



EMPLOYMENT TRIBUNALS

Claimant: Mr G Ssemukuutu

Respondent: ISS Mediclean Limited (t/a ISS Facility Services Healthcare)

Heard at: London South Employment Tribunal, Croydon

On: 23, 24 and 25 September 2025

Before: Employment Judge Abbott, Ms H Bharadia and Mr K Murphy

Representation

Claimant: representing himself

Respondent: Mr C Ilangaratne, counsel

JUDGMENT having been sent to the parties on 26 September 2025 (reasons having been delivered orally on 25 September 2025) and written reasons having been requested by the claimant in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction and identification of the issues

1. These are the reasons for the unanimous judgment of the Tribunal concerning the claim brought by Mr George Ssemukuutu (**the claimant**) against ISS Mediclean Limited (t/a ISS Facility Services Healthcare) (**the respondent**) following a final hearing on 23-25 September 2025.
2. This claim was presented on 20 September 2023, early conciliation having taken place between 9 and 11 September 2023. The complaints that this Tribunal needed to determine came under the following headings: (1) direct race discrimination (s.13 of the Equality Act 2010 (**EQA**)); (2) harassment related to race (s.26 EQA); (3) victimisation (s.27 EQA). The other claims in the claim form had been struck-out because the claimant did not pay a deposit in respect of them and therefore were not matters for us to decide.
3. A List of Issues was prepared by Employment Judge Martin at a preliminary hearing on 6 May 2025. The Claimant applied to vary that list after the hearing, but Employment Judge Heath considered and rejected that application. The Tribunal was satisfied that Employment Judge Martin's List

of Issues correctly reflected the pleaded claim and proceeded on the basis of that list, which is reproduced below.

List of Issues

[Issues 1-4 related to claims that have been struck-out]

Race discrimination

The Claimant is Black African.

5. The Claimant has specified the following as alleged discriminatory treatment:

5.1 Disproportionate vetting demands or excessive vetting scrutiny.

5.2 Being denied grievance access and ultimately excluded from work after raising concerns about discrimination.

Did any of the above happen as alleged?

6. If so, the Claimant is relying on an actual comparator of Guy Bertram.

7. Are there any material differences between the Claimant and his comparator?

8. Has the Claimant proved primary facts from which, in the absence of any other explanation, the Tribunal could properly and fairly conclude that the difference in treatment was because of his race?

9. Has the Respondent provided a non-discriminatory explanation for the above?

Harassment

10. The Claimant has specified the following as alleged harassment:

10.1 Coded remarks (e.g., 'long-term unemployed') in an email from Guy Bertram to Work Exchange dated 16 August 2023.

Did any of the above happen as alleged?

11. If so, does it amount to unwanted conduct related to race, having the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

Victimisation

12. Is either of the following a protected act:

12.1 the Claimant's email of 11 August 2023 (8:41am) mentioning 'discrimination'; and/or

12.2 the Claimant reiterating his concerns about 'discrimination' at a meeting with Guy Bertram and Marie Davey on 11 August 2023?

13. If so, is either of the following a detriment that the Respondent subjected the Claimant to because of his protected act(s):

13.1 terminating the Claimant's engagement with the Respondent on 11 August 2023; and/or

13.2 not investigating the Claimant's grievance of 15 August 2023 under the Respondent's policies and procedures?

[Issue 14 is a remedy issue]

4. The hearing took place in person at the Tribunal venue in Croydon. The claimant represented himself; the respondent was represented by counsel. The Tribunal was provided with a bundle running to 458 pages and heard evidence from the claimant and three witnesses for the respondent (Marie Davey, Guy Bertram and John Owens). Though the final hearing was listed for 4 days, the evidence was completed before the lunch break on day 2 and the parties were in a position to give their closing submissions (written supplemented with oral) that afternoon. Following deliberations on the morning of day 3, the Tribunal delivered an oral judgment that afternoon dismissing all of the claimant's complaints. On 6 October 2025 the claimant requested written reasons.
5. During cross-examination, the Claimant indicated some of his questions were being asked in support of his "*indirect race discrimination under section 19 of the Equality Act*". The same point was also raised in his closing submissions. There is no such claim in the claim form or the list of issues, nor had the Claimant articulated the basis for such a claim. Even if he was to make a formal application to amend, the timing of the point being first raised (*i.e.*, during cross-examination of the Respondent's final witness) is such that the balance of prejudice would fall very firmly in favour of refusing the amendment. It was not a complaint before us.

