



EMPLOYMENT TRIBUNALS

Claimant: Mr B Tucker

Respondent: First Cymru Buses Ltd

Heard at: Cardiff Employment Tribunal

On: 10, 11 and 12 December 2025

Before: Employment Judge R Harfield
Mr M Vine
Mr S Head

Representation

Claimant: Mr Tucker represented himself

Respondent: Ms Kendrew (Solicitor)

JUDGMENT having been sent to the parties on 19 December 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. Introduction

- 1.1 These are our written reasons following our oral judgment at the hearing, where we found the Claimant's complaints of direct age discrimination, harassment related to age and victimisation did not succeed and were dismissed.
- 1.2 We had before us a bundle of witness statements, a chronology, a hearing file of 298 pages, a cast list/list of people. We heard oral evidence from the Claimant and from Mr Chinnock and Mr Cornelius for the Respondent.
- 1.3 We heard closing submissions from both parties. They are not repeated here, but we took them fully into account and they are referred to at relevant points below.

2. The Issues to be decided

- 2.1 The issues for us to decide are set out at pages 50 to 53 of the hearing file contained within the case management order of EJ Brace as follows:

“The Issues

71. The issues the Tribunal will decide are set out below.

1. Harassment related to age (Equality Act 2010 section 26)

1.1 Did the Respondent do the following things:

1.1.1 On 25 November 2025, did Paul Cornelius enter the room and say ‘Where is the 81 year old? You is it? You are the 81 year old? Spent all your pension have you?’ or words to that effect;

1.1.2 On 29 November 2025, did Paul Cornelius:

1.1.2.1 Question the Claimant why he wanted to come out of retirement to start work again;

1.1.2.2 Question the Claimant if he had spent all his pension;

1.1.2.3 Say that he did not agree with Company policy of taking on drivers over the age of 65; and

1.1.2.4 State that other drivers had been working for many years, implying that they had been working as young men?

1.1.3 On 29 November 2025, did Paul Cornelius favour other trainees and give them more support than the Claimant?

1.2 If so, was that unwanted conduct?

1.3 Did it relate to age?

1.4 Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

1.5 If not, did it have that effect? The Tribunal will take into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

2. Direct age discrimination (Equality Act 2010 section 13)

2.1 The Claimant’s age group is above 65 and they compare their treatment with people in the age group below 65.

2.2 Did the Respondent do the following things:

2.2.1 The Claimant repeats and relies on the same matters at §1.1.1-§1.1.3 (Harassment) as acts of direct discrimination; and

2.2.2 Dismiss the Claimant?

2.3 Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There

must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The Claimant says they were treated worse than:

2.3.1 The other trainees present in the induction room on 25 November 2024 (the Claimant is unsure of the exact identity);

2.3.2 For the remaining complaints, Simon Dawkins and Paul Craig Davies, known as Craig Davies.

2.4 If so, was it because of age?

2.5 Did the Respondent's treatment amount to a detriment?

*2.6 Was the treatment a proportionate means of achieving a legitimate aim?
The Respondent says that its aims were:*

2.6.1 [TBC but currently the Respondent pleads that:

2.6.1.1 its legitimate aim was to properly manage its employee resource to enable the effective and safe running of the business §17 ET3 Grounds of Resistance]

2.7 The Tribunal will decide in particular:

2.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

2.7.2 could something less discriminatory have been done instead;

2.7.3 how should the needs of the Claimant and the Respondent be balanced?

3. Victimisation (Equality Act 2010 section 27)

3.1 Did the Claimant do a protected act as follows:

3.1.1 Submit a complaint about age-related matters referencing the Equality Act 2010 in January 2024? and/or:

3.2 Did the Respondent believe that the Claimant had done or might do a protected act, in that the Respondent believed that the Claimant had or might file an employment tribunal claim?

3.3 Did the Respondent do the following things:

3.3.1 Procrastinated and delayed in dealing with the Claimant's complaint.

3.4 By doing so, did it subject the Claimant to detriment?

3.5 If so, was it because the Claimant did a protected act?

3.6 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

4. Remedy for discrimination or victimisation

4.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

4.2 What financial losses has the discrimination caused the Claimant?

4.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

4.4 If not, for what period of loss should the Claimant be compensated?

4.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

4.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

4.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

4.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.9 Did the Respondent or the Claimant unreasonably fail to comply with it by specify breach?

4.10 If so is it just and equitable to increase or decrease any award payable to the Claimant?

4.11 By what proportion, up to 25%?

4.12 Should interest be awarded? How much?"

3. The Legal Principles

Equality Act – Direct age discrimination

3.1 Section 13(1) of the Equality Act provides:

"(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."

