

RESERVED JUDGMENT



EMPLOYMENT TRIBUNALS

Claimant: Mr PJ Rothwell

Respondent: Islam & Co Limited

Heard at: Liverpool

On: 5, 6, 7 & 8 January 2026

Before: Employment Judge Shotter

REPRESENTATION:

Claimant: In person assisted by Ms A Tee, partner

Respondent: Mr M Islam director and owner on 5 January 2026, Ms L Halsall, counsel, on the 6 & 7 January 2026.

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1. The claimant took part in ACAS early conciliation between the 5 and 16 June 2024. The claim form was presented on the 13 July 2024. The discriminatory act relating to ACCA training took place in or around 16 August 2023 at the latest. The claim of race discrimination brought under section 13 of the Equality Act 2010 was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The Tribunal does not have the jurisdiction to consider the claim, which is therefore dismissed. In the alternative, had the claim been brought in time, the complaint of direct discrimination on the grounds of race and religion is not well-founded and is dismissed.

2. The complaint of automatic unfair dismissal is not well-founded. The claimant was not automatically unfairly dismissed under section 95(1)(c) and section 104A(2) of the Employment Rights Act 1996 and the claim is dismissed.

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3. When the proceedings were begun the respondent was not in breach of its duty to provide the claimant with a written statement of employment particulars.
4. The complaint in respect of holiday pay is well-founded. The respondent failed to pay the claimant in accordance with regulation 14(2) and/or 16(1) of the Working Time Regulations 1998. The respondent shall pay the claimant £586.44 net. The respondent is responsible for paying any tax or National Insurance.
5. The complaint that the respondent was in breach of contract by failing to pay the claimant a contractual payment of £25,000 is not well-founded and is dismissed.
6. The respondent's counterclaim for an act of alleged negligence causing the loss of £986.89 and for the period 22 April to 4 July 2024 when the claimant did not work his notice is dismissed on withdrawal.

REASONS

Preamble

1. This is a liability hearing in person which follows several emails sent to the Tribunal by the parties concerning a failure to comply with the case management orders agreed on the 3 January 2025 when this case was listed for trial. It appears that there have been issues with producing a final bundle and witness statements, the claimant appears to have kept back documents in a supplemental bundle he disclosed late to the respondent on the 9 December 2025 together with the claimant's witness statement. Mr Islam explained that because of this the respondent was unable to complete its witness statements as a final bundle could not be agreed. Both parties have ignored case management orders made by a number of judges, the last being the 31 December 2025 when the respondent's application for a postponement was dismissed and the respondent was ordered to provide the claimant with a revised bundle.
2. The respondent has come to this hearing today with no bundles and no witness statements. I have refused to adjourn the hearing on the basis that it will be re-listed on a date in 2027, and this is not in the interests of both parties, who agreed that a fair way to proceed would be as follows:
 - 2.1 The claimant will confirm the relevant documents in his supplementary bundle, explaining their relevance, for example, if correspondence post-dating his resignation goes to credibility issues, The claimant stated documents 195, 232-234, 237-240, 246, 249, 250, 252 and 257-261 were relevant. I took the view that the SAR document including the claimant's complaint to the Information Commissioner was not relevant to the issues to be decided. The respondent prepared a revised bundle

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that included the documents referred to by the claimant in his supplementary bundle. The claimant was assisted by Ms Tee when deciding which document was relevant or not and given enough time to consider the matter as confirmed to me.

2.2 The respondent provided the claimant and the Tribunal with two witness statements, one from Mr Islam and the other from the claimant's comparator, Mr TowfiqUzzaman, who is referred to as Mr Towfig in a number of the documents. The claimant confirmed providing he received the witness statements by 4pm today, with the assistance of his partner he had enough time to prepare questions on cross-examination. As it transpired, the claimant prepared to cross-examine Mr Islam before the second day of the hearing and Mr Towfig before the third day of the hearing and confirmed he had sufficient time. The claimant put a number of questions in cross-examination to both witnesses.

2.3 Both parties emailed the bundle and supplemental bundle to the Tribunal, and it was agreed that we will work off electronic copies, including during cross-examination. On the second day I was provided with a hard copy of the claimant's bundle. During the hearing the respondent was ordered to produce two documents marked "R1" and R2" which I have dealt with below. When this happened, the claimant was given time to assimilate the documents before the hearing commenced, and he confirmed that the time had been sufficient.

2.4 I produced a final list of issues that had been discussed and recorded at the 3 January 2025 preliminary hearing and included the counterclaim for the parties to approve. Both are aware that all the evidence and closing submissions will need to be dealt with in the remaining 3-day hearing. The respondent recognised towards the end of the hearing the counterclaim had little merit, there was no evidence in the bundle and during submissions the counterclaim in its entirety was withdrawn and dismissed.

2.5 Finally, as the claimant had been absent from work for 7 months with stress, we discussed the claimant's health at today's hearing, and he confirmed there were no issues and no adjustments needed to be made under the Equal Treatment Bench Book. However, I made it clear to the claimant that he could request breaks whenever he wanted, which he did, and before oral submissions I adjourned at the claimant's request in order that he could finalise his written submissions and look at case law with the assistance of Ms Tee. There were no written submissions before me.

Agreed List of Issues

3. The Agreed List of Issues are as follows:

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Automatically unfair dismissal

1. Was the claimant dismissed? *It is an agreed fact that he resigned on 21 April 2024*
2. Did he terminate his contract by resignation in circumstances in which he was entitled to by reason of the employer's conduct? (section 95(1)(c) ERA 96)
3. Was the reason or if more than one the principal reason, for his dismissal (resignation) that he had taken action with a view to enforcing or securing the benefit of his right to the national minimum wage? (section 104A ERA 96)
4. Did he take that action in good faith? (section 104A (2) ERA 96)

He says he genuinely and reasonably believed that because of the hours he was working 37.5 at £ 19 000 per annum gross he was being paid less than the national minimum wage from April 2023, when he raised this with the respondent in August 2023 and in his grievance dated 4 September 2023.

5. Did the Claimant bring his claim within the prescribed time period?
6. Did the Claimant delay any matter prior to submitting his Claim?
7. Did the Claimant affirm his position by continuing to work for the Respondent?
8. Did the Claimant resign due to finding an alternative position?
9. Did the Claimant resign due to his omission in his role and not performing as any reasonable employer would expect?
10. How many roles has the Claimant been in since leaving the Respondent's business?
11. If so, what remedy is he entitled to? A basic award? a compensatory award? would it be just and equitable to make those awards? Should there be any reductions or deductions applied to any award?

Breach of contract

12. Was there a contract term entitling the claimant to receive £ 25,000 salary from 1 June 2023? As per the statement of main terms signed by the Claimant in December 2022.
13. Is there a signed contract in place between the parties?

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14. If so, was that payment made?
15. If not, was that complaint outstanding on termination of employment?
16. Was there a contract term to provide the claimant with ACA training?
17. If so, was it provided and if not, was that complaint outstanding on termination of employment?
18. Did the claimant have a contractual right to be automatically enrolled?
19. If so, was he enrolled and were appropriate deductions made from his pay?
20. If not, what remedy if any can the Tribunal award to the claimant. The respondent says this is ill conceived as a breach of contract claim and that it is a matter for the Pensions Ombudsman.

Direct race and religion discrimination (Equality Act 2010 section 13)

21. Did the respondent do the following things:

(i) Abu and Tawhid in August 2023 tell the claimant they would not now offer ACA training

22. Was that less favourable treatment than that given to Towfiq Zimmerman who was Bengali Muslim and was given ACA training and financial support, study leave and payment of exam fees?

23. If so, was it because of race and or religion?

The claimant says he was not supported because he was White European non practising Christian and that the respondent would not have withheld the benefits from a Bengali Muslim and he points to Towiq.

24. Did the respondent's treatment amount to a detriment?
25. Has the correct comparator been identified?
26. Did the Claimant ever confirm his race or religion to the Respondent?
27. Did the Claimant bring the claim before the end of "the period of three months starting with the date of the act to which the complaint relates" ([section 123\(1\), EqA 2010](#))
28. Did the acts amount to extending over a period within the meaning of 123(3)(a) of the Equality Act 2010?
29. Is it just and equitable of the tribunal to extend the time for submissions of the Claimant?