The relevant law

DIRECT DISCRIMINATION CONTRARY TO s.13 EQUALITY ACT 2010

6. Section 13 EQA prohibits direct discrimination. Section 13(1) EQA states:

"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."
7. Race (including colour, nationality and/or ethnic or national origins) is a protected characteristic (sections 4 & 9 EQA).
8. The primary focus in a direct discrimination case is on identifying why the claimant was treated as he was, before coming back to whether it was less favourable treatment because of the protected characteristic (see e.g. *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11). It is well established law that a respondent's motive is irrelevant and, indeed, the possibility of unconscious discrimination is recognised (see e.g. *Nagarajan v London Regional Transport* [1999] IRLR 572, HL). Moreover, the protected characteristic need not be the sole or even principal reason for the treatment as long as it is a significant influence or an effective cause of the treatment (see e.g. *Gould v St John's Downshire Hill* [2021] ICR 1, EAT).
9. What amounts to "less favourable treatment" is an objective test for the Tribunal (*Burrett v West Birmingham Health Authority* [1994] IRLR 7, EAT), although the claimant's perception may be taken into account. The

treatment cannot merely be different but must be less favourable (*Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065, HL). 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 his detriment (*Shamoon*).

10. A comparator must not share the protected characteristic relied upon, and must have no materially different circumstances – see Lord Scott in *Shamoon*: “*the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class.*” This applies regardless of whether the comparator that is used is actual or hypothetical.

HARASSMENT CONTRARY TO S.26 EQUALITY ACT 2010

11. Section 26 EQA provides, so far as is relevant:

“(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct 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.”

12. Race is a relevant protected characteristic: section 26(5) EQA.
13. “Unwanted conduct” means action, or inaction where action is wanted, that is unwanted by the employee. The Equality and Human Rights Commission’s Code of Practice on Employment notes that unwanted conduct can include “*a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person’s surroundings or other physical behaviour*”: see paragraph 7.7. Whether there has been unwanted conduct is a question for the Tribunal to resolve on the facts of each case: *Thomas Sanderson Blinds Ltd v English* UKEAT/0316/10 at [28].
14. The words “related to” require the Tribunal to focus on whether the unwanted conduct is associated with the employee’s disability. Whether the requisite associative link is established depends on all the facts, including

the context in which the impugned conduct took place and the mental processes of the relevant decision-maker: *Unite the Union v Nailard* [2016] IRLR 906 at [100]; *Bakkali v Greater Manchester Buses (South) Ltd (t/a Stagecoach Manchester)* [2018] IRLR 906 at [31].

15. The wording of section 26(1)(b) is important – as it requires conduct that is more than merely upsetting to B. This is a question of fact for the Tribunal. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724, EAT, Mr Justice Underhill, then President of the EAT, said: “*Not every racially slanted adverse comment or conduct may constitute the violation of a person’s dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended.*”
16. Where a series of actions is relied on, in support of a claim for harassment, a Tribunal should look at the totality to decide if there was harassment related to the protected characteristic, rather than by taking each action separately: *Reed v Stedman* [1999] IRLR 299.

VICTIMISATION CONTRARY TO s.27 EQUALITY ACT 2010

17. Section 27 of the Equality Act 2010 (**EQA**) provides, so far as is relevant:

“(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.”

18. A “protected act”, therefore is, in essence, raising an issue of discrimination. The Employment Appeal Tribunal recently gave guidance on what should be considered when determining whether a complaint amounts to a protected act in *Kokomane v Boots Management Services Ltd* [2025] EAT 38 at [31]:

“The ET should have been taking account of all these factors and asking the question what would the respondent have understood from the complaint or would have understood the complaint to mean from the information provided by the claimant as part of her complaint. That understanding would include the factors which were known to the respondent. Those factors would include the racial

makeup of its workforce, it would include what is in the grievance letter about a difference in treatment. It would also include the discussions at grievance meetings.”

