to overcome this and to build confidence around supporting DR.

67. The claimant appealed against the outcome of the grievance. The appeal was heard by Andrew Mason, Director of People and Culture. Mr Mason met with the claimant on 14th August. The claimant was again accompanied by a trade union representative.

68. Mr Mason wrote to the claimant on 23rd August 2024 to inform him of the outcome of the appeal. Mr Mason partially upheld two of the claimant's grounds

of appeal, concluding that:

"*whilst I do not believe that it is unreasonable to say that there is an expectation that you may be required to support DR in the future during periods of short staffing or in extenuating circumstances, I do not feel that you should be rota'd on as part of DR's core support team or to support him for extended periods of time*"

and

"*I do accept that it is entirely reasonable to want to read a document before you sign it. I agree that you should be allowed a reasonable period of time in which to do this…*"

69. Mr Mason did not uphold any of the other grounds of appeal, in particular the claimant's complaints of discrimination, unfair treatment and victimisation.

*Health and safety committee*

70. The respondent has a group health and safety committee which meets quarterly. It also has site based health and safety committees. Information about the health and safety committee, including contact details for the Health and Safety Manager, are displayed on a notice board in the staff rooms.

71. The respondent has a Health and Safety Manager and a Compliance Manager. The evidence before the Tribunal suggests that both of those managers work days, and that there is no dedicated health and safety representative for night workers.

72. The respondent does not recognise a trade union, and there are no trade union representatives on the health and safety committee. Membership of the committee comprises managers, and there are no elected health and safety representatives.

73. The claimant raised his concerns about working with DR to his manager, Mr Redenica, and to Mr Wordsworth. He did not raise them through the health and safety committee.

*Move to Village Green*

74. On 13 June 2024 a probationary review meeting took place between the claimant, Mr Redenica and Mr Wordsworth. During the meeting the claimant was informed that he had passed his probation. The claimant referred again to finding DR difficult to support, and it was agreed that the claimant would be allocated to a different area of the site, known as Village Green, starting full time from 17 June 2024. DR lives in a different area, not in Village Green. After the meeting a letter was sent to the claimant confirming that he had passed his probation.

75. Since moving to Village Green the claimant has not had to work with DR at

all. The last time he was required to support DR was during a quarter of a shift on 4 May 2024.

*Changes to the claimant's visa*

76. At some point in late 2023 or early 2024 the claimant finished the course of study which was linked to his study visa. His immigration status subsequently changed from a student visa to a skilled worker visa. The respondent agreed to sponsor the claimant's visa, enabling him to remain in the United Kingdom and working for the respondent.

77. The claimant was required, as part of his new visa requirements, to obtain certain NVQ qualifications, and to increase his hours of work so that he met a minimum earnings threshold. The respondent arranged for him to obtain his NVQ qualifications internally, rather than using an external provider. The NVQ qualifications that the claimant obtained can take up to 15 months. The claimant obtained them in less than 2 months.

78. On 3 April 2024 the claimant was registered for his NVQ qualifications. The following day a meeting took place with the internal NVQ assessor to put in place an assessment plan. On 8 April 2024 an NVQ observation of the claimant took place. On 10 April the claimant sent an email to the internal assessor stating that he had submitted his NVQ work to his supervisor.

79. On 22 April the second NVQ observation was completed and the claimant's work was submitted for verification. On 23 April the claimant's NVQ work was verified and an action point raised. The action point was addressed by the internal assessor on 30 April. On 1 May the claimant's NVQ work was re-verified. On 9 May a second assessment was completed and feedback given. On 14 May the claimant's NVQ work was submitted for final verification.

80. On 16 May a Certificate of Sponsorship was issued to the claimant by the respondent's recruitment department.

81. On 19 May the claimant's NVQ was verified and some further action points were set. These action points were addressed on 22 May and the work was then resubmitted for verification. The work was verified again on 23 May and submitted to the quality assurance team, who uploaded it to the City & Guilds portal to register the claimant's NVQ qualification as complete.

82. The same day, 23 May 2024, a Statement of Change was issued to the claimant authorising an increase in his pay to that of a Qualified Support Worker from 1 June 2024.

83. There was no delay in obtaining the claimant's NVQ. The respondent supported him fully through the process. At the time there was a high number of staff recruited from overseas who were going through the NVQ process. The respondent dealt first of all with workers whose visas were closer to expiry.

84. Under the claimant's new visa arrangements he was no longer limited to working 20 hours a week with the respondent, and needed to work longer hours in order to meet a minimum earnings threshold. On 14 June 2024 the respondent increased the claimant's hours of work from 20 hours a week to 36 hours a week, backdated to 16 May 2024. Under the new visa the claimant was permitted to work overtime with the respondent. He was also allowed to work for other employers, but for no more than 20 hours a week, and he was required to inform the respondent of any hours worked for other employers.

