



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000481/2025

Held in Glasgow on 10 – 12 November 2025

**Employment Judge Murphy
Tribunal Member N Bakshi
Tribunal Member JS Anderson**

Mr J Salaj

**Claimant
In Person**

GXO Logistics UK Limited

**Respondent
Represented by:
Mr G Cunningham -
Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

(i) The following complaints were not brought within the time limit in section 123 of the Equality Act 2010 (EA):

a. C's complaint about alleged refusals or omissions between August 2022 and 17 November 2024 to agree to requests by C for further training so that he could work in other areas; and

b. that in August 2022, on 15 December 2022, on 14 January 2023, on 6 April 2024 and on 16 September 2024, SP allocated C to Grid 9 which entailed tasks which exceeded handling lighter goods.

These complaints are, therefore, dismissed for lack of jurisdiction.

(ii) The claimant's remaining complaints of direct race discrimination under section 13 of EA are not well founded and are dismissed.

(iii) The claimant's remaining complaints of harassment related to race under section 26 of EA are not well founded and are dismissed.

(iv) In summary, none of the claimant's complaints succeeds and all are dismissed.

REASONS

Introduction

1. This final hearing took place in person in the Glasgow Tribunal. The claimant (C) gave evidence on his own behalf. The Respondent led evidence from Ivana Pagacova (section manager aka frontline manager (FLM)) (IP) and Stephen Panton (SP), also employed by R as an FLM. Evidence in chief was taken from the witnesses orally. Reference was made to a joint bundle of productions running to 161 pages.
2. C is a Slovakian national as is IP. Both had English language skills but given the technical, legal nature of some of the language used during the proceedings, the Tribunal was assisted by Slovakian interpreters to whom we express our thanks. Ms Velikcova attended on 10 and 11 November and Ms Sidorova attended on 13 November. Ms Velikcova translated for C during a preliminary discussion about the issues in the case. When giving evidence himself, C only required occasional assistance from Ms Velikcova. C's understanding was regularly checked, and he was frequently reminded of the opportunity to pause the hearing to seek assistance from the interpreter which he did occasionally. When cross examining R's witnesses and when giving his closing submissions, C spoke in his native Slovakian. IP did not seek the services of the interpreters and spoke in English at all times.

Issues to be determined

3. The case was originally listed for three days but due to availability constraints for one of the panel members, it was reduced to 2.5 days. With the parties' agreement, remedy was hived off to be determined at a subsequent hearing in the event C were to succeed in any of his complaints.
4. There is significant procedural history to the case with two previous preliminary hearings on case management (CMPHs) and a substantive preliminary hearing to decide a strike out application. The upshot is that by a judgment dated 30 July 2025, the Tribunal struck out all of C's claims except complaints 'related to work allocated to [C] following his return to work from absence in July or August of 2022'. However, leave was subsequently granted to C to amend his claim by Order dated 26 August 2025 to add to his claim certain additional wording he had inserted in yellow text into a draft List of Issues document.
5. The respondent's representative had prepared a draft List of Issues which Mr Cunningham circulated in the morning of 10 November. The List was not in all respects accurate, complete and up to date. Following a lengthy discussion with the parties, both parties agreed that the issues (and the only issues) to be decided by the Tribunal at the final hearing are as follows.

Time Bar: Race Discrimination / Harassment related to race

6. Early Conciliation was initiated on 16 February 2025, and an Early Conciliation certificate was issued on 21 February 2025. The date the claim form was presented on 23 February 2025. The (successful) application to amend was made on 19 August 2025 and, in so far as amendment was permitted, it was permitted by the Tribunal's order of 26 August 2025.
7. Were the discrimination and harassment complaints made within the time limit in section 123 of EA? The Tribunal will decide:
- a. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - b. If not, was there conduct extending over a period?
 - c. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - d. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i. Why were the complaints not made to the Tribunal in time?
 - ii. In any event is it just and equitable in all the circumstances to extend time?

Direct race discrimination (section 13 of EA)

8. Did R do the following things:
- a. From August 2022, did R refuse or fail to accommodate requests made by C to IP for further training so that he could work in other areas? (C does not maintain that IP was herself responsible for any decision not to offer such training).
 - b. In August 2022 and on 15 December 2022, 14 January 2023, 6 April 2024, 16 September 2024 and 22 January 2025, did SP 'feign ignorance' about C's health situation and allocate work tasks to C that exceeded handling lighter goods in the Chill section?
9. In doing the act complained of at para **8(a)**, did R treat C less favourably than John Maschinsky?
10. In doing any of the acts complained of, did R treat C less favourably than it would have treated others in materially the same circumstances?
11. If R treated C less favourably, was this because of C's Slovakian nationality or any other aspect of race defined by section 9(1) of EA?

Harassment related to race (section 26 of EA)

12. Did R do the acts set out in paragraph **8(a) and (b)** or any of them?
13. Did the conduct relate to C's race (including his Slovakian nationality)?
14. Was the conduct in question unwanted?
- 5 15. Did the conduct in question have the purpose of violating C's dignity and / or creating an intimidating, hostile, degrading, humiliating or offensive environment for C?
- 10 16. Did the conduct in question have the effect of violating C's dignity and / or creating an intimidating, hostile, degrading, humiliating or offensive environment for C, taking into account: C's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

Findings in fact

- 15 17. The following facts, and any further facts set out in the 'Discussion and Decision' section, are found to be proved on the balance of probabilities or were agreed by the parties. The facts found are those relevant and necessary to our determination of the issues. They are not intended to be a full chronology of events.

Background

- 20 18. R is a global logistics and distribution business. It operates the Sainsburys warehouse in East Kilbride. At the time of the events with which this claim is concerned, C was a warehouse operative at that site (and he remains employed in that capacity at the time of the hearing). C has continuous service with R from August 2007. Throughout the whole period from 2007, he has
25 been employed at the same East Kilbride warehouse site, though R was not always his employer there. C was previously employed there by predecessor employer(s). Latterly, he transferred from the employment of DHL to the employment of R in around July 2023. C is a Slovakian national who was raised and educated in Slovakia. He has lived and worked in the UK since at
30 least 2007, if not earlier.
19. The warehouse in East Kilbride is divided into different areas. One such area is known as 'Chill' which, as the name suggests, is temperature-controlled to store refrigerated stock.
- 35 20. To understand how the work was organised in Chill and who decided this, it is necessary to go into a little detail about R's operation and practices in the warehouse.

