



EMPLOYMENT TRIBUNALS

Claimant: Ms A Rdesinska

Respondent: Lidl Great Britain Limited

Heard at: in person at the Bristol Employment Tribunal

On: 13, 14, 15, 16, 17, 20 (in Chambers) and 21 October 2025

Before: Employment Judge Woodhead (sitting alone)

Appearances

For the Claimant: Ms D Janusz (Employment Consultant) with the Claimant

For the Respondent: Ms E Margetts (Counsel) with Mr M Ingram

Interpreters:

13 October 2025 - Mrs P Clopet

14 October 2025 – Ms Szamfeber (via CVP)

15 October 2025 - Mrs P Clopet

16, 17 October 2025 - Alina Moranska

21 October 2025 - Mrs P Clopet

JUDGMENT WITH REASONS

1. The complaints of direct race discrimination are not well-founded and are dismissed.
2. The complaints of harassment related to race are not well-founded and are dismissed.
3. The complaints of victimisation are not well-founded and are dismissed.

REASONS

THE ISSUES

4. This hearing was listed, at a case management preliminary hearing (CMPH) on 22 October 2024 (the 2024 CMPH), for eight days between **13 and 22 October 2025** to deal with liability and remedy (if appropriate). There was a further CMPH on 20 August 2025 (which had been listed with the primary purpose of dispute resolution but which was taken up with case management due largely to the Claimant's failure to comply with Orders).
5. The List of Issues had been agreed at the 2024 CMPH [HB61-63]. I made sure that everyone accepted some minor corrections to the list of issues. The final list of issues is reproduced, with those corrections, at the end of this Judgment.

THE HEARING

Day 1 – 13 October 2025

6. At the start of the hearing I was provided with:
 - 6.1 **Hearing Bundle** – 490 pages [HB[]]
 - 6.2 **Supplemental Bundle** - 227 pages [SB[]]
 - 6.3 **Witness Statement Bundle** - 56 pages [HB[]] containing witness statements for:
 - 6.3.1 The Claimant – 14 pages [CWS[]]
 - 6.3.2 **Ms Monika Kulikowska** – 7 pages (Claimant witness and former employee of the Respondent) [MKWS[]]
 - 6.3.3 **Mr A Bean** – 9 pages - Between August 2022 and December 2024 the Store Manager at the Respondent's store at West Hendford, Yeovil, Somerset [ABWS[]]
 - 6.3.4 **Mr L Shortland**– 3 pages - Since October 2016 employed as a Shift Manager [LSWS[]]
 - 6.3.5 **Mrs J Jackson**– 6 pages – at the relevant time Deputy Store Manager [JJWS[]]
 - 6.3.6 **Ms M Joy** – 7 pages - Area Manager [MJWS[]]
 - 6.3.7 **Mr S Shirras**– 5 pages - Regional Head of Sales Operations [SSWS[]]
 - 6.3.8 **Mr C Smith** – 3 pages - Deputy Store Manager [CSWS[]]

- 6.3.9 **Mr J Mikutis**– 2 pages - Deputy Store Manager [JMWS[]]
- 6.4 **CCTV footage** of the incident on 19 December 2023
- 6.5 Certain audio recordings which it was not in dispute that the Claimant had taken covertly. The parties agreed that the only recording that it was necessary for me to listen to was the recording of the welfare meeting on 6 January 2024:
- 6.5.1 Recording of Welfare Meeting – 6 January 2024
- 6.5.2 Recording of Corridor Conversation – 6 January 2024
- 6.5.3 Clips of Recording of Grievance Meeting – 8 January 2024 [7 Clips]
- 6.5.4 Recording of Corridor Conversation – 9 January 2024
- 6.5.5 Recording of Welfare Meeting – 9 January 2024
- 6.5.6 Recording of Grievance Appeal Hearing – 22 February 2024
7. Transcripts of the recordings had been prepared and were in the supplemental bundle. The Claimant initially said that a section of the transcript for the 9 January 2024 welfare meeting was disputed but she had not prepared an alternative version. She then said that she was happy with the transcript in the bundle.
8. A provisional timetable had been agreed at the preliminary hearing on 22 October 2024 which we went through in more detail to timetable the individual witnesses. It was agreed that it should be possible for evidence to conclude on the morning of Friday 17 October 2025 with submissions that afternoon. I warned the parties that I would guillotine cross examination and that the time allowances needed to cater for breaks, my questions and re-examination. In the event there was no need to guillotine evidence. After some discussion it was not anticipated that the Claimant would need simultaneous translation but it then transpired that she did.
9. I asked the Claimant, in the coming days, to check if she agreed a cast list and chronology prepared by the Respondent and I asked the Respondent to transcribe certain handwritten documents that I could not read. These documents were subsequently agreed by the Claimant.
10. I had been able to do most of my reading before the hearing commenced but took some further time to complete that and during that time Mrs Clopet checked that a polish language version of the Claimant's witness statement was a true reflection of the English version. She needed more time to complete that work and confirmed that it was accurate.
11. I made clear that anyone, including the interpreter, could ask for a break if they needed one. I reminded witnesses under oath that they were not permitted to

communicate with others about the case during breaks or adjournments while they were giving evidence under oath.

12. The Claimant's representative was an employment consultant and confirmed that she did not need any guidance on the Tribunal process and had prepared her cross examination of the Respondent's witnesses.
13. We started the Claimant's evidence ahead of schedule before lunch but it transpired that she wanted simultaneous translation during her evidence. We sat late to try to make up time. I had to remind the Claimant on a number of occasions of the need to focus and answer the question that she had been asked.

Day 2 – 14 October 2025

14. There was a short delay at the start of the second day of the hearing because an in person interpreter cancelled and practical arrangements needed to be made for an alternative interpreter to attend via CVP. We were nonetheless able to conclude the Claimant's evidence and that of Ms Kulikowska before the end of the day.

Day 3 – 15 October 2025

15. I started to hear from the Respondent's witnesses and completed the evidence of Mr Shirras, Mr Bean and Mr Mikutis. During the day the Respondent produced typed copies of notes that had been handwritten which I could not read. I asked the Claimant to check those notes and to provide comments, if any on the chronology and cast list.

Day 4 – 16 October 2025

16. Subject to a correction to the date on which the Claimant commenced sick leave the Claimant confirmed that she agreed the chronology and cast list. She said that she also was unable to read the handwritten version of the notes that had been typed up by the Respondent but did not dispute them. At the end of the day it transpired that a note was missing but the Respondent agreed that it would get that sent to the Tribunal and the Claimant in the evening or the following morning sufficiently in advance of submissions for the Claimant to review it. The Claimant and Respondent agreed to check the wording that was illegible at [HB282] and this page was subsequently reproduced for me.
17. I heard the evidence of the remaining Respondent witnesses (Ms Jackson, Ms Joy, Mr Shortland and Mr Smith) and after some house keeping the hearing concluded at 15:08 with the parties agreeing to send in written submissions by 12:00 the following afternoon and attend to give any further oral submissions at 14:00 on Friday 17 October 2025.

Day 5 – 17 October 2025

18. I received written submissions from both parties just after 12pm on the fifth day and then heard oral submissions from around 14:00. The hearing concluded just before 16:00 with an agreement that the parties would plan to return to the

Tribunal for an oral judgment on Tuesday 21 October 2025 at 14:00 but that I would write to the parties during the course of 20 October 2025 with confirmation.

Day 6 – 20 October 2025

19. In the morning, as directed, the Claimant sent in correspondence to the Tribunal on the Respondent's typed notes of certain handwritten documents in the bundle that I could not easily read. She confirmed that she did not dispute the wording of the typed notes. I deliberated on the claim.

Day 7 – 21 October 2025

20. On day seven the Claimant attended without her representative but was accompanied by Ms Kulikowska. I explained that none of the complaints in the claim had been successful. I had just started explaining my reasons when the interpreter stopped translating for the Claimant. I noticed and checked if I was speaking too quickly. The Claimant confirmed that she had asked the translator to stop. This led to a discussion in which the Claimant said that she wanted to leave. She left having requested written reasons and the Respondent asked me to nonetheless continue giving my oral explanation of my reasons (which I did).

FINDINGS OF FACT

21. Having considered all the evidence, I find the following facts on a balance of probabilities.
22. The parties will note that not all the matters that they told me about are recorded in my findings of fact. That is because I have limited them to points that are relevant to the legal issues.
23. The headings used are not findings of fact, they are simply a shorthand reference to the issue, point in dispute or key event.

Background

24. The Claimant commenced employment at the Respondent as Customer Assistant for its West Hendford store on 27 June 2023 [HB124]. Mr Bean took the decision that the Claimant had passed her probation period on 20 October 2023 [ABWS14] [HB138].
25. At this time the Claimant was employed to work 16 hours per week and her core hours were 05:00 to 09:00 [ABWS15, HB429 and HB432, HB124-135, HB137]. Towards the end of 2023 the Claimant asked to be given more hours.
26. I accept Mr Shortland's evidence that the morning shift at the store begins at 05:00 and has between 8-10 staff on it [LSWA4]. Stock is delivered to the store in the evening the day before. The primary focus, before the store opens to customers at 07:00, is to put out as much stock as possible on shelves, and whilst doing so, order existing stock on the shelves and ensure that stock closest to its expiration date is at the front (this is called stock rotation).

27. There are timescales for getting stock that is frozen or chilled from the pallets/crates on which they are delivered to the store into the customer facing chiller and freezer cabinets. These timescale requirements are referred to as the 'chill chain'. The aim is to ensure that the store is in a clean presentable state but restocking is the central focus for the first two hours of the day.

Use of languages other than English in the store

28. I accept Mrs Jackson's evidence [JJWS 4] that during the period relevant to this claim there were approximately 30 staff working at the store and that the number of staff working shifts varied depending on the time of day.

Physical demands of the role

29. There was a good deal of evidence on the demands of the role of customer assistant in the store. It is clear to me from that evidence (and as a matter of practical common sense), that the role:
- 29.1 Is generally quite physical, particularly between 5am and 7am when the bulk of the produce handling is done;
- 29.2 There are some lighter tasks such as stocking milk (which is predominantly moved from the warehouse to the shop floor on trolleys rather than being individually hand stacked) and moving crates containing salad and lighter produce. Milk tends to be stocked by a customer assistant working alone and can generally be done in around 20 to 30 minutes and does not take up much of the first two hours of the first shift of the day [CSWS11].
- 29.3 However, there is a good deal of heavy lifting and moving larger items. The Claimant focused on stocking meat and poultry and bags of frozen food as being a particularly heavy work. I find, based on all of the evidence that I heard, that this can involve moving heavier items but stocking the chillers can also involve moving heavier items. A pallet on which produce is delivered to the store will have mix of produce on it (which of course would not be determined by the store). A pallet will therefore have items with a mixture of weights. Normally staff will work as a pair in stocking produce from a pallet into chillers or freezers.
- 29.4 I accept Mrs Jackson's evidence [JJWS3] that the Claimant mainly worked the chiller, or meat and poultry stock and would then usually work on either the first or second till when they were opened. I find that the Claimant did not like resocking milk [LSWS7 and HB148-161].

Diversity and languages used in the store

30. I accept Mrs Jackson's undisputed evidence that the store had quite a diverse group of staff from a number of different countries and ethnic backgrounds. I accept that in general, to assist mutual understanding, English is the most common language used in the store. I also accept her evidence (which was consistent with that of a number of other witnesses and the evidence given by

colleagues who were interviewed, that if two colleagues who spoke another language were working together they might use that language or sometimes they might speak it to help a customer who shared that language. I accept that Mrs Jackson would sometimes hear colleagues speaking languages other than English during break times and that there was no issue taken with this by her or the store.

31. A polish speaking colleague (“**PK**”) was interviewed by Ms Joy on 9 January 2024 after the Claimant raised a grievance and said in that interview (when being asked about an incident explained below) [HB209]:

Everybody, every day someone says something. So whose told you today. [M] talked to me today he asked how the situation was and I said no. [Claimant] has not mentioned anything I don't feel that this company is racist I have never had any issues I've never felt like I am different because I am Polish. I don't like it when I am working with someone and someone comes over and speaks in polish as I don't like it as someone else doesn't understand what is being said I try to be respectful of everyone. [JC] in the store can speak very good polish and I was in the office being cashed up by [Mrs Jackson] and [JC] said hello how are you in polish and [Mrs Jackson] said be very careful with what you say.

32. It was put to Mrs Jackson that she had said ‘be very careful with what you say’ to PK when PK was speaking Polish to JC and that this suggested that she did not like Polish being spoken in the store. Mrs Jackson addressed this in her witness statement [JJWS6] saying:

I only vaguely recall an occasion when [PK] and [JC] were in the office, and [PC] was speaking in Polish to [PK]. I don't speak Polish so I think I made a joke about there only being three of us in the room and I did not understand what they were saying. There was nothing malicious about it, we were laughing and joking.