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Holiday Pay (Working Time Regulations 1998)

30. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

31. How many days remain unpaid?

The claimant says 17

32. what amount if any should the claimant be awarded? - The claimant says £ 1634.55

33. What was the claimant's leave year?

34. How much paid leave had the claimant taken in the year?

Remedy

35. How much should the claimant be awarded?

36. Schedule A2 Trade Union & Labour Relations (Consolidation) Act 1992 cases. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

the claimant says it did and that the respondent unreasonably failed to deal with his grievance in that it

(i) refused to communicate in writing about the grievance despite that being his request and in the context of him being off sick with stress

(ii) failed to respond to the grievance in writing at all during his employment and to the date of this hearing he says he has not had a response to his grievance despite the respondent saying it produced an outcome on 28 March 2023.

(iii) made repeated attempts to telephone him between September 2023 and April 2024 whilst he was off sick including ringing him three times on one day in December 2023

37. Is it just and equitable to increase or decrease any award payable to the claimant?

38. By what proportion, up to 25%?

Schedule 5 Employment Act 2002 cases.

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39. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

The claimant says he was never given a written statement of the terms that had been agreed orally, and that when HMRC investigated the issue of whether or not the respondent had paid NMW the respondent did not provide any statement at that time.

The respondent says there is a signed contract.

40. If the automatically unfair dismissal claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four.
41. What amount if any for injury to feelings should be awarded?
42. What losses flowing from discrimination should be awarded?
43. what interest should be awarded?

The respondent's counterclaim

1. Was the respondent entitled to be reimbursed for the alleged act of negligence when on 7 February 2023 the claimant submitted incorrect figures for a client's VAT return?
2. Was the claimant contractually obliged to provide the respondent with 3 months contractual notice starting on 4 April 2024? If so, did the claimant give short notice and worked to 21 April 2024 which resulted in the respondent employing another person to 4 July 2024?

Evidence

4. I heard oral evidence from the claimant on his own behalf, and on behalf of the respondent I heard from Mohammed Tawhidul Islam, managing director and owner, and TowfiqZimmerman, officer in the VAT department and the claimant's comparator. All witness statements were affirmed as true.
5. There were numerous conflicts to be resolved ranging from serious allegations of fabricating documents on the part of the claimant, who also disputed that documents in the bundle had ever be sent to him, for example, the grievance outcome, to evidence regarding whether TowfiqZimmerman was an appropriate comparator.

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6. There were several matters in which the claimant was found to have undermined his credibility which raised a question mark over his evidence, including his statement given in oral evidence on cross-examination that he was head of the VAT department. It is notable that the claimant described himself as an "Accounts Assistance" in the ET1 and there is no hint he had been employed as head of the VAT department, which on the claimant's own case could not be possible given his named comparator is TowfiqZimmerman, who was not head of the VAT department. The claimant's case of direct race discrimination is that he and TowfiqZimmerman were employed as accounts assistants in the VAT department and according to the claimant TowfiqZimmerman was offered training, which the respondent paid for because TowfiqZimmerman was a Bengali Muslim and the claimant was not of the same race and religion.
7. The second matter in which the claimant was found not to be a credible witness was his evidence that at his interview he was told training and support for ACA was promised, as set out in the ET1. The claimant confirmed this was his case at the preliminary hearing held on the 3 January 2025 that included a draft list of agreed issues. As can be seen from the agreed List of Issues above, the section 13 complaint refers to training for ACA only, with no mention of ACCA. The reference to ACA was changed by the claimant in his witness statement when the claimant asserted it was agreed he would be "supported to study for the ACA/ACCA" and the claimant continued to assert this in cross-examination. Even considering the fact the claimant was a litigant in person and had prepared the ET1, there is a marked difference between the two different qualifications, and as the case proceeded it became clear TowfiqZimmerman was undertaking ACCA training and not ACA training. I concluded the claimant's later reference to ACCA was disingenuous and his claim that he should have been offered ACCA training was not supported by his pleaded case and Schedule of Loss which refers to £20,000 damages for "removal of ACA training." There is no reference to ACCA, and this further undermines the claimant's credibility.
8. TowfiqZimmerman gave honest straight-forward evidence supported by documentation that he was self-studying for the ACCA qualification after the claimant had resigned, and the respondent was not paying his fees. I did not find the claimant's evidence that TowfiqZimmerman was studying and not working when he should have been as part of the support provided by the respondent (which was not provided to the claimant) believable given the factual matrix set out below. I preferred on the balance of probabilities the more credible evidence of TowfiqZimmerman as to the training position, and Mohammed Islam to the effect that ACA training was not offered to the claimant at interview or at all. For the avoidance of doubt, even though the claimant's pleaded case is that he was offered ACA training only, I also preferred Mohammed Islam's evidence that there was no agreement relating to ACCA training. ACA training could not have taken place for the reasons set out below.
12. I had before me an electronic bundle consisting of 192-pages, the claimant's supplementary bundle that went to 274 pages, a hard copy bundle totalling

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209 pages, three witness statements and the two additional documents provided by the respondent marked as recorded above. I heard oral submissions on behalf of both parties which I do not intend to repeat in full and have made references to a number in the body of the Findings of Facts and Conclusion arrived at having resolved the conflicts in the evidence on the balance of probabilities.

Facts

13. It is undisputed the respondent is a small accountancy firm based in the Northwest of England with an office in Liverpool City Centre. Mohammed Islam had taken over the firm from his father, Abu Islam, and his role was owner and managing director. Abu Islam managed the office when Mohammed Islam was away, but he was not a decision maker. Mohammed Islam was the decision maker and had the final say on how the business was run. Abu Islam had several clients he dealt with, and he worked with other members of the team which consisted of an office manager, Andrew Barnett, two other accountants and TowfiqZimmerman, who held the same position as the claimant during the short period the claimant worked for the respondent.
14. The acronyms ACA and ACCA relate to accountancy training qualifications provided by different bodies. The ACA accountancy qualification, the Association of Chartered Accountants (the "ACA"), is described as the "Rolls Royce" accounting qualification which requires a training contract to be entered into and the accountancy firm to be an authorised training employer. The respondent produced evidence marked "R2" consisting of an email sent to studentsupport@icaeu dated 13 May 2025 enquiring "if we are registered as a training office and if not, how we go about getting registered to train ACA students." The ICAEW response dated 14 May 2025 was "We can advise that your firm is not an authorised training employer on the system." The claimant submitted that the correspondence cannot be relied on. The claimant submitted there was no evidence the respondent was not an authorised trainer in 2023/2024. As the claimant had not produced any evidence showing the respondent was an authorised training employer at any time, I concluded the respondent had not been an authorised trainer when the claimant was employed by it. I inferred from interpreting both emails as a whole, that had the respondent been an authorised trainer in the past it would not need to ask how it would go about registering to train ACA students. There was no evidence whatsoever that TowfiqZimmerman was training with the ACA, and the claimant was unable to persuade me that the email received from the ACA was fraudulent in any way. I was satisfied by the document referred to in detail below, and evidence given by TowfiqZimmerman and Mohammed Islam that the ACCA qualification was less onerous and involved self-study as opposed to the ACA qualification which required the firm to be an authorised training provider and enter into a training contract neither of which were applicable to the respondent, claimant and TowfiqZimmerman.

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15. I concluded the respondent had not offered and agreed to provide ACA training to the claimant at his interview or at all.
16. The claimant has a degree on economics. He is not an accountant. Whilst working for HMRC a number of years ago the claimant obtained an AAT qualification to level 4. By the time the claimant applied for the account's assistant role with the respondent, which was an entry level position, the claimant had not worked in an office for approximately 5 years. He had been working as a cook and immediately before he took up his employment with the respondent, a forklift truck driver until he had an accident and then found work in a call centre. Mohammed Islam's evidence that the claimant was not head of the VAT department and he was placed on a six-month probation to see if he was suitable for office work, was credible.
17. The respondent advertised for an accounts assistant that included the following description: "Prior experience in an accounting environment would be highly desirable but not essential as training would be provided and career progression would be on offer for the right candidate...**support would be offered to study for the AAT qualification**" [my emphasis]. There was no reference to ACC or ACCA qualification, and the attraction to Mohammed Islam was the fact the claimant already possessed the AAT qualification when he interviewed the claimant and offered him the job immediately following the interview. The claimant did not need support to study the AAT qualification because he already possessed it.