85. A Statement of Change of Particulars of Employment was prepared, recording the increase in working hours, and the claimant was asked to sign it. Tracey McKay, Induction Manager, met with the claimant on 21 June, and asked him to sign the Statement of Change. The claimant signed the document and asked for a copy of the paperwork he was signing. Ms McKay did not have a spare copy or photocopying facilities and asked the claimant to accompany her to the administration team so that she could take copies of the documents for him. The claimant refused to do so, saying that he had a bus to catch.

86. During her conversation with the claimant on 21 June, Ms McKay explained to the claimant that, now that he was full time with the respondent, he could only work 20 hours for another company. Ms McKay has had similar conversations with other employees, with a view to ensuring that they are aware of the requirements of their visas. Both the employee and the respondent can face penalties if there is any breach of visa requirements.

87. When Ms McKay told the claimant that he could only work 20 hours for another company, the claimant commented 'that's just like starting again with Hesley group'. Ms McKay explained that it was not, because now he was working full time with the Hesley group and could work 20 hours elsewhere in addition.

88. The claimant alleges that during the conversation on 21 June Ms McKay threatened to report the claimant to the Home Office in circumstances where there had been no breach of his visa requirements. Ms McKay denied having made any such threat. We prefer the respondent's evidence on this issue. Ms McKay was a credible and compelling witness who had very good recall of the conversation on 21st June. We accept her version of events on that day, which was corroborated, to some degree, by an email she sent shortly after the conversation.

89. Ms McKay sent an email to Jill Queen and Alan Wordsworth on the morning of 21 June 2024. In the email she wrote that:

"*Joshua Aderemi has now signed his change of hours form. He couldn't understand why he wasn't given a copy of the emails to have, I did point out that these were for his file and if he wanted a copy he was to request them from the admin team….*

*He says he doesn't understand why he can't work more than 20 hours for another company because that's like him being part time here again. I pointed*

*out that, it's nothing like only being able to work here 20 hours and nowhere else. Also I pointed out that hes now full time here and if he checks his BRP it'll explain that he can now only work 20 hours for another company.*

*I'm not overly sure he was happy signing for full time hours.*"

90. Ms McKay was particularly concerned to ensure that the claimant understood the requirements of his visa because of an incident that had occurred in July 2023 when the claimant became an employee of the respondent. At that time he was in the UK on a student visa and could work no more than 20 hours a week. The respondent adapted its induction programme to ensure that it ran for 20 hours a week so that employees on student visas could attend.

91. On one particular day during the induction programme the claimant told Ms McKay that he was due to work a night shift that evening. That would have taken his working hours for the week to more than 20 and placed him, and the respondent, in breach of his visa requirements.

92. Ms McKay told the claimant that he could not work the night shift. She also contacted the night shift manager to inform him that the claimant could not work. Despite having been expressly told by Ms McKay not to work, the claimant attended work that evening. He was sent home by the night shift manager and not allowed to work.

93. This was the first and, to Ms McKay's knowledge, the only time that an employee has attended work when they have been told not to, and it stuck in her memory. It caused her to believe that the claimant may not fully understand the limitations of his visa.

*Supervision meetings in June 2024*

94. On 26 June 2024 one of the night care supervisors, Zoe Edmunds, observed that the lights were off in the accommodation where the claimant was working with service users. The respondent's normal policy is that lights should be left on, in part to reduce the risk of the Support Worker falling asleep during the night shift.

95. Ms Edmunds met with the claimant on 26 June and carried out an ad-hoc supervision. She discussed with the claimant the need to make sure lights are on in the accommodation at all times, and that if the service user themselves did not want the light on, the claimant should come out of the accommodation, bringing an audio monitor with him so that he could hear what was happening inside the accommodation. The claimant should then remain on the landing outside the flat with the audio monitor, and conduct 15 minute checks on the service user.

96. The claimant was also told that if the service user was awake during the night he should sit with them to provide support, and that there would be ongoing monitoring of the situation. Ms Edmunds produced a record of the supervision

meeting which the claimant signed.

97. On the night shift from the 27th to 28th June the claimant was on shift. Mr Wordsworth and Mr Redenica decided to carry out a spot check, in light of the concerns raised by Ms Edmunds. It is common practice for spot checks to be carried out, and typically up to 5 spot checks a night are conducted. On the night in question, Mr Wordsworth and Mr Redenica had already conducted spot checks on other Support Workers.

98. The claimant was allocated to work in Village Green flats 5 and 6 supporting service users with the initials CC and JS. When they arrived in flats 5 and 6, Mr Wordsworth and Mr Redenica found that the claimant only had one audio monitor with him. He should have had two audio monitors with him, one for each service user. The monitor that he had with him was turned down to a low volume. The monitor for the other service user was on the sofa in the lounge of the other flat, unplugged.