33. Mr Mikutis is not Polish, he is Lithuanian, and this is an important distinction to make. He said under cross examination that he had experienced racism in the UK. In his witness statement he made clear [JMWS12] that in over 10 years working at the store he had never experienced racism from colleagues or seen others suffer it.
34. It is not clear how close to the event PK was reporting that Ms Jackson made the comment “be very careful with what you say”. However, taking into account his comments about not having experienced racism, I consider that, if made, it was in context of a light hearted conversation, as Mrs Jackson described. I do not consider that it evidences that Mrs Jackson was opposed to Polish being spoken in the store. As PK alludes to himself, for two colleagues to speak in a language that a third colleague, who is sharing the same space with them, cannot speak might make that third colleague feel excluded and it was not inappropriate for Mrs Jackson to point that out. It was put to Mrs Jackson that what she said was

intimidating but the tenor of the note of PK's comment is that he had no complaint and I think it more probable that it was part of a light-hearted conversation which for obvious reasons is not conveyed by the written words in hearing note.

19 December 2023 incident

35. On 19 December 2023 Mr Shortland was working as a shift manager in the store. The shift manager is sometimes the most senior member of staff on the shift responsible for allocation of duties and breaks. He first spoke with the Claimant regarding the work he wanted her to do. The Claimant told him that meat and poultry work had been completed and he therefore asked her to help with work on the chiller.
36. A few minutes later the Claimant came to Mr Shortland and said that another colleague who was an experienced customer assistant and training mentor ("IO") had asked her to work on milk. Mr Shortland was happy with IO's instruction to the Claimant, trusting her experience as a customer assistant and training mentor. The Claimant said she did not want to do milk and that IO was bullying her. I accept Mr Shortland's evidence that he explained that bullying was a strong word to use and that IO was helping him organise the morning shift. He told the Claimant that if she had a legitimate issue she needed to speak to Mr Bean as the Store Manager.
37. Later in the morning the Claimant complained to Mr Shortland that IO had made unacceptable physical contact with the Claimant. I accept Mr Shortland's evidence that at the time his impression was that the Claimant was just uncomfortable with the physical contact. I accept his evidence that the Claimant did not say anything about the incident being racist or that IO had said anything relating to her nationality to the Claimant. He later told Mr Bean about the Claimant telling him that IO touched the Claimant.
38. Another colleague ("ST") who was interviewed by Mr Bean about incident on 22 December 2023 [HB151-152] said she could not hear what was being said by the Claimant and IO but she commented:

ST - body language they were close together it looked like more than a normal conversation, there was no swearing or anything untoward, I presume it was about working milk, which is quite common, she always refuses and in the past has told me to do myself, I try and avoid Agi as she is aggressive to me and disrespectful, so I try and avoid saying anything as she just says 'do it myself' or 'no' as the manager has asked me to do something else.

AB How close were they

ST There was no aggression, if there has been there to resolve it, they were close and talking

AB How did Agi and [IO] seem afterwards

ST New colleague Mark, decided to work with Jake and [IO] and left Agi worked on her own, as if no one wanted to work with her, I didn't detect anything more, she's always a problem to work with, as no one else wants to

If I have a chance I will not work with Agi.

AB Anything else to add

ST No, you probably find other staff will have the same feedback, and she is still not following process

39. I was able to view the CCTV footage. My assessment of that footage is that:
- 39.1 The Claimant, who was stacking food into chilled cabinets, stopped IO as IO was passing;
 - 39.2 IO followed her the short distance back to where the Claimant was working and started speaking to the Claimant as she worked;
 - 39.3 As the Claimant turned back towards IO and towards the pallet that the Claimant was unloading, IO placed her hands on the Claimant to stop her and speak to her and put her hands on the Claimant's shoulders.
 - 39.4 IO kept a hand on the Claimant's shoulder as she spoke to the Claimant and made hand gestures with the other hand. IO would then put her second hand back on the Claimant's shoulders.
 - 39.5 IO seemed to be giving the Claimant quite insistent instruction on what she wanted the Claimant to do.
 - 39.6 IO took her hands off the Claimant and the Claimant moved back but IO moved towards her again and again placed her hand or hands on the Claimant's shoulders.
 - 39.7 It appears to me that the Claimant did not want to do what IO was asking her to do and after less than a minute IO walked off and the Claimant went back to her work. The Claimant, at least as far as can be inferred from the CCTV, did not appear to have been hurt or upset by the interaction.
40. It does not appear to me that IO squeezed the Claimant's arms, held her arms, repeatedly gripped her arms tightly or dug her fingers into them with force as the Claimant subsequently alleged. From the CCTV there is no indication that IO's contact with the Claimant "*caused [the Claimant] considerable pain*". It is clear that IO put her hands on the Claimant's shoulders to stop the Claimant moving away as she talked to the Claimant.

41. This was subsequently considered by Ms Joy, as part of a grievance that the Claimant later raised. I agree with Ms Joy's conclusions as follows [HB279]:

In regard to the photograph you submitted to us of a bruise on your right shoulder, I acknowledge that [IO] did put her hand on your right shoulder, as shown in the CCTV.

I am unable to assess the placement of the hand on your shoulder due to the angle of the footage, therefore am unable to confirm if the bruise was a direct result of the incident in question. You confirmed you had contacted the police in relation to this matter, and to date we have not received any confirmation from the police that there will be any further actions.

Although there were no witnesses [IO] clearly laid hands on you, as shown in the CCTV footage, and there clearly seems to be an altercation between you both. Whilst there is no evidence to support the intent to be aggressive, there is a definite invasion on your personal space, and therefore inappropriate and unacceptable contact from [IO].

42. I accept that Mr Shortland's evidence at [LSWS8] is an accurate account of what the Claimant told him that day about the incident and his impression of the Claimant's reaction:

8. Later on the morning shift the Claimant told me that [IO] had put her hands on her shoulder and that she didn't like being touched. She didn't say it was aggressive or anything of that nature. My impression at the time from the conversation was that she was just uncomfortable with the physical contact. The Claimant did not say anything about the incident being racist or that [IO] had said anything racist. I later informed [Mr Bean] about [IO] touching the Claimant.

43. I also accept Mr Bean's evidence at [ABWS18 and ABWS19] which read as follows:

18. I was not at the Store when the incident occurred between [IO] and the Claimant but I did arrive later that morning whilst both the Claimant and [IO] were still on shift. [Mr Shortland], Shift Manager, advised me there had been an incident involving [IO] and the Claimant but was vague on the details. After this I went to go speak to both of them. I first ran into the Claimant. I asked her if she was okay. She said there had been an altercation between her and [IO]. She did not seem at all distressed or that she needed to go home, felt bad etc. She then quickly moved on to say she wanted more hours. That frankly seemed to be the more important agenda point for the Claimant during our conversation. I asked her to prepare a statement so that I could begin to look into the incident.

19. Shortly after this I discussed the matter with my line manager [Ms Joy] (Area Manager). [Ms Joy] submitted a request for the CCTV and I took statements from members of staff on the 05:00 – 09:00 shift [HB148; 149; 150; 153; 155; 156; 157; 164; 165-167]. I also conducted interviews [HB151-152; 154; 158-159; 160-161]. The Claimant produced a statement as we discussed [HB162-163]. There was no mention of any discriminatory language / intent in any of the statements.

44. Mr Bean provided his personal email address to the Claimant so that she could send a statement to him. I accept his evidence that he did not have a store/work email address and so provided his personal email address so that an investigation could move forward more quickly. He was later advised that he should not have done so for data protection reasons and he therefore did not reply by email to the Claimant's email with her statement.

45. On 9 January 2024, in his investigation interview with Ms Joy, PK said [HB208]

I was working fruit and veg and didn't see anything. I see [the Claimant] on self check out and was nearly crying I asked her what was wrong and she said [IO] attacked me and I told her to tell the managers. In my experience at the company I have seen more situations like this and I have seen similar situations where I haven't believed that the person did something and they did. So I don't believe anything unless there is proof. I don't trust anyone here I just do my job I don't believe [the Claimant] or [IO] unless there is proof. I was concentrating on my job I told her at 7.10 to go to the manager but I don't know whether that happened. It's really stressful at work now there is an atmosphere here now.

46. On the morning of 20 December 2023 the Claimant sent the following complaint to the Respondent which was written by the Claimant the day before (the day of the incident) [HB143-144]:

Hello, as agreed, I am sending you a description of the unpleasant situation that happened to me. Today around 6:10 a.m. I finished stacking the meat . I asked the manager, [Mr Shortland], what my next job should be. The manager replied that I should take a pallet of "chilla" and continue working. I followed his instructions and started working. Then [ST] came and said that I should leave this job and go start working with milk because [IO] said so, I replied that the manager told me to do another job. Since the employee [IO] insisted that I change my workplace, I went to the manager [Mr Shortland] and told him about the situation and that when I work at the milk stand I am alone there and the employee [IO] often comes to me and is not nice to me, says that my work is bad and that I feel I was persecuted by her. I told the manager that it was a lot of stress for me and I preferred to stay at the job he had assigned to me. Manager [Mr Shortland] said that he understood me and that I should stay where he said. A moment later, I think that around 7:15 [IO] came to me, she grabbed my arms and told me that I should do the

work on the milk, the grab was so strong that it hurt and it lasted about 2 minutes (I think so, but I was under a lot of stress so I could have had a bad impression of the time) I replied that the manager had ordered to do another job for me and when she let me go I went back to my duties I was very stressed but I tried to act normal after a few minutes when I was able to talk I told [Mr Shortland] about the incident and then after the shift I passed the information on to you the store manager [Mr Bean]. As the store manager you informed me that you will watch the recordings from the cameras in the store and take action. We agreed that it would be better for me to send a description of the entire situation that took place to your e-mail address because I was very nervous and it was difficult for me, I didn't want to stay in the store any longer.

Thank you for the support you have given me and I believe that after securing the recordings, you will take action to make me feel safe in my workplace. Regards, [Claimant]

47. The Claimant made no reference in her description of the 'entire situation' to any racist or potentially racist comments having been made by IO and I accept Mr Shortland and Mr Bean's evidence that she made no such allegations to them in their conversations with the Claimant on 19 December 2023.
48. The Claimant submitted that Mr Shortland and Mr Bean deliberately failed to document their conversations with the Claimant of 19 December 2023. I do not accept that submission. Those were informal discussions and Mr Bean was clearly waiting for the Claimant's written statement of events. Mr Bean then went on to investigate and properly documented the interviews he carried out and the statements he was provided with [HB148-161]. I also do not accept that there was undue delay in the investigation. Mr Bean, having received the Claimant's statement, taking into account that it was a very busy time of year, started interviewing staff on 22 December 2023 [HB148-161] and he interviewed/had statements from seven staff members.
49. On Saturday 30 December 2023 the Claimant sent a further email to the Respondent [HB168-169] which read as follows:

Hello, I am writing to you because almost 2 weeks have passed since the incident in which I was a victim of physical violence at work. I would like to inform you that the person who committed physical violence against me is still a trainer. This person ([IO]) has not been suspended for this incident at work and was even placed on the same shift as me. Everything that has happened so far is absolutely unacceptable and violates labor law. As a person against whom a job trainer used violence to force me to do work, I have not received any support from the company. My basic rights of bodily integrity have been violated, which is absolutely unacceptable and inconsistent with labor law as well as with the law in force in the UK. So far, the workplace has not done anything to solve the problem of violence and psychological

abuse that took place. By leaving in position a trainer who uses violence against employees and placing me on the same shift with this person, it exposes me to a lot of stress and thus prevents me from coming to work. (I am afraid that I will be beaten by the job trainer) I believe that because I am Polish, due to my origin, the issue of violating my bodily integrity was not taken seriously, I feel discriminated because I do not believe that If the trainer committed violence against a person of English origin, she would still remain at the workplace and the person of English origin would be exposed to another shift working with the perpetrator. I would like to ask you for quick reaction and help. I will go to the doctor today and ask for leave due to to the enormous stress that affects me at the very thought of having to go back to work and work with a person who can use physical and mental violence against me once again. I also talked to the regional manager about my working hours because [Mr Bean] (the store manager) promised two months ago that I will have a full-time job. My work schedule is about 20 hours a week, which I also don't understand because at the time I asked for a full-time contract, about 10 people were employed and I know that according to labor law, I had priority to receive more hours because I already work for you, I don't understand why is labor law being violated at my workplace and why do I feel discriminated against as a single Polish mother? (I have been working every weekend, 6 days a week for 7 months) If the company is not able to provide me with full-time work, I ask for 2 or 3 full-time job working days because it is not good for my budget to come to work 6 days a week for a 4-hour shift, commuting costs are high, as you know, morning work consists of unloading meat and doing mainly physical work, also that I have to get up at 4 am to come to work, I am expected, working as a Pole, to do the hardest physical work and then I cannot stay for a full shift because I am replaced by people of English origin who come at 9 a.m. and work mainly in customer service or at the cash register, I think this is discrimination once again. Moreover, as I have already written, I will need to take up a second job on the remaining days of the week if I do not get more hours in your company and the 6-day rotation of 4 hours a day will make it impossible for me. Please provide me with urgent information on what steps you can take to make me feel non-discriminated and safe so that I can return to work. Best regards, [Claimant]

50. Whilst it is clear that IO made inappropriate physical contact with the Claimant on 19 December 2024 and restricted the Claimant's movement by putting her hands on the Claimant's shoulders while she spoke to the Claimant, I do not agree, based on the CCTV footage, that she was violent towards the Claimant. It was undoubtedly an unpleasant experience for the Claimant and something that should not have happened but I consider that the Claimant did not have a reasonable basis for concluding that she risked being "beaten by the job trainer". The reference to psychological violence is not explained by the Claimant and can only objectively be taken to be reference to the upset caused by IO's

physical contact with the Claimant whilst she told the Claimant the work she wanted the Claimant to do (in direct and forceful language judging from IO's body and head position and her gesticulations).

