



EMPLOYMENT TRIBUNALS

Claimant: Mr N Byrom

Respondent: Brauer Ltd

Heard at: Cambridge

On: 3 - 5 December 2025 and 9 January 2026 (in chambers).

Before: Employment Judge E Davey
Ms D Clarke
Mrs C Smith

Representation

Claimant: In person

Respondent: Mr E Snook, Finance and HR Manager

RESERVED JUDGMENT

1. The complaints of direct race discrimination are not well founded and are dismissed.
2. The complaints of direct race discrimination, other than those numbered 1.1.8 and 1.1.9 in the list of issues at paragraph 10 of these reasons fail on the further ground they were not presented within the applicable time limit and it is not just and equitable to extend time.
3. The complaint of harassment related to race was not presented within the applicable time limit and it is not just and equitable to extend time. The complaint of harassment related to race is therefore dismissed.

REASONS

Introduction

1. The respondent is a manufacturer of heavy-duty industrial equipment employing approximately 26 employees.

2. The claimant was an external sales manager/representative at the respondent from 20 April 2023 until his dismissal on 25 July 2023.

Preliminary and procedural matters

3. There have been three case management preliminary hearings (CMPH) on 10 June 2024, 18 March 2025 and 24 September 2025, one of which (18 March 2025) was listed as a final hearing and converted to a CMPH as the respondent, and to a lesser extent, the claimant had not complied with case management orders.
4. At the commencement of this hearing, the respondent presented the Tribunal with eight bundles of documents for inspection. This was in response to the respondent disclosing redacted documents. The claimant was unhappy about this and wanted to review the unredacted documents. Despite considerable case management and guidance about disclosure obligations, this issue was still live at the hearing on 18 March 2025. Employment Judge Brown took the unusual step of ordering the respondent to bring the disputed redacted documents in both redacted and unredacted format for the Tribunal's inspection. There was a further case management hearing on 24 September 2025 and Employment Judge Tynan's order suggested the redacted evidence was limited to a single document. Practically, the eight bundles of documents (four redacted and four apparently identical unredacted bundles) numbering hundreds of pages may have added two to three hours to the hearing timetable. We explained that there was not time to review all these documents and whilst the claimant was not opposed to us doing this, we had concerns due to the fact tribunal hearings are open hearings. We explained our concerns to the parties and we are grateful that the parties agreed these documents (either redacted or otherwise) did not need to be incorporated into the trial bundle so the eight bundles were handed back to the respondent without review.
5. The respondent made post hearing submissions on 7 and 9 December 2025, about the variation of Employment Judge Brown's order dated 18 March 2025, that an email dated 10 July 2023 from the claimant to Mr Jabri, which it submitted was fraudulent, would not be included in the bundle. We varied that order because the claimant referenced this email in oral evidence in the context of strained relationships. We considered that the email may have been relevant to the issues so ordered the claimant to provide it. The respondent's post hearing application referenced the lack of opportunity to make submissions about that variation. The respondent raised concerns about the inclusion of this email at the point of the discussion about its inclusion (around 4pm on day 1). We continued to hear evidence until 4.23pm. The email was supplied the following day before we started to hear evidence at 11.11am. The respondent made no further applications nor presented any submissions between 4.23pm (3 December

2025) and 11.11am (4 December 2025) or at any other time during the three day hearing, including in its written submissions presented to the Tribunal on 5 December 2025.

6. A Tribunal can make, vary and/or revoke an order at any time if it is in the interests of justice to do so. We considered that the inclusion of this email may have been relevant to the issues, so we varied the order dated 18 March 2025 and we were entitled to do so. The respondent's position about this email was clear from earlier correspondence. We note that despite numerous assertions about the authenticity of the email, no evidence, other than submissions that the document was fraudulent, was ever provided by the respondent to support its position. It is not the tribunal's role to carry out a forensic investigation about the authenticity of a document simply because a party asserts it is fraudulent, it would be for that party to provide evidence to support its assertion and for the tribunal to then make findings about it, if relevant to the issues. We will return to our findings about this email in our 'findings of fact' section below.

Evidence and witnesses

7. We heard evidence from the following witnesses who also provided witness statements:

For the claimant

- a. Mr Nathan Byrom (claimant)

For the respondent

- b. Mr Paul Tuffs (formally the Sales and Operations Manager and now the Managing Director);
 - c. Mr Edward Snook (Finance and HR Manager)
 - d. Mr Adam Wiltshire (formally the External Sales Representative – South)
 - e. Ms Lola Hales (Finance and HR Assistant).
8. Ms April Scott (Internal Sales Coordinator) also provided a witness statement though as Ms Scott did not attend to give evidence, we explained to the parties that we could only attach limited weight to the statement.
 9. We also had an agreed hearing bundle totalling 266 pages (including witness statements). Following an order on day one, the parties provided a further 15 pages of documents relevant to the issues.

The issues

10. The issues as identified at earlier case management hearings were confirmed at the start of this hearing with additional issues being inserted about time limits which were discussed with the parties at the commencement of this hearing. For brevity, we have not included issues relevant to remedy.

1. Direct Race Discrimination (Equality Act 2010, s13)

The claimant identifies as mixed black African and white racial origin.

1.1 Did the respondent do the following things:

- 1.1.1 Mr Snook informed the claimant in April 2023 that it was not an option for him to receive a car allowance in lieu of him having the use of a pool car to perform his role; his comparator is Mr Anderton.
- 1.1.2 Provided the claimant with a laptop that was broken and not fit for purpose and thereafter replaced it with second-hand kit; his comparator is Mr Anderton.
- 1.1.3 Paid the claimant at a lower salary than it paid Mr Anderton; his comparator is Mr Anderton.
- 1.1.4 Ignored the claimant in or around June 2023 when he emailed his manager Mr Tuffs, asking if he could raise concerns; his comparator is a hypothetical comparator of a British white employee.
- 1.1.5 On 24 July 2023, notified the claimant whilst on annual leave that he was required to attend a probation review meeting the following day; his comparator is a hypothetical comparator of a British white employee.
- 1.1.6 Failed to respond to the claimant's email of 24 July 2023 in which he advised Mr Jabri that he was experiencing anxiety and was unfit to attend the probation review meeting the following day; his comparator is a hypothetical comparator of a British white employee.
- 1.1.7 Terminated his employment on 25 July 2023; his comparator is a hypothetical comparator of a British white employee.
- 1.1.8 Rejected his appeal against his dismissal; his comparator is a hypothetical comparator of a British white employee.
- 1.1.9 Did not respond to his grievance(s) that he had been discriminated against; his comparator is a hypothetical comparator of a British white employee.

1.2 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 is nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated less favourable than someone else would have been treated.

The claimant says he was treated less favourably than Mr Anderton for the issues as set out above (1.1.1-1.1.3), alternatively, he was treated less favourably than a hypothetical white British employee comparator (1.1.4 -1.1.9) in the same or not materially different circumstances.

1.3 If so, was it because of race?

2. Harassment related to race (Equality Act 2010, s26)

2.1 Did the respondent do the following things:

2.2 On or around Friday 9 June 2023, did April Scott, Sales, say to the claimant words along the lines of, "isn't that what you lot eat", when it was suggested that West Indian food was to be brought in for staff.

2.3 If so, was that unwanted conduct?

2.4 Did it relate to race?

2.5 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?

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

3. Time limits

3.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 2 August 2023 may not have been brought in time.