19. Where the employee has done a protected act, the Tribunal must decide whether the protected act was a significant part of the employer’s reason for subjecting the employee to the alleged detriment: *Page v Lord Chancellor* [2021] EWCA Civ 912, [2021] IRLR 377 at [30].
20. In order for a disadvantage to qualify as a “detriment”, the Tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. The test must be applied by considering the issue from the point of view of the victim. If the victim’s opinion that the treatment was to their detriment is a reasonable one to hold, that ought to suffice. While an unjustified sense of grievance about an allegedly discriminatory act cannot constitute detriment, a justified and reasonable sense of grievance may well do so (*Shamoon*).

EQUALITY ACT BURDEN OF PROOF

21. The provisions relating to the burden of proof are found in Section 136(2) and (3) EQA:

“(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.”

22. It is thus for the claimant to prove facts from which the Tribunal could conclude, in the absence of any evidence from the respondent, that the respondent committed an act of discrimination. Only if that burden is discharged is it then for the respondent to prove that the reason for the treatment was not because of a protected act or characteristic (see, e.g., *Royal Mail Group Ltd v Efofi* [2021] UKSC 33). This will typically be based upon inferences of discrimination drawn from the primary facts and circumstances found by the Tribunal to have been proved on the balance of probabilities. Such inferences are crucial in discrimination cases as it is unlikely there will be direct, overt evidence that a claimant has been treated less favourably because of a protected act or characteristic (see, e.g., *Anyia v University of Oxford* [2001] IRLR 377, CA).
23. Notwithstanding the above, in *Efofi*, Lord Leggatt repeated Lord Hope’s reminder in *Hewage v Grampian Health Board* [2012] UKSC 37 that it is important not to make too much of the role of the burden of proof provisions:

“They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.”
24. The bare facts of (i) a difference in status and (ii) 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 (*Madarassy v Nomura International plc* [2007] EWCA Civ 33). Something more is needed.

The facts

25. The role of the Tribunal is to consider all of the evidence, and the documentary materials referred to, and form a view as to what is most likely to be the true position on the balance of probabilities. It is important to say that, simply because we may disbelieve the evidence of a witness on a particular point, does not mean that we consider they are deliberately seeking to mislead – nor does it mean we must automatically disbelieve them on other points. Ultimately, we have to weigh up all the evidence on all different points and assess it on its merits.
26. We only made findings of fact necessary for the disposal of the live issues in this case. We have not referred to every document we have read and/or were taken to during the hearing, but we have considered all such documents. Where we have referred to documents, we have included the bundle page references in the form [xx]. We have not considered documents that were not referred to in the written or oral evidence or in submissions.
27. The relevant facts are, we find, as follows.
28. The claimant describes himself as a Black African.
29. The respondent is part of the ISS group of companies and provides facility management services to clients in the UK.
30. In early March 2023 the claimant attended a job fair at Lewisham College. This was an event organised with the DWP and was targeted at individuals who were long-term unemployed. At the time of the job fair, the claimant had been unemployed since the collapse of Maplin into administration in 2018. He had recently obtained a frontline licence from the Security Industry Authority and was therefore interested in exploring vacancies for jobs in security.
31. The respondent was one of the employers represented at the job fair. One of the two employees of the respondent present was Guy Bertram, who was the Key Account Manager for the respondent's contract with Oxleas NHS Foundation Trust and Kent and Medway NHS and Social Care Partnership.
32. The claimant and Mr Bertram spoke at the job fair. We accept Mr Bertram's evidence that he felt the claimant came across as a very pleasant, nice and personable individual. Mr Bertram considered that the claimant may be suitable to fill a security vacancy that the respondent had at the Queen Mary Hospital in Sidcup. Mr Bertram recognised that the claimant's personable and confident nature may be an asset in that role, which involves a high degree of customer interaction and meeting-and-greeting.
33. Following the job fair, Mr Bertram invited the claimant to attend an interview

at the hospital. The interview took place on 17 March 2023. As well as the claimant and Mr Bertram, also present was Marie Davey, the Site Services Manager for the hospital to whom the security officer would directly report.