The 29 November 2022 interview

18. The interview took place on the 29 November 2022 with the claimant, Mohammed Islam and Abu Islam.
19. The claimant's oral and written evidence is that it was agreed he would work 42.5 hours a week with a one-hour unpaid break and be paid an annual salary of £19,000 that would increase after 6 months to £25,000 with the promise of ACA/ACCA professional training and career progression. The claimant, who had no experience as a VAT account assistant, maintains he was told at the interview he would act as Head of VAT and train new staff from the outset. On the balance of probabilities, I preferred the evidence given by Mohammed Islam that the claimant was on a 6-month probation period, he had not worked in an office environment for a number of years and was entry level as a VAT account assistant as he had not held such a position previously. The salary of £19,000 reflects the fact that the role was an entry level one, and this was accepted by the claimant at the time. I do not find it credible the claimant was offered and accepted a guaranteed salary of £25,000 after 6 months. On the balance of probabilities, I find a discussion took place about salary increases in the future, no figure was mentioned, and a review would take place after the probationary period. It is notable that in contrast, the claimant's case is that Towfiq Zimmerman was promised a review after 12 months employment.

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20. On the balance of probabilities, I find Mohammed Islam confirmed the hours of work were 35 hours per week, with the claimant starting at 9am and finishing at 5.30pm, an unpaid lunchbreak of one hour and two unpaid fifteen-minute breaks in the morning and afternoon. I preferred the evidence of TowfiqZimmerman and the findings of the HMRC investigation (see below) to the claimant's evidence that his hours of work were agreed at 42.5 hours per week, and in this regard, I found him to have been an inaccurate historian. The claimant was aware, if he any doubts as to the hours of work, the office day started at 9am and finished 5.30pm, with an hour off for lunch, which the claimant would often share with TowfiqZimmerman or visit his girlfriend who worked in the Liver Building down the road. In addition, the claimant and his colleagues, including TowfiqZimmerman, had a half hour unpaid break in the morning and afternoon.
21. I concluded that the claimant was paid £19,000 gross for working a 35-hour week with unpaid breaks amounting to one and a half hours in total.

The Contract of Employment

22. The claimant disputes being provided with a contract of employment at any stage during his employment and accuses Mohammed Islam of fabricating the contract and forging the claimant's signature on it, maintaining that had the respondent possessed a signed copy of his contract at the time it would have provided HMRC with a copy. This is a serious allegation, and in support of it the claimant relied on the signature in his driving licence, a 16-25 Rail Photocard (the claimant's date of birth is 7 February 1988) and a passport. The claimant did not seek to enter evidence of any report from a handwriting expert. I am not a handwriting expert, and it appears all of the signatures, including the signature on the Employment Contract, are similar enough bearing in mind Ms Halsall's submission that written signatures are rarely identical over a period of time. On the face of the evidence before me, and on the balance of probabilities taking into account my finding that the claimant was not a credible witnesses on a number of other matters, I find the claimant's signature on a contract of employment was not forged as alleged, and I preferred Mohammed Islam's evidence that on the first day the claimant started work he signed the contract, and the claimant also signed the contract.
23. I am further persuaded that the claimant signed the Employment Contract dated 1 December 2022 having considered the applicable terms and whether they reflected the reality when the claimant was working, concluding that they did. The main place of work was correct, job title VAT assistant was correct, a six-month probationary period, hours of work 35 hours with unpaid breaks of 15 minutes in the morning and afternoon correct although there is no mention of a one-hour unpaid lunch break, the salary amount of £19,0000 was correct with a reference to the following "pay rises are completely at the discretion of the employer. We expect all work to be completed within the stated hours, and any overtime required to complete office work within a designated time frame will be unpaid unless agreed specifically in advance." The holiday year is correct; it runs from 1 January

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to 31 December and cannot be carried over. It is correct that SSP is payable on sick leave and termination of employment requires on months' notice during the probation period and three months' notice irrespective of service. The contract includes a short disciplinary procedure.

24. The claimant relies on a WhatsApp message between himself, and Ms Tee sent on the 2 December 2022 as evidence proving he was not provided with an employment contract. The claimant wrote "He apologised not getting the contract ends that done yet." The claimant argued that this was evidence that the contract could not have been produced and signed on the 1 December 2022 because of Mohammed Islam's apology. There is no contemporaneous documentation to the effect that Mohammed Islam had apologised for not providing the employment contract on the claimant's first day of work. It is notable that this was the only communication about the contract of employment, and I found it surprising that the claimant, who on his own account clearly discussed the contract of employment with Mohammed Islam, did not raise it again until the relationship had broken down. It made no sense that the claimant did not chase Mohammed Islam, who had allegedly apologised. On the balance of probabilities, I concluded the contract of employment was provided and signed by both parties, and the claimant's reliance on the WhatsApp message between himself and Ms Tee disingenuous, including the references to the claimant working late as recorded below.
25. The claimant was not provided with any other documents, such as an Equality/Equal Opportunity Policy/ Procedure.
26. It is unfortunate the claimant was not provided with an offer letter and a copy of his contract immediately following his successful interview, as this would have clarified the terms agreed beyond doubt, and given the claimant time to read the terms before starting work.
27. The claimant started work on the 1 December 2022. On the balance of probabilities, I preferred Mohammed Islam's evidence that the claimant informed him, due the low salary of £19,000, he did not want to join the pension scheme after 3 months of employment as provided for in the Contract of Employment. It is unfortunate the claimant's instructions were not confirmed in writing by either party, However, it is uncontroversial that the respondent and claimant did not make pension contributions after 3-months employment through to resignation, and this was not raised as an issue until much later on by the claimant, well after the three months had passed. Had the claimant genuinely believed he had agreed to join the pension scheme after 3 months and it was not actioned; he chose not to raise a query about this and relied on the omission as a breach of contract.
28. The claimant did not complain about an alleged lack of a contract of employment. He worked in accordance with the hours referred to above and there was no complaint about a lack of contract or the claimant working more than his contractual hours and the claimant raised no issue concerning his wages and being paid less than the statutory minimum. This is not surprising

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as the claimant was working 35 hours a week in receipt of a £19,000 salary. The claimant was paid £10.44 per hour. The minimum wage from April 2022 to March 2023 was £9.50 per hour, and from April 2023 to March 2024 increased to £10.42 per hour.

29. On the 3 January 2024 TowfiqZimmerman started his employment with the respondent. He had a degree in accounting, a BBA and MBA with professional experience working for KPMG in Bangladesh, and MSc in accounting and Finance from the University of Liverpool. TowfiqZimmerman accepted the first job he was offered despite it being at entry level on a salary of £19,000 and he worked in the same position as the claimant carrying out similar duties. The claimant's evidence that he had trained TowfiqZimmerman was not credible; showing a new employee around the office and helping him find his feet in a new environment is not synonymous with training, and I preferred TowfiqZimmerman's evidence that he was not trained by the claimant, the claimant was not head of VAT and he was not formally trained by Mohammed Islam or Abu Islam, as alleged by the claimant in cross-examination. On the balance of probabilities, I find that both the claimant and TowfiqZimmerman received on the job ad hoc training as and when necessary, with TowfiqZimmerman possessing more experience than the claimant in accountancy matters including VAT.

30. AS he had done with the claimant, Mohammed Islam provided TowfiqZimmerman with a written contract of employment which they both signed on the 3 January 2023. The terms are identical to those set out in the claimant's Contract of Employment.

The claimant's poor performance

31. In direct contrast to TowfiqZimmerman's performance, there were concerns over the claimant's performance.

32. On the 7 February 2023 the claimant had made a mistake that cost the respondent £986.89 (the withdrawn counterclaim) and made another mistake on the 7 March 2023 and a third mistake before resignation. These mistakes did not affect the claimant's probation period, which he successfully passed on the 1 June 2023.

33. At no stage during the probation period did the claimant raise an issue with his pension, which according to his contract, the claimant was entitled to join after three months of service, he did not request a copy of his contract, he did not complain about being required to work unpaid overtime and he raised no issue with being paid less than the national minimum wage. There was no communication orally or in writing about these matters between the claimant and the respondent. It is notable that the evidence relied on by the claimant was solely the WhatsApp messages between himself and his girlfriend, Ms Tee, and the claimant confirmed to me that he did not write to the respondent during this period. The claimant relies on these WhatsApp messages as evidence of several matters ranging from the overtime he

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worked to the alleged discrimination, and yet for some unexplainable reason there is no communication with the respondent about this.