3.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

3.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

3.2.2 If not, was there conduct extending over a period?

3.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

3.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

3.2.4.1 Why were the complaints not made to the Tribunal in time?

3.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Findings of fact

11. The relevant facts are set out below. Most of the facts are not in dispute. Where the Tribunal has had to resolve any relevant conflict of evidence, we indicate how we have done so at the material point.
12. The respondent is a manufacturer of heavy-duty industrial wheels and castors, air amplifiers, toggles clamps and other industrial goods. It is a small company that employs approximately 26 employees and is part of a group of three companies (employing approximately 42 people across the group). At the time of the claimant's employment, the managing director was Mr Mark Jabri; the sales and operations manager was Mr Paul Tuffs (now the managing director) and the finance and HR manager was (and still is) Mr Edward Snook. There is also an engineering manager.
13. The claimant was part of the sales team which includes an internal team and two external regional sales managers/representatives, of which he was one. Mr Kevin Anderton was employed as the regional sales manager north and the claimant was employed as the regional sales manager/representative south. There was a dispute about the title (and nature) of the claimant's role which we resolve later in this decision. Prior to the claimant joining the respondent, Mr Adam Wiltshire was employed as regional sales representative south. He left before the claimant commenced employment and returned following the claimant's dismissal.
14. We heard from Mr Snook that Mr Jabri sadly passed away on 6 June 2025. We offer our condolences.

Contract, role and salary

15. On or around 15 March 2023, the claimant applied for the role of regional sales manager. The role was advertised as Regional Sales Manager/Engineer (South) at £30,000-£45,000 per year and in another advert at £38,000-£40,000 per year. The claimant was interviewed on 4 April 2023 by Mr Jabri and Mr Tuffs.
16. By an email dated 13 April 2023, Mr Tuffs wrote to the claimant, part of the email states:

"You interviewed really well and as a result, we would like to offer you the role of Regional Sales Manager (South), here at Brauer Ltd.

Due to your level of experience in our industry we would like to start you on a salary of £32,000 with this being monitored closely and reviewed after 3 months and again at 6 months."
17. The claimant responded to Mr Tuffs on the same day and part of the email states:

"Yes, I will gladly accept the offer. I thought the company profile and products were perfect for me.

I appreciate there is a learning curve to meet the position's full potential, and so I am looking forward to getting stuck in and meeting the goals ahead."

18. On the same day, Mr Tuffs emailed Mr Jabri and stated:

“Nathan has accepted the job at £32k per annum, as discussed with yourself.

I’m just waiting for him to confirm address etc.

Will you be able to help me with his contract? I suppose we can use Kevin’s but alter the required details.”

19. The claimant told us he was unhappy about the lower salary and had a conversation with Mr Jabri about this in the first month of employment but did not want to ‘rock the boat’ as a new employee so never formally raised this as a concern.

20. By an email dated 14 April 2023, the claimant was sent a contract that detailed the role as ‘regional sales technical representative’ albeit the email subject describes the role as Regional Sales Manager/Engineer (South). The contract included an appendix entitled “Duties and responsibilities of the position” that are the same as the “Duties and Responsibilities of the position” section in Mr Anderton’s contract.

21. Mr Tuffs told us Mr Jabri wrote both the claimant’s and Mr Anderton’s contracts of employment.

22. The claimant told us and we accepted that he did not notice the title of the role offered (manager) had been changed (to representative) on signing which he did on 17 April 2023 until he received the disclosure documents from the respondent.

23. On 19 April, Mr Tuffs sent an email to all staff stating “We have a new starter tomorrow who will be our new Southern Sales rep/manager. His name is Nathan Byrom.”

24. We preferred the claimant’s evidence that the role he was recruited to and offered was for ‘Regional Sales Manager South’ rather than ‘Regional Sales Representative South’ as the claimant’s position was supported by the written correspondence (which following an order of the Tribunal, was only disclosed by the respondent on day 2 of this hearing).

Commencement of employment

25. The claimant started working at the respondent on 20 April 2023.

26. During his first week of employment, the claimant met Mr Anderton at the respondent’s office and they discussed sales and experience. The claimant told us this is when he learned the reduced pay offer was not about his lack of experience and concluded the reduced salary was more about what the respondent could get away with. He further opined that the respondent’s products were not complicated, that he had experience with machinery and

that he had field sales experience and so did not consider Mr Anderton's additional experience (in terms of years) to be significant.

27. Mr Anderton's employment at the respondent commenced on 5 July 2022 on a salary of £42,000, which increased to £45,000 after three months following a positive review. Mr Anderton's salary expectation was £45,000. Mr Anderton's 30+ years sales experience was in engineering. Mr Anderton was recruited with KPIs which included goals to win back customer accounts from AUT (a former employer of Mr Anderton and one of the respondent's competitors). Mr Tuffs told us the reason for Mr Anderton's higher salary was because of these minimum targets which did not apply to either the claimant or Mr Wiltshire.
28. Mr Snook told us that Mr Anderton left the respondent at short notice on 28 April 2023. Mr Anderton's role was not filled during the claimant's employment.
29. There was no Regional Sales Manager South in post when the claimant commenced his role. Mr Adam Wiltshire, who was employed by the respondent from 22 March 2021 in the internal sales team, was promoted internally to become Regional Sales Representative (South) on 1 March 2022 on a salary of £27,000, which increased to £27,800. Prior to this, Mr Wiltshire was a Technical Sales Coordinator within the internal sales team at the respondent. His role involved providing customers with quotes, processing orders and assisting with product related queries. Mr Wiltshire told us this was his first field sales role and he had no experience of engineering. Mr Wiltshire left the respondent on 22 September 2022 and has since returned to the respondent.
30. The claimant told us that following Mr Anderton's departure, he was instructed by Mr Jabri to take on Mr Anderton's duties. He told us it was possible to do this as it was a sales role, he had the experience, he did not need additional training and very practically, there was no one else to undertake this role following Mr Anderton's departure.
31. The Tribunal preferred the claimant's evidence that he covered Mr Anderton's role following Mr Anderton's departure from the company because it was supported by three emails disclosed on day two of the hearing. There is a (redacted) email dated 4 May 2023, from a customer of the respondent who had been in correspondence with Mr Anderton prior to his departure, the contents of this email are not relevant to the issues though confirm the claimant was interacting with Mr Anderton's customers. By an email sent from Mr Jabri to the claimant on 5 May 2023, he stated "Attached is the sales strategy north sent at the beginning of the FY 2022-2023". The claimant responded on the same day stating, "I'll start interacting with the customer list next week and get some visits booked". By an email sent from Mr Tuffs to the claimant on 16 May 2023, he stated, "Did you take Kevin's

phone with you yesterday? If it rings, could you answer it. I will need this back once you've finished getting the numbers off it".

32. We noted that throughout his employment, the claimant used the term 'manager' in his email signature and this was never challenged by the respondent. In oral evidence, Mr Tuffs stated that the job title of manager/representative was immaterial albeit we note his witness statement refers to the role being advertised and the claimant being recruited as a 'sales representative'. We concluded that Mr Tuffs' change of position followed the late disclosure of the documents referred to above.
33. We have already found that the role was advertised and offered to the claimant as a management role. Despite the contract detailing the claimant as a 'representative' we concluded that irrespective of his job title, the claimant was expected to perform a management role as supported by the above factors.

Training

34. It was common ground that the claimant's training was limited to the induction only. The claimant's position was that that was all that was required for the role. Mr Tuffs told us there was technical training that lasted for one hour and further on the ground training. We noted there was nothing in the documentary evidence that supports that the claimant was offered or expected to undertake anything other than an induction and related training to familiarise himself with the respondent's systems.

The car

35. The claimant's evidence was that during the interview for the role, he asked if he could have a car allowance instead of a company car and was told by Mr Jabri that should not be a problem and that Mr Anderton also had a car allowance. Mr Tuffs told us he could not recall this conversation.
36. The claimant conceded his contract of employment does not provide for a car allowance and instead details he would be provided with a company car. He told us he should have checked the wording of a contract before signing it though this was the first time what he was told in interview was different to the contract and this has been a lesson for him.
37. The claimant's evidence was that around mid-May, he was told by Mr Tuffs he could now start to work from home, having been office based until this time, so he asked about the car allowance and was told a car allowance was never agreed and not authorised by HR. The Claimant was given a 2017 Toyota Prius that had been used by Mr Wiltshire. Mr Tuffs' evidence was that Mr Anderton was given a car allowance because the company only had one pool car (the Prius) that was already assigned to Mr Wiltshire when Mr Anderton commenced employment. When asked whether he would have

taken the role without the car allowance, he told us “possibly, I would have looked for a higher salary. I did like the feel of the company initially.”