34. The interview went well. Mr Bertram was keen to get the claimant working in the role as soon as possible and suggested that he could work initially via an agency, The Work Exchange Agency. We accept Mr Bertram's evidence that he made this suggestion because he felt it was of benefit to the claimant, in that it would allow him to start work almost immediately and therefore be earning rather than having to wait to go through the respondent's on-boarding process first – Mr Bertram was conscious that this could be a time-consuming process lasting (potentially) 2-3 months – and would also allow the claimant the opportunity to test out the role and its location before committing to full-time employment. The claimant suggested in his witness statement and oral evidence that he expressed objections to this idea, but we reject that evidence as wholly inconsistent with the contemporaneous emails, which indicate the claimant's enthusiasm to get started ([68]).
35. Having gone through the necessary processes with The Work Exchange Agency, the claimant began working shifts at the hospital from 29 March 2023. The claimant accepted in oral evidence that, from this time, he was an agency worker for, not an employee of, the respondent, and we find that was his status.
36. During his shifts, the claimant was the only security officer on duty. He would usually be located in the hospital reception area, but would also undertake regular external patrols. His line manager, Ms Davey, sat in an office around 20 yards from the reception desk, as did Mr Bertram when he was at the hospital site.
37. Mr Bertram and Ms Davey had no concerns with the claimant's work and, in late June 2023, the process of bringing the claimant into the employment of the respondent (as had been anticipated from the outset) was commenced. On 27 June 2023 the claimant signed an employment pre-screening form and Security Application Form which, among other things, set out his education and employment history, consented to being screened and, in that context, agreed to provide information as required [89-95].
38. There was a delay in this form being sent to the respondent's screening team by the claimant's line manager, Ms Davey. We accept the evidence from Ms Davey that this delay was due to her suffering a health emergency in July 2025 resulting in a hospital admission, followed by unplanned sick leave to recover.
39. Ms Davey sent the new starter pack to the screening team on 7 August 2023. She acknowledged in her evidence that this was the first time she had handled a screening process for a new recruit, as is also clear from her email to the screening team ([105]). A response was sent to Ms Davey on the same day [104-105]. It identified a list of items that were missing from the pack, specifically:
 - a. That 2 signed and verified proofs of address were needed, but only

1 had been provided;

- b. That clarity was needed as to the period the claimant had worked for Maplin (his application form stated 2017 to 2019) and that supporting evidence (like payslips and bank statements) would be required since it would not be possible to obtain a reference due to Maplin having gone into administration; and
- c. That evidence of the claimant's Universal Credit period confirming dates of claim would be needed (his application form stated he was on Universal Credit from 2020 to 2023).

40. The response also attached the submission guide. A copy of this guide was provided in the bundle at [161-163]. The items identified as missing in the screening team response were items falling within the scope of this guide: the first (2 x proofs of address) is explicitly mentioned on the first page; and the second (Maplin information) is concerned with the requirement to provide a "full 5 yr account of their employment/status history" on the second page of the guide; and the third (Universal Credit information) is concerned with evidence of receipt of benefits during periods of unemployment again on the second page of the guide. It is clear therefore, and we find, that the reason for the information being requested was because it was required to be provided under the vetting policy. The same request would have been made of any person in the claimant's situation, because this was a policy that was applied to all applicants for a security role with the respondent.
41. On 10 August 2023, Ms Davey emailed the claimant communicating the list of further information she needed him to provide [109]. She copy-and-pasted the list from the email from the screening team, asked the claimant to bring the information in the following day if he could, but said that if he needed more time she would ask for a time extension on his behalf. (In fact, she pre-emptively asked for such an extension, as is clear in the emails in the bundle.)
42. We find that the reason Ms Davey made this request of the claimant was because the vetting team had told her this information was required. There was nothing obviously unreasonable about what was being asked for by the vetting team, and Ms Davey simply passed on the request. We find Ms Davey would not have done anything different with any other person in the claimant's situation.
43. The claimant responded by email at 08:41am on 11 August 2023 [110]. In summary, he referred to being offended by Ms Davey's email "*as one of downright discrimination*". He was critical of the time the process was taking and stated "*it is discrimination to justify unfair employment terms and conditions including transfer opportunities*". He also suggested Ms Davey had "*no due regard to exercising wider public sector duty regarding socio-economic inequalities in a way that is designed to reduce the inequalities of outcome*". Finally, he said "*I will never forget the day you snapped at me...*". He did not expressly identify in the email any protected characteristic relied upon in respect of his allegations of discrimination.