34. The claimant's evidence that Abu Islam forced the claimant to wait in the office, so the effect was that he worked late, was not supported by the evidence. The comment was made on the 7 July 2023 at 15.55 and at 18.15 the claimant wrote to Ms Tee "I'm literally sitting here waiting to go." This was not satisfactory evidence that the claimant was asked to work late, and I gave little weight to the text messages as it appears that instead of texting his employer the claimant chose instead to generate the only evidence of his complains by communications to his girlfriend. This made no sense given it would have been a straightforward matter for the claimant to ring and/or text and/or email Abu Islam or Mohammed Islam if he was sitting in the office waiting for Abu Islam without work to do. The claimant was the second security fob holder, and it was in his power to leave the office.
35. The claimant exchanged WhatsApp messages with Ms Tee on the 16 August 2023 concerning TowfiqZimmerman informing him he had just registered for ACCA and Mohammed Islam had given him a code. The letter dated 13 May 2025 from Mhairi Wilson, Director of Customer Service, supports TowfiqZimmerman's evidence that he registered for ACCA qualifications on 29 May 2024. There is no reference to any code being involved. On the balance of probabilities, I concluded the claimant's evidence that he had a discussion with TowfiqZimmerman some 9 months earlier was unreliable, and preferred TowfiqZimmerman's evidence supported by documentation that the alleged conversation had not taken place.
36. I concluded TowfiqZimmerman was not treated differently to the claimant at all. During the claimant's employment TowfiqZimmerman had not registered for ACA or ACCA training and nor had the respondent promised to provide it.

The date of knowledge and out of time claim

37. For the purpose of this litigation and time limits, according to the claimant's own evidence TowfiqZimmerman started the ACCA qualification and had been provided with a code by the respondent on some date prior to the 16 August 2023, with the date of knowledge for the claimant being the 16 August 2023 email at the latest. I find as a matter of fact the claimant was aware that he could bring a race discrimination claim, and according to his oral evidence given on cross-examination, chose not to do so because he wanted the respondent to increase his pay to £25,000 and offer him ACCA training. I have dealt with this below under the heading "Time Limits."
38. It is clear from the WhatsApp messages between the claimant and Ms Tee that the claimant was seeking alternative employment and she was assisting during this period. The claimant relies on the 17 August 2023 exchange when he commented "I've not signed a contract" and Ms Tee responded "could go tomorrow" as evidence that the Contract of Employment had not

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been provided. There is a problem with this evidence in that not signing a contract is different to a contract not been provided, which is the claimant's case although in evidence on cross-examination he appeared to suggest that if a contract was not signed then there was no employment contract, which is clearly wrong in law. Had the claimant not been provided with a contract of employment as he now claims, it is surprising that his message to Ms Tee does not say that. It is notable that at no stage of his employment before he decided to leave did the claimant raise the issue of (a) not being provided with a contract of employment, or (b) not signing a contract of employment, and it can be inferred that the reason for this was that the employment contract had been provided and signed on the 1 December 2022.

25 August 2023 meeting

39. At the 25 August 2023 meeting pay was discussed for the first time, and Mohammed Islam offered to increase the claimant's pay to £22,000 with a further £1000 in January 2024, despite his mistakes because he believed the claimant's performance would improve, they respected each other and got on. The claimant rejected the offer and made a counter-offer of £26,000 which was rejected by Mohammed Islam with the effect that the claimant's salary remained at £19,000 and he had no expectation in law that it should increase and the claimant's evidence that there was an expectation on the part of both parties that his salary should be increased immediately on successful completion of his probation period had no basis.
40. I find as a matter of fact that the claimant had refused the salary increase without reserving his position on the salary offer, and the respondent was not in breach of contract when it continued to pay to the claimant his salary of £19,000. In oral evidence on cross-examination the claimant stated he had verbally accepted the offer of £22,000 and should have received back pay to 22 June 2023. The claimant's evidence was not credible, and I found as a matter of fact he had rejected the offer. No agreement was reached to the effect that the respondent would increase the claimant's salary to £22,000 whilst the claimant was negotiating a higher salary and/or looking for alternative employment.

28 August 2023 meeting with the claimant and Abu Islam

41. A further meeting took place on the 28 August 2023 between the claimant, and Abu Islam, approximately just under 3 months since the claimant completed his probation period and on the claimant's case, he should have been paid £25,000. It is notable that there was no correspondence from the claimant concerning the alleged agreement. By this time the claimant had taken part in a meeting with Mohammed Islam about his poor performance, as he had committed another error on the 7 July 2023.
42. The claimant was looking for alternative employment having decided that he would be leaving the respondent's employment as soon as he could, and at the meeting held with Abu Islam on the 28 August 2023 the claimant

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informed him of this. The claimant's evidence that after this date he was pressured by the respondent to resign is not credible or supported by any contemporaneous documents. The claimant's pleaded case as set out in the ET1 was "during these talks there was a complete breakdown in the relationship after I advised I was going for a job interview when asked why I was requesting annual leave."

43. In his written statement at paragraph 7.1 the claimant referred to a meeting that took place on the 29 August 2023, he did not mention Abu Islam and the complaint was "the respondent then began to actively force me out." The claimant's statement is contradictory in that at paragraph 202 he wrote "my employment ended on 21 April 2024; I was constructively dismissed as the employer demanded my resignation." I have dealt with the 28 August 2023 meeting in some detail given the claimant's submission that I should raise an adverse inference and uphold the automatic unfair dismissal and race discrimination claim because Abu Islam was not called to give evidence and had not provided a witness statement. The claimant's submission had no basis; the claimant has not produced any satisfactory prima facie evidence that Abu Islam was racist at the 28 August 2023 meeting. At its highest, on hearing that the claimant intended to resign and was taking annual leave for an interview, Abu Islam asked when it would be, as confirmed by Mohammed Islam who had spoken with his Father because he had not been at the meeting, contrary to the contents of paragraph 22 in Mohammed Islam's witness statement that "he informed me he intended to leave once he had found a new position." There was no evidence whatsoever the respondent, either through Mohammed Islam or Abdu Islam was "actively" forcing the claimant out because he had made a statutory assertion about minimum wage, and the pleaded case was not that Abu Islam or Mohammed Islam had "demanded" his resignation after the grievance had been submitted.
44. It is notable that the claimant did not raise the issue of minimum wage until after he had been told that his salary would increase to £22,000. At 23.20 on the 28 August 2023 the claimant sent a WhatsApp message to Ms Tee when she wrote **"can just make a comment that you're looking past the discrimination"** the claimant responded, **"Yes because that won't make working with them awkward until I find a new job"** [my emphasis]. I concluded the claimant intentionally delayed issuing his claim of direct discrimination before lodging it outside the primary limitation period.
45. On the 28 August 2023 in a WhatsApp exchange with Ms Tee the claimant calculated the amount of pay he was receiving based on a 37.5-hour contract with 1 hour for lunch and concluded that he was being paid the minimum wage with overtime and the "Reasons to be paid more: AAT qualification." Ms Tee suggested "TGH can't you say something like Fees have gone up 33%, Anu did calc in front of you and justified it all as salary increases. That's £50K extra but you're only offered £50k extra of what?" **The claimant responded "they should pay £25k as a minimum...gonna type it all up in the morning and give it to them in writing. Do the calc above and say in think £35k is fair. And training is fair. That's my**

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minimum. If you don't accept this, we need to discuss my duties diluted as I go above and beyond my salary. If not, my hours being reduced. Also, I have not been paid £440. 37 hours only being getting 35 hours. **Happy to go to HMRC and discuss minimum wage if not** [my emphasis]. The one thing the WhatsApp message does not mention is the claimant's position as reflected in these proceedings that an agreement was reached with the respondent to the effect he would be paid £25,000 on completion of the probation period and training. On a commonsense reading of the words used by the claimant, the WhatsApp messages point away from this agreement ever being reached, with the claimant attempting to justify an increase in pay including using minimum wage and the threat of reporting the respondent to HMRC as a lever when he was working 35 hours a week not including unpaid breaks.