3.2 Age is a protected characteristic and under section 5 a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group. An age group is a group of persons defined by reference to age, whether a particular age or a range of ages.

3.3 Section 23(1) says that when comparing cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

3.4 Section 13 requires that two matters be established. The first is that there has been treatment of the particular claimant which is less favourable than

the treatment that was meted out, or would have been meted out, to a comparator. The second is that the less favourable treatment was because of a protected characteristic.

3.5 In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, the then House of Lords said it is often helpful to concentrate on the “reason why” question when considering a complaint of direct discrimination. Why did the alleged discriminator act as he did? What, consciously or unconsciously, was the alleged discriminator’s reason? This question is sometimes less legally complex than the task of identifying a comparator whose circumstances are materially the same, for the purposes of section 23, and the answer to it will often determine the claim.

3.6 In other cases it can be helpful to consider the “comparator” question. An actual comparator exists when there is a known, identified individual who does not have the protected characteristic, and there is no material difference between the circumstances relating to the claimant’s case and the comparator’s case. A tribunal may also consider how a hypothetical comparator in a similar (i.e. not materially different) position to the claimant, but who does not have the protected characteristic, would have been treated. A tribunal may also take account of the way in which the respondent treated other individuals who may be in more different situations but still have some similarities; often referred to as evidential (rather than statutory) comparators. The purpose is to use such comparators as an evidential tool to see whether an inference of discrimination is justified.

3.7 In order to satisfy the “because of” test, it is not necessary for the protected characteristic to be the whole of the reason, or even the principal reason, for the treatment. In Nagarajan v London Regional Transport [1999] ICR 877 it was said:

“Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others...If racial grounds...had a significant influence on the outcome, discrimination was made out.”

3.8 Direct age discrimination is capable of justification under section 13(2) where the employer can show the treatment in question was a proportionate means of achieving a legitimate aim.

Harassment related to a protected characteristic

3.9 Section 26 of the Equality Act defines harassment as:

(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 circumstances of the case;*
- (c) *whether it is reasonable for the conduct to have that effect.*

3.10 Conduct cannot be both harassment and direct discrimination by way of subjecting a person to detriment; see Section 212 Equality Act.

3.11 In Richmond Pharmacology v Dhaliwal [2009] IRLR 336 the EAT set out a three-step test for establishing whether harassment has occurred:

- (a) was there unwanted conduct;
- (b) did it have the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them; and;
- (c) was it related to a protected characteristic.

3.12 It was also said that the tribunal must consider both whether the claimant considers themselves to have suffered the effect in question (the subjective question) and whether it was reasonable for the conduct to be regarded as having that effect (the objective question). The tribunal must also take into account all the other circumstances. The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant’s dignity or creating an adverse environment for them, then it should not be found to have done so.

3.13 In Grant v HM Land Registry [2011] IRLR 748 the Court of Appeal reiterated that when assessing the effect of a remark, the context in which it is given is highly material. A tribunal should not cheapen the significance of the words “intimidating, hostile, degrading, humiliating or offensive” as they are an important control to prevent trivial acts causing minor upset being caught up in the concept of harassment. The Court of Appeal also said: *“It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable.”* In Betsi Cadwaladr University Health Board v Hughes [2014] UKEAT/0179/13 it

was also said by the EAT: *“The word violating is a strong word. Offending against dignity; hurting it, is insufficient. “Violating” may be a word the strength of which is sometimes overlooked. The same might be said of the words “intimidating” etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.”*

- 3.14 The phrase “related to” a protected characteristic in a harassment complaint is a different, broader test from whether the conduct is “because of” a protected characteristic in a direct discrimination complaint. But it does have its limits. The conduct complained about must still relate to the protected characteristic; which is a matter for the tribunal to determine based on all the facts as found. It was said in Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and Heads UKEAT/0039/19 the “related to” test may be satisfied by looking at the motivation of the individuals concerned but it is not the necessary or only possible route. It was also said:

“Nevertheless, there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be.”

Victimisation

- 3.15 Section 27 of the Equality Act 2010 provides:

“27 Victimisation (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.”