44. It is clear, and we find, that neither Ms Davey nor Mr Bertram understood the basis of the claimant's allegations of discrimination. Ms Davey's evidence, which we accept, was that she "*genuinely did not understand what he was trying to say*". She also described the email as "*upsetting as well as confusing*". Mr Bertram's evidence, which we accept, was that he was surprised since the accusation came in response to standard vetting queries.
45. That is consistent with what Mr Bertram wrote in his email reply to the claimant at 10:07am on 11 August 2023 [107-108]: "*The issues that have been highlighted are those raised by the vetting team and Marie unfortunately recently had several days unplanned absence which delayed matters. These queries raised represent standard steps leading to employment and are not discriminatory as you allege – steps that need to be addressed*". Mr Bertram offered to meet with the claimant and Ms Davey to discuss.
46. Such a meeting duly took place shortly after 11am that day. There were conflicting accounts of what happened in that meeting; we accept the evidence of Mr Bertram and Ms Davey on this matter. In summary, both Mr Bertram and Ms Davey sought to explain that the queries were a standard part of the vetting process applicable to all applicants for security roles and that, though it could be difficult sometimes gathering up the evidence, this was necessary to get through the process. Though the allegation of discrimination was mentioned it was not expanded upon in the meeting. The claimant suggested in oral evidence that Mr Bertram had effectively shut him down from discussing his discrimination allegations, but that was an allegation made for the first time orally and we reject it. The claimant was visibly unhappy about the situation and by his conduct was disrespectful towards Ms Davey, in that he avoided interacting or making eye contact with her and would speak directly only to Mr Bertram. In his oral evidence, the claimant did not deny acting in this way, saying that "*maybe that is what happened*" – we find that is how it happened.
47. The claimant did not accept Mr Bertram and Ms Davey's explanations. Mr Bertram suggested that, if he disagreed, the claimant may wish to raise a complaint. The meeting ended at around 11:30am, with the claimant leaving his work phone with Mr Bertram and Ms Davey and saying something to the effect of "*I need to think about this, I am going home*".
48. Shortly afterwards, at 11:33am, the claimant made an entry in the Daily Occurrence Book which read as follows: "*decided to end shift to think options through, s/o [security officer] off duty*" [111]. He then left the premises.
49. In his witness statement the claimant asserted that he had informed both Ms Davey and the Helpdesk Supervisor that he was leaving because he was unwell. He maintained that position in oral evidence; however, when asked, he was unable to describe what symptoms he was suffering from. Both Mr Bertram and Ms Davey gave evidence to the effect that they were unaware of the claimant having told anyone he was unwell. We reject the claimant's evidence that he was unwell and that he informed anyone in his chain of command that he was unwell – that evidence is flatly inconsistent

with what the claimant himself wrote in the Daily Occurrence Book. The reason he left was, as stated in the log, because he wanted to “*think his options through*” – in other words, he wanted to contemplate how to proceed in light of the information requests that were being made of him.