51. It is noteworthy that in this email the Claimant makes reference to discrimination based on her nationality because she considered that the Respondent had not done enough (or acted quickly enough) in response to the incident, because she had not been offered a full time contract and because she considered that she was being given harder work and not allowed to do her full shift.
52. The Claimant's case is that IO made racist comments to the Claimant during the incident on 19 December 2023. Her account of those comments is not identical but is captured as follows in its various iterations:
 - 52.1 The particulars of claim [HB22]: *"you must listen to me because you're a stupid Pole." "you're good for nothing, you can't do anything, you're a stupid Pole, and you have to listen to me."*
 - 52.2 The list of issues: *"you're good for nothing, you can't do anything, you're a stupid Pole, and you have to listen to me"*
 - 52.3 CWS3c: *"You are useless, you can't do anything. You are a stupid Polish woman, and you must listen to me."*
53. I do not place much significance on the variation to the wording of the allegation across these documents, the tenor is the same.
54. In her witness statement the Claimant explained [CWS17d], with reference to a grievance meeting on 8 January 2024 with Ms Joy:

During this meeting for I mentioned what words Irina used during her physical attack when I was asked by [Ms Joy] what unkind words [IO] used. I was so shocked by the act of physical aggression I focused entirely on that in my complaints. It was not the first time when [IO] told me or other polish staff 'stupid Polish' or similar words. I did not report this because I wanted to continue to work without a trouble and receive a full-time contract. I am a single mother and my priority is maintaining my family. I did not inform about comments related to my nationality on that meeting on for the first time. On 19 December, during a conversation with [Mr Bean] in the corridor, I said that the work coach insulted me, calling me a "stupid Polish woman." I then sent an email in which I did not include the reference to the comment about nationality—but the message was written chaotically, under strong emotions, and did not provide a full account of the events. On 21 December, I worked in the shop for the last time before Christmas. In a conversation with [Ms Joy], I emphasised that the attack was racist in nature and that I heard words such as: "stupid Polish woman," "you have to listen to me because you are a stupid Pole." The paper statement I prepared on 21 January in the

shop was essentially a transcription of the email I sent to [Mr Bean] on 19 December, because I do not write in English and this way I could submit my testimony in paper form. It should be stressed that the first formal meeting, during which my words were officially recorded for the first time, did not take place until 8 January as a formal meeting.

55. However, I find that IO did not make reference to the Claimant's nationality (disparaging or otherwise) during the incident as alleged. Race discrimination was clearly in the mind of the Claimant when she wrote her email of 30 December 2023. Given the seriousness of the allegation and the significant extent to which it would have aggravated the nature of IO's conduct towards the Claimant on 19 December 2023 I consider that the Claimant would have referred to it in her account of '*the entire situation*' in her email of 20 December 2023. I do not consider that 'shock' was a reason for her omitting reference to it then and any shock would have passed by the time she wrote her email of 30 December 2023. Had the racist comments alleged been made on 19 December 2023 by IO then it does not seem probable that the Claimant, when she was able to mention so many unrelated matters (including other perceived race discrimination), would not have raised the racist comments in her email of 30 December 2023. As I have explained, I do not consider that she mentioned racist comments to Mr Bean or Mr Shortland on 19 December 2023 and had she done so she would also have referred to them in writing on 19, 20 December and 30 December 2023.
56. I do not accept the Claimant's evidence [CWS7b] that, in a conversation with Ms Joy on 21 December, Ms Joy:
- 56.1 Said that what [IO] had done was not a serious offence;
- 56.2 Said that nothing particularly bad had happened to the Claimant;
- 56.3 Said that the Claimant should remember that the Claimant had applied for a full-time contract.
- 56.4 Warned the Claimant that the Claimant might not be given this contract in January if the matter was not quickly closed.
57. It is noteworthy that the Claimant made no allegation in her email of 30 December 2023 that she had been warned by anyone at the Respondent not to pursue, with HR or anyone else, a complaint against IO.
58. Mr Bean and Ms Joy gave compelling evidence that they would not want to bury or cover up a complaint. Mr Bean was clear that had there been an allegation of racist abuse then that would have been even more serious and the need to investigate would have been even more urgent. I accept that they wanted to deal with it openly because if complaints like this are not dealt with they tend to 'get bigger'. As PK acknowledge in his statement, it had created an atmosphere in the store. In any event, it was IO that had made unacceptable physical contact

with the Claimant (not the other way around) and the Respondent ultimately dismissed IO from her employment.

59. If Ms Joy had warned the Claimant against making a complaint and, as the Claimant alleged, had the Claimant made clear to Ms Joy that the Claimant would not accept being treated that way, then it is improbable that the Claimant would not have mentioned this in her email of 30 December 2023 (in which she raised the topic of wanting a full time contract and perceived discrimination). I do not accept the Claimant's evidence that Ms Joy responded by saying that an incident like the one the Claimant had reported did not look good for the store, that it created problems for the company, and that the Claimant should think about that. I note that by this point Ms Joy had requested but not seen the CCTV footage and so she was not in a position to opine on the seriousness of the incident. She would have taken a significant gamble had she chosen to play down the incident and then been proved wrong by the CCTV footage. In any event I do not think she was motivated to play down or seek to bury the incident.
60. I consider that Mr Shirras reached a reasonable conclusion on this point in his appeal outcome when he found [HB307]:

You state you were visibly upset on that day and that you spoke to [PK] in tears after the incident and showed him your bruises. Having reviewed the investigatory statement made by PK it does confirm that PK stated that he saw you at the Self Checkouts that day and that you were "nearly crying and seemed stressed" and when he asked you why, you responded that IG had attacked you. Based on PK's testimony I believe MJ's statement in your outcome letter to be incorrect. I believe PK's statement shows you made him aware of something significant allegedly taking place that morning.

You state you also spoke with [Mr Shortland] after the alleged attack on the same day, informing him you had emailed HR as "no one can touch or hurt me at work". You advised that in the outcome letter it states that LS believed the matter to be resolved, however you do not accept that this was true. Having reviewed LS's statement I find that the outcome letter accurately reflects what LS stated to MJ in his meeting with her. You advised that you informed Store Manager [Mr Bean] about what had occurred after you finished your shift at 9am and that you were crying when you informed him. Having reviewed the investigation minutes from AB I can confirm he said that he did have a conversation with you on that day but that you seemed your "normal self" and were not "distressed".

Based on the above I partially uphold this appeal point on the grounds that I do not believe MJ's outcome letter accurately reflected PK's testimony. However, this is the only instance of such inaccuracies that I found in MJ's outcome letter.

61. I do not find Ms Kulikowska's evidence at [MKWS10c] probable. Had IO called

her and the Claimant “puta” (translated as “whore,”) or repeatedly referred to them as “stupid Polish” I find it improbable that they would not have raised that formally, made covert recordings (as the Claimant did frequently even when told that recording of meetings was not permitted) and/or been able to have been more precise about the dates and circumstances in which the comments were said to have been made.

Alleged protected acts 3ai-iii

62. As regards alleged protected acts [LOI 3ai] and [LOI 3aii], whilst the Claimant raised a complaint with Mr Shortland and Mr Bean on 19 December 2023 about IO’s conduct towards her, I find it improbable that she made any reference to the incident having any discriminatory element or making any allegation under or in connection with the Equality Act 2010. I accept the Respondent’s submissions in this regard.
63. As regards the Claimant’s formal written complaint of 20 December 2023 to HR [LOI3aiii], as the Respondent submitted: The email does not state that the incident was related to the Claimant’s Polish nationality or use the words that the Claimant alleges IO said. The email does not reference discrimination.

Time off and return to work in the new year

64. The Claimant finished work on 22 December 2023 and her first day back at work was 2 January 2024.

January 2024 - failure to give a full time contract

65. It is not in dispute that neither Mr Bean/the Respondent, did not give the Claimant a full time contract in January 2024.
66. I accept Mr Bean’s evidence that he cannot make decisions about recruitment with out discussing it with his area manager (Ms Joy). I accept his evidence that he could not promise a full time contract without having discussed it with Ms Joy and without careful analysis having been undertaken.
67. I accept his evidence that he would not promise full time hours to anyone if he did not know that he could honour the promise and that he could only make such a promise once he and Ms Joy had done the analysis and concluded that they needed a colleague to work full time.
68. I also accept their evidence that the Respondent takes an analytical approach to such decisions to ensure that its staffing levels at particular times of day over the working week match its needs and, based on data, how it anticipates staffing demands to fluctuate. I accept that the store would get increasingly busy during October, November and December in the run up to Christmas and that January is the quietest part of the year for the store and that staffing levels need to match this.
69. I also accept their evidence that certain shifts (evenings (16:00 – 22:30) and Sundays) are particularly hard to fill. Clearly short term contracts and overtime

hours offer the Respondent a more flexible means of covering its fluctuating staffing requirements and it is not surprising, taking this all into account, that there was availability for the Claimant to work overtime (as she did) in October, November and December and that her level of overtime was substantially higher in December (December - 43.37 hours, November 27.99 hours, October 25.90 hours).

70. The Claimant said that her covert recording of a meeting on 9 January 2024 [SB 107-110] evidenced that Mr Bean had made her a promise of a full time contract. The transcript of that meeting, for example, records Mr Bean offering to give the Claimant two long shifts rather than four shorter ones (to reduce the Claimant's travel time and costs). The Claimant said that would be better and Mr Bean said that they were reviewing whether the Claimant could formally be given more hours. In the meeting the Claimant said:

"You promised me, because last time you said, "I promise you," and after you change." To which Mr Bean replied "We review it all the time. So, uh, with contracted hours, absolutely, the store has a budget, and we need to manage the budget going forward. I'll review that every week." and later

[...]

"Yeah, I under, I understand you, but you sometimes lie to me as well. I'm asking you many, many times about the contract, and I-I like I said, I-I don't want to do nothing about, you know, not-no problem for you. I like you, but you must be, uh, honest for me. No, no, like that, because I feel really bad now in this place. Two peoples younger than me, I don't know, 12 years..."

71. The fact that Mr Bean did not directly confront the Claimant by saying "I have never made that promise to you" or say "I have not lied to you" does not suggest to me that he accepted that he had made a promise of a full time contract or accepted the Claimant's broad and serious allegation that he sometimes lied to her. What he says in that meeting, particularly since it was held in January, is entirely consistent with him only having committed to note that the Claimant wanted full time hours and that he would keep things under review.
72. I accept that January was a difficult month to make such a decision given that it is the quietest month of the year when staff tend to revert to their base hours and the additional hours that the Claimant could do needed to match the times of day and days of the week where the Respondent had a need for additional staff. The fact that the Claimant worked overtime in the run up to Christmas and that in that period the Respondent took on additional staff does not mean that the Respondent could offer the Claimant a permanent increase in her hours.
73. I accept that the increase in staff at the end of 2023 was part of the seasonal flux and to replace departing staff. I accept Mr Bean's evidence that in the run up to Christmas the Respondent recruits temporary staff on 12-week contracts for 10 hours per week and that if permanent staff were hired it would have been to fit

the existing hours which were harder to cover (he remembered that one person was recruited to work evenings and on Sundays). Those were times when the Claimant was not available to work. This is not inconsistent with Mr Shirras' finding on the Claimant's grievance appeal [HB308-309]:

"Having reviewed the store recruitment between November 2023 and January 2024 I find that 5 colleagues were recruited. These were over variable contract sizes with variable flexibility, including 1 colleague on a 30-hour contract, 1 colleague on a 20-hour contract and 3 colleagues on 10-hour contracts. I find no evidence you were promised any increase in hours nor that you have been treated any differently to any others in this respect."

74. I accept Mr Bean's evidence that the fact that the Claimant reported the incident with IO and that he, rightly, needed to adjust the rota so that IO was not working at the same time as the Claimant, did not cause much difficulty (there are always rota issues to manage due, for example, to staff leaving or falling ill) and did not play into any decision he made on the hours offered to the Claimant.
75. As regards an employee call Evelina, I accept Mr Bean's clear evidence that she was recruited to work four evenings per week and Sundays and that she worked those shifts for a long time. Some way into 2024 her circumstances changed and she needed to start alternating morning and evening shifts, which the Respondent was able to accommodate.