- 3.16 A protected act involves bringing proceedings under the Equality Act, or giving evidence or information in connection with such proceedings, or doing any other thing for the purposes of or in connection with the Equality Act, or making an allegation (whether or not express) that a person has contravened the Equality Act.
- 3.17 Whether treatment is a “detriment” is established by asking whether the 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. It is not necessary to establish any physical or economic consequence. There must be a link between the protected act and the detriment; the claimant must be subjected to a detriment *because* the claimant did the protected act. Here

the tribunal has to ask itself whether the protected act had a significant influence on the outcome. This does not mean it necessarily has to be the main or principal cause. Again this “reason why” analysis involves an examination of the mental processes, conscious or unconscious of the decision maker in question. It is not a “but for” test.

Burden of Proof under the Equality Act 2010

- 3.18 The Equality Act provides for a shifting burden of proof. Section 136 so far as material provides:

“(2) if there are facts from which the Court (which includes a Tribunal) 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.”

- 3.19 Consequently, it is for a claimant to prove facts from which the tribunal could infer (absent explanation from the respondent) that discrimination has taken place. If such facts have been made out to the tribunal’s satisfaction, applying the balance of probabilities, the second stage is engaged. At the second stage the burden shifts to the respondent to prove, again on the balance of probabilities, that the treatment in question was “in *no sense whatsoever*” because of the prohibited reason / that the protected characteristic was not a ground for the treatment in question. A tribunal would normally expect cogent evidence to discharge that burden of proof.
- 3.20 In Hewage v Grampian Health Board [2012] IRLR 870 the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provisions should apply. That guidance appears in Igen Limited v Wong [2005] ICR 931, as supplemented in Madarassy v Nomura International Plc [2007] ICR 867. Here it is important to note that although the concept of the shifting burden of proof involves that two-stage process, the analysis should only be conducted once the tribunal has heard all the evidence.
- 3.21 Further, as to what is required to discharge the burden at the first stage; it was said it must be something more than a difference in protected characteristic and a difference in treatment. It was said that the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.
- 3.22 In Raj v Capita Business Services Ltd [2019] UKEAT 74 19 2006 the EAT confirmed that the burden of proof provisions in a harassment claim mean that it is for the claimant to establish facts such that, absent any other explanation for it, the tribunal could conclude that the conduct was related to the protected characteristic. The burden then shifts to the

respondent to show that it was not in fact so related. It was also said: *“I am doubtful that establishing unwanted conduct that had a prohibited effect could ever of itself give rise to a prima facie case that the conduct was related to a protected characteristic and in any event, I am quite satisfied that it did not do so in these circumstances.”*

4. Findings

- 4.1 The Claimant worked as a bus driver in 1964 to 1973. The Claimant then had a career holding various senior leadership positions until he retired in 2013. The Claimant became interested in returning to bus driving and had a chance meeting with the marketing manager for First Cymru who suggested he apply to work there. The Claimant successfully applied and was successful at interview stage and in passing medical and other tests. He also completed a driving test around Swansea, assessed by Ffion Llewellyn. The Claimant then started work with the Respondent on 25 November 2024.

On 25 November 2025 did Paul Cornelius enter the room and say “Where is the 81 year old? You is it? You are the 81 year old? Spent all your pension have you?” or words to that effect.

- 4.2 This first complaint is said to be harassment related to age and also direct age discrimination, where it is said it was less favourable treatment of the Claimant because of age, with the Claimant comparing himself to the other trainees in the induction room on 25 November 2024.
- 4.3 What the Claimant says in his witness statement is that 25 November 2025 was his first day of work, and the trainees attended an induction course run by Colin for most of that day. He says the induction course was completed by the middle of that first afternoon, and that the trainees were then taken to classrooms and given a computer to practice getting ready for theory tests. He then says at paragraph 13:

“The claimant recalls that when sat at his computer Paul Cornelius entered the room looking around somewhat bewildered and indignantly exclaimed “Where is the 81 year old.” To which the Claimant identified himself, Paul Cornelius then blurted out in a raised voice and in a sarcastic manner “O its you is it, you’re the 81 year old, spent all your pension have you?” Somewhat surprised the claimant replied “no I just want to drive buses again” Paul Cornelius then walked out of the room. However, the claimant felt very uncomfortable with Paul Conelius’ attitude, but the Claimant maintained his equanimity.”

- 4.4 Mr Cornelius in his in his witness statement, repeated in his oral evidence, says that he did not have any involvement with the Claimant before meeting the Claimant on Thursday 28 November to say hello, before they started out on the road on Friday 29 November. Mr Cornelius denies going into the training room and saying what is alleged. He said in his oral evidence that he was out on the road training others on the Monday. The Claimant then

said it might have been the Tuesday morning. Mr Cornelius again denied this, saying he would have had other work that week before taking on the Claimant's new group of trainees.