50. Upon learning that the claimant had left the premises, Mr Bertram took an immediate decision that the claimant could not continue to be engaged by the respondent. He emailed the Work Exchange Agency to this effect at 11:41am, saying “*Unfortunately George walked out from his shift this morning – consequently all future bookings are cancelled*” [113].
51. We find that the reason he made this decision was because, in Mr Bertram’s view, it was completely unacceptable for the claimant to have left mid-shift in those circumstances. He was the only security officer on duty, so the site was left without proper security cover. In fact, Ms Davey was able to arrange emergency cover from an agency security officer who came on shift less than half-an-hour after the claimant had left, but Mr Bertram could not have known that at the time he made his decision. We find Mr Bertram would have taken the same decision with any agency worker in a security officer role who had left mid-shift without permission leaving the site at risk, a conclusion that is also consistent with Mr Bertram’s evidence that, if an employed security officer was to do the same, he would have instigated disciplinary proceedings for gross misconduct consistent with the ISS Disciplinary Policy. The way the claimant had conducted himself in the meeting did also influence Mr Bertram’s decision – he had in mind a concern around the claimant’s inability to have a professional interaction with his manager bearing in mind the closeness of the environment in which they worked – though this was a secondary factor in the decision. We find that the decision was not influenced by the claimant’s race, nor was it influenced by the fact the claimant had alleged discrimination in his email of 11 August and in the meeting of the same day. The fact Mr Bertram had sought to meet with the claimant to discuss his concerns about the vetting requests after he sent his email alleging discrimination is indicative that he was wanting to identify a way forward, but this proved impossible because of the claimant’s subsequent conduct in leaving mid-shift without permission leaving the site at risk.
52. Later on 11 August 2023, at 5:13pm, the claimant emailed Mr Bertram stating he planned to submit a complaint and asked for contact details for HR [116]. Mr Bertram provided those details on 14 August 2023 [115].
53. Unfortunately, the message that his future bookings were cancelled was not passed on to the claimant by his agency. He turned up to start a shift on 12 August 2023 and was told he was not required.
54. On 15 August 2023, the claimant submitted a grievance letter to Gabby Holmes, the relevant HR advisor at the respondent [119-121]. The particular details of the grievance are not material to the issues, though it is worth highlighting the allegation made that there was an “*inference of discrimination that Marie never intended to secure my contract, hence her delaying tactics to frustrate me*”, and the conclusion that “*I feel victimised and discriminated against because of the lack of interest from management regarding my uncertainty of employment*”. Again, no specific protected

characteristic was identified in the letter.

55. Ms Holmes responded on 16 August 2023 in the following terms [126]: *"I note you are not an ISS employee having not completed the vetting process that all new starters are subject to thus not obtaining an ISS contract. Therefore, you will need to direct your complaint to the Work Exchange so they can investigate on your behalf."*
56. That response was, we find, consistent with the ISS Grievance Policy, which applies only to employees not to agency workers. It is also consistent with the ACAS Code on Grievance Procedures for the same reason. It was a reasonable position for the respondent to take.
57. The claimant did refer his grievance on to the Work Exchange Agency on 16 August 2023, and the agency in turn reached out to Mr Bertram (copying the claimant) for his advice. In response on the same day, Mr Bertram provided a detailed point-by-point rebuttal of the claimant's grievance [122-125]. Save in one respect, the detailed content of the response is not material to the issues. It suffices to say that Mr Bertram explained that the requests that had been made of the claimant were part of the standard vetting process, that there was no discrimination, and that the termination of the claimant's engagement was as a result of him walking off site mid-shift.
58. The claimant relies upon one remark made in Mr Bertram's email as an allegation of harassment related to race – specifically, a reference to the claimant being *"long term unemployed"*. It is important to view that remark in the full context. It forms part of Mr Bertram's response to the allegation that Ms Davey never intended to secure the claimant's employment. The full answer reads as follows:

"The intention all along had been to place George on the payroll - George was initially interviewed by Guy at a job fair at Lewisham College for long term unemployed - and offered a role as a security officer, working via the Work Exchange agency to see whether the role/location suited both parties - at the time George was unemployed and Guy facilitated the introduction to Work Exchange. The agency placement proceeded well and the vetting process commenced- the intention being that in time, George could multi-task, covering both reception and security duties at the QMH. The employment of George was a regular conversation between Guy and Marie."
59. In other words, Mr Bertram was stating facts as to the circumstances in which he first met the claimant. It was not said with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. Not could it reasonably have had that effect and the claimant did not advance any evidence that, in fact, this particular statement did have that effect upon him.
60. The claimant sent a further grievance letter to Ms Holmes on 20 August 2023 [128-130]. Ms Holmes responded on 25 August 2023 in the following terms [133]: *"I have discussed this with the site team and as a result Guy Bertram has provided you with a thorough explanation via email ... answering each of the points you have made. In this email he has also explained the process that is required by all new starters at ISS that you have raised concerns about as being discriminatory. Based on the above, I*

now consider this matter closed."