2 January 2024

Ms Jackson constantly checking the Claimant's work

76. The Claimant alleged [LOI 3biv] that on 2 January 2024 Mrs Jackson was constantly checking the Claimant's work.
77. I accept the cogent evidence of Mrs Jackson [JJWS9] that, at that time, management had identified that stock was not being properly rotated to ensure that earlier use by dates were brought to the front of shelves. I accept that the entire management team were tasked with checking stock rotation and providing feedback to staff. Mrs Jackson fairly accepted that she could understand that the Claimant might feel that she was targeted if, for example, she had been challenged on rotation for a couple of days in a row.
78. I accept, however, that the Claimant was not singled out in this regard and everyone was being monitored on their stock rotation performance and that this had, in any event, been identified as a weakness of the Claimant. The Claimant could not have known the extent to which other staff were also being monitored and challenged on this.
79. The Claimant's submission that Mr Shirras did not make reference to others being monitored does not mean Mrs Jackson was not being truthful. The point Mr Shirras made in his grievance appeal outcome was that there was a valid

reason, based on the Claimant's performance, for her stock rotation to be monitored. The fact that he did not mention that others were also being monitored does not mean that they were not or that Mrs Jackson is lying.

Mrs Jackson comment about attending the Christmas party

80. The Claimant alleged [**LOI 3bv**] that on 2 January 2024 Mrs Jackson told the Claimant she was not allowed to attend the company's Christmas party because IO was expected to attend.
81. I find that Mrs Jackson made no such comment to the Claimant. This would have been a surprising comment for Mrs Jackson to have made, not least because the Claimant was the victim of IO's conduct not the perpetrator of misconduct towards IO. Had this happened I think it is improbable that the Claimant would have omitted, as she did, reference to this from her emails at that time (including [HB176]), or in her grievance meeting with Ms Joy on 8 January 2024. The Claimant's explanation for this (being that she was "mentioning other important matters") is not persuasive.
82. The list of attendees at the party was displayed on the wall (that is where staff could sign up to attend the party and state their menu choices and it is where Ms Kulikowska signed the Claimant up to attend).
83. All staff could see who was attending and I accept the Respondent's evidence that there was some discussion amongst staff that both IO and the Claimant had indicated their intention to attend.
84. I accept the Respondent's evidence that both the Claimant and IO attending was not unworkable. I can see that it would have been possible and that the Respondent could have expected them as, as adults, to have avoided each other and to have treated each other with respect. Attendance at a Christmas party was different to the Claimant and IO being required to work at the same time when they might have had to interact and potentially work together or alone without anyone else being in close proximity.
85. I accept Mrs Jackson's evidence that (i) she did not tell the Claimant that IO would be attending (ii) she did not tell the Claimant that she could not attend the party or (iii) tell the Claimant that it would be "dangerous" for the Claimant to attend the party.

Request to work a shift at another store and checking customer receipt

86. The Claimant alleged [**LOI 3bvii**] that on 2 January 2024 Mrs Jackson messaged the Claimant, but none of her other colleagues, asking her to work in another store (Crewkerne) located a distance of 17 miles away from the store where the Claimant normally worked) and that she did so because the Claimant had done protected acts.
87. The messages in question read as follows [HB171]:

JJ to C: Hey, would you be able to do your morning shift at crewkerne store tomorrow please?

C to JJ: Hello, I can't. After Irina bruise my hand, the rest of the employees might have seen it as a punishment for me. I think it would have a bad impact on my image. And yet it's not me who should be punished. Regards Agnieszka

JJ to C: No one's punishing you, everyone's been asked this week to see if they can help crewkerne out and they just happen to be short staffed tomorrow morning! No worries if you can't go

88. The Claimant's response was surprising and defensive. It is plain from the text message from Mrs Jackson that this was just a request in respect of one shift (not a request that the Claimant transfer with any permanency to another store). It is also clear from her messages that Mrs Jackson applied no pressure to the Claimant to agree.
89. I accept Mrs Jackson's evidence as highly probable that, although she could not personally find messages from so long ago making similar enquiries of other employees, as her message to the Claimant itself reflects, other employees were being asked (either in person during their shift or by text message or in calls) if they could help Crewkerne out given the store's staffing difficulties.
90. The Claimant was not being singled out and I do not accept her evidence or that of Ms Kulikowska in this regard. I accept that such requests are not unusual in the Respondent's business when a local store needs help. The opportunity for extra hours might also be welcomed by an employee, particularly in January when there is less opportunity for overtime. The reason Mrs Jackson asked the Claimant was because she wanted to see if the Claimant was able and willing to help at that other store.
91. It is not probable that the Claimant contacted all other co-workers to check if the same request had been made of them and she provided no evidence of this.

Checking Polish customer

92. The Claimant alleged [LOI 2aii] that on 2 January 2024 Mrs Jackson approached the Claimant and a Polish customer to print off the receipt of the Polish customer again, searched the Polish customer's bag, and replied to the Claimant's question on why she did so saying "*because she's Polish like you*".
93. The following day, 3 January 2024, the Claimant sent an email which read as follows [HB176]:

Hello, I confirm that I will be at the meeting on Monday, January 8.

I would like to inform you that I do not feel mentally well enough to come to work. I feel persecuted, my work in the last few days has been closely watched and checked by the store managers. The situation happened

yesterday, one of the managers came over and reprinted the customer's receipt to check whether the customer had really paid for all the products, only because the customer asked for help and I spoke to him in Polish (the customer didn't speak English very well). In the last 4 days, my working time have been changed by one of the managers 3 times, which is not right to do from one day to the next, the working hours also looked malicious, e.g. 5-9:30 I have never had to take a break before in a 4-hour shift or Saturday from 5-8:15. Despite the fact that I asked for an 8-hour shift. Yesterday, one of the managers suggested that I spend my shift in another store, I did not agree because in this situation it would look like a punishment for me and could have a negative impact on my image. Today I also received a message from one of the employees asking one of the managers to provide information to the rest that they should closely observe my work and look for errors in it. Due to the fact that after Irina used physical violence against me and she still comes to work and has contact with the rest of the staff, employees talk a lot about this incident. I want to believe that the change in my working hours and all the other events described are not malice from the managers in my direction and only by coincidence. Unfortunately, however, I do not feel that the company will protect me in any way during this difficult situation for me. I do not feel strong enough to come to work tomorrow. Best regards, Agnieszka Rdesinska

94. The Claimant did not then name the manager involved but I consider it improbable that, having made a link in the email to the customer and her own nationality/language and that being the reason for the check, she would not have mentioned a comment being made that was overtly discriminatory in suggesting that the reason for the check was the customer's nationality. The Claimant made the same allegation at the grievance meeting on 8 January 2024 to Ms Joy but did not raise the comment that the Claimant alleges in her claim [HB199]. I conclude that the comment was not made and accept the Respondent's submission that it is pure speculation for the Claimant to suggest that this customer was checked because of her Polish nationality/use of the Polish language or the Claimant's Polish nationality/use of the Polish language.
95. I do not accept the Claimant's evidence, notwithstanding that English is not her first language, that it was "impossible to write it all down". I accept Mrs Jackson's evidence that she would have had no problem with the Claimant speaking Polish to a customer and that she would only have searched a customer's bag if either a colleague or a customer had flagged the need to her. I accept that checking customer's bags at the self service checkout is something that happens more frequently than people might think.

3 January 2024 – Claimant complaint to the HR service centre

96. On 3 January 2025 the Claimant was invited to a grievance meeting by Ms Joy to take place on 8 January 2024. The letter [HB178] referred to the matters raised in the Claimant's emails of 20 December 2023 and 30 December 2023.

97. The Claimant replied to the HR service centre (which had sent out the grievance meeting letter by email) the same day saying as referenced above [HB176].

4 January 2024

98. On 4 January 2024 the Claimant sent the following email to the Respondent's HR services team [HB185]:

Good morning, I do not want to involve my colleagues from work regarding Monday's meeting. However, since I am Polish and English is not my first language, I would like to ask if I can come to the meeting with an interpreter. Recently, due to an incident at work, I have been stressed and under the influence stress, the language barrier goes up, I would feel more confident if they agreed to come to the meeting with a translator.

4 January - alleged protected act 4 ([LOI3aiv])

99. The Claimant alleged that the same day she told Mrs Jackson verbally that she had reported the incident involving IO to the Police. I find that the Claimant was on sick leave on this date and conclude that she would not have told Mrs Jackson in person that she had made a report to the police about IO and the 19 December 2023 incident.
100. The Claimant provided no evidence that she otherwise told Mrs Jackson that she had made a report to the police (e.g. evidence of a phone call or text message).
101. I was provided with text messages between the Claimant and Mrs Jackson from that day and those texts make no reference to the Claimant telling Mrs Jackson that she had reported the IO incident to the police [HB172-173]. The texts also suggest that the Claimant had not called Mrs Jackson that day.
102. I find that the Claimant did not make the report to Mrs Jackson that she alleges that she made. The Claimant asked me to listen to the recording of a subsequent meeting on 6 January 2024 where she said she referred to it, which I did, but I could hear no such reference to the alleged protected act (it is mentioned in later meetings, for example her meeting with Ms Joy on 8 January 2024 [HB193] and Mr Bean on 9 January 2024 e.g. [SB110]).
103. I accept the Respondent's submission that, as regards the meeting with Ms Joy on 8 January 2024, although the Claimant said that she had reported the incident to the police, she did not inform Ms Joy as to the content of the report, save that it can be inferred that it only related to a physical attack. There is no reference to the Claimant having reported discrimination to the police, or that she informed the police of the words that the Claimant alleges IO said.

Day off requests

104. The Claimant alleged that the same day, (4 January 2024) because of her alleged protected acts her sickness absence for 4 January 2024 was marked as unauthorised absence [LOI3bviii]. For reasons explained above, I do not consider that she called the store to notify the store of her absence, she just

noted her absence on the myLidl application. However, this was not sufficient under the Respondent's sickness absence reporting policy which said [HB90-91]:

"If you cannot attend work as a consequence of illness or injury, you must (unless it is impossible for you to do so) telephone your line manager/a member of your management team as early as possible and ideally before your start time, but no later than 60 minutes after the time when you are normally expected to start work."

105. I accept Mr Bean's and Mrs Jackson's evidence that the Claimant would have been given training in her induction at the start of her employment on the requirements for reporting sickness absence. The process was also made clear in the text message from Mrs Jackson to the Claimant of 4 January 2024 [HB173] and in the return to work/welfare meeting conducted by her with the Claimant on 6 January 2024 [HB189] (another meeting which the Claimant covertly recorded [SB67-69]).
106. It was because the Claimant had not called the store that the Claimant's absence on 4 January 2024 was recorded as unauthorised.
107. The Claimant alleged that [LOI 3bxii] from around the middle of January until the beginning of March 2024, requests for single days off were created on the Claimant's behalf during the Claimant's sick leave (in the MY LIDL application) which were refused by the Respondent.
108. The parties agreed that the Claimant was on sickness absence from 11 January 2024 to April 2024. The Claimant was imprecise about which specific sick leave days were rejected as sick leave by the Respondent in the application/app (i.e. Mr Bean because it was he who had the access to the app) and treated as unauthorised absence instead.
109. I accept the Respondent's submission that it is the Claimant's case to make out and that she did not put specific instances to Mr Bean. I accept Mr Bean's evidence that dates were only rejected and recorded as unauthorised absence in the app because the Claimant had failed to comply with the absence policy (notification via the app being insufficient) and not because the Claimant had made any complaint about IO (or any other alleged discrimination for that matter). Mr Smith's evidence accorded with this.
110. Documents related to this complaint appeared at [HB379-400]. There is no basis for the Claimant to assert that, by saying she could call in to the store rather than email, that was a deliberate attempt by the Respondent to avoid a paper trail being created. The policy clearly mandated a phone call to the store. If the Claimant was concerned about a lack of paper trail she could have emailed as well and taken screen shots of her phone evidencing the calls. She does not appear to have done so despite having made numerous covert recordings of meetings.

111. I note here that IO was moved on the rota to the early mornings after this point but that was because the Claimant was on sick leave. I also note the following in the bundle:

111.1[HB232] – Fit note of 17 January 2024 (for the period 11 January 2024 – 31 January 2024). Reason for absence: stress at work.

111.2[HB266] - Fit note of 31 January 2024 (for the period 31 January 2024 – 1 March 2024). Reason for absence: stress at work.

111.3[HB319] – on 12 March 2024 the Respondent chased the Claimant for her fit note.

111.4[HB320]- Fit note of 31 March 2024 (for the period 1 March 2024 – 5 April 2024. Reason for absence: stress at work.

Daily checking of work rota

112. The Claimant alleged [LOI 3bix] that on 4 January 2024 Mrs Jackson texted the Claimant saying that the Claimant's work schedule would be created daily so the Claimant had to check it every day.

113. On 4 January 2024 Mrs Jackson and the Claimant exchanged the following text messages [HB172-173] (as referenced above and emphasis added):

JJ to C: Hey I did ring this morning as you were meant to be at work but no reply! Need to know if you'll be in tomorrow?