4.5 The Claimant says in his witness statement that he had further interactions with Mr Cornelius over those first few days of employment, which again Mr Cornelius denies, or denies that they happened at that time. The Claimant in his cross examination of Mr Cornelius also put to Mr Cornelius other things he said Mr Cornelius did in those first few days, such as helping with the issuing of uniform. Mr Cornelius said he had no recollection of these things.

4.6 This is a situation in which we are therefore assessing the Claimant's word against Mr Cornelius' word. Out of fairness to the Claimant when assessing this we have not taken account of and have given no weight to the interviews subsequently conducted by the Respondent with the Claimant's fellow trainees, Simon and Craig, because they have not given evidence under oath and the Claimant has not had the opportunity to cross examine them.

4.7 What we have therefore looked at is the most contemporaneous documents available and, in particular, the Claimant's written complaint found at [121]. Within that at paragraph 5 the Claimant wrote: *"I started work on Monday 25th November 2024 and took part in a very useful induction course presented by Colin who made us all very welcome. Following this we spent several days in the classrooms and along with my contemporaries passed the theory examinations within any problems by Thursday that week.*

6. There were six trainee drivers on my induction course and following our theory tests were divided into two groups of three and allocated to separate instructors.

7. Our group's instructor was called Paul who explained he was from London but had lived in South Wales for the past twenty years or so.

8. We had several group discussions in which Paul was surprised that I was of my age and was asked why I looked so young and fit." The Claimant then goes on to give more detail about those discussions.

4.8 That initial complaint by the Claimant therefore makes no reference at all to having met Mr Cornelius on 25 November 2024, let alone that Mr Cornelius walked into the classroom blurting out in a raised voice and a sarcastic manner what it is the Claimant alleges, before walking out again. Indeed, that initial complaint says there was an initial induction course, then classroom training before passing the theory examinations by the Thursday, with the trainees then being divided into two groups of three, and then allocated to their instructors, with the Claimant's group being Paul. It therefore does not suggest that the Claimant and Mr Cornelius were interacting until the Thursday following completion of the theory test; an account that accords with that of Mr Cornelius.

- 4.9 On the balance of probabilities we do not find that Mr Cornelius said to the Claimant on 25 November 2024 (or indeed 26 November 2024) what the Claimant alleges. We prefer the evidence of Mr Cornelius on that point, which accords with the Claimant's initial written complaint. We also considered it in general implausible that Mr Cornelius would, never having met the Claimant, walk into a classroom and say what it is that is alleged in a bewildered, indignant, sarcastic manner and in a raised voice, and then when the Claimant said he just wanted to drive buses again, turn around and walk out again.
- 4.10 As we have not found as a matter of fact that this event occurred the complaints of harassment related to age and direct age discrimination cannot succeed and are dismissed.

On 29 November 2025 did Paul Cornelius: Question the Claimant why he wanted to come out of retirement to start work again; Question the Claimant if he had spent all his pension; Said he did not agree with the Company policy of taking on drivers over the age of 65; and stated that other drivers had been working for many years, implying that they had been working as young men?

- 4.11 It is said these acts amount to harassment related to age and direct age discrimination, on the basis that it was less favourable treatment because of age. The Claimant here says he was treated worse than his fellow trainees Simon and Craig, because of age.
- 4.12 The Claimant in his witness statement says this was the first day that he and his fellow trainees were out on the road with Mr Cornelius. He says they had stopped for a changeover of drivers and a break, and that in general conversation Mr Cornelius: *"wanted to know why the Claimant had decided to come out of retirement, stating that he did not agree with employing trainees over 65 years of age, with the inference being that they were too old. The Claimant pointed out that First bus employed drivers in their seventies and eighties, to which he responded with a "yes but" they had been continuously employed as bus drivers from their younger years."*
- 4.13 Mr Cornelius in his statement says that he did his normal introduction with trainees, gave a brief introduction to himself and his work history, and asked the trainees to introduce themselves and give some background. He says he treated the Claimant no differently to any other trainee. He says the Claimant said he had previously driven buses, and said his age, and that he (Mr Cornelius) complimented the Claimant on how well he looked for his age, which was a positive comment that the Claimant seemed to take as a positive comment. He accepts that he asked the Claimant what had enticed him out of retirement, out of general interest and because it is nice to get to know people. Mr Cornelius says that the Claimant said he loved the thought and challenge of driving a bus again. Mr Cornelius says this was a positive conversation with no indication that the Claimant was offended. Mr Cornelius denies asking the Claimant if he had spent his pension. He denies saying that he disagreed with the Respondent's policy of taking

drivers on over the age of 65, and says that is not something he believes or would say. He says that the Respondent takes on plenty of drivers over the age of 65 and he had no issue training anyone over the age of 65 and it is his job to train people. He denies in his witness saying that other drivers had worked as drivers for many years. In cross examination he accepted he may have said something about drivers having long careers with the Respondent, but denied that it was in response to any conversation in which he had said he didn't agree with the Respondent taking on older people, again making the point that the Respondent does take on people of all ages.