38. We preferred the evidence of the claimant. It follows that as he had just bought a new car, he would have asked about the car allowance and we accept he would have reconsidered the salary offer without it. We also accept why he did not read the contract and this being a lesson for him. The respondent’s evidence was limited to Mr Tuffs stating he ‘did not recall’ whether the issue of the car allowance was discussed at interview. Given his lack of recollection, we found the claimant’s evidence to be more reliable. We also accepted the conversation about not having a car allowance was with Mr Tuffs, the claimant’s line manager, and not Mr Snook (as stated in the issues).

The laptop

39. It is common ground the claimant was office based until around mid-May, following which, his work was a combination of being home based and out in the field visiting customers and/or potential customers.
40. On 24 May 2023, Mr Tuffs corresponded with Mr Main asking “Any ideas when Nathan will be getting a laptop?” Mr Main responded on the same day stating “Now that it a question. I was under the impression I was going to be using Marks’ (sic) old laptop for him but I’m not actually sure. He might have to have my old one when the parcellforce website is back working again instead though.” Mr Tuffs responded by saying “Is it worth speaking to Mark about it? I can do it tomorrow if he needs something”. On 1 June, Mr Jabri emailed Mr Main and told him “Can you ensure that Nathan has a LAPTOP by close of play today”. Mr Main responded to say his is still in use and should he let him have Kevin’s old laptop.
41. The claimant was eventually provided with Mr Jabri’s old laptop. The claimant’s position was this laptop was not fit for purpose and beyond repair. The claimant conceded in his oral evidence that the laptop worked though the casing was damaged and he had to prop up the lid when in use, he further opined that it did not look good for him or the company, particularly in the context of selling highly professional products. The claimant went on to say that it was not about having a new laptop, it was about how practical it was to use a laptop with a broken lid.
42. Mr Anderton was provided with a new laptop on commencement of employment. We were told this was because there were no spare laptops at the time. Mr Tuffs’ laptop was around 11 years old when it was replaced with Mr Anderton’s laptop.

43. The claimant conceded he was unaware that Mr Tuffs, who occupied a higher position than Mr Anderton, had been issued with a second-hand laptop.
44. Mr Snook's evidence was the claimant was issued with two laptops during his employment. The claimant could not recall if this was the case. In an email dated 21 June 2023, Mr Main asked the claimant to log in to his new laptop. Given Mr Jabri's order to provide the claimant with a laptop on 1 June 2023, we concluded the claimant was issued with a second laptop not long after he was issued with a laptop in early June.
45. The respondent's position was that it only purchased new equipment if it had no spare used equipment and issuing Mr Anderton with a new laptop was the exception rather than the rule. We accepted this evidence as this is supported by the correspondence and the fact the sales and operations manager was issued with two used laptops in succession.
46. The respondent's position was that the laptop was returned damaged. We note the laptop was already damaged, conceded by the respondent and given that fact, was vulnerable to further damage. We accepted that any further deterioration with the laptop was because of general wear and tear and not through carelessness.

The claimant's concerns

47. At some time in June 2023, the claimant emailed Mr Tuffs asking to raise concerns and Mr Tuffs did not respond to this email. This email was not in the bundle but is not in dispute. Mr Tuffs' evidence was that at the time of this email, he received about one hundred emails a day and had recently undergone treatment for back issues that kept him offsite and as the claimant did not chase for a response, the email was overlooked. In the context of a busy inbox and health issues, we accepted Mr Tuffs' lack of response was a genuine oversight.

West Indian Food

48. The claimant's evidence was that in early June 2023, Mr Jabri came into the sales office and stated he would get a West Indian takeaway the following day. The claimant believed this suggestion for West Indian food was made by Mr Jabri in the context of him (the claimant) raising concerns about strained relationships with the sales team, with Mr Tuffs and Ms Scott in particular. It was common ground that relationships were strained by this time. The claimant told us that following Mr Jabri informing the sales team of his plan, Mr Tuffs asked what West Indian food was and Ms Scott said in response and referring to the claimant "Isn't that what you lot eat?" and smirked.

49. In his evidence, the claimant told us he personally uses the term Caribbean to describe the region and its culture though he was not offended with others using the term West Indian. For consistency, we have used the term West Indian and 'West Indian food comment' to describe the issue.
50. The claimant told us that he was "rattled" by the comment, so he went to Mr Jabri's office and said "I asked if he heard what April said. He didn't reply. I expanded on what she said. He then said I shouldn't let it get to me. He downplayed it". Ms April Scott did not attend the Tribunal though did provide a witness statement where she denied making the comment or any similar comment. As the claimant was unable to put this to her under oath, we can only attach limited weight to her position.
51. The claimant told us the food was ordered and delivered the following day. The respondent confirmed this was on 9 June 2023. The claimant ate the food in the downstairs spare office with Mr Jabri, Ms Scott, Ms Hayles, Mr Snook and other staff members. Mr Tuffs was not there. It was common ground the meal passed without incident and everybody was pleasant to each other.
52. The claimant told us that as he was the "new boy at the facility" he decided not to take the West Indian food comment further nor raise this with HR because "if I did it at the time, I would have been placing a target on myself".
53. The claimant did raise the West Indian food comment as part of his grievance post dismissal. We will return to this in our findings following the informal grievance investigation.

Change of management and performance concerns

54. On 16 June 2023, the claimant emailed Mr Jabri requesting a one to one meeting to discuss equipment and sales management, among other things. Following this meeting, where the claimant discussed ongoing friction between him and the sales team, Mr Jabri took over line management from Mr Tuffs. This decision was supported by Mr Tuffs.
55. On 28 June 2023, Mr Tuffs emailed Mr Jabri complaining that the claimant was not contributing to the sales team and instead, expected the sales team to do his work. He ended the email by stating "Personally, I feel like he is not taking any responsibility and in return just blames the internal sales team, which is really starting to annoy me". The claimant's evidence was that the sales team was becoming increasingly hostile, would ignore him and "speak in code" when he was present.
56. Mr Tuffs told us that by this time, the respondent had concerns about the claimant's performance and that the claimant's attitude had changed, that he had been late for work and left early and had worn headphones whilst working. He told us he had difficulty talking to the claimant so passed the

matter onto Mr Jabri. The claimant's evidence was that he only had one earphone in so could engage with the team and was late once or twice though this was because he lived 90 minutes away and in any event, he "was employed to do field sales".

Review meeting

57. On 10 July 2023 at 09.14, the claimant sent Mr Jabri an email, part of which states:

"I have had a lot of thought about my role at Brauer and how things have been progressing. I'll send over a summary and potential options this morning.

Once you have had time to reflect on what I have to say, I will accept your decision."

58. At 09.37 Mr Main sends Mr Jabri an email stating that it did not look like the claimant had connected since 28 June.

59. At 12.06, the claimant sent Mr Jabri a detailed email from his personal account. The email raises some of the claimant's concerns though is largely a critique of the respondent's approach to sales.

60. The respondent disputed this email was genuine, arguing it had checked Mr Jabri's email account and carried out an audit to see if this email was deleted and found nothing. The respondent did not provide any evidence to support this position. We found it was more likely than not that the email was genuine as it fitted in with the sequence of events though given the content (which was largely a critique of the respondent's approach to sales) was not determinative to the issues or our findings and if anything, suggested the claimant was over confident about his position at the Respondent, particularly given the undisputed friction in the sales team.

61. At 14.27, Mr Jabri invited the claimant to an 'review meeting' the following day 10am. The claimant accepted the invitation. Mr Snook told us Mr Jabri discussed the meeting with him afterwards and discussed concerns about the claimant's performance though had wanted to keep it informal so there were no minutes.