21. C was employed at the material times on the day shift from 6 am until 2 pm. The number of people working in the Chill area of the warehouse (and other areas) was variable. It depended upon the time of day and the day of the week. There were employees with regular hours who routinely worked on day shift on days according to a rota, some of whom were contracted to start at 8 am or 10 am. In addition to contracted dayshift warehouse operative employees, some other operatives who usually worked a different shift might from time to time work overtime hours on dayshifts in the Chill. Additionally, R from time to time engaged agency workers to work on shifts including the day shift. On a given dayshift, there may be only 5 or 6 employees working in Chill at 6 am (when C started work) but as the shift wore on, that number might swell to over thirty.
22. R employed a team called the Planning Team which was responsible for planning the staffing levels within Chill and other areas of the warehouse on that given shift. They did this by considering the volume of deliveries expected to come in and to go out of the relevant area of the warehouse during that shift and the timings of such deliveries.
23. As well as deciding how many staff required to be allocated to any given shift and the spread of the man hours across the shift, the Planning Team decided how many and which employees would be allocated to which activity in the course of a shift. In principle, there were around 7 activities to which a warehouse operative might be allocated. However, in practice, R did not always have a requirement for all such activities at all given times. R called these activities 'skills' but, in reality, they were particular tasks to which an employee might be allocated. The Chill area is set out in a grid formation. There were ten grids to which employees might be allocated to perform a 'skill'. An operative could not be allocated to a 'skill' unless they had been trained in the skill. It is unnecessary to detail all of the skills but three of the 'skills' were:
- a. Chill Intake – also known as 'tramping in' goods. Goods arriving in by lorry are moved to the intake area where they're separated by category.
 - b. Chill Pick – picking cases from an allocated grid within Chill from a pallet, using a hand truck to lift the pallet and move around that particular grid.
 - c. Marshalling – a worker picks the case in the cage and when the cage is full it is moved to marshalling where the marshal allocates its position for each store.

24. Not every operative was trained on every skill. Some had training in just one skill; others had training in two. Less commonly on the day shift, others still were trained in as many as three or four skills. When planning the manpower on a shift, the Planning Team considered which activities or skills would be required on that shift having based on volume and timing of deliveries. They held records of which employees were trained in which skills. The Planning Team's work was to ensure that those employees working the shift were trained in the necessary skills needed to cover the work which would be required to be undertaken during the shift. This varied as between day shifts, backshifts and night shifts because of the cycle of deliveries in and out. For the day shifts, R predominantly required its employees to work on either Chill Intake or Chill Pick as they began the cycle of processing the morning deliveries. On that shift, R often had little or no requirement for the other skills which may come into greater demand later in the day/ evening/ night.
25. To match the operatives to the skills needed, the Planning Team prepared for every shift in Chill (and elsewhere in the warehouse) a printed shift rota document. For the day shift in Chill, it was headed Dayshift Fresh Projection Sheet (the Sheet). In it, they allocated each employee on the shift to one of the skills for which they were trained. Because of the business need for that particular time of day, regardless of whether an operative was trained in three or four skills, they would most probably be allocated to either Chill Intake or Chill Pick. Almost all employees on the dayshift were so allocated. The printed Sheets were given by Planning to the FLM(s). The FLM had the task of allocating work within each 'skill', as described below.
26. C was trained in the operation of various pieces of equipment. When it came to the 7 skills (activities), he was trained only in Chill Pick. He was therefore always allocated to Chill Pick by the Planning Team on the Sheet provided to the FLM. As well as allocating employees to skills for the day shift, it was the Planning Team which was responsible for identifying where R's training needs lay so as to ensure R had enough operatives trained in the 'skills' required for R's needs on each particular shift. The Planning Team decided the training to be rolled out in particular skills and the number of employees to whom training would be available.
27. The training offered to employees on different shifts varied as between shifts. Where the Planning Team was experiencing no shortfall in operatives with the skills necessary to meet R's requirements during a particular shift, they did not prioritise offering training in that skill to the staff group contracted on that shift.
28. Where the Planning Team did decide to offer training to employees on a particular shift (after identifying a need for more employees trained in the skill in question for the shift), it progressed this by informing the FLMs of the places

available and when the training was scheduled. The FLMs were then responsible for liaising with those operatives in their teams who weren't yet trained in the skill to ascertain (i) if they were interested in being trained in it; and (ii) if they were available to attend on the scheduled training date(s).

- 5 29. The skills for which a warehouse operative might be trained could, therefore, depend on a variety of factors. These could include the length of time the operative had been working in the warehouse and which areas they had worked in; what shift pattern(s) they had worked in the course of their service in which areas; and their interest in and availability for training on offer from time to time.
- 10 30. IP, SP and Bethany McCallum (BM) were employed by R as dayshift FLMs in the Chill area of the depot at the material times. IP is a Slovakian national, and SP is from a white British background. As mentioned, the Planning Team allocated employees on the dayshift in Chill to a particular skill for the shift on the daily printed Sheet. As also mentioned, there are ten grids in the Chill area. It is unnecessary to list the types of product stored in every grid. Grid 9 stored milk and juice products, which products were generally the heaviest of the products in any of the grids in Chill. Moving the product for Grid 9 may often involve lifting a weight of 10kg.
- 15 31. Sometimes, only one of the FLMs was on shift during the dayshift. Other times, there were two or three. Each FLM had a specific team of direct reports allocated to them. C was one of 15 to 20 operatives in IP's team and reported to her. The other FLMs each had their own similarly sized teams.
- 20 32. When on shift, it was usually IP who was responsible for allocating C to a grid within Chill Pick. However, from time to time, one of the other FLMs on duty might have responsibility for allocating C to a grid either because IP was not working that day or because, for example, IP and SP were both working but had decided to split the work so that IP managed employees assigned to one skill while SP managed those assigned to another skill. It was most frequently IP who allocated C to a grid for his shift. Less frequently, it was SP.
- 25 33. In 2020/21 due to the Covid restrictions, all training was placed on hold in the warehouse.
- 30

Events C complains about

- 35 34. C struggled with a hernia on his left-hand side in 2021. In around September 2021, C's left side hernia ruptured. Around this time, he requested training on Marshalling from IP. IP fed back to the Shift Managers and the Planning Team C's interest in being trained on Marshalling. No training was provided to C on Marshalling at that time or in the period with which this claim is concerned

(between August 2022 and February 2025). C continued to ask IP for training in marshalling frequently until around the end of 2024.

35. It is not established on the evidence that C was in a minority of employees with long service who was only trained on Chill Picking.

5 36. John Maschinski is a Scottish employee of R (and previously of DHL) with Eastern European ancestry. His regular contracted shift was not the day shift but the back shift. He has a different line manager to C and is not managed by any of the dayshift FLMS. He has been employed at the warehouse in East Kilbride since approximately 2005. At some stage around 2021 or 2022, Mr
10 Maschinski received training in Marshalling.