- 4.14 The Claimant in his written complaint at the time said that they had several group discussions in which Mr Cornelius was surprised by the Claimant's age and asked why he looked so young and fit. The Claimant describes saying he did not know the answer, but it may be because he does not smoke and had given up alcohol about 40 years ago. He describes also mentioning that each week he raced in various park runs, and suggested that the others do the same, although there was no guarantee it would make them look young and healthy. He wrote that he remembers Mr Cornelius saying that there was no way he would do any of the mad things the Claimant did, and that the Claimant said to Mr Cornelius that he would gain enjoyment and satisfaction regardless of any improvement in looks. He wrote that Mr Cornelius questioned why the Claimant would want to come out of retirement, and that he had explained retirement was ok for those who want to take it easy, and he simply wanted to make a worthwhile contribution to First Bus and be an everyday ambassador for the company. He wrote that from the comments he formed the opinion that Mr Cornelius felt someone of the Claimant's age should not be working. He then wrote that in the group discussion they had explained their working careers, and why they wanted to take up bus driving as a career. He wrote that Mr Cornelius and the group seemed intrigued by his career history, and that he explained several times that earlier in his life he had enjoyed driving buses and now in later life was delighted to return to this worthwhile work. He wrote that Mr Cornelius had explained that he was semi-retired and on a special contract with the Respondent where Mr Cornelius would work for part of the year, and take 5 months off that he would spend in India.
- 4.15 In assessing this allegation it is again the Claimant's and Mr Cornelius' word against the other.
- 4.16 We accept, and indeed it is accepted by Mr Cornelius, that he asked the Claimant what had enticed him out of retirement. On the balance of probabilities, we do not find that Mr Cornelius asked the Claimant if he had spent all of his pension. That allegation does not feature in the Claimant's summary of the alleged conversation at paragraph 20 of his witness statement and also does not feature in his original written complaint. Although if we are wrong about that and it was said, then we would consider that it was nothing more than part of a friendly conversation in the group where people were getting to know each other and their back stories.

- 4.17 We do not find on the balance of probabilities that Mr Cornelius said that he did not agree with the company policy of taking on drivers over the age of 65. We also do not find on the balance of probabilities that, as part of a continuing conversation, the Claimant then said that First Bus employed drivers in their seventies and eighties with Mr Cornelius saying yes but they had been continuously employed as bus drivers from their younger years. Again, this allegation, does not feature in the Claimant's initial written complaint. It is a serious allegation and we consider if it had been said it would have been recorded by the Claimant. Instead, what the Claimant said in his initial written complaint was that he himself had formed the opinion that Mr Cornelius felt that someone of his age should not be working – which is very different from saying that Mr Cornelius had in effect directly said such things.
- 4.18 So returning to the complaint that Mr Cornelius asked the Claimant what had enticed him out of retirement, we do not find that this was said by Mr Cornelius with the purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The context is important. In our judgement, Mr Cornelius was engaging in introduction discussions with the trainees where they were all sharing something about themselves and their back stories. They had had a positive exchange about the Claimant looking good for his age, with the Claimant offering some advice from his perspective. Mr Cornelius in our judgement, was then asking the Claimant why he would want to come out of retirement just out of general interest. The Claimant accepts himself in his initial written complaint that the group including Mr Cornelius seemed intrigued about his professional history. Mr Cornelius himself was sharing some of his own life story and life choices he himself had made, such as taking on his seasonal contract so he could spend part of his year in India. Mr Cornelius was taking an interest and engaging in friendly conversation; he was not in our judgment seeking to offend the Claimant.
- 4.19 We also do not find that what Mr Cornelius said at the time had the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. We do not consider there is evidence of the Claimant feeling that way at the time; he made no immediate complaint. Furthermore, given the context of the conversation as found it is unlikely that someone in the Claimant's position would feel that way. Even if we are wrong about that we would find that it is unreasonable for the Claimant to feel that an intimidating, hostile, degrading, humiliating or offensive environment had been created by such a comment. As set out in the summary of the law; harassment is a high threshold and it is important not to cheapen the significance of the words that make up the statutory test. When set within the context of the conversation it is not reasonable to view what Mr Cornelius said as reaching that threshold. In terms of the equivalent direct age discrimination complaint, we also do not find that this question by Mr Cornelius amounted

to less favourable treatment that was to the Claimant's detriment because of age. It was a positive conversation; it was not less favourable treatment of the Claimant and was not to his detriment.