46. In a WhatsApp exchange on the 29 August 2024 the claimant wrote "Spoke to Abdu regarding not staying. He wanted a resignation. Told him no he will get notice once I've found another job. He said usually I'd stay until January (laughing emoji) Told him that's not happening. He said I agreed to a month. Told him I never..." I concluded the claimant contemporaneous evidence undermined his allegation that he was put under pressure to resign because he had asserted a statutory right to be paid the statutory minimum wage.
47. At 13.22. on the 30 August 2023 the claimant sent a WhatsApp to Ms Tee "Abu has told Towfig he will review his pay" to which Ms Tee responded "discrimination" and there was a discussion about ACCA training and the respondent reimbursing TowfiqZimmerman, evidence which is not supported by contemporaneous documents and undermined by the ACCA letter referred to above confirming TowfiqZimmerman had started his training on the 29 May 2024 and not in 2023.
48. At 12.24 on the 1 September 2023 the claimant sent Ms Tee a WhatsApp "only paid me the same as last month.... I've elected to stay as the pay is so low. **Gonna put in my holiday request for next Friday and the following week. Will contact Tawhid on the Monday and let him he's breaking national minimum wage law**" [my emphasis]. The claimant set out in detail what his letter would say, including starting work on the 1 December 2022 just above the national minimum wage and as the national minimum wage increased "for tax year 2023/2023 from April 2023 I expected my pay to reflect this change...based on a 37.5 working week...I have worked overtime..."

The claimant's absence from 4 September 2023 to resignation.

49. The claimant went off on sick leave with stress on 4 September 2023 from which he did not return and emailed the respondent the grievance as he had planned to do in the exchange of WhatsApp messages with Ms Tee. There was no evidence before me that the claimant was too unwell to take part in ACAS early conciliation or issue proceedings during his sickness absence,

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and I find that he was well enough to have issued proceedings inside the statutory limitation period.

The 4 September 2023 grievance

50. In the 4 September 2023 grievance the claimant complained that he had been receiving pay less than £10.42 per hour below the national minimum since 1 April 2023, maintained that he had not been told at interview of the two 15 minute break, overtime was worked each month without pay, and “during my interview, we agreed a 6 month pay review that was conducted on the 24/08/2023 and concluded on 25/08/2023 £22,000 going up to £23,000 in January 2024. Not only has this not been back paid from 6 months onwards, but it has not been actioned this month either.” In direct contrast to the breach of contract claim lodged with the Tribunal the claimant did not mention that a pay increase of £25,000 had been agreed at the interview. The claimant complained; **“during my interview, I was told my salary was so low I would be provided training. I was promised study support and not only did that not happen but instead has been provided to a Bangladesh colleague I trained...I will be expecting remedial action immediately otherwise I will be escalating this issue to National Minimum Wage”** [my emphasis].
51. The claimant raised allegations of discrimination and unequal treatment relating to TowfiqZimmerman making racist comments (which was not before the Tribunal) and TowfiqZimmerman being offered study support when the claimant was not.
52. The claimant did not enter into ACAS early conciliation with a view to issuing proceedings for discrimination on the grounds of race and religious belief.
53. The 4 September 2023 grievance with the first occasion the claimant had asserted his statutory right to be paid a minimum wage, and I found that it was not made in good faith, but as leverage to negotiate a higher salary of £25,000 with the threat of reporting the respondent to HMRC if payment was not made. In oral evidence during cross-examination the claimant confirmed that up to the date of his resignation, had the respondent paid him £25,000 and provide training he would have remained working for it.
54. There were a number of issues concerning the claimant’s sickness absence and reporting provisions.
55. I do not intend to set out the party-to-party correspondence that passed between the parties concerning the claimant’s failure to provide a timely certificate in relation to his sickness absence, his refusal to attend a grievance hearing inside or outside the workplace and refusal to communicate with Mohammed Islam other than in writing. Mohammed Islam’s attempts to telephone the claimant were ignored, and the grievance investigation was conducted without any grievance meeting with the claimant taking place at the claimant’s insistence. In short, the claimant made it clear that he wanted nothing to do with the respondent. During this

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period the claimant was seeking alternative employment, and his oral evidence on cross-examination was that had he been offered a salary increase of £25,000 and training he would have returned to work despite not engaging with any of the processes apart from completing a medical records release form with a view to occupational health being instructed to provide a report had the claimant indicated he would be returning to work.

56. There is confusion as to whether the claimant took 1 or 2 weeks holiday in September or October 2023 and the total number of holidays taken in 2023. The claimant has not produced any satisfactory evidence to clear up this confusion, and he did not provide a breakdown of how the 17 days accrued holiday figure has been broken down, taking into account up 4 weeks statutory holidays can be carried over when they accrue during a sickness absence. I cannot find on the balance of probabilities that the claimant accrued untaken holidays in 2023. Both parties accepted wage slips would be of no assistance as they did not set out the holidays; this is unfortunate and the respondent can be criticised for this. However, the claimant should have been in a position to set out what holidays he had taken and broken down how he calculated those that were owed, and as I did not find the claimant a credible witness, I was unable to conclude a total of 17 days was owed without further information. I have dealt with the 2024 holiday entitlement below as at the effective date of termination.

Late payment of SSP

57. In an email dated 22 October 2023 the claimant complained that he had been paid SSP late. The claimant wrote “your excuse of this insidious action makes no sense...I previously worked for HMRC in the employer duties department and as such, dealt with employee’s pay regularly...” In an email dated 30 September 2023 the claimant accused Mohammed Islam of making “harassing phone calls” which is a reference to welfare calls the claimant had ignored.
58. I accept on the balance of probabilities Mohammed Islam’s explanation that he had not realised the claimant had been sent his SSP late, and there were issues concerning the claimant’s sicknote and being absent without leave, and there is no satisfactory evidence from which an adverse inference can be drawn in relation to the discrimination complaints or automatic unfair dismissal.

Investigation of the claimant’s grievance

59. On the balance of probabilities, I accepted Mohammed Islam’s oral evidence on cross-examination that he had started to investigate the claimant’s grievance and stopped when the claimant raised a complaint with HMRC about being paid less than the national minimum wage, pending HMRC’s investigation. The claimant has brought this into question, disputing a grievance investigation ever took place and maintaining he was not posted the grievance outcome by the respondent, which he states was not seen until the bundle in this litigation. I preferred Mohammed Islam’s evidence,

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and while it is undeniable he did not warn the claimant that he was waiting for the HMRC outcome, which he should have done as best practice, it is credible that this is what had taken place as reflected in the Grievance outcome report.

60. It is apparent from the correspondence between the claimant and HMRC a number of documents (including call notes) and screenshots were provided by the claimant, and in the 31 October 2023 HMRC communication the claimant was informed “the next step of the review is for me to hold a meeting with the business.” The meeting was held with Mohammed Islam who remained in contact with HMRC and provided further information requested to the satisfaction of HMRC, including a blank unsigned copy of the Contract of Employment which was identical to the copy signed by the claimant. The claimant’s assertion that the Contract of Employment was fabricated and fraudulently signed after HMRC started to investigate made no coherent sense. If the respondent wanted to deceive HMRC and the Tribunal, as maintained by the claimant, it would have sent the fraudulently signed contract and not an unsigned copy. Mohammed Islam’s evidence that he had provided an unsigned copy and HMRC was happy with this could not be disputed by the claimant and I found it to be credible.
61. In a letter dated 21 November 2023 HMRC referred to the claimant’s intention to get legal advice, and it is clear from the documents in the bundle the claimant was able to deal with his complaint and HMRC’s response to it. I concluded the claimant’s health did not prevent him from undergoing ACAS early conciliation and issuing proceedings. The claimant’s case is that he was waiting for the outcome of his grievance, and yet there was no reference in the 4 September 2023 grievance to allegations of discrimination on the grounds of race and religion or any other type of discrimination. Considering the overall matrix, I concluded the claimant was waiting to see if his actions (including the grievance) resulted in an increased salary being made to him, which was the claimant’s only concern as he believed the respondent should pay him £25,000 with training because he was worth it.
62. In a letter dated 22 January 2024 HMRC requested evidence from the claimant showing the business “**required you to stay late beyond the screenshot that you provided...**” [my emphasis]. It appeared that HMRC had been proved with the WhatsApp messages between the claimant and Ms Tee, which was also the only evidence before the Tribunal that the claimant may have worked later on occasion, than 5.30pm. In an email dated 22 January 2024 the claimant’s response was to refer HMRC to cameras evidencing he was seeking permission to leave “whereas on a normal working day I would just leave at half 5 without any need for interaction.” The evidence before the Tribunal was different, in that the claimant maintained on one occasion he had to wait to be allowed to go home as recorded above.
63. In an email sent on the 23 February 2024 to HMRC the claimant alleged he had never been provided with a contract and any signature on it was forged

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and he disagreed with the interpretation given to the WhatsApp messages, requiring the evidence found by HMRC in favour of another employee being underpaid to be disclosed, and appealing the HMRC decision. It is notable that HMRC did not find the claimant had been paid less than minimum wage. and when this outcome was communicated to the claimant the claimant

64. Taking into account the contemporaneous documents relating to the HMRC investigation, I concluded that Mohammed Islam's evidence was credible that when he became aware of the HMRC outcome, which was not favourable to the claimant, before the grievance report was finalised, and before it was posted Mohammed Islam did not check the date of the document he had started to prepare before the HMRC investigation into the minimum wage allegations.