37. C decided to return to Slovakia for an operation to treat his left side hernia on 2 June 2022. During the operation, the surgeon identified that C also had a hernia on his right-hand side. He recommended that C undergo further surgery in due course to treat that hernia and a procedure was scheduled in
15 Slovakia for 3 November 2022. After a period of convalescence following his operation in June 2022, C's GP signed him off on 19 August 2022 as fit to return to work subject to amended duties of avoiding heavy lifting. C provided a copy of this Fit Note to IP.

38. On or about 26 August 2022, C submitted a complaint to his work. He
20 complained that in February 2022 his GP had written to DHL suggesting that C be assessed by their OH Advisors in connection with his left-side hernia. He advised in his complaint that the left hernia had now been 'repaired' but that he had now been told there was another hernia on the right. He advised the right-side hernia was not yet painful so he could work full time shifts but
25 referred to his GP Fit Note (which, as mentioned, recommended adjustments).

39. A conciliation meeting was held on 30 August 2022. C was accompanied by his TU representative, George Doherty. The meeting was led by IP and another manager employed by DHL (John Coulter) was also present. It was
30 agreed C would have regular health reviews with IP; that he would pick from Grids 4, 5 and 6 "at the moment mostly"; and that he would have two-way communication with the manager. These three points were documented in writing. The last point referred to the possibility that C would sometimes receive management instructions from FLMS other than IP. In recognition of
35 this possibility, it was agreed at the meeting that C would communicate with such other managers about the agreed amended duties as necessary, should the need arise.

40. SP was aware of C's absence, that he had had a hernia, and that he had had an operation. He conducted a return-to-work meeting with C around August

2022. It is not established that later, at the time of the conciliation meeting, SP was made aware of the specific terms of what had been agreed between IP and C regarding C's allocation to Grids 4, 5 and 6 and not to Grid 9.

- 5 41. It is not established on the evidence whether C had the further procedure on his right-side hernia as planned in November 2022 or at another time. Whether or not he did so, C in any event remained at risk of developing a recurrence of his right-side hernia, particularly if he were to do work that involved heavy lifting.
- 10 42. Throughout the period from 30 August 2022 to the date of presentation of the ET1 on 23 February 2025, IP did not allocate C to Grid 9 and, in keeping with the agreement documented on 30 August 2022, she continued to allocate C to lighter grids where at all possible.
- 15 43. It is not established that on Saturday 8 October 2022, SP allocated C to Grid 9 then changed the allocation to Grid 4. SP did change C's initial Grid allocation on that shift to Grid 4 but the grid he initially allocated C was not Grid 9.
44. It is not established that SP allocated C to Grid 9 in August 2022, on 15 December 2022, or on 16 September 2024.
- 20 45. On Saturday 14 January 2023, on Saturday 6 April 2024 and on Wednesday 22 January 2025, SP initially allocated C to Grid 9 when C attended for his dayshift. On each of these three occasions, C complained to SP and pointed out his health situation with his hernia and that he should be allocated to a lighter grid. On each occasion, SP agreed to change C's allocation to a different grid, and C did not, in fact, work on Grid 9. On none of these
25 occasions did SP show anger towards C at having to reallocate his grid. On none of these occasions did SP disingenuously 'feign' ignorance of C's hernia condition.
- 30 46. It is not established that older Scottish nationals were rarely allocated to Grid 9 by SP or by other FLMS or that Scottish nationals generally were rarely allocated to that grid.
- 35 47. It is not established that there was a pattern of either IP or SP allocating Eastern European nationals or other non-British nationals to work on Grid 9 when allocating workers to Grids in the Chill Pick function. It is not established that SP had a practice of allocating Grid 9 to Mr M Seymaniak, a Polish national. It is not established that, in Mr Seymaniak's absence on day shift, SP's practice was to allocate Grid 9 to C.
48. It is not established that R (or DHL before it in the period to July 2023) had a practice of providing training opportunities to a disproportionately high number

white Scottish employees or Scottish nationals generally and to a disproportionately low number of foreign nationals within the workforce at the warehouse site.

Facts relevant to time limits

- 5 49. In August 2022, C didn't know about the possibility of raising allegations of race discrimination or race related harassment in the Employment Tribunal. He did not become aware of this possibility until November 2024. The possibility came to his attention because he contacted the police about other
10 allegations (which allegations are no longer 'live issues' issues we require to decide in this case). A policeman called C back and suggested the possibility of raising an Employment Tribunal claim.
- 15 50. When living in Slovakia, an EU country, C was aware that if an employee had a concern about discrimination, he could complain to a court or Tribunal in Slovakia about the matter. He had known this from before he began
employment at the warehouse in Scotland in 2007. Over the years of his employment at the warehouse, C had been unhappy about work related matters at various times. It is not established that he ever made any enquiry about whether it was possible to complain to an external court or tribunal or
20 other third party in Scotland about his concerns, as C knew was possible in Slovakia.
- 25 51. In 2010, C looked at the Citizen's Advice Bureau's website on the subject of workplace issues. He recalls that the site suggested he put his complaints in writing to his employer, but C's recollection is that the site did not refer to the existence of Employment Tribunals. In around 2010, C also spoke to a CAB adviser about concerns at his work. C's understanding of their advice was that they simply suggested that C raise the matter internally which C felt he had already tried. C did not take from the discussion that there was any option of raising proceedings in an Employment Tribunal.
- 30 52. C was a member of a trade union throughout his employment since August 2007, and he consulted his TU representative from time to time throughout the period of his employment. At the material times, he had a trade union representative named G Doherty. From August 2022, C consulted with Mr Doherty on approximately 5 occasions about work related concerns. C received advice to contact R confidentially on a whistleblowing phone number
35 which had been set up by R or its predecessor, DHL, and which was advertised in posters on the notice board. It is not established that C told Mr Doherty that he believed his treatment by R was related to or because of his race or that he asked Mr Doherty about raising concerns in any external court, tribunal or other forum. C's understanding is that Mr Doherty did not mention
40 the possibility of Employment Tribunal litigation. It is not established as an

objective fact that the CAB website, the CAB adviser and C's TU representative omitted to mention the existence of employment tribunals when C consulted these sources.

53. C was computer literate at material times and had access to the internet.

5 54. C never spoke to or attempted to speak to a solicitor in the period before he raised his claim. His first attempt to obtain legal advice was made in August 2025, a number of months after presenting his claim.