- 4.20 These complaints of harassment related to age and direct age discrimination are therefore not well founded and are dismissed.

On 29 November, did Paul Cornelius favour the other two trainees and give them more support than the Claimant?

- 4.21 The Claimant says that he noticed that Paul Cornelius was giving closer coaching to his fellow trainees, Craig and Simon, over him. He says that Mr Cornelius was particularly friendly with Craig who he seemed to have a particular rapport and shared connections with, but that even with Simon, that Simon got closer coaching compared to the Claimant.
- 4.22 The Claimant says that each time he took the driving seat he received no such help and support and that he was just told to continue driving until he was given a change of direction instruction.
- 4.23 Mr Cornelius denies this, stating that he did not favour any trainee above the Claimant, did not give them more support than the Claimant, and that if anything the Claimant probably received more feedback because the Claimant was struggling the most.
- 4.24 Again, therefore there are two differing versions of events from the Claimant and from Mr Cornelius.
- 4.25 If we look at the contemporaneous records, they show the Claimant receiving broadly the same amount of driving practice as the other two trainees.
- 4.26 Mr Cornelius' handwritten contemporaneous notes at [116-120] also show a similar degree of feedback being given to all three trainees, and indeed sometimes more to the Claimant because there are more concerns that Mr Cornelius is feeding back to the Claimant about. That is natural because whilst a trainer would of course comment on positive actions and progress; the aim of the training is to get the trainee up to the standard to get through the test; so there will be a need to focus on what might be going wrong or needs to be done differently or improved.
- 4.27 On the balance of probabilities, we do not find it established that Mr Cornelius was favouring other trainees and giving them more support than the Claimant. It may well be that Mr Cornelius had more general chit chat with Craig because of a rapport, but that is not in our judgement the same thing as giving Craig more support when it comes to training, nor something that would be related to age.
- 4.28 This complaint is not made out as a matter of fact, and therefore the complaints of harassment related to age and direct age discrimination are not well founded and are dismissed.

The Decision to Dismiss

- 4.29 The next complaint is about the decision to dismiss the Claimant, brought as a complaint of direct age discrimination, where the Claimant compares himself to the younger trainees, Simon and Craig. The Claimant sets out the background from his perspective in his witness statement, which includes Mr Cornelius telling him that Ms Llewellyn would be taking the group for a couple of days in the third week of training, because Mr Cornelius was on a course. The Claimant says that Mr Cornelius said that Ms Llewellyn would also be assessing the Claimant the following Friday. The Claimant sets out his account of that training with Ms Llewellyn (which he did not consider to be a first assessment), then working again with Mr Cornelius, before being told on 12 December that Ms Llewellyn may take him for an assessment that morning because he was holding up the training of other trainees. The Claimant sets out his belief that Ms Llewellyn then told him he was not being assessed but it would be as if he was on a test. He sets out his account of that, and where he disagrees with Ms Llewellyn's assessment of his driving. He sets out how she then told the Claimant that she was going to take over and drive back to the depot. He sets out how she then terminated his training/employment. Mr Cornelius in his witness statement sets out his own views on the Claimant's progress in training, and asserts that he asked Ms Llewellyn to do a first assessment of the Claimant when she was covering for Mr Cornelius when he was absent on the course, because of Mr Cornelius' concerns. Mr Cornelius says that in his view the Claimant's driving then did not improve and Ms Llewellyn then did the second assessment. Mr Cornelius explained in evidence that they generally tried to get assessments done by the same instructor for continuity reasons. Mr Cornelius says his understanding is that the Claimant's employment was terminated by Ms Llewellyn because the Claimant could not meet the expected standard but the decision and action was that of Ms Llewellyn.
- 4.30 The Claimant was therefore dismissed by Ffion Llewellyn on 12 December. We have given this complaint careful consideration because of the absence of Ms Llewellyn being called as a witness in this case, and because of the absence of contemporaneous records completed by her at the time other than the inadequate record found at [82]. Ms Llewellyn still works for the Respondent. Ms Kendrew said it was not thought necessary to call Ms Llewellyn as a witness.
- 4.31 But what the Claimant has to show is that there are facts from which we could decide, in the absence of any other explanation, that the Respondent dismissed the Claimant because of his age (in the sense of it being a significant influence on the decision to dismiss in the minds of those making the decisions). It is only at that point, that the burden shifts to the Respondent to consider if the Respondent has through cogent evidence established a non-discriminatory explanation for the treatment in question.