99. Mr Wordsworth and Mr Redenica were concerned about the risk to the service users of both monitors not being operational. The audio monitors are used to ensure that the Support Worker can hear anything happening in the room where the service user is located, if the Support Worker is in a different room. One of the service users has epilepsy and is at risk of seizures and vomiting.

100. Mr Wordsworth and Mr Redenica asked the claimant to attend a meeting with them on 28 June 2024. The meeting took the form of an ad-hoc supervision / discussion. Minutes were taken of that meeting and shared with the claimant. The claimant commented on the minutes and then signed them.

101. During the meeting there was a discussion about the monitors. Mr Wordsworth said that CC's monitor had been found unplugged and left on JS' sofa, and that JS' monitor was turned down and not checked properly. JS had also been left alone in his flat when he was awake. The claimant should have been with JS when he was awake.

102. In his claim to the Tribunal the claimant alleged that during the meeting Mr Wordsworth and Mr Redenica made unsubstantiated allegations that 1 of 2 audio monitors was switched to a low volume and another was switched off. Mr Wordsworth and Mr Redenica both gave evidence to the Tribunal that their concerns about the monitors were genuine, and were not unsubstantiated. Moreover, in his comments on the notes of the meeting, the claimant did not deny that the monitors weren't working or suggest that the concerns were fabricated. Rather, he commented that the respondent had 'overreacted' to the situation concerning the monitors. In addition, when discussing the issue of monitors at the grievance meeting on 8 July, the claimant did not suggest that the allegations were fabricated.

103. We prefer the evidence of the respondent, and find that the concerns raised by Mr Wordsworth and Mr Redenica about the monitors were genuine, and did not amount to unsubstantiated allegations.

104. During the meeting the claimant was asked about his compliance with visa requirements and whether he was working elsewhere. He was not asked repeatedly, he was just asked because Mr Redenica and Mr Wordsworth had reason to believe he may be working elsewhere, and wanted to ensure that he did not breach his visa requirements because both the claimant and the company could be liable. Night managers had been told that the claimant was working for another company because he had been seen on their training by a former employee of the respondent whose husband still worked for the respondent.

105. The discussion about visa requirements and working elsewhere was triggered by the concern that the claimant may be working elsewhere and by the email from Tracey McKay on 21st June. We find that the claimant was not asked repeatedly about visa requirements or working elsewhere, and that Mr Wordsworth did not, during that meeting, threaten to report the claimant to the Home Office.

106. During the meeting on 28 June Mr Wordsworth had on his desk a mug which he used to drink tea and coffee from. Mr Wordsworth is a fan of the Dr Who television programme and the mug had been given to him as a present approximately one year earlier. It has an image of a dalek and the words "you may think that I am listening but, in my head, I am thinking of exterminating someone" printed on it. The mug happened to be on the desk during the meeting with the claimant. It was not put there deliberately, it just happened to be there.

107. The claimant alleged that Mr Redenica asked the claimant if he was sure that this was the best job for him. In his evidence to the Tribunal Mr Redenica accepted that he had made this comment to the claimant. He said that the reason he asked the claimant that question was because the claimant was reluctant to work with challenging residents and it was becoming difficult to schedule where he would work. The nature of the respondent's business is that many of the residents are challenging. Mr Redenica said that the comment was nothing to do with race, and we accept his evidence.

108. Mr Redenica had also been made aware that the claimant and another employee were not completing the required monitoring forms consistently or checking out of date food in residents' flats. When Mr Redenica raised these issues with the claimant the claimant would challenge Mr Redenica.

109. The claimant told Mr Redenica that he did not understand what it was like for the claimant coming to this country as a migrant worker. Mr Redenica told the claimant that he did, because he is Kosovan and came to the United Kingdom as a migrant. It was the claimant who raised the issue of race during the conversation, not Mr Redenica.

## The Law

Health and Safety Detriment

110. Section 44 of the Employment Rights Act 1996 ("the ERA") contains the right not to be subject to any detriment on certain health and safety grounds. The relevant provisions are the following:

"*(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that –*

*….*

*(c ) being an employee at a place where –*

*(i) there was no such representative or safety committee, or*

*(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,*

*he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.*

111. Section 48(1) of the ERA gives workers the right to make a complaint to an Employment Tribunal that they have been subjected to a detriment contrary to section 44. Section 48(2) provides that in a detriment claim under section 44 "*it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*" As a result of this provision if the claimant establishes on the balance of probabilities that there was a relevant health and safety disclosure and a detriment, the burden of proof passes to the employer to show that the claimant was not subjected to the detriment on the ground that he made the health and safety disclosure. It does not however mean that a detriment claim will succeed 'by default' if there is no evidence as to why the respondent subjected the claimant to the detriment (***Ibekwe v Sussex Partnership NHS Foundation Trust EAT 0072/14***).