Grievance outcome

65. The grievance outcome is incorrectly dated 4 January 2024. Prior to this on the 2 January 2024 Mohammed Islam wrote to the claimant "the investigation into your grievance has now been completed and I will be sending a letter to you in this regard in due course. I was hoping to be able to discuss the contents with you prior to sending the letter..." It is unfortunate that the letter did not make it clear the investigation had been completed except for the HMRC investigation, and the respondent's omission in this regard has only served to confuse the position. I concluded that there was no reason for Mohammed Islam to hide the fact that a HMRC was investigating part of the grievance relating to national minimum wage, as it was known to both the claimant and respondent that the HMRC investigation was ongoing at the time.
66. Upon the respondent being informed by HMRC that it had no case to answer in respect of the claimant, the incorrectly dated 4 January 2024 grievance letter was posted to the claimant by Mohammed Islam on 28 March 2023, who did not think to obtain proof of posting, which was unfortunate. The claimant denies receiving the grievance outcome, and given the factual matrix above, I did not find this evidence reliable, and preferred on the balance of probabilities Mohammed Islam's evidence that HMRC had confirmed the position relating to the claimant and asked the respondent to provide documents linked to another employee before to 28 March 2023 grievance outcome was finalised.
67. It is notable that the grievance outcome refers to the National Minimum Wage and Working Hours complaint as follows which supports Mohammed Islam's oral evidence; "I want to remind you that this matter was thoroughly investigated by HMRC. The investigation concluded that you were paid at least NMW for all hours worked. Additionally, your claim that you were informed of a 42.5-hour week is incorrect, as you are aware the standard working week for all full time staff, including yourself, is 35 hours which

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includes two unpaid 15 minute breaks per day...**on the 28 August 2023 you informed Abu that you were rejecting the pay offer and intended to leave the firm. Abu told you he respected your wishes and asked you to make your resignation formal however you refused stating you would not resign until you had found a new role...A resignation was never discussed with you again after this date...your pay remained unchanged as you rejected the offer of a pay increase...**" [my emphasis].

68. With reference to the discrimination allegations, these were denied and there was a reference to Towfiq Zimmerman, "who holds a master's degree in accounting" being recognised as the more qualified candidate."
69. In a letter emailed to the respondent on the 3 May 2024 HMRC confirmed it had completed a check of the respondent's records and "based on the information I've seen, you have not paid one of your workers at least the correct rate of NMW. This is because the worker (name redacted) worked more hours than he was contracted to over the course of his calculation year, and he did not receive at least NMW for the additional hours worked." It is undisputed that the worker was not the claimant, who was aware before his resignation that HMRC had carried out an investigation and found he had not been paid less than the national minimum wage covering the period he worked for the respondent, and the claimant had no reasonable basis for asserting he had in this litigation bearing in mind the lack of any credible evidence provided to the Tribunal.
70. The claimant remained too unwell to work but well enough to seek alternative employment and attend interviews and obtained new employment which he commenced on the 22 April 2024 at a salary of £24,300 (as set out in the ET1 but not in the schedule of loss). Directly as a result the claimant emailed the respondent on the 4 April 2024 attaching a fit note and giving notice of resignation expiring on the 21 April 2024. The claimant gave no reasons for his resignation, and in contrast to his oral submissions (and not oral evidence) he made no reference to any cumulative breach including being paid less than the national minimum wage, a failure to "engage meaningfully with my grievance," failure to implement the agreed £25,000 verbal contract, "failed to provide the promised ACA training, failed to enrol the claimant into a pension scheme, comply with the ACAS Code and pay accrue holiday on termination."
71. I found on the balance of probabilities that the sole reason for the claimant's resignation was pay. The respondent had failed to offer the claimant the increase he wanted and he found alternative employment at a higher rate of pay, having used the threat of resignation and reporting the respondent to HMRC for National Minimum Wage breaches as leverage to force the respondent to increase his salary to a minimum of £25,000 (which is what the claimant thought he was worth) when no prior agreement had been reached to increase his pay in an entry level role to this amount. There was no possibility of the claimant ever being offered an ACA training contract,

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and the claimant was aware at the time of his resignation that was no agreement to the effect that he would be offered an ACCA training contract.

72. The effective date of termination was the 21 April 2024. As the claimant's employment started on the 1 December 2022, he did not have sufficient continuity of employment to bring a claim of ordinary constructive unfair dismissal. The claimant had accrued holiday during his sick leave absence between 1 January 2024 to 21 April 2024 for which he did not receive payment as conceded by the respondent at this hearing.

Accrued holiday pay

73. It is accepted the claimant earned £1411.80 net per month on an annual salary of £19,000. The daily rate is £65.16 net per day. The claimant worked a 35-hour week, had a one-hour unpaid lunch break and two half hour unpaid 30-minute breaks. The claimant worked 5 days a week and he was entitled to be paid accrued holiday in the sum of £586.44, a figure agreed between the parties although the claimant disputes that the calculation should be based on a salary of £19,000 maintaining it should be £25,000 on weekly hours of 37.5.

74. The respondent is ordered to pay to the claimant accrued untaken holiday in the sum of £586.44 within 14 days of the date this Reserved Judgment and Reasons is sent to the parties.

75. The claimant took part in ACAS early conciliation between the 5 and 16 June 2024. The claim form was presented on the 13 July 2024.

The law

National Minimum Wage

76. Dismissal in connection with *national minimum wage entitlement* is set out in S.104A ERA .

Section 104A.— The national minimum wage.

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right of the employees to which this section applies; or

(b) the employer was prosecuted for an offence under section 31 of the National Minimum Wage Act 1998 as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, a right of the employee's to which this section applies; or

(c) the employee qualifies, or will or might qualify, for the national minimum wage or for a particular rate of national minimum wage.

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(2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—

(a) whether or not the employee has the right, or

(b) whether or not the right has been infringed,

but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

(3) The following are the rights to which this section applies—

(a) any right conferred by, or by virtue of, any provision of the National Minimum Wage Act 1998 for which the remedy for its infringement is by way of a complaint to an employment tribunal; and

(b) any right conferred by section 17 of the National Minimum Wage Act 1998 (worker receiving less than national minimum wage entitled to additional remuneration).

77. It is immaterial whether the employee actually has the statutory right in question or whether it has been infringed, but the employee's claim to the right and its infringement must be made in good faith — S.104(2).

Calculating a week's pay

78. The method of calculating a week's pay for an employee with normal working hours depends on whether the employee's remuneration varies with the amount of work done or according to the time spent working. There are three scenarios and the claimant falls under the first scenario; where the employee's remuneration does not vary with the amount of work done — S.221(2) ('time workers'). The amount payable to the claimant under the contract was £19,000 and his normal working hours were 35 hours a week.

Discrimination

Direct race discrimination

79. S.13(1) EqA provides that direct discrimination occurs where "a person (A) discriminates against another (B) if, because of a protected characteristic [race] A treats B less favourably than A treats or would treat others.