- 4.32 As Ms Kendrew points out, it is not enough to simply point to age, or to simply point to a difference in treatment, or to a hunch that age (or any other protected characteristic) is at play to establish that first primary case.
- 4.33 Here we do not find, even weighing in the Claimant's favour the points that Ms Llewellyn has not been called as a witness and the absence of contemporaneous documents from her, that he has shown us sufficient facts from which we could conclude that he was dismissed because of his age.
- 4.34 We say this because:
- 4.34.1 It has never been the Claimant's case that Ms Llewellyn herself was personally motivated to dismiss him because of his age. As the Respondent observes the Claimant spoke highly of Ms Llewellyn, said he respected her, and that he did not think her comments about his driving were because of his age;
- 4.34.2 Instead, what the Claimant suggests is that Ms Llewellyn was sent to do a job to get rid of him, and that his case is predicated on Mr Cornelius having influenced Ms Llewellyn to dismiss the Claimant because of age related reasons. Mr Cornelius denies this;
- 4.34.3 However, the main basis on which one might infer that Mr Cornelius had such a motivation, or took such a step, would be if we had found that Mr Cornelius had an age discriminatory attitude towards the Claimant. But here we have not upheld the Claimant's earlier complaints of harassment related to age and direct age discrimination. For example, if we had found that Mr Cornelius did hold the view that the Respondent should not employ people over 65; we can see how that might be the kind of thing that could show that primary case when it comes to dismissal to shift the burden over to the Respondent. However, we have not found that Mr Cornelius said those things or had such an attitude;
- 4.34.4 We cannot therefore see the basis on which it can be said that there is a prima facie argument that Ms Llewellyn was influenced to dismiss the Claimant by Mr Cornelius through Mr Cornelius being motivated by the Claimant's age;
- 4.34.5 On the balance of probabilities, we consider that the Claimant was put through the assessment process with Ms Llewellyn because of genuine concerns about his driving and the progress being made. We would accept that whether there was going to be a first assessment, and when, may well have not been explained well to the Claimant. But we do not consider that it is the case that there were no concerns about the Claimant's driving. The Claimant himself in his witness statement accepts that after a few days Mr Cornelius told him that he was struggling. Further at paragraph 52 he accepts that Mr Cornelius told the Claimant that Ms Llewellyn would be

assessing him, and would be making her decision the following Friday. It strikes us that it is therefore inevitable that the Claimant and Mr Cornelius must have had some kind of discussion on Friday 6 December about Mr Cornelius' concerns about the Claimant's driving and a lack of progress such that Mr Cornelius was going to get Ms Llewellyn to do an assessment. That also accords with the digital records which show the Claimant making slower progress compared with the other trainees; with the comments that Mr Cornelius has written in the daily reflections including on 6 December; and also Mr Cornelius' daily handwritten entries which for example on 6 December record serious concerns such as: "*No awareness /Doesn't see things / Drifting.*" We have looked through all the contemporaneous records and consider that they do show that the Claimant was exhibiting worrying incidents to Mr Cornelius, that the Claimant was not progressing as quickly as the others, and that whilst Mr Cornelius had concerns about Simon too, they were not at the same level as Mr Cornelius' concerns about the Claimant;

4.34.6 As such we do not consider this is a situation in which the Claimant was, for no good reason, put through an assessment process with Ms Llewellyn which might then indicate an ulterior motive at play and assist with shifting the burden of proof. Instead, we consider that there was good, legitimate reason. The Claimant was not in an identical situation to Simon and Craig, and he was not being unfairly singled out;

4.34.7 We also take account of the fact that when it comes to the assessment process with Ms Llewellyn the Claimant himself does not dispute that events happened; what he disputes is Ms Llewellyn's evaluation of their seriousness. But he himself ultimately accepts that, for example, Ms Llewellyn shouted "stop" at him at one point, and also that ultimately she took over the drive and drove back to the depot;

4.34.8 As a result, we are not satisfied that the Claimant has discharged that initial burden of proof on him to show an arguable case of his dismissal being age discrimination and we therefore find the burden does not shift to the Respondent. The complaint of direct age discrimination therefore fails at this first stage.