55. After the policeman suggested that C raise a Tribunal claim in November 2024, C reviewed the CAB website again and found information about
10 Tribunal claims which informed him of the need to initiate an Early Conciliation process first with ACAS. C then perused ACAS's website online and submitted an online contact form. He did not initiate Early Conciliation until 16 February 2025. C applied to amend his claim on 19 August 2025. He didn't include the material in the amendment in the original claim because he wasn't
15 aware of the importance of doing so.

56. C prioritised other matters between November 2024, when he learned of the possibility of making a Tribunal claim, and 16 February 2025 when he initiated Early Conciliation. He also prioritised other matters in the period between
20 bringing the claim on 23 February 2025 and applying for leave to amend on 19 August. C often felt exhausted after his shift in the warehouse and was very busy with a renovation project in a flat he had bought.

Observations on the evidence

57. In relation to the primary facts, there was relatively little which was materially
25 disputed. As is common in claims of this type, the principal dispute concerns the motivation behind decision-making and the inferences which can properly be drawn from the primary facts.

58. However, there were a few matters where the evidence conflicted. There were
30 several others where C asserted statistical or other propositions (which had not been pleaded) but produced no evidence to support these, beyond his own impression/ perception.

59. Though it is accepted that SP was aware that a conciliation meeting was
taking place on 30 August 2022 between C and IP, it is not established on the
evidence before the Tribunal that SP was shown or made aware at the time
of the specific terms of what had been agreed between IP and C regarding
35 C's allocation to Grids 4, 5 and 6 and not to Grid 9. The evidence for this was scant. C did not give evidence that he'd shown this to SP though he said he had 'probably' shown SP his GP fit note suggesting amended duties to him at the time of the RTW interview. SP's evidence was that he could not recall

seeing the conciliation agreement document or being aware of what was agreed between IP and C though he accepted he was aware of C's hernia and operation. The evidence before us does not sustain a finding, on the balance of probabilities, that SP was aware of or had seen at the material time the terms of the conciliation agreement dated 30 August 22. The fact that it was specifically agreed between C and IP that C would have a responsibility for communicating effectively about the issue with other managers tends to suggest there was no intention to share the document's contents with other FLMs.

60. C said that when he allocated C Grid 9, SP 'feigned ignorance' of C's hernia situation. SP said in evidence that he had never allocated C to Grid 9 on purpose, knowing it was inappropriate or that C was not fit for the duties. He said that on the occasions when he had done it, he had not done it on purpose, and he had reallocated when requested. On the balance of probabilities, we preferred SP's account. The sparse occasions when SP allocated Grid 9 occurred between long intervals, with the first occurring some 7 months after C's surgery in June 2022 and the latter two occasions taking place respectively over a year after C's return to work and over two years after that date. There was no dispute that SP agreed to reallocate when C complained on each occasion. Taking all the circumstances into account, we were satisfied that, SP did not deliberately seek to allocate C to that grid despite an awareness it was unsuitable. It seemed to us more probable on balance that SP either simply did not have C's condition at the front of his mind when he made the three allocations, or that he did recall C's hernia illness at the time but assumed (wrongly) that with the passage of considerable time, C's health condition and fitness had changed. SP's willingness to immediately change the allocation tended to support this account as did the very infrequent nature of the contentious allocations.

61. C said that on 8 October 2022, SP initially allocated him to Grid 9 but changed it to Grid 4. We were taken to the Sheet for that date. It indeed showed that C was allocated to Grid 4 and that a grid number had previously been written by SP on the Sheet then scored out. The scored-out number was illegible, and it was not possible to tell from the document which Grid had been allocated before the change. As to the circumstances of the change, C said "He probably realised himself and changed that". It was not C's evidence that C had objected to his allocation and that this had led to the change. The Sheet was put to SP. SP did not remember the specific occasion but, on reviewing the Sheet he felt able to assert with confidence that it was not Grid 9 that had initially been allocated. He explained that the shift was a Saturday with low volume which was why he only had two individuals working as Chill pickers that day. SP noted that the only other grid being picked was Grid 6. His evidence was to the effect that, at that time of a Saturday morning on a low

volume shift when only two pickers were working, he was very confident that one of them would not, based on his usual practice, be allocated to Grid 9.

- 5 62. We did not find it proved on the balance of probabilities that SP had initially written Grid 9. On C's own evidence, he had no direct knowledge of what grid number SP had originally written down. On the other hand, we found SP's explanation convincing that, taking into account the time of the morning, the small number of pickers and SP's experience of R's allocation requirements for a shift of the sort, it was improbable that he had allocated C to Grid 9 before making the change.
- 10 63. Another area of conflict concerned SP's reaction when C asked for a change to his grid allocation. C said, *"on 14 January 2023 I probably had an argument with SP about that, so he changed that angrily, but he changed that."* He likewise said he had an argument with SP on 6 April and 'very angrily' SP had allocated him somewhere else. SP said he was never angry. We were not
15 persuaded by C's evidence that SP displayed anger. His evidence lacked detail as to how SP showed anger or, for example, what, roughly, SP was alleged to have said. C himself seemed to lack certainty in his recollection of the occasion in that he talked about 'probably' having had an argument with SP to get the allocation changed on 14 January 2023. On the balance of
20 probabilities, we preferred SP's account.
64. C alleged SP had a practice of allocating Eastern European nationals or other non-UK nationals to work on Grid 9 when allocating workers to Grids in the Chill Pick function. SP emphatically denied this. From a period spanning over
25 three years, only six Sheets were produced which showed that Grid 9 had been allocated to someone during the shift in question. In three cases it was allocated to C, but as we know, on these shifts it was subsequently reallocated to someone else following complaint. The other instances of Grid 9 being allocated on these shifts bears out no pattern of allocation of that Grid to Eastern European workers but (for this small sample) tends to show
30 otherwise. There was no other data before us relating to C's proposition which we found not to be established on the evidence.
65. C alleged that SP had a practice of allocating Grid 9 to Mr M Seymaniak, a Polish national, and, in Mr Seymaniak's absence, of allocating Grid 9 instead to C. Again, SP emphatically denied this. There was no evidence, beyond C's
35 bald assertion to support this proposition. We did not find this to be established on the balance of probabilities.
66. C alleged he was in a minority of employees only trained on Chill Picking despite his long service. Again, there was no evidence for this beyond C's
40 bald assertion. We did not find this to be established on the balance of probabilities.