C to JJ: Hello, in the Lidl application I marked today as a day off due to illness, I don't know why you didn't receive this information, I also wrote an e-mail regarding today's indisposition. As for tomorrow, according to the work schedule I have, I have a day off tomorrow. But in this case Someone changed my working hours three times this week, maybe my work schedule is out of date again. Let me know if there is another change. Regards, Agnieszka

JJ to C: You need to ring in I won 't receive that, plus isn't the correct way to say that you' re sick

You've been in since Tuesday and the rota hasn't changed since then, need to be checking your next shift daily

C to JJ: Hello, so according to your schedule I work tomorrow? because according to the work rotation photo I took on Tuesday, I have tomorrow off. I'm confused, please let me know. Regards, Agnieszka

JJ to C: No [Mr Bean] got it wrong your not in tomorrow, don't worry but next time your sick you need to ring

114. The Claimant's cross examination of Mrs Jackson rightly appeared to acknowledge that the text messages did not say that the Claimant's rota would be changing daily but it was put to her that the words "*need to be checking your next shift daily*" implied this. Mrs Jackson's evidence was clear and I accept it.
115. Mrs Jackson takes photos of the rota published for staff on the wall (normally two weeks in advance of the shift in question) so that she can double check it if she is not in the store. Mrs Jackson did not know then that the Claimant in fact took the same approach.
116. Mrs Jackson, notwithstanding that she takes photos of the rota, also checks the rota before leaving the store on each occasion she attends the store, in case there has been a change.
117. I accept the Respondent's evidence that if there is a change to a rota then they will try to print a new version off and put it on the wall for staff to see (the new rota has a code v1.1, v1.2 etc to show it is a new version). However, if there is insufficient time to print a new version then sometimes changes are made in manuscript on the wall.
118. Of course the Respondent tries to advise staff (e.g. by call or in an in person conversation) if their rota has changed. This is unsurprising because the Respondent of course wants staff to attend when they are needed and not to have a shortfall in staff at the times needed. It could not fairly criticise a staff member who did not attend a shift if their rota had changed to allocate them that shift after their last attendance at the store but before they were next due in. Equally, it seems logical that the Respondent would not want to deal with the discontent that would be likely to arise if a staff member attended a shift that, since their last attendance at the store, had been cancelled. It was not suggested that either of these things had occurred with the Claimant.
119. Clearly all Mrs Jackson was suggesting in her text message to the Claimant was that it was good practice, in case the system failed or in case the Claimant was not taking photos or had mis-remembered the rota, that the Claimant double check the rota before leaving on each occasion that she attended the store for a scheduled shift. This was Mrs Jackson's advice to all staff. It could not sensibly be interpreted as a requirement on the Claimant to come to the store daily, even on days when she was not due to work, to check the rota. Nor could it be interpreted sensibly as telling the Claimant that her shifts would be altered daily.
120. Had the Claimant assumed otherwise then she could have checked her understanding. In the meeting on 6 January 2024 the Claimant did not make her misunderstanding clear and so Mrs Jackson was not given the opportunity to clarify her guidance.

6 January 2024 – Welfare meeting with Mrs Jackson and JL - [HB186-190, recording and recording transcript [SB58-72]

121. On 6 January 2024 Mrs Jackson had a return to work/welfare meeting with the Claimant. The Claimant took a covert recording of the meeting which I have listened to whilst also reviewing the transcript of the meeting. I was able to hear what was being said.
122. Mrs Jackson had conducted return to work meetings in the past, in accordance with the Respondent's policy, on an employee's return to work.
123. I accept the Respondent's evidence that it was Ms Joy who asked Mrs Jackson to also do a welfare meeting. That was understandable given the incident with IO on 19 December 2023 and what the Claimant had subsequently said about that incident. The Claimant was unduly suspicious of who had instigated the meeting and the need for it.
124. Mrs Jackson was nervous about doing the meeting because she had not conducted a welfare meeting before. It was early in the morning and she had not had much chance to read the documents she had been provided by Ms Joy before starting the hearing. There were pauses in the meeting while she got to grips with what she needed to cover. Mrs Jackson does not have a particularly clear way of speaking and this was perhaps accentuated by her nervousness and uncertainty about what she was required to do. It did not help that JL, a colleague assigned to take notes of what was said, did not have experience of note taking and needed to be supervised in that role by Mrs Jackson. It would have been better had Mrs Jackson spoken to the Claimant more slowly and clearly given that she knew that English was not the Claimant's first language. However, I do not consider that her failure to do so was deliberate and it was early in the morning at a busy time of day.
125. The Claimant started the meeting by complaining about her rota changing and it should have been clear to Mrs Jackson that the Claimant was suspicious about the reason for the meeting. Mrs Jackson might have slowed down and given clearer reassurance to the Claimant than she did about the fact that the meeting was to discuss the Claimant's welfare (it was not disciplinary in nature) and that the Claimant was not being singled out (such meetings were held with other employees in such circumstances).
126. The meeting was not held in an entirely professional way in that light-hearted comments were made between Mrs Jackson and JL with reference to JL's lack of aptitude for taking notes. However, I bear in mind that it was early in the morning in a retail environment which might be expected to be less formal than other working environments.
127. It is clear to me that any laughter or, as the Claimant put it "sniggering" was at the expense of JL or Mrs Jackson (for example laughing at her own inability to spell the Claimant's name).

128. I do not consider the tone to have been rude or sarcastic towards the Claimant. Mrs Jackson's comment about the Claimant being careful because JL needed to take a note of what she said perhaps could have been better phrased, and the point more precisely made, but it was no more than a comment on the difficulty JL was having in keeping pace with his note of what was being said. At one point there was laughing because Mrs Jackson had to tell JL to wake up. Not long after JL commented that Mrs Jackson herself was awful at taking notes which she admitted, showing self-deprecation (she also disclosed something that might explain this difficulty at [JJWS22]). Mrs Jackson laughed at her own failings and acknowledged that the meeting would have been smoother had Ms Joy been able to conduct it.
129. I find that the Claimant's comment about wanting to know her shift rota in advance like staff of other nationalities derived from a misunderstanding of Mrs Jackson's earlier text message (referred to above [HB172-173]). It is not surprising that Mrs Jackson did not fully understand the Claimant's point of view (given that Mrs Jackson knew that all staff were generally given the same notice of their rota and in the same way – through publication on the notice board). As regards the requirement to call in for sick leave, Mrs Jackson fairly acknowledged that this was more difficult if scheduled for a shift starting at 5am and she explained the leeway afforded by the policy.
130. I accept Mrs Jackson's evidence as probable [JJWS22-24], particularly given the Claimant's defensiveness/suspicion about the meeting, that at end of meeting she asked the Claimant to read through the notes and the Claimant refused. Mrs Jackson then asked the Claimant to write her own name on the top of the meeting notes as she was unsure how to spell the Claimant's full name.
131. Mrs Jackson then put the notes in Ms Joy's locked data protection box before taking a copy for the Claimant. After doing so the Claimant stopped Mrs Jackson in a corridor and asked for a copy of the notes. Mrs Jackson could not by that point retrieve the notes and she was not sure at that point if the Claimant was entitled to a copy and thought it best not to give her a copy until she knew from Ms Joy that it was ok. I cannot see why the Claimant would not be entitled to a copy of the notes of her own welfare meeting but accept that the reasons Mrs Jackson could not provide her with one was that they had been posted in Ms Joy's locked data protection box.
132. The Claimant, in any event, of course had her own covert recording of the meeting. Mrs Jackson fairly admitted in her witness statement that she knows now that it was a mistake (arising from inexperience) not to have given the Claimant her own copy to take away with her.
133. I do not accept that Ms Joy forbade Mrs Jackson from providing the notes. The grievance appeal outcome reached similar conclusions [HB310]. On the Claimant making Ms Joy aware that she did not have a copy of the notes of the 6 January 2024 meeting at her meeting with Ms Joy on 8 January 2024, the notes were sent out to the Claimant shortly afterwards.

134. On the afternoon of 6 January 2024 I note that the Claimant sent the following email to HR services [HB191]:

hours this week, which is what I have written in my contract). (I wrote an e-mail to you earlier, asking for meetings in the presence of a translator, because under stress the language barrier goes up, I'm sorry that even the company didn't respect this.) The meeting took place in an atmosphere of ridicule. At the meeting I was promised copies of the document in the manager's handwriting, but after signing the document I was told I would not receive a copy. I was told that Michel forbade me to give it to her. I said English was not my first language and I needed a copy to translate it, but was told this was not the case. The document was written by hand, so after I left, anyone could add whatever they wanted. This is all very disappointing, I don't understand how a manager can say at the beginning of the conversation that you will get a copy and then not give it to you. I don't know if this is in line with Lidl's policy, I know for sure that it is illegal. I am deeply disappointed that I have been treated this way 3 weeks after I was the victim of workplace violence. Lidl, as an employer, should protect victims of violence, but it haunts me because I am of Polish origin and it protects the perpetrator. Best regards Agnieszka

135. I do not agree with the Claimant's assertion that at or after (as applicable) the meeting:

135.1 Mrs Jackson and JL burst into laughter having heard the Claimant explain how she felt [LOI 2aiii].

135.2 Mrs Jackson and JL laughed and made a comment that it was weird referring to what the Claimant had said when she explained that that she was feeling 'not too bad' but stressed in general but she was able to work. I cannot hear the word 'weird' being used and it is not in the transcript of the covert recording [LOI 2aiii].

135.3 Mrs Jackson made a comment to the note taker JL to write "asked her if she really understands the question," or that Mrs Jackson and JL laughed [LOI 2aiii].

135.4 Mrs Jackson and JL laughed when the Claimant made a mistake whilst speaking or when she used the incorrect form of past tense [LOI 2aiv].

135.5 Mrs Jackson and JL laughed when the Claimant said that she would like to receive the store rota in advance like everyone else [LOI 2av].

135.6 Mrs Jackson informed the Claimant that the Claimant would not receive a copy of the statement from the meeting on the 6 January 2024 because Mrs Joy, area manager, forbade her to give it to the Claimant [LOI 3bx]

136. The notes that JL took of the meeting are clearly not verbatim but they capture

the key points and it does not appear to me that the Claimant has suffered any injustice or humiliation in how they summarise the discussion.

8 January 2024 - Grievance meeting with Ms M Joy – protected act

137. On 8 January 2024 the Claimant attended a grievance hearing with Ms Joy and again made a covert recording [HB193-200 and SB79-100]. The Claimant says that she informed Ms Joy that she had reported the incident with IO to the police and that this was a protected act [LOI 3aiv].

138. That evening she sent an email to HR saying [HB201]:

Hello, I would like to inform you that from next week, as I have been announcing for several weeks, I will be able to work only during contract hours. My availability is from Monday to Friday 5:00-13:30, Saturday 5-9:00 I never signed a contract for 5-9 availability, as they tried to convince me at the meeting. Please respect my availability and do not put me, as a single mother, at risk of falling into debt. Until I receive an employment contract for more hours, I can work 2 full days 5:00-13:30 I can't afford to commute to work 5 times a week because I only have a 16-hour contract. Regards, Agnieszka

139. As the Respondent submitted, the notes of the meeting record that the Claimant said: "Police have stated that it was a physical attack and cannot be in the same store until court meeting." [HB193]. This is the only time the Claimant refers to the police in the meeting. I accept the Respondent's submission that, although the Claimant said that she had reported the incident to the police, she did not inform Ms Joy as to the content of the report, save that it can be inferred that this only related to a physical attack. There is no reference to the Claimant having reported discrimination to the police, or that she informed the police of the words that she in this claim alleges IO said to her on 19 December 2023.

Notice of shifts and rearranging work schedule and nature of work allocated

140. The Claimant alleged that because of her Polish nationality [LOI 1bii] Mr Bean, between 2 and 8 January 2024 failed to give her adequate notice of work shifts, whilst he did so to staff of English and/or non-Polish origin. The Claimant also alleged that because she had done the protected acts Mr Bean [LOI 3biii] between 2 and 8 January 2024 rearranged the Claimant's schedule of work within the working week three times.

141. I accept Mr Bean's evidence and the Respondent's submissions that rotas are issued in the welfare area of the store for all staff up to three weeks in advance of the shift and are not sent out via electronic means. Everyone gets access to the rota at the same time, and if there are changes to the rota, they are discussed with the staff member(s).

142. The Claimant accepted in her evidence that everyone received the rota at the same time which was presented on the wall and not sent electronically.