112. The question for the Tribunal is what, consciously or unconsciously, was the reason for the detrimental treatment. In order for the claim to succeed the disclosures must be the 'real reason' or the 'core reason' for the treatment (***Aspinall v MSI Mech Forge Ltd EAT 891/01***). In ***Fecitt and others v NHS Manchester (Public Concern at Work intervening) [2010] ICR 372*** Elias LJ summarised the causation test in whistleblowing detriment claims as being 'did the protected disclosure materially (in the sense of more than trivially) influence the respondent's treatment of the claimant.

113. A 'detriment' can include putting the claimant at a disadvantage and should be assessed from the claimant's perspective (***Ministry of Defence v Jeremiah [1980] ICR 13*** and ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337***). It can include matters that may appear to be minor to an observer, although the seriousness of the detriment will be relevant to the question of compensation.

114. The Tribunal can draw an inference in detriment claims. In ***International Petroleum Ltd and others v Osipov and others EAT 0058/17*** the EAT held that the correct approach when drawing inferences in a detriment claim is as follows:

1. It is for the claimant to show that the disclosure is a ground or reason (that is more than trivial) for the detriment;
2. The respondent must be prepared to show why the detrimental treatment was carried out. If it does not do so, inferences may be drawn against it;
3. Any inferences drawn must be justified by the Tribunal's findings of fact.

Disability

115. The relevant statutory provisions are contained in Section 6 of the Equality Act 2010 which provides that:

*"(1) A person (P) has a disability if -*

*a) they have a physical or mental impairment, and*
*b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to- day activities".*

116. Schedule 1 Part 1 Para 2 of the Equality Act defines long-term as:

*"an impairment which has lasted for a least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person effected".*

117. Paragraph 12 of Schedule 1 of the Equality Act provides that:

*"When determining whether a person is disabled the Tribunal must take account of such guidance as it thinks is relevant".*

118. The Equality Act 2010 Guidance on matters to be taken into account in determining questions relating to the definition of disability ("the Guidance") was issued by the Secretary of State pursuant to section 65 of the Equality Act in May 2011.

119. In ***Goodwin v Patent Office [1999] ICR 302*** the then President of the Employment Appeal Tribunal gave guidance on the approach for Tribunals to adopt when deciding whether a claimant is disabled. He suggested that the following 4 questions should be answered in order-

1. Did the Claimant have a mental or physical impairment?
2. Did the impairment affect the Claimant's ability to carry out normal day-to-day activities?
3. Was the adverse condition substantial?
4. Was the adverse condition long-term?

120. Mr Justice Underhill, in ***J v DLA Piper UK LLP [2010] ICR 1052*** suggested that, although it is still good practice to the Tribunal to set out separately its conclusions on the question of impairment, there is generally no need to consider the impairment question of detail, as:

> "*In many or most cases it will be easier (and is entirely legitimate) for the tribunal to ask first whether the claimant's ability to carry out normal day-to-day activities has been adversely affected on a long-term basis. If it finds that it has been, it will in many or most cases follow as a matter of common-sense inference that the claimant is suffering from an impairment which has produced that adverse effect. If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve the difficult medical issues.*"

121. When considering whether a Claimant has an impairment the guidance of ***Rugamer v Sony Music Entertainment UK Ltd [2011] IRLR 664*** is helpful. In that case the EAT defined impairment as 'some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition' and the phrase "physical or mental impairment" as referring to a person' having in everyday language something wrong with them physically or something wrong with them mentally'. The statutory Guidance states at paragraph A5 that a disability can arise from a range of impairments and sets out some examples of what those impairments can be.

122. The Tribunal has to decide whether the impact on the Claimant's ability to carry out normal day to day activities is substantial. Section 21(1) of the Equality Act defines substantial as meaning "more than minor or trivial".

123. When deciding whether the adverse impact is substantial or not the Tribunal must take account of the cumulative effects of the impairment. The Guidance provides examples of factors which it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities, and also of factors which it would not be reasonable to regard as having a substantial adverse effect on normal day-to-day activities.

124. Day-to-day activities are given a wide interpretation and in general will be things that people do on a regular or daily basis. They can include general work-related activities but will not include activities which are only normal for a small group of people. In ***Adremi v London and South Eastern Railway Ltd [2013] ICR 5912***, the EAT held that a Tribunal has to consider the adverse effect not upon the claimant's carrying out of normal day-to-day activities, but upon his ability to do so. The Tribunal's focus should be on what the claimant says he cannot do as a result of his impairment.

125. The burden of proving that he is disabled within the meaning of section 6 of the Equality Act 2010 falls on the claimant, ***Kapadia v London Borough of Lambeth [2000] IRLR 699***.

<u>Direct race discrimination</u>

126. Section 13 of the Equality Act provides that:

"*(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others"*

127. When determining questions of direct discrimination there are, in essence, three questions that a Tribunal must consider:

a. Was there less favourable treatment?
b. The comparator question; and
c. Was the treatment 'because of ' a protected characteristic?