4.35 For the Respondent's benefit we would, however, add that we would not encourage respondents to put themselves in the situation they have here, through not calling the actual decision maker in question.

Did the Claimant do a protected act in submitting a complaint about age related matters referencing the Equality Act in January 2025? Did the Respondent procrastinate and delay in dealing with the Claimant's complaint because the Respondent believed the Claimant had done or might do protected act?

- 4.36 It is accepted that the Claimant's complaint of 27 January 2025 is a protected act as is the Claimant's contact with Acas.
- 4.37 We do not, however, find that the Respondent procrastinated and deliberately delayed in dealing with the Claimant's complaint because he did a protected act or because they believed he might file an employment tribunal complaint.
- 4.38 Here the premise of the Claimant's complaint is that the Respondent deliberately delayed progressing his complaint to try to time the Claimant out from pursuing a tribunal claim. We do not find that Mr Chinnock, who dealt with the Claimant's complaint, did so. Mr Chinnock is an Operations Manager based at the Respondent's Bristol Lawrence Hill depot.
- 4.39 The initial period up to 12 February 2025 was attributable to Amanda Thompson, the Training and Recruitment Manager, undertaking some initial investigations and also liaising with HR for advice on how to deal with the complaint. The Respondent was deciding how best to take the complaint forward, but it was looking to take the complaint forward. The Respondent was not looking to ignore it. The decision was then made it should be considered by an independent operations manager.
- 4.40 Mr Chinnock was first asked to take the complaint on 12 February. He says he received the documents on 14 February but had not read them by the time he spoke to the Claimant on 19 February. The Claimant disputes this saying that Mr Chinnock said he had not received them by that point. It seems to us it is most likely that there was a misunderstanding between Mr Chinnock and the Claimant on that point, but in any event do not consider that Mr Chinnock was deliberately procrastinating or delaying to time the Claimant out. Mr Chinnock was juggling this alongside other work commitments and was heading towards annual leave. But Mr Chinnock was progressing things in a sense that he was arranging to speak to the Claimant on 19 February.
- 4.41 The Claimant then left the phone call anticipating a further meeting with Mr Chinnock. That did not happen. Mr Chinnock explained in evidence he did not think he ultimately needed the meeting to make a decision. That may not have handled the Claimant's expectations well, but it is not evidence of delay.
- 4.42 Mr Chinnock had explained to the Claimant that he was due to go on holiday and was unlikely to provide his outcome until the week commencing 10 March. Mr Chinnock then was on holiday from 24 February to 3 March.
- 4.43 On 7 March Mr Chinnock sent the Claimant an update and said he hoped to provide an outcome by the end of the week.
- 4.44 On 13 March Mr Chinnock emailed the Claimant to say his investigations were taking longer than anticipated and he sought to arrange a call the following week to give his conclusions. That conversation did then take

place on 18 March. In the meantime, Mr Chinnock was undertaking further investigations with Ms Thompson and the Bristol training team.

- 4.45 We do not consider that there was within this context deliberate delay by Mr Chinnock. It was in our judgement, simply the case of Mr Chinnock juggling this complaint alongside other commitments. We certainly cannot see any basis on which to say Mr Chinnock was seeking deliberately to time the Claimant out or that he knew about the actual time limit and was manipulating it into how he was dealing with the Claimant. There is nothing in the internal emails between Mr Chinnock and HR about this, and indeed HR are generally enquiring about progress with the complaint; not stalling it. Compared to the many cases we hear as an industrial tribunal about the handling of appeals and grievances; this also is not a case that involves anything we would really recognise as egregious delay. The complaint of victimisation is not well founded and is dismissed
- 4.46 We would add by way of a final observation, that we would encourage the Respondent, who is a large organisation, to reflect in general about their employment practices in this area. The Claimant, on the face of it, was dismissed with no paperwork. There was no offer of a right of appeal. Despite it only being for a short period of time, the Claimant was their employee and yet his complaint was treated as a third party complaint. It was not a process that, if relevant, would meet the requirements of the Acas Code. In particular, there was no process that involved a right of appeal with access to all the information that Mr Chinnock had. To Mr Chinnock's credit he recognised this, and said he thought they would reflect on that. He was, as we accept, following what he was told by HR. We hope that the Respondent will undertake that reflection; the Claimant was their employee if only for a short time.

Approved by:
Employment Judge R Harfield
13 February 2026

JUDGMENT SENT TO THE PARTIES
ON

23 February 2026

Katie Dickson

FOR THE TRIBUNAL OFFICE