143. Mr Bean did not fail to give the Claimant adequate notice of her shifts between 2 and 8 January 2024, she knew of them at the same time as everyone else. Relevant documents were at [HB444] (the applicable timesheet) and [HB346] (v1.5 of the rota). The Claimant's timesheet and v1.5 rota match exactly.
144. The Claimant was accidentally added to the v1.5 rota as the only person working on 1 January 2024 when the store was closed and there was no suggestion that she had not realised this was a mistake.
145. The earlier version (v1.4 [HB334]) of the same rota showed the Claimant as scheduled to work on the same days but on v1.4 her shifts ended at 9:30am or 9:15am (on v.1.5 they ended at 9:00am). This was to allow a buffer between the Claimant's shift ending and IO's shift starting.
146. The reduction in hours over Tuesday – Thursday was made up by a longer Saturday morning shift (starting earlier).
147. The Claimant was not the only person whose rota had changed between v1.4 and v1.5. The run date of v1.5 was 19 December 2023 and I find it improbable that the Respondent would not have issued it on that date.
148. I do not repeat my findings in respect of the text exchange between Mrs Jackson and the Claimant of 4 January 2024. Mrs Jackson was relying on information that Mr Bean had given her about the Claimant's shift pattern which was wrong and Mrs Jackson realised his mistake and confirmed that it was a mistake to the Claimant. It was a mistake and this cannot sensibly be categorised as a change to the Claimant's shifts. The Claimant still had hours that week matching her contractual hours (16 per week) the v.1.4 just had her working 15 minutes longer.
149. The Claimant's case was that [LOI 3bii] from the 2 to 22 January 2024, because of her alleged protected:
 - 149.1 she was assigned to the shifts 5-9am in the morning;
 - 149.2 she was assigned only to do heavy physical work such as unloading, frozen foodstuff, meat, and other heavy products;
 - 149.3 she was assigned to work in isolation from other staff;
 - 149.4 she was made to finish her shift at 9:00am before IO started at 9:30am;
 - 149.5 several employees told her not to talk to them in front of management.
150. I note that from 11 January 2024 the Claimant was on long term sick leave.
151. The Claimant's normal shift pattern was 5am to 9am which matched her availability. Her rota was changed to a finish time of 9am so that her shifts and IO's shifts did not overlap and to allow for a buffer because the Claimant

understandably did not want to work at the same time as IO. It was not because the Claimant had raised any complaint about IO.

152. There is no cogent evidence, other than the Claimant's bare assertion (which lacks any precision or detail) that the work assigned to the Claimant was any more heavy or physical than it would normally have been or than that assigned to anyone else or that the Claimant was deliberately assigned to tasks isolated from others.
153. I do not repeat my findings in respect of the demands of the role of customer assistant and I accept the Respondent's submission that the Claimant's account is contradictory in that she claims that she was doing more physical heavy lifting tasks (which are done in pairs) but at the same time being required to work in isolation (milk and self service checkout are done in isolation but are considered lighter tasks).
154. There is no sensible basis on which I could conclude that the Claimant was given "worse" tasks after she raised complaints about IO, nor for finding that she was not rotated as much as she was prior to the incident with IO.
155. Mr Mikutis was clear in his evidence that colleagues have preferences or strengths in certain tasks and that if a colleague had an issue with a task he or she had been allocated then he would deal with it as he always considered colleagues' opinions. This accorded with Mr Bean's evidence.
156. The Claimant said [CWS9a]: *"Several employees including Monika Kozłowska [sic] secretly confided to me that they were not allowed to speak with me when management was observing, otherwise they too would be treated badly. I was told management had given clear orders for my isolation, that no one was to talk to me, spend time with me, or work alongside me, and that I was to experience the consequences of having raised a complaint."* There was no evidence on which to base a finding that this imprecise allegation had any basis in fact.

9 January 2024 - shift scheduled with IO

157. The Claimant's case [LOI 3bxi] was that on 9 January 2024 Mr Bean scheduled the Claimant's shift to coincide with the shift of IO.
158. The rota for that week [HB364] was prepared by Mr Bean on 27 December 2023 and whilst it initially showed IO and the Claimant working the same shift, Mr Bean spotted this and changed the rota so that IO started her shift at 9:30am (after the Claimant's shift was due to end). The Claimant and IO therefore did not work the same shift on 9 January 2024. I accept Mr Bean's evidence that he changed the rota as soon as he could. It was a simple mistake which he rectified and did not constitute any form of retaliatory action against the Claimant (the previous week Mr Bean had ensured that they were not working at the same time).
159. As Ms Joy noted in her grievance outcome letter of 5 February 2024 [HB279],

"We could see that that neither you or [IO] had been scheduled on to the same shifts, as you were scheduled for morning shifts and IG afternoon shifts." The only occasion where the Claimant and IO overlapped was on 2 January 2024 when, as Ms Joy noted "although [the Claimant was] not scheduled to work on the same shift, [the Claimant] had stayed and worked until 13.13. [IO] was scheduled to start work at 12.30 on that day, resulting in there being a crossover of 43 minutes." Mr Shirras reiterated the point in his appeal outcome on 6 March 2024 [HB307-308]. As the Respondent submitted, the Claimant was not required by the Respondent to stay beyond her shift and could have left prior to IO starting her shift. She could have seen IO's start time on the published rota and chose to stay on with that information available to her.

160. After 11 January 2024, when the Claimant started sick leave, IO was scheduled to work at the time the Claimant normally worked but that was simply because the Claimant was on long term sick leave. The Claimant cannot sensibly complain of that.
161. On 9 January 2024, in a welfare meeting with Mr Bean which the Claimant covertly recorded, Mr Bean explained that he would compress the Claimant's contracted hours into two eight-hour shifts on Monday and Tuesday to support the Claimant (reducing her travel time and costs). The Claimant, in an email of the same day, thanked the Respondent for that adjustment and I note that she went on to write as follows [HB217]:

Hello, I would like to thank you for your intervention in changing my working hours.

Unfortunately, I did not receive the promised full-time contract, but I did receive 2 full days of work.

I talked to [Mr Bean] and [Ms Joy] about Saturday's meeting, which was carried out without prior notice. I received information [Mr Bean] and [Ms Joy] did not agree to conduct this meeting. [Mrs Jackson] and [JL] were to interview me about my well-being and readiness for work and instead they held a meeting about what my expectations were regarding [IO] after the incident in which I was a victim a physical violence. This meeting was recorded by [JL] manager and [Mrs Jackson] asked questions. As I wrote earlier, [Mrs Jackson] and [JL] assured me that the meeting was taking place on [Ms Joy]'s orders, which turned out to be false. [Mrs Jackson] promised me that after signing the document I would receive a copy she later informed me that [Ms Joy] had given them an order not to give me such a copy. As I mentioned earlier, the meeting was conducted in an unprofessional manner, during the meeting my knowledge of the language and my origin were ridiculed. It is very disappointing that two managers, who should have shown me support after the attack on me that took place in the store, interrogated me in this matter without the consent of their superiors and ridiculed me because of my language and origin.

As I wrote earlier, this is a very difficult time for me and due to stress, the language barrier increases, so I asked for a witness and an interpreter. I am asking you to investigate this matter because I no longer want to be discriminated against, humiliated and ridiculed by my superiors at work.

Three weeks have passed since [IO]'s attack. Imagine how the investigation, which is conducted in an atmosphere of reluctance and discrimination spread by managers, has an impact on the individual (co-worker). And finally, what impact does all this have on me, how much unpleasantness happened to me during this long investigation. .

Best regards, Agnieszka Rdesinska

10 January 2024 email from the Claimant

162. On 10 January 2024 the Claimant wrote as follows [HB220]:

Hello, I am still waiting for statements from the meetings. When can I expect a reply to my email?

Best regards Agnieszka Rdesinska

11 January 2024 - Long term sick leave

163. As referenced above, from 11 January 2024 the Claimant was on long term sick leave.

16 January 2024 – alleged prohibition of Polish speaking

164. The Claimant complains that because of her Polish nationality [LOI 1a] on 16 January 2024 Mr Bean prohibited Polish speaking staff Ms Kulikowska and PK from speaking Polish. Ms Kulikowska in her witness statement [MKWS4a] said:

I recall a particular incident where the prohibition on speaking Polish followed events involving other Polish employees. One day, before my scheduled day off, an issue arose where [PK], who worked on the tills, spoke Polish with a Polish customer he knew. Similarly, I had been speaking Polish with a colleague, Ms. Ewelina on other days however on that particular day I was not at work, but I found out what happened from other colleagues including Ewelina. It became apparent that [Mr Bean], the store manager, was very unhappy about us speaking Polish at work with each other or with Polish customers. The next day, when I returned, [Mrs Jackson] informed me and others we could not speak Polish at work, neither between Polish staff or with customers. I understood that this prohibition was issued towards Polish staff generally that none of us could speak Polish.

165. The Claimant, in submissions said (amongst other things which I note) “[Mrs Jackson] had previously: Prohibited employees from speaking Polish at work and informed Ms. Monika Kuligowska [sic] of this instruction (paragraphs 3a and 3b of Monika Kuligowska’s [sic] statement).”

166. The Claimant said that she was informed of the alleged prohibition by Ms Kulikowska whose evidence was that it was not Mr Bean who told her not to speak Polish but Mrs Jackson who told PK not to speak Polish, and this was then reported to Ms Kulikowska. I refer to my findings above.
167. It is clear that Ms Jackson was on holiday on 16 January 2024 and indeed throughout that week [HB354] and, as referenced above, the Claimant was on sick leave that day. Ms Jackson could not have communicated a prohibition on the speaking of Polish that week.
168. Ms Joy and Mr Shortland, whose evidence I accept, also confirmed that they were not aware of any prohibition on the use of any language in the store.
169. Further PK was interviewed by Ms Joy on 9 January 2024 [HB209] and made the comments I have referred to above. His statement contradicts the Claimant's allegation.
170. Ms Kulikowska, when interviewed by Ms Joy on 30 January 2024 [HB263] and asked if she had witnessed any discrimination said, "*Nothing I can recall no one has been directly racist.*" I accept the Respondent's submission that this is consistent with what Ms Kulikowska said in a disciplinary hearing conducted with Ms Joy on 20 May 2024 [SB200] and that on both occasions, Ms Kulikowska does not say anything about being prohibited from speaking Polish.
171. Ms Kulikowska, as the Respondent submitted, summarised what she told Ms Joy in an email to the Claimant 5 February 2024 [HB276] and did not mention being prohibited from speaking Polish. I find Ms Kulikowska's evidence that she did not raise this allegation as "*other things were important*" improbable. I find that the prohibition alleged was never made.

17 January 2024 email [233]

172. On 17 January 2024 the Claimant wrote "*Hello, four weeks have passed since the incident, I wanted to ask if the investigation has been completed?*"

Christmas party attendee list

173. The Claimant alleged that [LOI 3bvi], because of her alleged protected acts on 16 January 2024, Mr Bean removed her name from the attendee list for the Christmas party.
174. A Christmas party was arranged by the Respondent to take place on 28 January 2024 (an earlier event having had to be cancelled by fault of the venue). I do not repeat my findings as set out above. Ms Kulikowska put the Claimant's name on the first sheet that went up. I accept Mr Bean's evidence that that sheet was then filled so more space was needed and the full list was therefore taken down and a fresh sheet put up. It might have been better and have caused less confusion for the full list to have remained up and for an overflow list to have been put up next to it. I accept Mr Bean's evidence that it would have been explained to staff in staff meetings that those whose names were on the original

list did not need to sign the new list that went up again. The Claimant was being passed information by Ms Kulikowska and it is regrettable that she either did not hear that explanation at a staff meeting or did not pass the information back to the Claimant. In any event it was not just the Claimant on the list that was taken down there would have been many others on it as it was full. Mr Bean also explained, and I accept, that [ABWS24]:

[...]

A few colleagues were discussing the fact the Claimant was down to go despite being on sickness absence. The Claimant was of course entitled to come to the Christmas party as was anyone on extended absence from work. I wanted as many people as possible to attend. To stop the chatter and encourage as much attendance as possible (the list had also been completed), I took the complete one into the office to be stored, and I put a new blank one up for further colleagues to sign up to.

I do recall general chatter going on around this time about the incident between [IO] and the Claimant, which if I noticed I would seek to minimise. I do recall [PK] talking directly with me at one point, quite upset, saying he wanted no involvement with all that was going on and was feeling pressured by the Claimant to raise issues.

[...]

175. The list was replaced for these reasons and not as an act of revenge against the Claimant. The Claimant has misunderstood what happened and has fallen into unfortunate speculation in circumstances when she was receiving information 'second hand'.
176. In cross examination of the Respondent's evidence the Claimant said that the list with her name and menu choices had not been provided to the venue. She advanced no evidence of her own on this. I accept Mrs Jackson's clear evidence that both sheets with the menu choices on them, including the Claimant's choices, were submitted to the venue and I accept her evidence and that of Mr Bean that they had expected the Claimant to attend.
177. The Claimant chose not to attempt to check her understanding (which was misplaced) about the Respondent's attitude to her attending. Mrs Jackson's evidence was not inconsistent with Mr Shirras' appeal outcome at [HB308] where he said "[Mrs Jackson] stated she was aware that the initial list for colleagues attending the Christmas party was removed and replaced with a new blank list but did not know the precise reason for this or who had done it.". Mrs Jackson at that time did not know why Mr Bean had put a new list up.
178. The Claimant's name was not removed from the Christmas party list, her name and menu choices were submitted to the venue, and the Claimant's name along

with that of staff not just of Polish nationality appeared on the first list that was taken down and replaced with an overflow sheet.