128. In a direct discrimination case the claimant must have been treated less favourably than an actual or a hypothetical comparator. Section 23(1) of the Equality Act 2010 provides that there must be "*no material difference between the circumstances*" of the claimant and the comparator. The comparator must be "*in the same position in all material respects*" as the claimant, save that the comparator does not share the claimant's race (***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337***).

129. The Equality and Human Rights Commission Code of Practice on Employment (2011) states that:

"*…. it is not necessary for the circumstance of the two people (that is, the worker and the comparator) to be identical in every way; what matters is that the circumstances which are relevant to the treatment of the worker are the same or nearly the same for the worker and the comparator…*"

130. Where a comparison with an actual comparator can be made, there is no need for the Tribunal to construct a hypothetical comparator. Where a hypothetical comparator is required, the Tribunal must create a "*hypothetical "control" whose circumstances are materially the same as those of the complainant save that the comparator does not have the protected characteristic… The question is then whether such a person would have been treated more favourably than the claimant in those circumstances. If the answer to this question is that the comparator would not have been treated more favourably, this also points to the conclusion that the reason for the treatment complained of was not the fact that the claimant had the protected characteristic*" (***Gould v St John's Downshire Hill [2021] ICR 1, EAT***).

131. In ***Gould*** Mr. Justice Linden explained that "*The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective…For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision…[and] the influence of the protected characteristic may be conscious or subconscious.*"

Burden of proof

132. Section 136(2) of the Equality Act 2010 sets out the burden of proof in discrimination claims, with the key provision being the following:

"*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision…"*

133. There is, in discrimination cases, a two stage burden of proof (see ***Igen Ltd (formerly Leeds Careers Guidance and others v Wong [2005] ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205*** which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to. In ***Igen v Wong*** the Court of Appeal endorsed guidelines set down by the EAT in ***Barton v Investec***, and which we have considered when reaching our decision.

134. In the first stage, the claimant has to prove facts from which the tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment. So, if the claimant establishes a prima facie case of discrimination, the burden shifts to the respondent and the Tribunal has to consider whether the respondent's explanation is sufficient to show that it did not discriminate.

135. In ***Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913*** the Court of Appeal held that "*there is nothing unfair about requiring that a claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the respondent's act was a discriminatory one) then the claim will succeed unless the respondent can discharge the burden placed on it at the second stage."*

136. The Supreme Court has more recently confirmed, in ***Royal Mail Group Ltd v Efobi [2021] ICR 1263****,* that a claimant is required to establish a prima facie case of discrimination in order to satisfy stage one of the burden of proof provisions in section 136 of the Equality Act. So, a claimant must prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

137. Where there are multiple allegations of discrimination, the Tribunal should consider whether the burden of proof has shifted from the claimant to the respondent in relation to each one, rather than taking a broad brush approach.

138. In ***Glasgow City Council v Zafar [1998] ICR 120***, Lorde Browne-Wilkinson recognised that discriminators ' do not in general advertise their prejudices: indeed they may not even be aware of them'. Direct discrimination is often covert rather than overt, and a Tribunal can look at all the material before it when determining whether there has been less favourable treatment (***London Borough of Ealing v Rihal [2004] IRLR 642***).

139. The Tribunal has the power to draw inferences of discrimination where appropriate. Inferences must be based on clear findings of fact and can be drawn not just from the details of the claimant's evidence but also from the full factual background to the case.

140. It is not sufficient for a claimant merely to say, 'I was badly treated' or 'I was treated differently'. There must be some link to the protected characteristic or something from which a Tribunal could draw an inference. In ***Madarassy v Nomura International plc [2007] ICR 867*** Lord Justice Mummery commented that: "*the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

141. Unreasonable behaviour is not, in itself, evidence of discrimination (***Bahl v The Law Society [2004] IRLR 799***) although, in the absence of an alternative explanation, could support an inference of discrimination (***Anya v University of Oxford & anor [2001] ICR 847****).*

142. In ***Laing v Manchester City Council [2006] ICR 1519 EAT*** Mr Justice Elias, then President of the EAT, held that:

"*71…..What must be borne in mind by a Tribunal faced with a race claim is that ultimately the issue is whether or not the Employer has committed an act of race discrimination. The shifting in the burden of proof simply recognises the fact that there are problems of proof facing an employee which it would be very difficult to overcome if the employee had at all stages to satisfy the Tribunal on the balance of probabilities that certain treatment had been by reason of race.*

*72. The Courts have long recognised, at least since the decision of Lord Justice Neill in the King case to which we have referred, that this would be unjust and that there will be circumstances where it is reasonable to infer discrimination unless there is some appropriate explanation….*

*73. No doubt in most cases it will be sensible for a tribunal formally to analyse a case by reference to the two stages. But it is not obligatory on them formally to go through each step in each case….There is no single right answer and tribunals can waste much time and become embroiled in highly artificial distinctions if they always feel obliged to go through these two states….*

*75. The focus of the Tribunal's analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a Tribunal to say, in effect, "there is a nice question as to whether or not the burden has shifted, but we are satisfied here that even if it has, the Employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race".*

*76. Whilst, as we have emphasised, it will often be desirable for a tribunal to go through the two stages suggested in Igen, it is not necessarily an error or law to fail to do so."*

## Conclusions

143. The following conclusions are reached on a unanimous basis, having considered carefully the evidence before us, the relevant legal principles and the submissions of the parties.