The email exchange between Ms Scott and the claimant

62. There was an email exchange between the claimant and Ms Scott that started at 14.39 on 18 July 2023. Ms Scott asked the claimant to review a customer request for a quote. At 15.22, the claimant replied and said he is assuming that Ms Scott will be quoted for this. At 15.26, Ms Scott responded and stated that internal sales have been told to send the claimant all technical enquiries. At 16.11 the claimant responded and asked if Ms Scott would mind taking him through "all the steps for putting a quote on Sage, please?". At 16.55, Ms Scott responded stating she thought he "had already been trained on processing estimates". At 17.09, the claimant responded to

say he had not been trained and he can ask Gareth when he is next in. He goes on to say he is in Peterborough the next day so will only have tethered internet access, that he is conscious they are losing time and that it would be great to know that Ms Scott will handle it.

63. The following day at 10.09, Ms Scott sends a long email stating she recalled taking the claimant through placing an estimate when he first started and goes on to provide a step by step guide with screenshots setting out each stage with underlined instructions. She goes on to say:

"I will least (sic) this estimate to yourself to place, following on from instructions given to internal sales and believe this will be good practice/additional training for yourself. Please do print this email for future reference on how to process estimates".

64. At 10.27, the claimant responded:

"April,

I don't know why you insist on being awkward and condescending?

I'm assuming that you can check the estimates. You inputted the only one that will have my name against it. You've been massively unhelpful (even before I gave you 'friendly feedback') and you you'll clearly use any opportunity to grind your axe.

Is all I've done is ask for some professional help.

As I've said April, I'm on the road today and I don't have access to Sage. Do you think that it's appropriate to leave an urgent request for yet another day? That's rhetorical by the way.

Your attitude is terrible and you're clearly lazy, whilst willing to fire shots rather than get orders across the line.

Kind regards"

65. At 10.32, Ms Scott forwarded this email to Mr Jabri stating "Please can you deal with the email below as a matter of urgency. I am unhappy with the comments made below".

66. Mr Jabri must have referred the matter to the claimant (albeit whether this was via a call or an email (not included in the bundle) is not clear because the claimant sent him an email at 11.28 acknowledging frustration with communicating with Ms Scott, stating he had asked for a call back after the meeting last week and was not surprised this did not happen and that the sales team were toxic, often criticising other senior staff members and suggesting those senior staff members were only in the role because of their links to board members. He then goes on to ask for annual leave to complete a house move the following week.

67. At 16.04, Mr Jabri emailed Mr Snook and stated that having gone through the email chain that he "has concerns" and that "Without confirming that Nathan's response is acceptable, I do feel that April has a role to play in this unacceptable outcome".

68. Mr Snook responded at 08.48 on 20 July. Part of the email states:

“There is certainly concerns on both parties and animosity that needs to be quashed. I feel at this stage an internal sales meeting between both parties and Paul would hopefully quash any ongoing issues, with understanding things could be taken further against each party if the attitude does not improve. However, this changes if April does submit a formal complaint against Nathan.”

69. We heard and accepted Mr Snook and Mr Jabri then discussed the email exchange between the claimant and Ms Scott by telephone. We heard Mr Snook was working from home that day (20 July) due to an operation on his toe. Mr Snook told us that during that call Mr Jabri stated he wanted to terminate the claimant’s probation due to unprofessional behaviour. Mr Snook told us it was Mr Jabri’s decision to terminate the claimant’s employment. He went on to say that the decision was to end probation due to poor performance and because of the email to Ms Scott and it was not a disciplinary matter.

70. On 21 July at 15.53, Mr Jabri emailed Mr Snook examples of potential gross misconduct and asked if the claimant’s email could be considered to be harassment or discrimination against another employee? Mr Snook responded at 20.45. Part of this email states:

“I have had a thought this evening, that I don't think we need to go down this route of disciplinary as we discussed on the phone yesterday; Nathan clearly isn't fitting into the sales team and as such I believe the differences between Nathan and Paul/April would be enough not to continue with his probationary period, he has less than 2 years service therefore this would be reason enough.

I would suggest only going down the below route if the intention is not to let Nathan leave the business but to provide either a written warning or a final written warning for future conduct. If this is the case I think there is enough to say that his emails were misconduct, however I would also consider if we went this path the minimum requirement would be a verbal warning also for April. This would remove any doubt of discrimination within the business.”

71. Mr Snook told us his use of the term ‘remove any discrimination’ was in the context of general discrimination and not with reference to a protected characteristic. We accepted this as it is clearly in response to Mr Jabri’s email referencing potential harassment and discrimination towards Ms Scott.

The probation review meeting

72. At 17.10 on 24 July, Mr Jabri sent an email and letter to the claimant’s personal email account inviting him to a probationary meeting the following day at 11.00hrs. The letter states:

“Dear Nathan

Probationary performance review meeting

I am writing to invite you to a “Probationary Performance Review Meeting” on Tuesday 25th July 2023 at 11am in the Managing Director's office.

The meeting will be held by myself (Mark Jabri), with Mr Edward Snook taking notes.

The aim of the "Probationary Performance Review Meeting" will be to discuss your performance with a consideration to terminating your contract of employment due to the following issue:

Email communication sent to April Scott on the 19th July 2023 @ 10:27am.

You have the right to bring a colleague to the meeting should you wish.

Yours sincerely"

73. On the same day at 22.55, the claimant emailed Mr Jabri and Mr Snook and stated:

"Hi Mark, Ed,

Thank you for the invite.

I won't be able to make it tomorrow. I am feeling understandably stressed, therefore, I will be consulting my doctor and taking advice from them.

Ed, please can you put me down as sick. I will be in touch daily until I have received an appointment.

Kind regards"

74. It was common ground that the email inviting the claimant to the probation meeting was sent on a day he had booked as annual leave. The respondent's position was that they waited until after the working day ended and sent the email at 17.10. The rationale being that the claimant would not be on annual leave at that time. The claimant's position was that he was on annual leave. Either way, we found that the claimant was not working at 17.10 irrespective of whether he was still on leave or not, it was still non-working time. We noted that the invite required the claimant to attend the probation meeting at 11.00hrs the following day, so two working hours after he received the invite.

75. On 25 July, the claimant sent an email asking for a copy of the company handbook. Mr Snook provided this at 11.09.

Termination of employment

76. The probationary review meeting proceeded in the claimant's absence inasmuch as Mr Jabri and Mr Snook met briefly to see if the claimant would attend before Mr Snook returned to his office. At 11.49, Mr Jabri sent the claimant an email and letter. The relevant part of the letter stated:

"I am writing to advise that due to not attending your "Probationary Review Meeting" on the 25th July 2023, the meeting went ahead in your absence.

Due to the communication sent to April Scott on the 19th July 2023 at 10:27am, in which other colleagues were also cc'd in. We find the content of this email to be unacceptable."

77. The letter goes on to say

“You have the right to appeal against my decision. Should you wish to do so, please send in writing by Tuesday 1 August 2023 to Mr Edward Snook either by email or at the address shown above.”

78. The email correspondence to Ms Scott was the only reason cited for termination in the letter. When asked why the meeting was not postponed, Mr Snook told us that whilst it was considered, the respondent did not see the point as a decision had already been taken to terminate the claimant's employment. The respondent also argued, post dismissal, that the claimant did not provide a medical certificate. However, we accept the claimant's position that as he had been dismissed, the relevance of providing medical evidence fell away and the provision of a certificate would have only been relevant if the respondent had postponed the meeting to a later date. This did not happen.

79. The respondent raised numerous capability and performance issues during the hearing. We accepted that the respondent had genuine concerns about the claimant's performance because this had been expressed in correspondence before the email exchange between the claimant and Ms Scott so we have no reason to doubt the respondent's oral evidence in this regard, except, in our finding, the trigger for the 'performance review' was the email exchange between the claimant and Ms Scott.

80. At 11.58 on 25 July, the claimant sent an email appealing the decision to terminate his employment. The email states:

“Hi Mark,

As you are aware I'm off sick and therefore was unable to attend.