Early conciliation

179. On 8 February 2024 ACAS early conciliation commenced [HB31].

1-6 February 2024 – grievance investigation, outcome and appeal

180. I note that on 1 February 2024 the Claimant wrote to the Respondent as follows [HB269]:

Hello, I would like to ask how long the investigation will last and whether all the people harassed by [IO] such as: [OB], [JC]. (were dragged by their clothes) [AH]., Monika K. (stalked by [IO] every day) were also interrogated ? I'm waiting for your answer, thank you and best regards, Agnieszka

181. Having met with the Claimant on 8 January 2024 to discuss the Claimant's grievance, Ms Joy concluded her investigation on 1 February 2024 [JMWS41] [HB271-275]. She recommended that IO be subject to a disciplinary process in respect of the incident on 19 December 2023 and, as I have said, IO was later suspended and dismissed for her conduct. Ms Joy issued a letter explaining her decision on the grievance on 5 February 2024 [HB277-281]. I accept her evidence that she had investigated a sufficient number of people having given the Claimant a reasonable opportunity to state her case. I accept that it was not incumbent on her to have interviewed those mentioned in the Claimant's email of 1 February 2024.

182. On 6 February 2024 the Claimant appealed Ms Joy's decision [HB282] saying:

Hello, I would like to inform you that I am very dissatisfied with the result of your investigation and I do not agree with your decision. I would like to emphasize that in the entire investigation, many aspects that I raised were omitted and distorted. Based on your response, I believe that the investigation was conducted incorrectly and that the people persecuted by [IO] were deliberately omitted from the investigation or their statements were changed. [Name], [Name] (were dragged by their clothes) [Name], [MK]. (persecuted by IO every day). There are many irregularities and untruths in the final statement itself. I will give you some examples. As for closely monitoring my work, it was also about searching clients of Polish origin whom I served, which according to [Mrs Jackson] was [Ms Joy]'s order and evidence of it there are people of Polish origin whose purchases and receipts were examined, the regional manager could easily check it on CCTV to have proof. [Ms Joy], at the meeting on January 8, 2025, informed me that she did not know anything about the meeting that took place on January 6, 2024 and that this meeting was conducted without her knowledge or consent. Regional Manager [Ms Joy] emphasized at the meeting on January 8, 2024 that [Mrs Jackson], as shift manager, does not have the authority or anyone's consent to conduct meetings of this type. As I informed you earlier, I never received

a statement regarding this meeting and [Mrs Jackson] informed me that it she was not allowed to give me a copy of the certificate on the orders of Regional Manager [Ms Joy]. In the final statement, [Ms Joy] writes that [Mrs Jackson] is the Deputy Manager, which to my knowledge is not true. Many facts prove that this investigation was unfair because I have provided you with irrefutable evidence to support my allegation:... I am asking you to reconsider the matter.

22 February 2024 - grievance appeal

183. The Claimant attended an appeal meeting with Mr Shirras on 22 February 2024 at which MP acted as note taker [HB291-294]. As one would expect, the notes of the meeting are not verbatim but, against the Respondent's guidance that recording of the meetings was prohibited, the Claimant made a covert recording of the meeting. Ms Kulikowska accompanied the Claimant at the meeting.
184. At the end of the hearing, Mr Shirras asked the Claimant if she considered that she had had a fair hearing and opportunity to raise the points that she need to raise and the Claimant confirmed that she had [HB293].
185. The Claimant's case was that [LOI 2avi] the appeal meeting minutes dated 22 February 2024 (as taken by MP) were distorted in such a way to make them funny and incomprehensible, and on some occasions suggesting that the Claimant made a number of errors whilst communicating in English, for example: "*I to pay the cost of a caretaker*".
186. The words "*I to pay the cost of a caretaker*" do not appear in the minutes from the meeting or in the transcript of the covert recording. It appears that the Claimant's reference to 'caretaker' is to babysitter and that is the word used in the minutes of the meeting. There is no discrepancy between the reference in the minutes [HB292] and the transcript of the Claimant's covert recording [SB127, 138, 140].
187. The meeting minutes have not been distorted and do not come across as funny or incomprehensible. As you would expect, and as was explained to the Claimant from the outset by Mr Shirras, the minutes were not intended to be verbatim and the Claimant could read and approve them [HB291]. I accept Mr Shirra's evidence was that he went through the minutes with the Claimant and Ms Kulikowska (who accompanied the Claimant and assisted with translation in the meeting), and that the notes were signed electronically and in no way amended after that point (I was taken to the metadata for the minutes).
188. I accept the Respondent's submission that in evidence, the Claimant was unable to explain what she was referring to when she said that her words had been changed in the minutes. She said that she needed help from her representative as it was "too difficult" to answer and that is not satisfactory.

6 March 2024 - grievance appeal decision

189. Mr Shirras finalised his conclusions on the Claimant's appeal on 6 March 2024

and provided them by letter to her [HB304-312].

ET1 and ET3

190. The Claimant issued her claim from on 23 March 2024 [HB10-30]. The Respondent submitted its response on 23 May 2024 [HB33-48].

Claimant's return to work

191. The Claimant returned to work in April 2024. She remains employed on a 16-hour contract at the store, but her hours are compressed into two eight-hour shifts (as suggested by Mr Bean to help the Claimant).

Manipulation of documents

192. I was provided with the meta data for the meeting minutes prepared by the Respondent for the meetings held by Ms Joy on 8 January 2024 (SB167) and 30 January 2023 in which there was no mention of a prohibition on speaking Polish (SB173). The Claimant and Ms Kulikowska made the serious allegation that the minutes prepared by the Respondent had been manipulated and modified. I accept the Respondent's submission that those were unfounded allegations and that the meeting minutes are an accurate representation of what was said and do not omit material details.

THE LAW

193. There was no dispute between the parties as to the law applicable to the claim. I accept the summary of the law prepared by the Respondent in its submissions but note as follows:

Discrimination under the EqA

194. The Equality Act 2010 (EqA) protects employees and applicants for employment from discrimination based on or related to a number of 'protected characteristics' (section 4). These include race (section 9).

Direct discrimination

195. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment. This includes direct discrimination because of a protected characteristic as defined in section 13.

196. Section 13 of the Equality Act 2010 provides that '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'.

197. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

198. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. I can take into account a number of factors including an examination of circumstantial evidence.
199. I must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.
200. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of the protected characteristic. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.
201. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.
202. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's race. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.
203. Guidelines on the burden of proof were set out by the Court of Appeal in **Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258** and I have followed those as well as the direction of the court of appeal in **Madarassy v Nomura International plc [2007] IRLR 246, CA**. The decision of the Court of Appeal in **Efobi v Royal Mail Group Ltd [2019] ICR 750** confirms the guidance in these cases applies under the Equality Act 2010.
204. The Court of Appeal in Madarassy, states:
- '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.'* (56)

205. It may be appropriate on occasion, for the tribunal to take into account the Respondent's explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (**Laing v Manchester City Council and others [2006] IRLR 748; Madarassy**). It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent asserts that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his/her favour that the burden at the first stage has been discharged (**Efobi v Royal Mail Group Ltd [2019] ICR 750**, para 13).
206. In addition, there may be times, as noted in the cases of **Hewage v GHB [2012] ICR 1054** and **Martin v Devonshires Solicitors [2011] ICR 352**, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When I adopt such an approach, it is important that I remind myself not to fall into the error of looking only for the principal reason for the treatment, but instead ensure I properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.
207. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach **Qureshi v London Borough of Newham [1991] IRLR 264, EAT**. I must "see both the wood and the trees": **Fraser v University of Leicester UKEAT/0155/13** at paragraph 79. My focus "must at all times be the question whether or not they can properly and fairly infer... discrimination.": **Laing v Manchester City Council, EAT at paragraph 75**.

Victimisation

208. Section 27 EqA provides: "(1) A person (A) victimises another person (B) if A subjects B to a detriment because— (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act. (2) Each of the following is a protected act— (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act. (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith. (4) This section applies only where the person subjected to a detriment is an individual. (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."
209. The starting point is that there must be a clear allegation amounting to a protected act. Therefore an allegation that something might be discriminatory rather than is actually discriminatory, will not be sufficient **Chalmers v Airpoint Limited and Others UKEAT/0031/19**.

210. In addition, if what the issue alleged by Claimant as amounting to a breach of the EqA would not be unlawful under the EqA, then it cannot be a protected act for example see ***Waters v Metropolitan Police Comr [1997] IRLR 589***.
211. I note Langstaff P in **Durrani v London Borough of Ealing UKEAT/0454/2012**: “*there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies*”. In that case the complaint being made was not of discrimination, but of unfair treatment generally and the ET had not erred in finding that was not a protected act.
212. In **Chalmers v Airpoint Ltd UKEAT 0031/19** the EAT upheld the ET’s decision that an employee’s comment in her grievance that the employer’s actions “may amount to discrimination”, and she had also not mentioned ‘sex’ was insufficient to be a protected act.
213. The employee must be subjected to a detriment, which has been decided to mean placed at a disadvantage ***Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230***. Unfavourable or less favourable treatment arguments are not in accordance with the correct statutory wording of section 27. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL***. Therefore, for detriment to be proven, it is for the Claimant to show that they were or would have been, in their subjective view, placed at a disadvantage and that it was objectively reasonable for them to have held that view.
214. Detrimental treatment of a Claimant will not be because of a protected act if the detrimental treatment is caused by the way in which the protected act is done or the behaviour of the Claimant whilst communicating the protected act or gathering information for it. For example see ***Woods v Pasab Limited [2012] EWCA Civ 1578*** and ***Martin v Devonshire Solicitors [2011] ICR 352***.
215. The detriment relied upon by the Claimant, must be linked to the protected act. The same test for causation in direct discrimination, is therefore relevant to victimisation because the statutory wording is the same.
216. A detriment cannot be found to have been because of a protected act if there is no evidence that the person who allegedly inflicted the detriment knew about the protected act. The Court of Appeal decision in **Scott v London Borough of Hillingdon [2001] EWCA Civ 2005** was that knowledge of a protected act is a precondition of a finding of victimisation. In that case there was no positive evidence that the decision maker knew of a previous complaint of discrimination, and therefore no basis for a finding of victimisation. The knowledge of one person in an organisation of a protected act cannot be attributed to another; the protected act must operate on the mind of the decision maker: **Peninsula Business Services Ltd v Baker [2017] ICR 714, EAT**.

Harassment (sex and race)

217. Section 40 of the EqA renders harassment of an employee unlawful.
218. Section 26 EqA 2010 provides: (1) A person (A) harasses another (B) if- A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of - violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account— the perception of B; the other circumstances of the case; whether it is reasonable for the conduct to have that effect.
219. ***Richmond Pharmacology Ltd v. Dhaliwal [2009] IRLR 336*** makes clear that while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct related to other protected characteristics), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.

ANALYSIS AND CONCLUSIONS

220. I was careful to look at the evidence 'in the round' to determine whether it suggested that the Claimant had been subjected to the unlawful treatment of which she complains (this is particularly important when it comes to allegations of direct discrimination, victimisation and harassment). Having done so I did not find cause to change our decisions on any issue or issues.

Direct race discrimination (Equality Act 2010 section 13)

LOI 1bi

221. This complaint fails on the facts, neither Mr Bean nor any other manager on 16 January 2024 or any other date prohibited Polish speaking staff Ms Kulikowska and PK from speaking Polish.

LOI 1bii

222. This complaint fails on the facts, the Claimant was given the same notice of her shifts as English and/or non-Polish staff.
223. Accordingly the Claimant was not subjected to less favourable treatment because of her nationality as she alleges.

Harassment related to race (Equality Act 2010 s. 26)

LOI 2ai

224. This complaint fails on the facts, IO did not say to the Claimant on 19 December 2023 "*you're good for nothing, you can't do anything, you're a stupid Pole, and you have to listen to me*". IO did touch the Claimant inappropriately and

gesticulate to her in the way I have described. It is clear that IO's conduct in that respect was unwanted but it had nothing to do with the Claimant's nationality and there is no basis for concluding that IO acted as she did because of the Claimant's nationality or that her conduct:

224.1 Had the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant as someone of Polish nationality; or

224.2 If it had that effect that it was not reasonable for the conduct to have that effect.

225. It may well have created an intimidating environment for the Claimant but not because she is someone of Polish nationality. IO's conduct was not related to the Claimant's nationality.

LOI 2aii

226. This complaint fails on the facts. Mrs Jackson did not check a Polish customer's bag and then explain to the Claimant that she was doing so because the customer was "*Polish like you*". Mrs Jackson relatively frequently has to check the shopping of customers, normally at the request of a colleague or the relevant self service checkout customer assistance. It is pure speculation on the part of the Claimant for her to suggest that this customer was checked because of her Polish nationality/use of the Polish language or the Claimant's Polish nationality/use of the Polish language. The checking of a Polish customer's bag was not for the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant as someone of Polish nationality and if it had that effect that it was not reasonable for it to have done so.

LOI 2aiii

227. This complaint fails on the facts. On the 6 January 2024:

227.1 Mrs Jackson and JL did not burst into laughter having heard the Claimant explain how she felt;

227.2 Mrs Jackson and JL did not laugh and make a comment that it was weird referring to what the Claimant had said when she explained that that she was feeling 'not too bad' but stressed in general but she was able to work;

227.3 Mrs Jackson did not make a comment to the note taker JL to write "asked her if she really understands the question," to which Mrs Jackson and LJ did not laugh.