80. An actual or hypothetical comparator is required who does not share the claimant's protected characteristic and is in not materially different circumstances from him. The EHRC Employment Code makes it clear that the circumstances of the claimant and comparator need not be identical in every way, what matter is that the circumstances "which are relevant to the [claimant's treatment] are the same or nearly the same for the [claimant] and the comparator." This is relevant to the comparator, TowfiqZimmerman, relied upon by the claimant who were not in the same or nearly the same circumstances as the claimant. TowfiqZimmerman is better qualified, more

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experienced and had not made mistakes and was therefore not in an identical position as the claimant. Both held the same entry level position, carried out the same duties, worked a 35-hour week with the same unpaid breaks, and ACA training had not promised and nor had it taken place.

81. I had in mind that it was not necessary for the claimant to show that the respondent discriminated consciously. Subconscious discrimination or unconscious discrimination is also prohibited: "Those who discriminate on grounds of race or gender do not in general advertise their prejudices: indeed, they may not even be aware of them:" Glasgow City Council v Zafar [1998] IRLR 36 (HL)). "Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated" Nagarajan v London Regional Transport and others [1999] IRLR 572 (HL). "In some cases, the discrimination will not be ill-intentioned but based merely on an assumption that a person would not "fit in:" King v Great Britain-China Centre [1991] IRLR 513 (CA). The Tribunal must therefore, it is suggested, inquire as to the conscious or subconscious mental processes which led the respondent to take a particular course of action in respect of the claimant and to consider whether a protected characteristic played a significant part in the treatment as per IPC Media Ltd v Millar [2013] IRLR 707 and I concluded in Peter Rothwell's case that it did not.

82. The discriminatory reason need not even be the principal reason for the Respondent's actions; it only needs to have had "a significant influence on the outcome" as per Owen & Briggs v James [1982] IRLR 502 (CA) and Nagarajan. For direct discrimination to occur, the relevant protected characteristic needs only to be a cause of the less favourable treatment "but does not need to be the only or even the main cause". As indicated below, I carried out this inquiry before concluding on the balance of probabilities conscious and unconscious mental processes were such that the claimant's protected characteristic played no part in the respondent's treatment of the claimant.

Burden of proof

83. Section 136 of the EqA provides: (1) this section applies to any proceedings relating to the 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 provisions concerned, the court must hold that the contravention occurred. (3) Subsection (2) does not apply if A shows that A did not contravene the provisions. (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule."

84. In determining whether the respondent discriminated the guidelines set out in *Barton v Investec Henderson Crossthwaite Securities Limited* [2003] IRLR 332 and *Igen Limited and others v Wong* [2005] IRLR 258 apply, as affirmed in *Ayodele v CityLink Ltd* [2018] ICR 748 to which the Tribunal was referred by Mr Piddington. The claimant must satisfy the Tribunal that there are primary facts from which inferences of unlawful discrimination can arise and that the Tribunal must find unlawful discrimination unless the employer can prove that it did not commit the

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act of discrimination. The burden of proof involves the two-stage process identified in *Igen*. With reference to the respondent's explanation, the Tribunal must disregard any exculpatory explanation by the respondent and can take into account evidence of an unsatisfactory explanation by the respondent, to support the claimant's case. Once the claimant has proved primary facts from which inferences of unlawful discrimination can be drawn the burden shifts to the respondent to provide an explanation untainted by sex [or in the present case race], failing which the claim succeeds. Peter Rothwell did not meet this burden of proof as he did not satisfy me that there were primary facts from which inferences of race discrimination can arise, and the burden did not shift. If I am wrong in my assessment and the burden had shifted, in the alternative I would have gone on to find the respondent had provided an explanation untainted by race discrimination.

Conclusion: applying the law to the facts

Automatically unfair dismissal

85. With reference to the first issue, namely, was the claimant dismissed, it is an agreed fact that he resigned on 21 April 2024.
86. With reference to the second issue, namely, did he terminate his contract by resignation in circumstances in which he was entitled to by reason of the employer's conduct, I found that he did not. The sole reason for the claimant terminating his contract was the respondent's failure to increase the salary offer to £25,000 and the claimant had found another job that paid more than the respondent. The claimant did not terminate his contract by reason of the respondent not paying him the minimum wage. When the claimant took the decision to resign, he had been off work for 7 months and had no intention of returning to work unless he was paid £25,000 and trained. The claimant had been instrumental in instigating a HMRC investigation as recorded above, had provided HMRC with evidence concerning alleged underpayments of salary less than the national minimum wage and HMRC had found that one employee had been paid less and that was not the claimant. By the time the claimant resigned he was in receipt of contractual SSP, and minimum wage was not an issue and the claimant could not have genuinely thought it was..
87. With reference to the third issue, namely, was the reason or if more than one the principal reason, for his dismissal (resignation) that he had taken action with a view to enforcing or securing the benefit of his right to the national minimum wage? (section 104A ERA 96), I found that it was not for the reasons already stated.
88. With reference to the fourth issue, namely, did the claimant take that action in good faith (section 104A (2) ERA 96), I found that he did not. The claimant worked a contractual 35 hours and was in receipt of £19,000 gross per annum, marginally above the minimum wage. There was no satisfactory evidence that the claimant was asked and required to work overtime, the contract provides that he was not contractually obliged to work overtime and he was expected to carry out his duties

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between the office opening hours of 9am to 5.50pm with a total of one and a half hours unpaid breaks. The claimant worked these hours without complaint until the respondent refused to increase his salary to £25,000. It is apparent as set out in the factual matrix that the claimant was using the threat of HMRC carrying out an investigation into national minimum wage as a lever to pressurise the respondent agreeing to the pay increase, which the claimant believed at the time he was worth rather than contractually entitled to (see below.) I did not find the claimant a credible witness and found he did not “genuinely and reasonably believed that because of the hours he was working 37.5 at £ 19 000 per annum gross he was being paid less than the national minimum wage from April 2023, when he raised this with the respondent in August 2023 and in his grievance dated 4 September 2023.

89. There is no requirement for me to deal with the remaining issues, and had the claimant brought his claim within the prescribed time, not delayed and affirmed his position by continuing to work for the respondent on a salary of £19,000 after he was told there would be no salary increase to £25,000 in August 2023 and after his grievance was rejected in March 2024, the claimant affirm his position by continuing to remain employed by the Respondent and only resigned due to finding an alternative position paying a higher salary which he took up.

Breach of contract

90. With reference to the first issue, namely was there a contract term entitling the claimant to receive £ 25,000 salary from 1 June 2023 as per the statement of main terms signed by the Claimant in December 2022, I find there was not. The contract is silent on salary increase and the contractual salary set out is £19,000 and “pay rises are completely at the discretion of the employer.”
91. With reference to the second issue, namely, is there a signed contract in place between the parties, I find the contract was signed by both parties on the 1 December 2022.
92. With reference to the third and fourth issue, it is accepted between the parties the payment of £25,000 was not made. As the claimant was not contractually entitled to £25,000 the complaint was not outstanding on termination of employment. The claimant was contractually entitled to £19,000 per annum and SSP when he was absent due to sickness and on termination.
93. With reference to the fifth issue, namely, was there a contract term to provide the claimant with ACA training, I found there was no such term. For the avoidance of doubt I found there was no contract term to provide the claimant with ACCA training (which was not the claimant's pleaded case in any event).
94. With reference to the sixth and seventh issue, ACA training was not provided and could not be provided as the respondent was not authorised to offer and take part in ACA training contracts, and there was no complaint outstanding on termination of employment.

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95. With reference to the eighth issue, the claimant did have a contractual right to be automatically enrolled, and he informed the respondent that due to the low salary he did not want to be enrolled into the pension scheme.
96. With reference to the ninth issue, namely, if so, was he enrolled and were appropriate deductions made from his pay, I find the claimant was entitled to be enrolled after 3 months' probation period, he was not enrolled, and no appropriate deductions were made from the claimant's pay. The claimant never raised pension as an issue with the respondent until it became clear his salary would not be increased to £25,000. It is notable after the 3-month probation period had passed the claimant never queried his pension, and the fact he made no contributions. I infer that the reason for this was that the claimant was aware he had put a stop to automatic enrolment as a means of saving the deductions he would need to pay.
97. With reference to the tenth issue, namely, remedy I confirm the claimant has not made out his case that the respondent was in breach of contract in relation to a salary of £25,000, ACA training and automatic enrolment onto the pension scheme, he is not entitled to any remedy, and his claims are dismissed.