Health and safety information

144. The first question we have had to consider is whether the claimant brought to the respondent's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety. We find on balance that his concerns that working with DR would be potentially harmful to health and safety were not reasonable.

145. The claimant worked with DR on a number of occasions after he received his borderline positive TB diagnosis, without raising any complaint. His TB was latent and asymptomatic. He was not receiving any medical treatment for it, or even any medical supervision. Occupational Health assessed him as fully fit for work without adjustments.

146. There was no medical evidence before us to suggest that there was any risk to the claimant's health and safety of working with DR. DR did not have any communicable diseases, and the respondent sought to reassure the claimant as such. The claimant had worked with DR on previous occasions without suggesting that there was any potential risk to his health and safety.

147. Whilst we accept that the claimant perceived a risk to his health and safety from working with DR, his perception was not, objectively speaking, reasonable. It cannot be the case that the protections of section 44 of the Employment Rights Act 1996 are designed to apply to those who raise concerns about health

and safety without there being any objective basis for concluding that there was in fact a risk to health and safety. Whilst we accept that the perception of the individual concerned may be a relevant consideration, it is not the overriding one.

148. We find that the claimant does not fall within section 44 of the Employment Rights Act 1996 because the matters he brought to his employer's attention were not circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.

149. Notwithstanding our conclusions on the issue above, we have nonetheless gone on to consider the other issues in the health and safety detriment claim. The first of those is whether the claimant brought his concerns to the respondent's attention in circumstances where there was no safety representative or committee or it was not reasonably practicable for him to raise his concerns through such a representative or committee.

150. We find, on the evidence before us, that the respondent did have a health and safety committee. There were however no trade union or elected employee representatives on that committee, despite the respondent's policy indicating that there should be. There was a Health and Safety Manager, but she worked days and it did not appear, on the evidence before us, that her role was one of a representative.

151. In circumstances where there was no health and safety representative, and the claimant worked nights only, we find on balance that it was not reasonably practicable for him to raise matters via the committee. There was no evidence to suggest that he knew anyone on the committee or that any members of the committee were dedicated to hearing concerns from employees. The committee was made up largely of managers. In those circumstances it was, in our view, reasonable for the claimant to raise concerns to his managers.

152. The first alleged health and safety disclosure was made verbally to Mr Redenica at the latest on 29 February 2024. We find that the claimant did raise concerns about working with DR in late January 2024 and that he linked those concerns to his health. We accept therefore that the claimant did raise health and safety concerns with Mr Redenica prior to 20 February 2024.

153. The second alleged disclosure relied upon by the claimant was a disclosure which the claimant says was made verbally during a meeting on 24 May 2024. We have found on the evidence before us that there was no meeting that day, and that there was no disclosure to Mr Redenica that day.

154. The claimant also says that he raised health and safety concerns in writing in a grievance he raised on 12 June 2024. In the grievance the claimant states that his grievance is about the impact on his physical and emotional health of going through the phased return to working with DR. We find that this does amount to a disclosure of concerns about matters which he believed were

harmful or potentially harmful to his health.

155. The final alleged disclosure was made during a probationary review meeting with Mr Wordsworth on 13 June 2024. We find on balance that the claimant did raise concerns about working with DR and the impact on his health during that meeting. The notes of the meeting record that the claimant was finding supporting a particular individual difficult. That was clearly a reference to DR.

156. Although we have concluded that the claimant did raise concerns about what he perceived to be risks to his health, for the reasons set out above we find that the concerns he raised do not fall within section 44 of the Employment Rights Act 1996.

Detriments

157. We have nonetheless considered whether the claimant was subjected to detriments. The claimant alleges that he was subjected to four detriments because he raised health and safety concerns, all of which he says occurred during a meeting on 29 June 2024. The meeting in question actually took place on 28 June not 29 June 2024.

158. The first alleged detriment is that Mr Wordsworth and Mr Redenica made unsubstantiated allegations that 1 of 2 audio monitors was switched to a low volume and another was stitched off. We find that there were no unsubstantiated allegations made by either Mr Wordsworth or Mr Redenica. We accept the respondent's evidence that they found one of the monitors on a low volume and another unplugged when they checked the flats where the claimant was working on the night in question. The evidence of the respondent's witnesses on this issue was consistent both with each other, and with the written record of the meeting. It is telling that although the claimant, having been given the opportunity to review and comment on the written record of the meeting, made some comments, he did not suggest in his comments that the allegations about the monitors were unsubstantiated. Rather, he alleged that the respondent had overreacted.