228. The Claimant was not the subject of any laughter or humiliation at the meeting. Mrs Jackson and JL were laughing at each other or themselves. The meeting could have been conducted in a more professional manner but it was not conducted in the way it was for the purpose of violating the Claimant's dignity or

creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant as someone of Polish nationality or as a Polish speaker and if it had that effect that it was not reasonable for it to have done so.

LOI 2aiv

229. This complaint fails on the facts. On the 6 January 2024 JL and Mrs Jackson did not laugh when the Claimant made a mistake whilst speaking or when she used the incorrect form of past tense. I refer to my comments on [LOI 2aiii].

LOI 2av

230. This complaint fails on the facts. On the 6 January 2024 Mrs Jackson and JL did not laugh when the Claimant said that she would like to receive the store rota in advance like everyone else. I refer to my comments on [LOI 2aiii].

LOI 2avi

231. This complaint fails on the facts. The Claimant's appeal meeting minutes dated 22 February 2024 were not distorted in such a way to make them funny and incomprehensible, and did not suggest that the Claimant made a number of errors whilst communicating in English, for example: "I to pay the cost of a caretaker,". The notes were not a verbatim record of the meeting and were not prepared in any respect for the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant as someone of Polish nationality or as a Polish speaker. If they had that effect then it was reasonable for the notes to have had that effect.

Victimisation (Equality Act 2010 s. 27)

The protected acts

232. For the reasons set out in my findings the things relied upon by the Claimant as protected acts were not in fact protected acts.

LOI 3ai and 3aii

233. Whilst the Claimant raised a complaint with Mr Shortland and Mr Bean on 19 December 2023 about IO's conduct towards her, she did not make any reference to the incident having any discriminatory element or making any allegation under or in connection with the Equality Act 2010.

LOI 3aiii

234. The Claimant's email to the Respondent's HR team of 20 December 2023 does not state that the incident was related to the Claimant's Polish nationality or use the words that the Claimant alleges IO said. The email does not reference discrimination.

LOI 3aiv – 4 January 2024 to Mrs Jackson

235. For the reasons I have explained in my findings of fact, the Claimant did not on 4 January 2024 tell Mrs Jackson that she had reported verbally the incident involving IO to the Police. In any event, the Claimant would have had to mention not just

the physical contact that IO had with her, she would have had to have done something falling within Section 27 (2) of the Equality Act 2010.

LOI 3aiv – 8 January 2024 to Ms Joy

236. As I have explained in my findings of fact, as regards the meeting with Ms Joy on 8 January 2024, although the Claimant said that she had reported the incident to the police, she did not inform Ms Joy as to the content of the report, save that it can be inferred that it only related to a physical attack. There is no reference to the Claimant having reported discrimination to the police, or that she informed the police of the words that the Claimant alleges IO said. The Claimant would have had to have done something falling within Section 27 (2) of the Equality Act 2010 and she did not.
237. The complaints of victimisation all fail because on the pleaded claim the Claimant did not do any protected acts. However, in case I am wrong on those findings and because the Claimant nonetheless did do other things that would amount to protected acts I have gone on to consider whether any of the alleged detriments were because of the pleaded protected acts or in retaliation for the Claimant's broader complaints. I have concluded that they were not but, without repeating my findings of fact, highlight as follows:

LOI 3bi

238. Mr Bean had not promised the Claimant a full time contract. In January 2024 he did not give the Claimant full-time contract because it was the quietest time of the year and he needed to assess the store's needs and discuss them with Ms Joy before making any decisions on staffing.

LOI 3bii

239. The Claimant was not subjected to any detriment between 2 and 22 January 2024:
- 239.1 in the shifts she was assigned. 5-9am was within her normal working pattern and it was common for staff to revert to their base hours in this quiet month.
- 239.2 The Claimant was not assigned only to do heavy physical work such as unloading, frozen foodstuff, meat, and other heavy products.
- 239.3 The Claimant was not assigned to work in isolation from other staff as a detriment.
- 239.4 The Respondent did not make the Claimant finish her shift at 9:00am before IO started at 9:30am as a detriment or because of any allegation made the Claimant falling within Section 27 of the Equality Act. She was assigned these hours so that she did not have to work at the same time as IO and to ensure there was a buffer between their respective finish and start times.
- 239.5 Several employees did not tell the Claimant not to talk to them in front of management.

LOI 3biii

240. For the week 2 – 8 January 2024 Mr Bean did not rearrange the Claimant's schedule of work within the working week three times.

LOI 3biv

241. On the 2 January 2024 Mrs Jackson was checking not only the Claimant's work but that of others because there was a problem in the store with stock rotation that needed to be improved. The Claimant was not singled out.

LOI 3bv

242. On 2 January 2024 Mrs Jackson did not tell the Claimant that the Claimant was not allowed to attend the company's Christmas party.

LOI 3bvi

243. On the 16 January 2024 Mr Bean did not remove the Claimant's name from the attendee list for the Christmas party. The Claimant's name and menu choices were submitted to the venue and the Claimant was expected to attend.

LOI 3bvii

244. On the 2 January 2024 Mrs Jackson did message the Claimant asking her to work in another store located in a distance of 17 miles away from the store where the Claimant normally worked. Other colleagues were asked the same question. This was not a detriment or punishment and no pressure was applied to the Claimant to work a shift at Crewkerne. Mrs Jackson simply asked the Claimant if she would be able to help that store and the Claimant was free, as she did, to turn down the opportunity for a shift, hours and pay for working there.

LOI 3bviii

245. On 4 January 2024 the Respondent marked the Claimant's sickness absence for 4 January 2024 as unauthorised absence because the Claimant had failed to comply with the Respondent's sickness absence reporting procedure. Her absences was marked as unauthorised for no other reason.

LOI 3bix

246. Mrs Jackson did not send her text of 4 January 2024 to the Claimant because the Claimant had done anything falling within Section 27 of the Equality Act. She was advising the Claimant of best practice (to ensure that employees did not inadvertently miss scheduled shifts). Her text could not reasonably have been interpreted as indicating that the Respondent intended to make daily changes to the Claimant's shift allocation or that the Claimant needed to attend the store to check her shift allocation daily, even if she was not due to be working that day.

LOI 3bx

247. On the 6 January 2024 Mrs Jackson told the Claimant that she could not provide the Claimant with a copy of the notes of their meeting because she was not sure if she was permitted to do so and because she had in any event already posted them (without taking a copy) to Ms Joy's locked data privacy box. This was a

mistake on the part of Mrs Jackson which she acknowledged and was not because the Claimant had done anything falling within Section 27 of the Equality Act or because Ms Joy had forbidden Mrs Jackson to give a copy to the Claimant.

LOI 3bxi

248. The rota for the week in which 9 January 2024 fell was prepared and posted on 27 December 2024 and Mr Bean inadvertently scheduled the Claimant to work at the same time as IO. He rectified this mistake as soon as he could and the Claimant was not subsequently scheduled to work at the same time as IO (the previous week Mr Bean had ensured that they were not working at the same time). This was a mistake on the part of Mr Bean which he rectified and it was not because the Claimant had done anything falling within Section 27 of the Equality Act.

LOI 3bxii

249. This complaint was imprecisely pleaded. Dates were only rejected and recorded as unauthorised absence in the app because the Claimant had failed to comply with the absence policy (notification via the app being insufficient) and not because the Claimant had made any complaint about IO (or any other alleged discrimination for that matter).

Conclusion

250. Accordingly the Claimant's complaints of unlawful direct race discrimination, race harassment and victimisation are not well founded and are dismissed.

Employment Judge Woodhead

17 November 2025

Sent to the parties on:

2nd December 2025

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For the Tribunals Office

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

Appendix

AGREED LIST OF ISSUES

The Issues

73. The Claimant was employed as a Customer Assistant from 27 June 2023 and the Claimant remains an employee. ACAS Early Conciliation took place between 8 February 2024 and 23 February 2024.

1. Direct race discrimination (Equality Act 2010 section 13)

- a. The Claimant describes herself as of Polish nationality.
- b. Did the Respondent do the following things:
 - i. On the 16th January 2024 Mr Bean prohibited Polish speaking staff Monika Kulikowska and [PK] from speaking Polish.
 - ii. Between 2 and 8 January 2024 Mr Bean failed to give adequate notice of work shifts to the Claimant, whilst it did so to staff of English and /or non -Polish origin.
- c. Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant says she was treated worse than:

[IO] and [CL] who were allowed to speak Portuguese and Italian respectively (1 b i)

[JD], [AH], [ON], [DDG], [JC], [KW], and [LR] [English coworkers save for [ON] who was Tunisian (non-Polish) (1 b ii)

d. If so, was it because of the Claimant's nationality?

e. Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to race etc.

2. Harassment related to race (Equality Act 2010 s. 26)

a. Did the Respondent do the following things:

i. On the 19th December 2023 [IO] said to the Claimant "you're good for nothing, you can't do anything, you're a stupid Pole, and you have to listen to me", waved her hands in front of the Claimant's face, squeezed the Claimant's arms multiple times, and held the Claimant's arms, not letting the Claimant move and causing soft tissue injuries.

ii. On the 2nd January 2024 Mrs Jackson approached the Claimant and the customer to print off the receipt of the Polish customer again, searched the Polish customer's bag, and replied to the Claimant's question on why she did so saying "because she's Polish like you."

iii. On the 6th January 2024 Mrs Jackson and ~~Ms Joy~~ JL burst into laughter having heard the Claimant explain how she felt; Mrs Jackson and ~~Ms Joy~~ JL laughed and made a comment that it was weird referring to what the Claimant had said when she explained that that she was feeling 'not too bad' but stressed in general but she was able to work; Mrs Jackson made a comment to the note taker [JL] to write "asked her if she really understands the question," to which Mrs Jackson and [JL] laughed (paragraph 16)

iv. On the 6th January 2024 ~~Ms Joy~~ JL and Mrs Jackson laughed when the Claimant made a mistake whilst speaking or when she used the incorrect form of past tense;

v. On the 6th January 2024 Mrs Jackson and JL laughed when the Claimant said that she would like to receive the store rota in advance like everyone else (English staff) (paragraph 16)

vi. The Claimant's appeal meeting minutes dated 22nd February 2024 were distorted in such a way to make them funny and incomprehensible, and on some occasions suggesting that the Claimant made a number of errors whilst communicating in English, for example: "I to pay the cost of a caretaker," (paragraph 26)

b. If so, was that unwanted conduct?

- c. Did it relate to the Claimant's protected characteristic, namely her Polish nationality?
- d. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- e. If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

3. Victimisation (Equality Act 2010 s. 27)

a. Did the Claimant do a protected act as follows:

- i. On the 19th December 2023, the Claimant informed her the shift manager, Liam Shortland about the incident involving [IO]
- ii. On the 19th December 2023 reporting verbally the incident involving [IO] to the store manager Mr Bean.
- iii. On the 20th December 2023 making a formal written complaint to HR in relation to the conduct of [IO].
- iv. On the 4th January 2024 the Claimant told Mrs Jackson that she had reporting verbally the incident involving [IO] to the Police and did the same to Ms Joy on 8th January

b. Did the Respondent do the following things:

- i. In January 2024 Mr Bean did not give the Claimant full-time contract (paragraph 8).
- ii. From the 2nd to 22nd January 2024 assigned the Claimant to the shifts 5-9am in the morning; assigned the claimant only to do heavy physical work such as unloading, frozen foodstuff, meat, and other heavy products; assigned the Claimant to work in isolation from other staff; made the Claimant finish her shift at 9:00am before [IO] started at 9:30am; several employees told the Claimant not to talk to them in front of management (paragraph 8)
- iii. For the 2nd – 8th January 2024 Mr Bean rearranging the Claimant's schedule of work within the working week three times (paragraph 10).
- iv. On the 2nd January 2024 Mrs Jackson was constantly checking the Claimant's work (paragraph 11)
- v. On the 2nd January 2024 Mrs Jackson told the Claimant she was not allowed to attend the company's Christmas party because [IO] was expected to attend;
- vi. On the 16th January 2024 Mr Bean removed the claimant's name for the attendee list for the Christmas party (paragraph 13).

- vii. On the 3rd 2nd January 2024 Mrs Jackson messaged the Claimant, but none of her other colleagues, asking her to work in another store located in a distance of 17 miles away from the store where the claimant normally worked (paragraph 14).
 - viii. On the 4th January 2024 marking the Claimant's sickness absence on the 4th January 2024 as unauthorised absence (paragraph 15)
 - ix. On the 4th January 2024 Mrs Jackson texted the Claimant saying that her work schedule would be created daily so the claimant had to check it every day (paragraph 15)
 - x. On the 6th January 2024 Mrs Jackson informing the claimant that the Claimant would not receive a copy of the statement from the meeting on the 6th January 2024 because Ms Joy, area manager forbade her to give it to the Claimant (paragraph 16)
 - xi. On the 9th January 2024 Mr Bean scheduled the Claimant's shift with the shift of [IO] (paragraph 19)
 - xii. From around the middle of January until the beginning of March 2024, requests for single days off were created on the Claimant's behalf during the Claimant's sick leave (in the MY LIDL application) which were refused by the Respondent (paragraph 29)
- c. By doing so, did the Respondent subject the Claimant to detriment?
- d. If so, was it because the Claimant had done the protected acts?