67. C alleged that older Scottish nationals rarely were allocated to Grid 9. C didn't put this specifically to SP. However, in response to questioning by Mr Cunningham, SP denied that he ever made allocations based on nationality or race. No empirical evidence was adduced to support a trend of the sort C alleged. We did not find such a trend to be established on the evidence before us.
68. C alleged that R (or DHL before it in the period to July 2023) had a practice of providing training opportunities to a disproportionately high number white Scottish employees or Scottish nationals generally and to a disproportionately low number of foreign nationals within the workforce at the warehouse site. Again, no evidence was adduced to support this proposition beyond C's assertion. In the absence of any empirical data to support this allegation, we did not find it to be established on the balance of probabilities.
69. C alleged that the CAB website, the CAB adviser and his TU representative all omitted to mention when he consulted them the possibility of complaining to an employment tribunal. C's evidence on the points was marked by uncertainty and sometime inconsistency. At one stage he was firm that he didn't know about Tribunals; at another point he said he didn't think he'd known about Tribunals previously. The evidence C gave of each of these interactions was vague. He couldn't place when the consultations had taken place and his recounting of the events lacked any detail. With respect to the CAB website, at one stage he said it had no material about Tribunals, but he later said that he returned to this website in order to find out about Tribunal process (and successfully did so). It was not explained why he would do so if he knew that this particular site didn't contain information about Tribunals from his previous perusal. During evidence in chief, C spoke only of having looked at the CAB website but during cross examination he referred to having spoken to a CAB adviser. We did not conclude that C had sought to mislead the Tribunal over these matters but did conclude that this recollection of the interactions described was weak and unreliable. We also allowed that it was possible that C had not fully absorbed all that was said to him by the CAB adviser or his TU representative at the time, possibly because of the language barrier or possibly because C gave greater focus to particular aspects of the conversations. Taking all relevant matters into account, we did not accept C's evidence on the balance of probabilities on these matters.

Relevant law

Direct discrimination

70. Section 13 of the EA is concerned with direct discrimination and provides as follows:

“13 Direct discrimination

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

5 71. Section 9 of EA deals with the protected characteristic of race. It provides:

“9 Race

Race includes

(a) *colour*

(b) *nationality;*

10 (c) *ethnic or national origins.”*

72. According to section 23 EA, “on a comparison for the purposes of section 13, ... there must be no material difference between the circumstances relating to each case”. The relevant “circumstances” are those factors which the respondent has taken into account in deciding to treat the claimant as it did, with the exception of the element of race (**Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] UKHL 11). A person can be an appropriate comparator even if the situations compared are not precisely the same (**Hewage v Grampian Health Board** [2012] UKSC 37). The claimant does not need to point to an actual comparator at all and may rely only on a hypothetical comparison.

73. Very little direct discrimination today is overt, and it can be necessary to look for indicators from a time before or after a particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias (**Anyia v University of Oxford** [2001] IRLT 377, CA). Sometimes evidence is led of so-called ‘evidential comparators’. These are actual comparators but whose material circumstances in some way differ from those of the claimant. Their evidential value is variable and is inevitably weakened by differences in material circumstances from the claimant’s (**Shamoon**).

30 74. For a direct race discrimination complaint to succeed, it must be found that any less favourable treatment was because of the claimant’s race, though the discriminatory reason need not be the sole or even the principal reason for the respondent’s treatment. In **JP Morgan Europe Ltd v Chweidan** [2011] IRLR 673, CA, LJ Elias summarised the position as follows:

“This means that a reason for the less favourable treatment – not necessarily the only reason but one which is significant in the sense of more than trivial – must be the claimant’s disability. ...”

75. Section 39(2) of EA provides among other matters that an employer must not discriminate against an employee as to the terms on which employment is offered or the way in which he affords access to training or other benefits, or by dismissing him or subjecting him to ‘any other detriment’. There is, therefore, a requirement for an element of detriment in any discrimination claim (which does not concern employment terms/ access to training or benefits / dismissal).
76. ‘Detriment’ is not defined in the legislation, save that it is said to exclude conduct amounting to harassment (s.212). A claimant seeking to establish a ‘detriment’ needs to show that a reasonable employee would or might take the view that they had been disadvantaged in the circumstances in which they had to work (**Shamoon v Chief Constable of the Royal Ulster Constabulary (Northern Ireland)** [2003] UKHL 11. The dicta of Peter Gibson LJ in **Jiad v Byford** [2003] IRLR 232), CA is that ‘detriment’ is to be given a wide meaning and it means no more than to put under a disadvantage. Although a trivial disadvantage would not suffice, it is not necessary to find some physical or economic consequence.

Burden of Proof (EA claims)

77. Section 136 of EA deals with the burden of proof. It provides, so far as material, as follows:

“136 Burden of proof

- (1) *This section applies to any proceedings relating to a contravention of this Act.*
- (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
- (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*
- ...
- (6) *A reference to the court includes a reference to—*
- (a) *an employment tribunal;*

...”

78. The effect of section 136 is that, if the claimant makes out a prima facie case of discrimination (or harassment), it will be for the respondent to show a non-discriminatory explanation.
79. There are two stages. Under Stage 1, the claimant must show facts from which the Tribunal could decide there was discrimination (or harassment). This means a 'reasonable tribunal could properly conclude' on the balance of probabilities that there was discrimination or harassment (**Madarassy v Nomura International plc** [2007] IRLR 246, CA). The Tribunal should take into account all facts and evidence available to it at Stage 1, not only those which the claimant has adduced or proved. If there are disputed facts, the burden of proof is on the claimant to prove those facts. However, the respondent's explanation is to be left out of account in applying Stage 1. Merely showing a protected characteristic plus less favourable treatment is not generally sufficient to shift the burden and progress to Stage 2. Those bare facts 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 or other prohibited conduct. 'Something more' is required (**Madarassy**).
80. Although, at Stage 1, a tribunal must exclude the substance of the employer's explanation, it is not excluded from drawing inferences from the fact that there are inconsistencies in an employer's explanation (**Veolia Environmental Services UK v Gumbs** EAT/0487/12/BA). If the claimant shows facts from which the Tribunal could decide a discriminatory or other prohibited act has occurred, then, under Stage 2, the respondent must prove on the balance of probabilities that the treatment was 'in no sense whatsoever' because of the protected characteristic or protected act (**Igen v Wong** [2005] IRLR 258).
81. There are cases where it is unnecessary to apply the burden of proof provisions. These provisions will require careful attention where there is room for doubt as to the facts necessary to prove discrimination or other prohibited conduct but they have nothing to offer where the Tribunal is in a position to make positive findings one way or the other (**Hewage**).