I would like to appeal the decision as I was in the process of raising a formal grievance. As previously discussed, I believe there to be racial discrimination and or harassment that is yet to be investigated.

I believe that me asking for a copy of the company handbook is an indication that you knew there was a grievance coming and so you have terminated the contract in order to not hear my complaint.

Please confirm if you will be hearing my grievance or if you would wish for this to pass straight to an employment tribunal claim.

Please let me know by the end of business.

Kind regards

Nathan”

81. The claimant also raised a grievance with the respondent on 25 July 2023. The letter alleges race discrimination compared to white British colleagues citing less favourable treatment regarding the provision of a car with illegal tires and being over six years of age; having a lower salary; not providing training; (not) clearing the air with Mr Tuffs; Mr Tuffs not wanting to be involved in external sales; the provision of equipment and termination of

employment. The letter also includes an allegation of harassment with reference to the West Indian food comment.

82. The grievance was acknowledged the same day and a meeting was initially arranged by the respondent for both the appeal and grievance on 28 July 2023. The claimant complained he was still sick and wanted a trade union representative at the appeal hearing and would prefer the grievance to be the following week.

The return of the respondent's property

83. On the same day (25 July) the respondent asked the claimant to return the company car that day. This email was not included in the bundle though it was common ground Mr Snook threatened to contact the police if the car was not returned that day. Mr Snook told us this was due to insurance cover which covered employees only.
84. By an email sent at 16.32, the claimant refused to return the car stating he had been on annual leave and recent events had led to him extending his vacation. He goes on to say the car was secure and in a safe location and could be returned on 4 August. The claimant told us he was staying with his sister at the time.
85. By an email dated 26 July, the claimant told Mr Snook he considered the police threats represented a further act of discrimination and asked for this to be added to his grievance.
86. The parties eventually agreed a mutual time and place for collecting the car and company equipment on 4 August 2023. The more detailed circumstances of what happened and why are not relevant to our findings or the issues, so we make no further reference to this matter.

The appeal and the grievance hearings

87. The respondent conceded it refused to hear the grievances or the appeal until all the respondent's assets were returned. Its position was that it was practical for the return of its assets and the meetings to happen on the same day. Mr Snook arranged for the 1st grievance to be heard by himself with Ms Hayles as notetaker and the 2nd grievance would be heard by Ms Hayles with Mr Snook as notetaker. The claimant was told the matter would then be investigated and he would have a response within seven days. Despite the claimant's concerns about partiality with reference to Mr Snook's involvement in the grievances, he concluded he had no option other than to agree to ensure his grievance was heard.
88. The appeal meeting and grievances were heard on 4 August. Mr Snook also heard the appeal which lasted about 5 minutes. The claimant stated in the appeal meeting he did not wish to return to the respondent. The claimant

told the Tribunal he would have considered going back when he sent the appeal though following dismissal, lots of things happened, including threats of calling the police and allegations he was stealing the respondent's car and that things became very heated.

89. The 1st grievance lasted about 20 minutes and the 2nd grievance lasted about 5-10 minutes. Mr Snook told us he did not ask too many questions at the 1st grievance meeting as he planned to investigate once the claimant had discussed the allegations and then revert with further questions if required. At 15.53 on 4 August, Mr Snook wrote to the claimant following the grievances meetings. Part of the email states:

"Please accept this email as confirmation we will reply with our findings of our investigations by Friday 8th September at the latest. We have delayed the normal reply date due to the requirement to speak to colleagues of Brauer and my own holiday as well.

Sorry for the slow response on this and appreciate your acceptance within our meeting. If you could also reply to this email that would be very much appreciated".

90. The claimant responded at 21.24 acknowledging receipt of the email and the response date of 8 September.
91. On 8 August, Ms Hayles wrote to the claimant attaching a letter and the three sets of minutes. The letter asked the claimant to sign and return the minutes by 11 August and if this did not happen, the respondent would consider matters to be closed. The claimant did not respond so Ms Hayles sent a further email on 15 August with an attached letter closing the grievances and appeal.
92. On 14 September, the claimant wrote to Ms Hayles stating he was still waiting for the outcome of the investigation. On 15 September, Ms Hayles wrote to the claimant. Part of the letter stated "Following on from my emails sent 8th and 15th August 2023, as we received no response, Brauer Ltd consider all matters to be closed as at 5:00 PM on 16th of August 2023".
93. The claimant told us he did not see Ms Hayles' letter and relied on Mr Snook's letter of 4 August that stated he would receive a final outcome by 8 September. The respondent's position was that it was entitled to close the grievance investigation following the claimant's failure to return the minutes signed and dated.
94. Mr Snook told us he undertook a preliminary investigation about the West Indian food comment by Ms Scott prior to the grievance hearing though only had 'informal chats' and did not take any notes of those conversations. He also told us he discussed the matter with Mr Jabri, who denied any conversation about the West Indian food comment with the claimant. For reasons that are not clear, the respondent misunderstood when the West Indian food comment was alleged to have been made and assumed it happened the day of the meal on 9 June and not the day before. When we

queried this, Mr Snook stated the claimant had changed his position though when taken to the minutes and the grievance, Mr Snook conceded there was no reference to the alleged comment being made on the day of the meal whereas Mr Snook's informal investigation was about matters that occurred on the day of the meal. Mr Snooks told us he did not investigate this matter further following the grievance meeting.

95. On balance, we found the West Indian food comment did occur and we accept the comment occurred the day before the meal and that the claimant raised this with Mr Jabri on the day of the remark. Ms Scott did not give evidence despite still being employed at the respondent. Due to Mr Jabri's sad passing, other than the claimant, Ms Scott was the only person who could give a firsthand account about the comment other than the claimant.
96. We agreed Ms Scott could give evidence remotely and would have considered further concessions (e.g. camera off). We found the respondent to be quite nonchalant about Ms Scott's decision not to give evidence in the circumstances, simply telling us she did not want to attend due to a past negative experience in the family Court. We also noted all witness evidence refers to the day of the meal and not the day before, so questions asked during the informal investigation were most probably the wrong questions and potentially to the wrong people. We were also concerned Mr Snook did not take notes and failed to follow up the matter further after the grievance meeting despite assuring the claimant the matter would be investigated and he would have an outcome by 8 September.
97. We noted that despite Mr Snook's assertion in his witness statement that the respondent followed the ACAS code of practice, in his oral evidence he told us he was a finance manager first and foremost and has only undertaken HR training (CIPD) following the claimant's dismissal. Mr Snook told us he read up on HR and used Chat GTP for information at the time of the claimant's employment and dismissal. He also stated he would never disagree with the managing director with reference to whether the respondent was following the correct procedures. We found that having done CIPD training, Mr Snook would now appreciate that the respondent did not follow the ACAS code of practice on disciplinary and grievance procedures as it should have provided more notice for the probation review meeting, it should not have attached conditions to hearing the appeal and grievances which caused delays (with reference to the return of the respondent's assets), it should have conducted a formal investigation of the grievance irrespective of whether the claimant signed the minutes and concluded that process with a grievance and an appeal decision and it should have considered getting somebody within the business that was neutral, a board member or an external consultant to manage the appeal, and potentially the grievances.

98. We asked the claimant why he took so long to contact ACAS and was told the respondent made the claimant collect his P45 in person from the respondent's address in Milton Keynes rather than posting it. The respondent did not dispute this. The claimant collected his P45 on 31 October. The claimant lives in Rugby. It was a long drive just to collect a P45. The claimant commenced ACAS early conciliation the following day (1 November 2023).

Submissions

99. The claimant elected not to provide submissions. The respondent provided written submissions. We have not referred to the submissions in any detail unless appropriate to do so but would reassure the respondent its submissions were considered when reaching our judgment.

Relevant law

100. The relevant sections of the Equality Act 2010 are set out below.

Section 13 Direct Discrimination:

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.