159. We therefore find that there were no unsubstantiated allegations made about the audio monitors. We also find that the concerns raised by Mr Wordsworth and Mr Redenica about the monitors were entirely justified and were nothing whatsoever to do with any health and safety concerns raised by the claimant. Rather, they were concerned that the claimant may not be able to hear the residents, which could cause a risk to the residents' safety and wellbeing.

160. The second and third alleged detriments are that Mr Wordsworth and Mr Redenica repeatedly asked the claimant about his compliance with visa requirements and whether he was working elsewhere. We find, on the evidence before us, that they did not ask him repeatedly about his compliance with visa requirements and whether he was working elsewhere. Comments

were made during the meeting, but these were not repeated, and were made because of the email received from Tracey McKay and concerns that the claimant may be working elsewhere. They were nothing to do with any health and safety concerns raised by the claimant.

161. The final alleged detriment is that a mug was placed in the claimant's line of sight which read "you may think I am listening but in my head I am thinking of exterminating someone". We find that the mug was on the table during the meeting on 28 June, but it had not been placed there deliberately, and the wording on the mug was not targeted at the claimant. Mr Wordsworth could not even remember the mug being on the table during the meeting. He accepted that it had the words written on it, alongside a picture of a dalek. The words and picture on the mug are a reference to Dr Who, which Mr Wordsworth is a fan of. The reason the mug was on the desk was because Mr Wordsworth uses it to drink tea and coffee out of whilst at work. It was nothing whatsoever to do with any health and safety concerns raised by the claimant.

162. It is, in our view, notable in this case, that once the claimant began raising concerns about working with DR, the respondent did not seek in any way to punish him or to deter him from raising further concerns. Rather, they took his concerns seriously, referred him to Occupational Health, acted on Occupational Health's recommendations, and moved the claimant to work with different service users, despite Occupational Health advising that this was not necessary. In addition, the respondent sponsored the claimant and increased his working hours so that he could remain living and working in the United Kingdom.

163. For all of the above reasons, the complaint of detriment under sections 44 and 48 of the Employment Rights Act 1996 fails and is dismissed.

<u>Disability</u>

164. The claimant says that he is disabled due to latent TB. We have considered first of all whether the claimant had a physical impairment. This is not in our view clear cut. The claimant has a diagnosis of borderline positive TB in relation to a latent disease. The disease is described by Occupational Health asymptomatic and does not require medical supervision or treatment.

165. On balance we find that, as the claimant has no more than a diagnosis, of a condition which is entirely asymptomatic, there is no impairment.

166. Even if the latent TB could be said to amount to an impairment however, the impairment has very little if any impact on the claimant's ability to carry out normal day to day activities. The only impact described by the claimant was the need to spit to remove flem if he is on a long walk and that he sometimes avoids eating cold foods. Since receiving his diagnosis the claimant has not visited his GP about the condition or received any treatment.

167. There was no evidence before us to suggest that there are any restrictions

on the claimant's mobility, or his ability to walk for long periods of time. Nor was there any evidence of any restriction on his ability to eat, other than a preference for warm food.

168. The claimant's witness statement did not address the question of the adverse impact of the latent TB on him at all, and he has not produced a disability impact statement.

169. The Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011) on disability states that it would not be reasonable to regard the following as having an adverse effect on normal day to day activities:

> "*Experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or one mile*"

170. The Guidance also states that it would be reasonable to regard the following as having an adverse effect on normal day to day activities:

> "*A total inability to walk or an ability to walk only a short distance without difficulty for example because of physical restrictions, pain or fatigue*."

171. Neither of those apply to the claimant. The evidence before us suggests that he is able to walk for long distances.

172. We therefore find that the latent TB has no adverse effect on the claimant's ability to carry out normal day to day activities. We also find that, even if the requirement to spit occasionally to remove flem were to be considered an adverse impact, it is not 'substantial'.

173. The burden of establishing that he meets the legal definition of disability falls on the claimant. He has not discharged that burden.

174. We therefore find that the claimant is not disabled within the meaning of section 6 of the Equality Act 2010.

Reasonable adjustments

175. The claim for reasonable adjustments fails because the claimant does not meet the legal definition of disability.

Direct race discrimination

176. The claimant makes six allegations of direct race discrimination. In reaching our conclusions on these allegations we have reminded ourselves of the burden of proof provisions in section 136 of the Equality Act 2010, that it is rare for discriminators to admit discrimination, and that we have the power to draw inferences. There is, however, no evidence before the Tribunal from which we could properly draw an adverse inference. The respondent has a diverse workforce, and a number of staff whose visas it sponsors. It requires

all staff to undergo mandatory training in equality, diversity and inclusion. Moreover, the respondent went to considerable lengths to support the claimant, referring him to Occupational Health, moving him away from working with DR, sponsoring him, supporting him to obtain NVQ qualifications and increasing his hours and pay to enable him to remain living and working in the United Kingdom.