Harassment related to race (section 26 of EA)

82. Section 26 of EA deals with harassment and is in the following terms, so far as material:

26 Harassment

- (1) A person A harasses another (B) if –

- (a) *A engages in unwanted related to a relevant protected characteristic, and*
- (b) *the conduct has the purpose or effect of –*
 - (i) *violating B’s dignity, or*
 - (ii) *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 –*
 - (a) *the perception of B;*
 - (b) *the other circumstances of the case;*
 - (c) *whether it is reasonable for the conduct to have that effect.*

...

- 83. Section 136 of EA, dealing with the burden of proof, is set out at paragraphs **77-81** above where the provisions are discussed. As discussed in those paragraphs, the provisions are equally applicable to harassment complaints (and indeed to any proceedings relating to a contravention of the EA).
- 84. Section 212 of the EA provides, in effect, that the prohibited conduct of harassment and direct discrimination are mutually exclusive. “Detriment” is a necessary ingredient of discrimination for the purposes of section 39, absent the other types of harm listed in s.39(2)(a) to (c). Section 212 provides that ‘detriment’ does not include conduct which amounts to harassment. It follows that if any conduct is found by the Tribunal to constitute harassment pursuant to section 26 of EA, that same conduct cannot also be found to have amounted to direct discrimination for the purposes of section 13 of the Act, having regard to the terms of sections 39 and 212 of EA (see, e.g. **Jarrett v Essex County Council** UKEAT/0045/15, **Hargreaves v Evolve Housing and Support** [2022] EAT 122).

Time Limits

- 85. Section 123 of EA deals with time limits for bringing discrimination and harassment claims and provides:

“s.123 Time limits

- (1) *subject to section 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of-*

(a) *the period of three months starting with the date of the act to which the complaint relates, or*

(b) *such other period as the employment tribunal thinks just and equitable...*

5 (3) *for the purposes of this section -*

(a) *conduct extending over a period is to be treated as done at the end of the period;*

(b) *failure to do something is to be treated as occurring when the person in question decided on it."*

10 86. S.140B of the EA provides for an extension to the three-month time limit in certain circumstances. In effect, s140B(3) of ERA 'stops the clock' during the period in which the parties are undertaking early conciliation and extends the time limit by the number of days between 'Day A' and 'Day B' as defined in the legislation. This 'stop the clock' provision only has effect if the early
15 conciliation process is commenced before the expiry of the statutory time limit. Where a limitation period has already expired before the conciliation commences, there is no extension (**Pearce v Bank of America Merrill Lynch** UKEAT/0067/19).

20 87. Where a complaint is submitted out of time, the burden of proof in showing that it is just and equitable to allow it to be received is on the claimant (**Roberson v Bexley Community Centre** [2003] IRLR 434). Parliament has chosen to give the Tribunal wide discretion in determining whether it is just and equitable to extend time, having regard to the language of the provisions (**Adeji v University Hospitals Birmingham NHS Foundation** [2021] EWCA
25 Civ 23.)

88. In **Miller and Ors v The Ministry of Justice** [2016] UKEAT/003/15, the EAT cited five points relevant to the test for extending time in discrimination claims which were relevant to the appeal in that case, as follows:

30 a. The discretion to extend time is a wide one: **Robertson v Bexley Community Centre** ...

b. Time limits are to be observed strictly in ETs. There is no presumption that time will be extended unless it cannot be justified; quite the reverse. The exercise of that discretion is the exception rather than the rule ...

35 c. If an ET directs itself correctly in law, the EAT can only interfere if the decision is, in the technical sense, "perverse", that is, if no reasonable ET properly directing itself in law could have reached it, or the ET failed

to take into account relevant factors, or took into account irrelevant factors, or made a decision which was not based on the evidence...

d. What factors are relevant to the exercise of the discretion, and how they should be balanced, are for the ET ...

5 e. The ET may find the checklist of factors in s 33 of the Limitation Act 1980 ("the 1980 Act") helpful (**British Coal Corporation v Keeble** [1997] IRLR 336 ...) ... This is not a requirement, however, and an ET will only err in law if it omits something significant.

89. In the **Keeble** case, the EAT referred to the list of factors which appear in the
10 Limitation Act 1980 s.33 which provides for the Courts' discretion to exclude the time limit in England and Wales in actions in respect of personal injuries or death. The Court of Appeal ("CA") has made clear that the Tribunal is not required to go through such a list. With that said, the CA has also observed that factors which are almost always relevant to consider when exercising any
15 discretion whether to extend time are: (a) the length of, and the reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or prohibiting it from investigating the claim while matters were fresh) (**Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] IRLR 1050).

20 90. It is not necessarily wrong to consider and assess the merits of a proposed claim and to weigh these in the balance when considering whether to extend time, even if the Tribunal is not in a position to say the claim is so weak as to have no reasonable prospects of success. Even if the merits are assessed as better than no reasonable prospect, or even if found meritorious at a final
25 hearing, subject to a reserved time bar point, it does not follow that time will always in such a case be extended because that factor may be outweighed by other considerations, including possible considerations of prejudice in favour of the respondent (**Kumari v Greater Manchester Mental Health NHS Foundation Trust** [2022] EAT 132 at para 58 and 59).

30 91. Time generally begins to run from the act of discrimination complained of. However, there is an exception to this where there is a 'conduct extending over a period' (s.123(3)(a)). Here, the prohibited conduct shall be treated as done at the end of that period. The distinction between 'conduct extending over a period' and a 'one-off' decision to do something or not to do something
35 is an important one.

92. Where a series of acts or failures are alleged to amount discrimination in the category of 'conduct extending over a period', a finding that the later 'timely' acts were not prohibited conduct will mean that the earlier allegations cannot be 'knitted together' with those later 'timely' acts to form 'conduct extending

over a period' done at the time of the latest 'timely' allegation. In **South Western Ambulance NHS Foundation Trust v King** [2020] IRLR 168, EAT, the claimant alleged her grievance was a protected act and that the investigation of it, its dismissal and the rejection of her appeal were acts extending over a period. The first was found to be prohibited conduct but the later acts were not. As only the final act (dismissal of the appeal) occurred within the limitation period, the complaint of victimisation was out of time.

Submissions

93. Mr Cunningham handed up a written submission which he supplemented with brief comments. This was circulated to C in advance of hearing C's submission, and he was granted an adjournment and the services of the interpreter to consider its terms before addressing us. C gave an oral submission which largely focused on giving comment on R's written submissions. Prior to hearing submissions, the purpose of these was explained to the parties and, in particular, it was explained that this was not an opportunity to lead further evidence. It was explained that the Tribunal would come to its findings on fact based on the evidence of the witnesses taken under oath / affirmation and the documents or parts thereof introduced by the witnesses under oath. During his submissions, C sought to introduce additional evidence about various matters. It was reiterated that the Tribunal would not take these new matters into account when reaching its findings in fact.