Section 23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13.....there must be no material difference between the circumstances relating to each case.

Section 26 – Harassment (the relevant subsections)

(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.

Section 136 Burden of proof:

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

101. Section 13 of the Equality Act 2010 provides that direct discrimination takes place where a claimant is treated less favourably because of a relevant protected characteristic. In Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL Lord Scott stated (at paragraph 110) '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'.

102. Macdonald v Ministry of Defence; Pearce v Governing Body of Mayfield Secondary School 2003 ICR 937, HL Lord Hope held (at paragraph 64) that (with the exception of the protected characteristic), 'all characteristics of the complainant which are relevant to the way his case was dealt with must be found also in the comparator.

103. The EHRC Statutory Code Employment of Practice at 3.23 states - The Act says that, in comparing people for the purpose of direct discrimination, there must be no material difference between the circumstances relating to each case. However, it is not necessary for the circumstances of the two people (that is, the worker and the comparator) to be identical in every way; what matters is that the circumstances which are relevant to the treatment of the worker are the same or nearly the same for the worker and the comparator.

104. Igen v Wong [2005] ICR 931, CA 9 provided guidelines regarding the burden of proof (at paragraph 76). The Tribunal must follow a two stage process. At stage one the claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant. The outcome of the stage one analysis will usually depend on what inferences, if any, can be drawn from the primary facts. If the claimant gets past stage one, the burden of proof shifts to the respondent who must prove s/he did not discriminate against the claimant. Although there are two stages, Tribunals usually hear the all the evidence in one sitting, including the respondent's explanation before decided whether the requirements of each stage are satisfied.

105. The Supreme Court in Hewage v Grampian Health Board [2012] UKSC has confirmed “The points made by the Court of Appeal about the effect of the statute in these two cases [Igen and Madarassy] could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in Martin v Devonshires Solicitors [2011] ICR 352, para 39, 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.”
106. In Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL, Lord Nichols stated (at paragraph 8) ‘No doubt there are cases where it is convenient and helpful to adopt a two step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two are intertwined.’
107. In Laing v Manchester City Council [2006] ICRT 1519, EAT (at paragraph 74) Lord Justice Elias said ‘Another example where it might be sensible for a Tribunal to go straight to the second stage is where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question whether there is such a comparator - whether there is a prima facie case - is in practice often inextricably linked to the issue of what is the explanation for the treatment.’
108. In Madarrasy v Nomura [2007] ICR 867, CA (at paragraphs 56-57) where the Court of Appeal said there must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to the Respondent “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”.
109. In Bahl v The Law Society [2004] IRLR 799, the Supreme Court confirmed that unfair treatment will not in and of itself be enough to shift the burden of proof.
110. Richmond Pharmacology v Dhaliwal [2009] ICR 724. The EAT gave guidance to Tribunals application (of this provision) and confirmed Tribunals must address in their reasons (a) whether the respondent to the claim had engaged in unwanted conduct; (b) whether the conduct in question had either the purpose or the effect of either violating the claimant's dignity or creating an adverse environment for her; (c) whether the conduct had been on the grounds of the claimant's race or ethnic or national origins.

111. Thomas Sanderson Blinds Ltd v English *EAT 0316/10* the EAT pointed out that *unwanted conduct* means conduct that is unwanted *by the employee*.

Discussions and Conclusions

112. Our findings are with reference to the list of issues and use the same paragraph numbers. We deal with the complaints about direct race discrimination in chronological order and then the allegation of harassment. First, we will deal with the correct comparators for the purpose of the s13 EqA complaints.

Direct discrimination

113. Section 13 of the Equality Act 2010 provides that direct discrimination takes place where a claimant is treated less favourably because of a relevant protected characteristic. Less favourable treatment requires a comparator i.e. who is the complainant treated less favourably than?

The correct comparator – issues 1.1.1 - 1.1.3

114. The claimant relied on Mr Anderton whereas the respondent submitted that Mr Wiltshire was the correct comparator. Mr Wiltshire was initially employed in the internal sales team at the respondent where his role required he provide customers with quotes, process orders and assist with product related queries. Mr Wiltshire was promoted internally to regional sales representative. This was his first field sales role. Mr Wiltshire had no engineering experience. Mr Wiltshire was promoted to a sales representative role and not a managerial role. Mr Anderton had experience in both engineering and in field sales roles. Mr Anderton applied for a regional sales manager role.
115. The claimant had experience in both engineering and field sales and he applied for and was offered a regional sales manager role. Further, the claimant took on some of Mr Anderton's responsibilities shortly after he commenced employment. We also noted the role the claimant applied for was advertised with a salary range of £30,000-£45,000 whereas Mr Wiltshire, on leaving, was paid £27,800 so less than the salary range for a manager.
116. We concluded that Mr Anderton was the correct comparator to the claimant as both had engineering and field sales experience and both were recruited to managerial roles. We acknowledge there are some differences in Mr Anderton and the claimant's circumstances. However, we concluded that the circumstances which are relevant to the treatment of Mr Anderton

and the claimant are the same or nearly the same for the purposes of recruitment to the regional sales manager role.

The correct comparator 1.1.4 – 1.1.9

117. We agreed with the parties that the remaining s13 complaints require a hypothetical comparator who is a white British employee at the respondent whose circumstances are the same or not material different to the claimant save for the protected characteristic.

Issue – 1.1.3

118. Mr Anderton's salary was £45,000 per annum whereas the claimant's salary was £32,000 per annum. It is less favourable treatment to be paid £13,000 less per annum.
119. The next question is to determine whether the less favourable treatment was because of the claimant's race. Section 136(2) of the 2010 Act sets out the burden of proof applicable to proceedings under the Act. This is a two-stage enquiry.
120. The Tribunal first considered whether the claimant proved facts from which, if unexplained, we could infer the pay disparity was because he is black. We find that he did.
121. The respondent's evidence around the role, which it linked to pay, was evasive at best though given the late disclosure on day two, despite substantial case management with reference to disclosure, and Mr Tuffs' witness statement that describes 'the recruitment process for the role of external sales representative' was misleading. We concluded Mr Tuffs' change of position in his oral evidence on day two where he stated the term sales manager and sales representative were interchangeable and not significant was an attempt preserve his position. We concluded the respondent would have been aware the documents disclosed on day 2 were relevant to the issues and elected not to disclose them because they did not support its case. We drew an adverse inference from the respondent's failure to disclose these very relevant documents.
122. As detailed above, we found the late disclose to support that the role was advertised and offered as a managerial role on a salary of up to £45,000, the same as Mr Anderton's salary. We also noted the contracts were similar and Mr Tuffs asked Mr Jabri if he should use 'Kevin's' contract and finally, Mr Anderton and the claimant had similar experience as set out above.
123. We next considered whether the respondent proved the pay disparity was in no way whatsoever because the claimant is black. We found the respondent did prove this. It was not disputed that Mr Anderton had

previously worked for AUT (Wheels and Castors) Ltd, one of the respondent's competitors, so his business contacts were relevant to increasing the respondent's customer base. In addition, Mr Anderton was placed on KPIs with a view to increasing sales and meeting targets, which he was well placed to do due to his experience of working for one of the respondent's competitors and his pay was increased from £42,000 to £45,000 having met his KPIs.

124. The claimant was also told he would have a salary review though this did not materialise due to the dismissal.

125. Finally, we were not persuaded that the claimant thought he was paid less due to his race. His own evidence was that the salary offer of £32,000 was because that was what the respondent thought it could get away with.

126. We found that the pay disparity was for the reasons stated by the respondent and was in no way because of the claimant's race. This complaint is dismissed.

Issue 1.1.1

127. It was common ground the claimant was provided with a pool car rather than a car allowance. We found Mr Jabri did tell the claimant during the job interview that he could have a car allowance and Mr Tuffs (and not Mr Snook) told the claimant in May (and not April) he would have use of the Toyota Pruis (the respondent's pool car).