61. The claimant wrote again to Ms Holmes on 30 August 2023 seeking to appeal the grievance outcome [131,133]. Ms Holmes responded the same day in the following terms [132]: *"You have received an explanation and you are not an ISS employee therefore you wouldn't be subject to our policies and procedures. To confirm, we consider this matter closed."*
62. These responses were, we find, consistent with the ISS Grievance Policy and with the ACAS Code on Grievance Procedures for the same reason stated earlier. It was a reasonable position for the respondent to take.
63. The Claimant commenced ACAS early conciliation on 9 September 2023 and the early conciliation certificate was issued on 11 September 2023. This claim was presented on 20 September 2023.
64. In September 2024, Ms Davey managed the vetting process for a security officer applicant referred to as 'M'. Like the claimant he had been engaged through an agency and the respondent was looking to bring him onto its payroll as an employee. 'M' was of a different ethnic origin to the claimant. Documentary requests were made of 'M' which were at least as extensive as those made of the claimant. 'M' did try to provide responsive documents, but a problem arose because of his inability to show evidence of bank statements from a particular period of unemployment – because he had not had a bank account in that period. The vetting team's position was that, absent the evidence, he could not pass the vetting process. In the end, management intervened to explore whether other options could be found to evidence the relevant period and, ultimately, the vetting team agreed to accept a statement from a family member of 'M' to the effect that they financially supported him during that particular period of time. 'M' therefore passed the vetting process.

Application of the law to the facts

Issues 5-9: direct race discrimination

65. The first step is to identify whether, in fact, the claimant has been treated less favourably than how the Respondent treats or would treat others.
66. The first such allegation, under sub-issue 5.1, is that the claimant was subjected to disproportionate vetting demands or excessive vetting scrutiny. It follows from the factual findings that we have made that the claimant was not treated less favourably in respect of vetting. The information being requested was required to be provided under the respondent's vetting policy. The same request would have been made of any hypothetical comparator (*i.e.* someone in materially the same circumstances as the claimant), because this was a policy that was applied to all applicants for a security role with the respondent.
67. We have also scrutinised actual comparators that have been raised in submissions. The claimant rightly abandoned reliance on Mr Bertram as a comparator, as he was plainly not in the materially the same circumstances as the claimant. In closing submissions, he relied instead on 'M'. However, the comparison to 'M' does not assist the claimant. Whilst it is correct that

management intervened to try to help 'M' navigate the process, that was at a late stage when 'M' had been cooperative and provided such documents as he was able to – the management intervention was because 'M' simply was not able to provide documents that the vetting team wanted to see, and the end result was that 'M' still had to provide evidence, albeit in a different form. By contrast, the claimant never engaged with the requests that the vetting team had made. It was never suggested by the claimant that he would be unable to provide the materials being requested, so the stage of considering alternative evidence (if that was to be required) was never reached. The claimant was not treated any less favourably than 'M'.

68. The first allegation therefore fails as there was no less favourable treatment. But even if there was, there is no factual basis from which, in the absence of any other explanation, the Tribunal could properly and fairly conclude that the difference in treatment was because of the claimant's race. There is simply nothing in the facts to suggest the claimant's race had any influence whatsoever on what was being asked of him by the vetting team.
69. The second allegation, under sub-issue 5.2, relates to being denied grievance access. It follows from the factual findings that we have made that the claimant was not treated less favourably in respect of grievance access. The ISS Grievance Policy did not apply to the claimant because he was not an employee of the respondent. Any other agency worker in materially the same circumstances as the claimant but for their race would, we find, have been dealt with in the same way. We note that Mr Bertram did provide (without being required to do so) a detailed response to the claimant's grievance, which may have been something that a hypothetical comparator would not have received.
70. The second allegation therefore fails. But, in any event, there is no factual basis from which, in the absence of any other explanation, the Tribunal could properly and fairly conclude that the difference in treatment was because of the claimant's race. There is nothing in the facts to suggest the claimant's race had any influence whatsoever on the decision not to accept his grievance.
71. The third allegation, again within sub-issue 5.2, concerns exclusion from work. It follows from the factual findings that we have made that the claimant was not treated less favourably in this regard. Mr Bertram would have taken the same decision with any agency worker in a security officer role who had left mid-shift without permission leaving the site at risk. (We also accepted Mr Bertram's evidence that if an employed security officer was to do the same, he would have instigated disciplinary proceedings for gross misconduct consistent with the ISS Disciplinary Policy.) In other words, any hypothetical comparator would have been treated in the same way as the claimant in the circumstances.
72. Moreover, we have made a positive finding that Mr Bertram's decision to end the claimant's engagement was not influenced (let alone significantly influenced) by his race. Rather, it was primarily because of the claimant's conduct in walking off shift without permission leaving the site at risk, with some influence of the way the Claimant had conducted himself in the meeting on 11 August 2023.