94. The entire content of both submissions has been carefully considered and taken into account in making the decision in this judgment. Failure to mention any part of these submissions in the judgment does not reflect a lack of consideration. In recognition that C is a litigant in person, we considered, in addition to his written submission, various arguments he raised when giving his evidence and when cross-examining R's witnesses. We understood C also intended to rely upon in support of his case. The submissions and, in C's case, the additional points made at other stages of the hearing, are addressed in the 'Discussion and Decision' section below, in which we set out where they were accepted, where they were not, and the reasons for this.

Discussion and decision

95. There is a time bar issue to be decided in respect of the complaints. The Tribunal requires, in that context, to decide whether some of the older allegations formed part of a course of conduct which extended over a period (ending less than 3 months before EC was initiated). We defer consideration of this issue pending our consideration of the substantive merits of the

complaints since this will inevitably bear on the question of whether there was prohibited conduct extending over a period and specifically whether later 'timely' allegations formed part of a course of conduct with earlier, ostensibly late allegations.

- 5 96. We have found as a fact that C asked IP for training regularly from August 2022 until around the end of 2024 and that he was not offered the training. As to the other allegation that, when, allocating grids to C in Chill Pick, SP 'feigned ignorance' of C's health situation and allocated C work tasks that exceeded handling lighter goods, there are various alleged dates, only three
10 of which have been established. These were: Saturday 14 January 2023, Saturday 6 April 2024 and Wednesday 22 January 2025. It is not disputed that, on these three occasions, SP initially allocated C to Grid 9, nor that he reallocated C to lighter duties following protests from C.
- 15 97. The aspect of race on which C relies is not his colour but his nationality or national origins. When we refer to 'race' in this judgment, we mean by it the EA definition of that term which includes nationality and national origins.
- 20 98. To succeed in a complaint of direct race discrimination, it must be established that R treated C less favourably *because* of race. To succeed in his harassment complaint, it must be established (among other things) that R's conduct *related to* race. Direct discrimination and harassment are mutually exclusive; the conduct cannot at once be both. For a complaint of direct race discrimination, the protected characteristic of race must have been a significant or effective cause though it need not be the sole or principal cause. For a complaint of harassment, it is not necessary that the conduct be
25 'because of' the protected characteristic, but only that it is 'related to' that characteristic. For harassment, it is not necessary to construct a comparison with a real or hypothetical comparator. In deciding whether conduct 'related to' race, the intention of the actors in question is relevant to but not determinative; we must apply an objective test in deciding whether the acts
30 related to race.
- 35 99. As we understand his case, C argues that an inference of race discrimination or harassment related to race can be drawn from several matters on which he relied in his oral submission and / or which he put forward when he gave evidence about what made him think race influenced R's decisions. We summarise these as follows:
- i. John Maschinski was employed only two years longer than C and, unlike C, Mr Mschinski was provided with marshalling training;
 - ii. C said he had been unsuccessful in obtaining a clerical role where John Maschinski and Victoria Konuk had succeeded;

- iii. C said there was a pattern of SP 'feigning ignorance' and of allocating C to Grid 9 to C;
 - iv. He said that there was a pattern of SP allocating Grid 9 to C on days when a Polish colleague, Mr M Seymaniak, wasn't available;
 - 5 v. C said he was in a minority of employees only trained on Chill Picking despite his long service;
 - vi. C said that R (or DHL before it in the period to July 2023) had a practice of providing training opportunities to a disproportionately high number white Scottish employees or Scottish nationals generally and to a
10 disproportionately low number of foreign nationals within the workforce at the warehouse site;
 - vii. C said that older Scottish nationals were rarely allocated to Grid 9. He specifically alleged SP had a practice of allocating Eastern European nationals or other non-British nationals to work on Grid 9 when
15 allocating workers to Grids in the Chill Pick function. C attributed this to a propensity to exploit and manipulate racial groups whose different cultural and educational backgrounds meant (according to C) that they were less likely to understand how things worked in the company and their workplace rights.
- 20 100. We consider the Stage 1 hurdle is surmounted to shift the burden to the Rs to prove reasons unrelated to race for the decisions about which he complains. For the burden to shift, we would require to be satisfied on all the facts and evidence before us, but excluding R's explanations for the decisions
25 complained of, that there are facts from which the Tribunal could reasonably and properly infer that R's conduct was because of C's race (in the case of direct discrimination) or was related to C's race (in the case of harassment).
101. In approaching these questions, we took into account the totality of the evidence (leaving out of account R's explanation for the decisions) and considered whether any inference of race discrimination or harassment could
30 be drawn from that totality, including, from the matters C relied upon. In the paragraphs that follow, we discuss the matters relied upon by C in turn. However, we emphasise that, when reaching our decision on whether Stage 1 was surmounted for each type of complaint before us, we considered holistically the cumulative effect of all of the primary facts. We recognise the
35 danger of approaching the matter in a fragmented manner which carries the possibility of missing the 'eloquence of the whole'.
102. Mr Cunningham submitted, among other things, that the treatment relied upon was not because of C's race and that the necessary causal link was missing. He likewise contended it was not related to C's race.

103. With respect to Mr Maschinsky's receipt of marshalling training, Mr Cunningham said that Mr Maschinsky was not a relevant comparator. He said when this individual worked in the warehouse, he was not in SP's team, and it was not clear which shift he worked on. We agree that there is insufficient evidence before us to draw any meaningful inferences from the fact that Mr Maschinsky was provided with marshalling training at some point in 2021 or 2022. We have found that this individual was not employed on the dayshift, like C. We have further found that, for the dayshifts, R predominantly required its employees to work on either Chill Intake or Chill Pick as they began the cycle of processing the morning deliveries. R often had little or no requirement for the other skills, including marshalling, which may have come into greater demand on other shifts. Mr Maschinsky also had two years' longer service than C. As an evidential comparator, the material differences between Mr Maschinsky's circumstances and those of C (especially his differing shift at the material time when the training was provided) considerably weaken his evidential value. We could not reasonably and properly draw any inference from the fact of his different treatment that the omission to offer the training to C was either a cause of or related to C's Slovakian nationality or ethnicity.
104. C also raised in his evidence that he had been unsuccessful in obtaining a clerical role where John Maschinski and Victoria Konuk had succeeded. There was no live complaint before that R's omission appoint C to a clerical role itself amounted to an act of prohibited conduct. The context in which we considered the evidence on this issue was whether it could give rise or contribute to an adverse inference about the reason for C's treatment or an inference of the necessary relationship to race for a harassment complaint. We concluded that they could not. We heard virtually no evidence about the circumstances, experience or qualifications of these individuals for clerical roles and very little information about C's. It was undisputed that Ms Konuk was appointed to a clerical role in a different company (not R or DHL). The evidence before us about the matter does not sustain any inference that R's decisions with respect to C's training offering or his allocation to Grid 9 were related to or because of C's Slovakian race.
105. C's makes an allegation that there was a pattern of SP 'feigning ignorance' and allocating him to Grid 9. We were not convinced that there was a sufficient number of occasions of SP allocating C to Grid 9 to amount to a 'pattern'. We have found as a fact that SP did not feign ignorance when making the allocations about which C complains and set out our reasons for that finding earlier in the judgment. We do not find that the evidence supports an inference that SP allocated C to Grid 9 because of C's race or that his conduct in doing so related to race.
106. It was not established on the evidence that