128. We concluded this was less favourable treatment compared to Mr Anderton who had a car allowance. The claimant had just financed a new car so it follows a car allowance would have been preferable to a pool car.

129. The next question is to determine whether this less favourable treatment was because of the claimant's race. We first considered whether the claimant proved facts from which, if unexplained, we could infer that being refused a car allowance in lieu of having the use of the pool car was because he is black. We find that he did not.

130. Whilst we found the car allowance was discussed and agreed at interview and Mr Anderton had a car allowance, we could draw no inferences from the primary facts that suggested there was discrimination.

131. The claimant signed the contract of employment detailing he would have use of a pool car and accepted this was an error on his part and the decision was never challenged.

132. There must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to

the respondent. We accepted that agreeing the claimant could have a car allowance at interview and then providing a contract of employment that conflicted with that verbal agreement was unfair. However, unfair treatment will not in and of itself be enough to shift the burden of proof.

133. Whilst the burden of proof does not shift to the respondent, we concluded it was sensible to look at the totality of those facts, including the respondent's explanations. The respondent told us that Mr Anderton had a car allowance because no pool car was available when he commenced employment whereas the pool car was available when the claimant commenced employment. We accepted this non-discriminatory explanation for the difference in treatment.

134. The Tribunal found that the provision of a pool car in lieu of a car allowance was in no way because of the claimant's race. This complaint is dismissed.

Issue 1.1.2

135. It was common ground that Mr Anderton was provided with a new computer whereas the claimant was provided with two used computers. We accepted the claimant's position that the casing of one of those computers was broken and that he needed to prop up the lid when in use.

136. We concluded the claimant was treated less favourably than Mr Anderton with reference to being provided with a cosmetically damaged computer as opposed to being provided with a new one.

137. Applying the two stage burden of proof provisions, we concluded the claimant did not prove facts from which, if unexplained, we could infer that being provided with a used cosmetically damaged computer as opposed to a new computer was because he is black.

138. We accepted the claimant's evidence that it did not look professional to prop up the lid of the computer when discussing highly professional products with customers whilst Mr Anderton, when in post, had the benefit of a new computer. As referenced above, a difference in protected characteristic and treatment is not enough, there must be something more.

139. The claimant's own evidence was that it was not that he wanted a new computer, he wanted a working computer that looked professional, he also conceded that he was unaware Mr Tuffs also had a used computer that was eleven years old around the time the claimant commenced employment at the respondent.

140. Looking at the totality of the facts, we concluded from the evidence the respondent's allocation of its equipment was haphazard and this is clear from the email correspondence between Mr Tuffs, Mr Main and Mr Jabri

about the delays in providing the claimant with a computer. We concluded the claimant was issued with the first computer that was available and the fact the computer was cosmetically damaged was in no way related to his race.

141. Whilst the burden of proof does not shift to the respondent, we concluded it was sensible to look at the totality of those facts, including the respondent's explanation, which we accepted, that it's policy was to utilise used equipment when available and the allocation a new computer to Mr Anderton was the exception rather than the rule because a used computer was not available.

142. We concluded that the respondent providing the claimant with a used (and cosmetically damaged) computer was in no way because of the claimant's race. This complaint is dismissed.

Burden of proof provisions for the remaining s13 EqA complaints

143. We concluded that because the remaining s13 EqA complaints require a hypothetical comparator, it was appropriate look at the totality of the evidence, including the respondent's explanation for the treatment and ask the reason for the treatment.

Issue 1.1.4.

144. It was common ground Mr Tuffs did not reply to the claimant's email and we accepted this was because it was an oversight caused by the need to manage a large volume of incoming emails while nursing a back injury. We concluded a hypothetical comparator (i.e. a white British employee in the same position as the claimant) would have been treated in the same way.

145. The Tribunal concluded that Mr Tuffs ignoring the claimant's email was in no way because of his race. This complaint is dismissed.

Issue 1.1.5 - 1.1.7

146. We considered these issues together because they are interlinked and all happened within less than 24 hours of each other and the rational, on the part of the respondent was much the same for each issue.

147. The respondent did notify the claimant he must attend a probation review meeting the following day. The respondent argued he was no longer on annual leave because it sent the email at 17.10. We found this explanation to be absurd because the email was sent outside of work time i.e. during the claimant's free time. We concluded it made no difference whether it was annual leave or free time, the issue is that it was not work time.

148. The respondent also ignored the claimant's request to postpone the meeting. However, we accepted the respondent's explanation that this was because a decision had already been taken to dismiss the claimant because he had failed his probation. The respondent therefore chose to arrange for this meeting to take place as swiftly as possible and saw no reason to postpone the meeting.
149. The claimant was dismissed on 25 July. We accepted Mr Snook's evidence that he and Mr Jabri met at 10.55 and following the claimant not attending, dismissed him. It was somewhat creative to suggest the meeting went ahead in the claimant's absence. There were no minutes, Mr Snook was back at his desk within 15 minutes and Mr Jabri had already decided to dismiss the claimant prior to the meeting and had communicated this to Mr Snook in their telephone conversation on 20 July 2023, long before the claimant requested the staff handbook, so concluded the respondent did not swiftly dismiss the claimant to avoid a grievance. In these circumstances, there was nothing to discuss at 'the meeting'.
150. We concluded a hypothetical comparator i.e. a white British employee in the same position as the claimant who had failed his probation (for sending an 'unprofessional email' to a member of the sales team and where there were performance concerns) would have been treated by the respondent in the same way, i.e. he/she would have been invited to a meeting a short notice without the option of a postponement.
151. We have already found the primary reason for the dismissal was the email sent to Ms Scott on 19 July though also accepted there were some performance concerns as confirmed in the email from Mr Tuffs to Mr Jabri dated 28 June and the fact there was an earlier informal review meeting on 11 July (just two weeks before the claimant was dismissed). We concluded that a white British employee in materially the same position as the claimant would also have been dismissed.
152. It was clear to us that the respondent's understanding of the ACAS code of practice on disciplinary (and grievance) procedures was misconceived at best or simply ignored. Mr Snook argued the respondent followed the ACAS procedure when it clearly did not. We concluded the claimant was treated very unfairly, the respondent should have given him enough notice to be able to plan for a union representative to attend the probation review meeting with him, it should have considered postponing the meeting to accommodate the claimant's sickness absence and should have given the claimant an opportunity to present his position before terminating his employment. The fact it did none of these things was unfair. However, unfair treatment will not in and of itself is not enough to prove discrimination.

153. We concluded that none of these issues were in any way linked with the claimant's race. All three complaints (1.1.5, 1.1.6 and 1.1.7) are dismissed.

Issue 1.1.9

154. It is not disputed that the respondent did not respond to the claimant's grievances. We accepted the claimant's evidence that he was waiting for an outcome as per Mr Snook's email dated 4 August and overlooked the email and letter from Ms Hayles which followed on 8 August asking for the minutes to be signed and then closed the grievances without investigation or a decision. We concluded the reason why the respondent did not respond to his grievances (with an outcome) was due to incompetence rather than discrimination.
155. We made detailed findings (at paragraph 97) that the respondent's management of the grievances (and all internal procedures) fell significantly short of the ACAS code of practice on disciplinary and grievance procedures and this was due to a combination of ineptitude due to lack of knowledge, experience and no HR training about how to manage these procedures at the time of the claimant's employment as confirmed by both Ms Hayles and Mr Snook in their oral evidence. We concluded this was unfair and the respondent should have provided a decision to his grievances though as already stated above, unfair treatment does not, in and of itself, prove discrimination. We concluded a white British employee in materially the same circumstances would have been treated in the same way. This complaint is dismissed.