177. The claimant named three comparators in support of his complaint of direct discrimination: Chris Mills, Jennifer King and Mark. We heard very little evidence about Chris Mills or Mark, and there is insufficient evidence before us to conclude that they are appropriate comparators. We did hear evidence about Jennifer King. She is an employee who suffered from cancer, and who Occupational Health advised should not work with DR. Her situation is not comparable to the claimant's, firstly because she suffered from a potentially life threatening disease which had caused her to have a long period of sickness absence, and secondly because Occupational Health advised that she should not work with DR. Neither of those factors applied to the claimant. The claimant has failed to establish appropriate comparators for the race discrimination claim.

178. The first allegation of discrimination is that there was a delay in processing the claimant's NVQ qualification in April 2024. We find on the evidence before us that there was no delay. On the contrary, the claimant obtained his NVQ qualifications in less than two months, and there was evidence before us to suggest that when the qualifications are done externally, it can take up to 15 months.

179. The respondent gave evidence that, when processing NVQs, it prioritised employees whose visas were about to expire, and there was no evidence before us to suggest that the claimant's visa was about to expire. It was in our view entirely reasonable for the respondent to prioritise the processing of NVQs based on the length of time the individual concerned had to run on her or his visa, so that those employees whose visas were closest to expiry had their visas processed more quickly.

180. The first allegation of discrimination therefore fails because there was no delay in processing the claimant's NVQ, and because decisions on prioritisation of NVQ processing were made on the basis of the expiry date of an individual's visa and not because of race.

181. The second allegation of discrimination is that the respondent required the claimant to work with DR on 9 April 2024 despite a risk assessment to the contrary and before the provision of any PPE. This allegation fails because:

1. The claimant was not required to work with DR on 9 April. He was rostered to do so, but this was an error as Mr Redenica was on holiday, and when the claimant complained he was assigned to other service users;

2. There was no risk assessment advising that the claimant should not work with

DR;

3. The claimant had already been provided with some PPE, albeit that some was yet to be ordered; and

4. There was no evidence whatsoever before us to suggest that the decision to roster the claimant to work with DR on 9 April was because of race. Nor was there any evidence from which we could draw an inference that that was the case.

182. The third allegation of discrimination is that Mr Wordsworth threatened the claimant on 17 April 2024 that his job opportunities would be limited if he did not work with DR, and that Mr Wordsworth told the claimant that he did not have a choice as to where he would be assigned. We find that Mr Wordsworth did not threaten the claimant that his job opportunities would be limited, or that he did not have a choice as to where he would be assigned. It is clear that the claimant's preference not to work with DR was taken into account and he was assigned to other service users.

183. The claimant also alleges that Mr Redenica discriminated against him by asking him if he was sure that 'this was the best job for him'. Mr Redenica gave evidence that he had made a comment to that effect, and we find that it was made. We find that the reason the comment was made was because Mr Redenica had reason to believe that the claimant did not want to work with more challenging residents and was not following the correct protocols and procedures, for example, by failing to complete monitoring forms and failing to check out of date food in the residents' flats. Mr Redenica did not make the comment because of race, but rather because he was concerned, as a result of the claimant's behaviour at work, that the role may not be the best one for him.

184. The fifth allegation of discrimination is that Tracey McKay verbally threatened to report the claimant to the Home Office on 21 June 2024. We find that she did not threaten the claimant, either on that day or on any other occasion. Her comments to the claimant that day were prompted by concern for the claimant in light of his previous attempt to work in breach of his student visa requirements. She wanted, understandably, to ensure that the claimant did not put either himself or the respondent in breach of his new visa requirements. The claimant's race was not a motivating factor.

185. The final allegation is that Mr Wordsworth verbally threatened to report the claimant to the Home office on 29 June 2024 and 'kept asking if he was working elsewhere'. We find that no threats were made by Mr Wordsworth on either the 28th or 29th June 2024. Mr Wordsworth did ask the claimant if he was working elsewhere, because he wanted to ensure that the claimant did not breach his visa requirements. His comments were not because of the claimant's race.

186. The claimant has failed, in the race discrimination claim, to prove facts from which the Tribunal could infer that discrimination has taken place. He has

not discharged the first stage of the burden of proof. Even if he had done, the respondent has clearly proved a non non-discriminatory reason for its treatment of the claimant.

187. The claims of race discrimination therefore fail and are dismissed.

188. In light of the Tribunal's findings, there is no need for us to consider questions of remedy.

Approved by:

Employment Judge Ayre

Date: 19 September 2025

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/