- a. there was a pattern of SP allocating Grid 9 to C on days when Mr M Seymaniak wasn't available; or
 - b. that C was in a minority of employees only trained on Chill Picking despite his long service; or
 - 5 c. that older Scottish nationals rarely were allocated to Grid 9 or that R pursued a practice of allocating Eastern European or other non British nationals to work on Grid 9 (and in so doing of manipulating these racial groups whose different cultural and educational backgrounds (according to C) meant they were less likely to understand how things worked in the company and their work place rights; or
 - 10 d. that R (or DHL before it in the period to July 2023) had a practice of providing training opportunities to a disproportionately high number white Scottish employees or Scottish nationals generally and to a disproportionately low number of foreign nationals within the workforce at the warehouse site.
 - 15
107. Since these were not established as facts on the evidence before us, no inference adverse to the respondent can be drawn from these unsubstantiated suggestions.
108. Having taken into account the totality of the evidence (leaving out of account R's explanation for the decisions), we concluded that primary facts have not
20 been found in this case from which we could properly conclude that R treated C as it did because of race or that R's conduct related to race. Therefore, the Stage 1 burden is not discharged in relation to either the direct discrimination complaint or the harassment complaint. These complaints are not well
25 founded and do not succeed.

Time limits in relation to the potentially time barred direct race discrimination and harassment allegations

109. Though the complaints do not succeed on the merits, we cannot ignore the question of time limits since this goes to the Tribunal's jurisdiction. None of
30 the 'in time' allegations (i.e. those said to occur on or after 17 November 2024 which comply with the s.123(1)(a) limit) have been established to be prohibited conduct, contravening the EA. It follows that the earlier acts and omissions of which C complains as race discrimination and race-related harassment cannot be 'knitted together' with those later ones to be
35 characterised as a course of prohibited conduct extending over a period since they have been found not to have been prohibited under the EA.

110. The Tribunal must decide whether these claims were brought within a period which we think is just and equitable. The relevant 'untimely' allegations complaints are:
- 5 a. refusals or omissions between August 2022 and 17 November 2024, to grant requests by C for further training so that he could work in other areas; and
 - b. that in August 2022, on 15 December 2022, on 14 January 2023, on 6 April 2024, and on 16 September 2024, SP initially allocated C to Grid 9.
- 10 111. Some of these allegations have been found not to have happened and all have been found to be unmeritorious, but we consider them (briefly) as we require to do so to decide the jurisdictional question.
112. The reason C put forward in evidence for his omission to bring these complaints within the normal three-month time limit was a lack of awareness
15 of the option of raising claims in the Employment Tribunal. He said that he discovered this only in around November 2024 when a policeman suggested the option of an Employment Tribunal claim.
113. We considered all relevant factors to determine whether it would be just and equitable to extend time for presenting all complaints to the date the claim
20 was lodged or, where the complaint was introduced by amendment, the date leave to amend was granted.
114. Factors which weighed in favour of extending time to that date included:
- a. that C was unaware of his option to complain to a Tribunal until late 2024;
 - 25 b. that C was a foreign national who spoke English as a foreign language and that his different social, cultural and educational background may have affected his awareness of his legal rights and options in Scotland and the ease with which he was able to discover these;
 - c. that C has been employed throughout all material periods in a job he
30 found exhausting; and
 - d. that C had a significant refurbishment project which occupied him substantially during his free time.
115. However, the following factors ultimately weighed more heavily in our deliberations:

- a. that time limits are designed to ensure compliance with the principle of legal certainty and departures from these time limits should be the exception;
- b. we noted that the period of delay was variable in relation to different complaints but in relation to the earliest complaints, it was quite substantial, exceeding 2 years;
- c. that although we accept C did not know he could complain to an Employment Tribunal about the matters he was concerned about until December 2024, we were not satisfied that his efforts to research or pursue enquiries about his options were particularly diligent. He was a Trade Union member who regularly consulted with his TU rep; he had previously perused the Citizen's Advice Bureau website and had had a conversation with a CAB adviser; he had internet access throughout the material periods. We have not found that it was an objective fact that none of these sources identified the possibility of an Employment Tribunal claim, but we accept that it was C's subjective understanding or perception that they did not. We acknowledge that this understanding may have arisen because of language barriers or because C did not give his full attention to the information available from the sources. However, even allowing for these explanations, we were not convinced that C's efforts to inform himself were at all extensive. It is within the judicial notice that there is a wealth of information available online about Employment Tribunals including information on the CAB site which C asserts he perused. It is also within the judicial notice that there were, at the material times, translation services available online, including machine translation without cost, in the event he had any doubt about his understanding. C knew of the scope to try to speak with a solicitor but didn't attempt to do so in the period under review.
- d. that C did not act promptly to lodge a claim even after he was informed the possibility of raising a Tribunal claim in late 2024 but instead prioritised other matters including refurbishment work he was carrying out on his property;
- e. that the delay carried real implications in relation to the cogency of the evidence. SP, for example, was available to give evidence but, as someone who allocates tasks to staff on a daily basis in his role, his recollection of the specific dates and his knowledge or memory of C's particular health situation on those dates was adversely impacted by the delay. No doubt to some extent or other, the delay also affected the recall of other witnesses including C himself as memories are apt to fade and sometimes distort with the passage of time.

116. Balancing all relevant factors, we conclude that, in the circumstances of this case, it would not be just and equitable to extend the time for receiving of the claimant's complaints which were not lodged or introduced by amendment within the 'normal' time limit in section 123(1)(a). These complaints are accordingly time barred and the Tribunal lacks jurisdiction to decide them.
- 5

Date sent to parties: 16 December 2025