Issue 1.1.8

156. Strictly speaking, the respondent did not reject the appeal. It closed the appeal after the claimant failed to sign the minutes sent to him on 8 August and not returned by 11 August. The respondent did not formally provide a response to the claimant's appeal. That said, it was common ground that during the appeal meeting on 4 August, which only lasted 5 minutes, the claimant told Mr Snook he did not want his job back. The claimant elaborated in his evidence that when he submitted the appeal, he may have returned to the respondent, if given the opportunity to do so. However, matters changed and it was common ground that the relationship between the parties became very difficult following the claimant's dismissal. Without stating the obvious, the purpose of appealing a dismissal is to seek to be reinstated which is something the claimant did not want when he attended his appeal meeting, so it begs the question why he has taken issue with his appeal being dismissed.
157. Taking the respondent's position and the reason for its decision to close the appeal without providing a decision was for the same reasons as set out above with reference to not responding to the claimant's grievances.

In any event, we concluded the respondent would not have reinstated the claimant as its reasons for terminating his employment had not changed, the relationship had deteriorated further and it was able to use the claimant's failure to sign and date the appeal minutes as a reason for closing the appeal and not providing a decision. We concluded the respondent should have finalised the appeal irrespective of the claimant's failure to sign the minutes for the same reasons it should have provided a grievance decision.

158. We concluded the respondent's poor management of the appeal, which ostensibly meant it was rejected (closed without a decision), demonstrated incompetence rather than discrimination. We concluded a white British employee in materially the same circumstances would have been treated in the same way. This complaint is dismissed.

Harassment related to race

159. Harassment is defined in section 26 of the 2010 Act as A person 'A' harasses another 'B' if that person engages in unwanted conduct related to a protected characteristic which has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for 'B'. In deciding whether the unwanted conduct has such a purpose or effect, the tribunal must consider the perception of B the other circumstances of the case and whether it is reasonable for the conducts to have that effect. There was a single complaint of harassment related to race.

Issue 2.2

160. From our findings, we found this remark did occur. For the avoidance of doubt, we concluded that the claimant was consistent in his evidence and we accepted he delayed formally raising this matter to avoid 'being a target' and that the respondent's failure to adequately investigate the remark (Mr Snook had informal chats with potential witnesses before the grievance meeting, did not take notes and did not investigate following the meeting, mistakenly concluded that the remark happened on the day of the meal and not the day before so the limited investigation was misplaced), Ms Scott did not give evidence (despite adjustments being offered by the Tribunal) and the respondent was nonchalant about this was enough for us to infer, utilising the two stage burden of proof enquiry that the comment occurred and the respondent provided no explanation other than a flat denial with no oral testimony from witnesses with firsthand knowledge to support that assertion.
161. We concluded the conduct was unwanted. We considered the respondent misdirected itself in its submissions where it stated the claimant was not offended. The claimant stated he did not think the comment was intended to offend, that is different from saying he was not offended. The

claimant went on to say he was 'rattled' by the comment sufficiently enough to raise it with Mr Jabri, the managing director, on the day of the comment. We accepted the claimant's evidence that he did not pursue this as a formal complaint because he 'was the new boy' and would have put a 'target on his head'. We nonetheless concluded the comment was unwanted.

162. We concluded the conduct was related to race. The context was West Indian food and the unwanted conduct was in response to Mr Tuffs asking what West Indian food was and the response, directed at the claimant, from Ms Scott being 'isn't that what you lot eat?' was, in our finding, related to the claimant's race.

163. We accepted the claimant's evidence that Ms Scott did not intend for the comment, which we found to be unwanted conduct, to violate his dignity or create an offensive environment. We concluded the purpose was not to violate the claimant's dignity or create an offensive environment.

164. Turning to the effect of the unwanted conduct, we considered that where the conduct complained of does not have that purpose i.e. where it is unintentional, it is not necessarily unlawful just because the claimant feels his dignity is violated or feels the conduct has created an adverse environment. We also considered the other circumstances of the case and whether it is reasonable for the conduct to have that effect as well as the perception of the claimant in bringing the complaint. We first considered whether the claimant did in fact feel his dignity was violated or that there was an adverse environment as defined in the section and that it is only unlawful if it was reasonable for him to have that feeling or perception.

165. We concluded that whilst this was a one-off act, it still violated the claimant's dignity and created an offensive environment. The claimant's evidence was that the remark 'rattled' him, we attached the everyday meaning to this and concluded the remark upset and/or unnerved him and he was upset enough to talk to M Jabri about it. We concluded this was enough to violate his dignity. We then considered the context within which the conduct took place. The suggestion by Mr Gabri of West Indian food was because of relationships between the claimant and the sales team, notably Ms Scott (and Mr Tuffs) were strained, the meal was suggested as a way of easing tension and bringing the team together in a convivial way, in that context, the remark was wholly inappropriate and tactless so it was reasonable for the remark to have the effect of violating the claimant's dignity and creating a hostile environment. We accepted that the circumstances with this remark were borderline, though given the context of the remark and the fact the suggestion of the meal was intended as a way of fostering better relations, we concluded that it fell on the wrong side of the line.

166. We concluded that Ms Scott's comment was unwanted conduct that was related to race and had the effect of violating the claimant's dignity and creating a hostile environment.

167. The conduct happened on 8 June 2023, the claimant contacted ACAS on 1 November 2023, so we went on to apply the requirements of s123 of the 2010 (time limits) with a view to determining whether we would uphold or dismiss this complaint.

Time limits

168. The relevant act of discrimination occurred on 8 June 2023 (and not 9 June 2023). The claimant commenced ACAS early conciliation on 1 November 2023. The last day to contact ACAS would have been 7 September 2023. The claimant contacted ACAS 55 days after this. The claim was not made within three months (plus early conciliation extension) of unlawful conduct.

169. Turning to s123(3)(a) conduct extending over a period is to be treated as done at the end of the period. We concluded this was an isolated act not linked to any of the s13 complaints as it was a one-off comment and in any event, this complaint stands alone as we dismissed all the s13 complaints so there is no relevant (i.e. unlawful) conduct that occurred within the statutory time limit that this s26 complaint could be linked to with reference to s123(3)(a).

170. Turning to s123(1)(b) and whether it is just and equitable to allow this complaint to be presented outside the statutory time limit. The claimant told us he did not complain about this during his employment because he did not want to be targeted, we accepted that was reasonable in the circumstances. However, the claimant was dismissed on 25 July 2023 so at that point, this complaint would have been in time if the claimant had contacted ACAS following dismissal. We acknowledge the claimant utilised the respondent's internal grievance procedure, which included a grievance about this complaint. However, that procedure concluded on 15 August 2023 and the claimant became aware of this fact on 15 September 2023. Despite this, the claimant still waited until 1 November 2023 to contact ACAS.

171. The claimant told us he contacted ACAS following the respondent's refusal to post his P45 and he did this the day after he collected his P45 from the respondent's Milton Keynes office. He referred to this as an act of post-employment victimisation. That complaint was never before us so we make no further comment on it. We concluded the claimant did not plan to present a claim against the respondent and then changed his position following this incident with his P45. We further concluded the reason for the delay did not give rise to circumstances to support that the delay in contacting ACAS made it just and equitable for us to extend time.

172. The complaint of harassment related to race was not presented within the applicable time limit. It is not just and equitable to extend time. The complaint of harassment related to race is therefore dismissed.

173. On the face of it, the only s13 complaints that were presented within the statutory time limit were 1.1.8 and 1.1.9. We did not uphold any s13 complaints and concluded the last two acts were linked to each other (based on the outcome of each emanating from the same decision to close the grievance and appeal) but not to any earlier acts. As no s13 complaints were upheld, we concluded it was a pointless exercise reviewing in any detail what acts were linked to each other. Our findings with reference to whether it was just and equitable to extend time replicate our findings in paragraph 171-172 above.

Remedy hearing

174. As the Tribunal has not upheld any of the claimant's complaints, the remedy hearing listed for 10 April 2026 is vacated and the parties are instructed not to attend the hearing venue.

Approved by

Employment Judge E Davey

Date: 6 February 2026

RESERVED JUDGMENT & REASONS SENT
TO THE PARTIES ON 18 February 2026

FOR EMPLOYMENT TRIBUNALS