- 73. The third allegation therefore fails.
- 74. The direct race discrimination complaint therefore is not well-founded and is dismissed.

Issues 10-11: harassment

- 75. The first step in respect of this complaint is to identify the unwanted conduct related to race. Here the claimant relies upon Mr Bertram's mention of "*long-term unemployed*" in his email of 16 August 2023.
- 76. Even if it can be said that this is unwanted conduct in the sense that the claimant did not want the fact he had previously been long-term unemployed stated in an email, what Mr Bertram said in that email cannot reasonably be interpreted as 'related to' race in any meaningful sense. The claimant has been unable to offer a meaningful account for why it is: in his submissions he argued we should find that this was a negative stereotype related to his socio-economic background, which is a common facet of racial harassment. But, with respect to the claimant, that does not come remotely close to establishing a link between what Mr Bertram said and race.
- 77. In any event, we have also found on the facts that the remark had neither the purpose nor the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- 78. The harassment complaint therefore is not well-founded and is dismissed.

Issues 12-13: victimisation

- 79. The Claimant relies upon two protected acts. We deal with them in turn.
- 80. The first (sub-issue 12.1) is his email of 11 August 2023. The Claimant relies on the fact that he alleged "discrimination". However, the nature of the claimant's allegations was wholly unclear to the respondent, as we have already found. The respondent did not understand what the complaint was. The lack of any mention of a protected characteristic is also a relevant (but not determinative) factor – by contrast there is mention of "*unfair employment terms and conditions*" and "*socio-economic inequalities*". Weighing up all of the factors, we find that there is no complaint made in the claimant's email which can properly be understood to be alleging treatment contrary to the Equality Act; rather it is a more general complaint of perceived unfair treatment. The email lacks detail, specificity or the necessary context to meet the threshold. Accordingly, the email is not a protected act.
- 81. The second (sub-issue 12.2) is the claimant's alleged reiteration of his concerns about "discrimination" in the meeting of 11 August 2023. We have found that the Claimant did not, in fact, elaborate on his concerns at the meeting. Whilst "discrimination" was mentioned, it took matters no further forward than the Claimant's email. For the same reasons, this was not a protected act.

82. In the absence of any protected acts, the victimisation complaint must fail.
83. In any event, we will also address the detriments that the Claimant alleges he suffered.
84. The first of these (sub-issue 13.1) is the termination of his engagement. We have made a positive finding that Mr Bertram's decision to end the claimant's engagement was not influenced (let alone significantly influenced) by the fact he had made allegations of "discrimination". Rather, it was primarily because of the claimant's conduct in walking off shift without permission leaving the site at risk, with some influence of the way the claimant had conducted himself in the meeting on 11 August 2023. So, even if his complaints were protected acts, there was no causal link between those acts and his termination.
85. The second of these (sub-issue 13.2) is the non-investigation of his grievance under the respondent's policies and procedures. However, the said policies did not apply to the claimant because he was not an employee. That was the reason given for why his grievance was not accepted, and we accept it is an objectively reasonable one. There is no factual basis from which, in the absence of any other explanation, the Tribunal could properly and fairly conclude that the decision not to investigate was significantly influenced by the claimant having raised complaints of discrimination. So, even if his complaints were protected acts, there was no causal link between those acts and the non-investigation of his grievance.
86. The victimisation complaint therefore is not well-founded and is dismissed.

Conclusion

87. The judgment of the Tribunal, therefore, is that none of the claimant's complaints are well-founded and all are dismissed.

Approved by:

Employment Judge Abbott

Date: 2 November 2025

Public access to employment tribunal decisions

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

Recording and Transcription

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

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