Direct race and religion discrimination (Equality Act 2010 section 13)

98. With reference to the issue, namely, did the respondent do the following things:

(i) Abu and Tawhid in August 2023 tell the claimant they would not now offer ACA training, I found the claimant was never offered ACA training and the premise that the respondent informed the claimant in August 2023 that "they would now not offer ACA training" is misconceived. As the claimant was never offered ACA training that offer cannot be taken away from him. The respondent was not authorised to offer ACA training and was unable to offer the claimant a training contract. For the reasons set out above, the claimant's evidence that ACA training was promised at interview was not found to be credible.

(ii) TowfiqZimmerman is a Bengali Muslim, and he was not given ACA training and financial support, study leave and payment of exam fees. TowfiqZimmerman's race and or religion was irrelevant. Long after the claimant has resigned TowfiqZimmerman registered on the ACCA self-study course at his own expense.

(iii) The claimant has not shifted the burden of proof. The claimant has not satisfied the Tribunal that there are primary facts from which inferences of unlawful discrimination can arise and that the Tribunal must find unlawful discrimination unless the employer can prove that it did not commit the act of discrimination- *Igen* (above). There is no evidence apart from the claimant's say so that the claimant was not supported because he was White European non practising Christian and that the respondent would not have withheld the benefits from a Bengali Muslim.

RESERVED JUDGMENT

(iv) The respondent's treatment of the claimant did not amount to a detriment. Neither the claimant or TowfiqZimmerman were offered/promised ACA training, it was not offered to TowfiqZimmerman and TowfiqZimmerman did not register to be training on the ACA "Rolls Royce" accountancy qualification. TowfiqZimmerman registered for the ACCA qualification months after the claimant had resigned and left the business.

(v) There is a question mark over whether TowfiqZimmerman can be the correct comparator given his qualifications, experience and work record in comparison to the claimant. However, nothing hangs on the named comparator in this case given the claimant's case did not get over the first hurdle of establishing TowfiqZimmerman was ever offered ACA training in the first place. Section 13 EqA requires consideration of the comparison (the less favourable treatment) and the reason for that treatment and whether it was because of the relevant proscribed ground. These two questions can be considered separately and in stages; or they can have intertwined: the less favourable treatment issue cannot be resolved without deciding the reason why issue. As was observed by Lord Nicholls in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 at paragraph 11: "...tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? ... If the former, there will ... usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others." As can be seen from its findings of facts above, I examined all of the facts in the case to ascertain whether the claimant was treated less favourably as he alleges drawing on its findings in relation to the actual comparator concluding Peter Rothwell was not treated less favourably.

30. The claimant never spoke about his race or religion with the respondent, and the claimant's race and religion were an irrelevance evidenced by the fact the claimant was never asked about his religion and nor did he discuss it. The claimant was offered the same entry level position identical to TowfiqZimmerman with no preferential treatment for the latter, despite TowfiqZimmerman being the better qualified and experienced. There was no evidence whatsoever to suggest that the claimant's race and religion was a factor, and the claimant's attempts to show that the respondent behaved badly towards him generally had no traction. The respondent knew the claimant wanted to leave for more money and neither his race, religion or the fact he asserted a statutory right were of any relevance to the respondent.

Time limits

31. The claimant's pleaded case concerns ACA training and not ACCA training. The list of issues reflects the pleaded case. The claimant has attempted to change his evidence at the final hearing to include training for ACCA. The

RESERVED JUDGMENT

claimant has not made an application to amend, and ACCA training is not part of his pleaded case. However, for the purpose of time limits I will deal with the ACA/ACCA training. According to the claimant's evidence Towfiq Zimmerman started the ACCA qualification and had been provided with a code by the respondent on some date prior to the 16 August 2023, with the date of knowledge for the claimant being the 16 August 2023 at the latest. The claimant was aware that he could bring a race discrimination claim, he had discussed this with Ms Tee as evidenced in the WhatsApp exchanges, and according to his oral evidence given on cross-examination, chose not to do so because he wanted the respondent to increase his pay to £25,000 and offer him ACCA training. The claimant also took legal advice and was aware of his legal rights.

32. With reference to the first issue, namely, did the claimant bring the claim of direct race and religious discrimination before the end of "the period of three months starting with the date of the act to which the complaint relates" (section 123(1), EqA 2010) I found he had not. The statutory time limit expired on the 15 November 2023.
33. With reference to the second issue, namely, did the acts amount to extending over a period within the meaning of 123(3)(a) of the Equality Act 2010, there were no acts extending over a period on the claimant's case taken at its highest.
34. With reference to the third issue, namely, is it just and equitable of the tribunal to extend the time, I found that it was not just and equitable to do so on the basis that the claimant had a claim with no prospects of success and the balance of prejudice lay with the respondent.

35. In conclusion, the claimant has not established that the alleged race/religion & belief discrimination that allegedly occurred on or before 16 August 2023 was part of a course of conduct and it was not just and equitable to extend the time limit for bringing his direct race/religious belief discrimination complaint, the Tribunal does not have the jurisdiction to consider the complaint and they are struck out. In the alternative, were the claims brought before the expiry of the statutory time limit extended by ACAS conciliation (which for the avoidance of doubt they were not) the claimant was not treated less favourably than his comparator and his claims are struck out and dismissed.

36. The claimant took part in ACAS early conciliation between the 5 and 16 June 2024. The claim form was presented on the 13 July 2024. The discriminatory act relating to ACA/ACCA training took place in or around 16 August 2023 at the latest. The claim of race/religious belief discrimination brought under section 13 of the Equality Act 2010 was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claim is therefore dismissed.

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Holiday Pay (Working Time Regulations 1998)

35. With reference to the first issue, namely, did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when his employment ended, the respondent has conceded that it failed to pay to the claimant statutory holidays totalling 60 hours for the holiday period 1 January 2024 to the claimant's resignation.
36. It is accepted the claimant earned £1411.80 net per month on an annual salary of £19,000. The daily rate is £65.16 net per day. The claimant worked a 35-hour week, had a one-hour unpaid lunch break and two half hour unpaid 30-minute breaks. The claimant worked 5 days a week and he was entitled to be paid accrued holiday in the sum of £586.44, a figure agreed between the parties although the claimant disputes that the calculation should be based on a salary of £19,000 maintaining it should be £25,000 on weekly hours of 37.5. I have dealt with this above.
37. The respondent is ordered to pay to the claimant accrued untaken holiday in the sum of £586.44 within 14 days of the date this Reserved Judgment and Reasons is sent to the parties.
38. In conclusion, the claimant took part in ACAS early conciliation between the 5 and 16 June 2024. The claim form was presented on the 13 July 2024. The discriminatory act relating to ACCA training took place in or around 16 August 2023 at the latest. The claim of race discrimination brought under section 13 of the Equality Act 2010 was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The Tribunal does not have the jurisdiction to consider the claim, which is therefore dismissed. In the alternative, had the claim been brought in time, the complaint of direct discrimination on the grounds of race and religion is not well-founded and is dismissed.
39. The complaint of automatic unfair dismissal is not well-founded. The claimant was not automatically unfairly dismissed under section 95(1)(c) and section 104A(2) of the Employment Rights Act 1996 and the claim is dismissed.
40. When the proceedings were begun the respondent was not in breach of its duty to provide the claimant with a written statement of employment particulars.
41. The complaint in respect of holiday pay is well-founded. The respondent failed to pay the claimant in accordance with regulation 14(2) and/or 16(1) of the Working Time Regulations 1998. The respondent shall pay the claimant £586.44 net. The respondent is responsible for paying any tax or National Insurance.

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42. The complaint that the respondent was in breach of contract by failing to pay the claimant a contractual payment of £25,000 is not well-founded and is dismissed.

43. The respondent's counterclaim for an act of alleged negligence causing the loss of £986.89 and for the period 22 April to 4 July 2024 when the claimant did not work his notice is dismissed on withdrawal.

Approved by:

Employment Judge Shotter

27 January 2026

Judgment sent to the parties on:

10 March 2026

For the Tribunal:

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Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

RESERVED JUDGMENT



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

ARTICLE 12

Case number: **2403752/2024**

Name of case: **Mr PJ Rothwell** v **Islam and Co Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 10 March 2026

the calculation day in this case is: 11 March 2026

the stipulated rate of interest is: **8% per annum.**

For the Employment Tribunal Office