



EMPLOYMENT TRIBUNALS

Claimant: Mr Shajait Ali

Respondent: Vodafone Limited

Heard at: Bury St Edmunds (by video)

On: 17, 18, 19 and 20 March 2026

Before: Employment Judge Graham

Representation

Claimant: Self representing

Respondent: Ms I Egan, Counsel

JUDGMENT having been sent to the parties and written reasons having been requested by the Claimant on 30 March 2026, in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. ACAS Early Conciliation took place between 24 September and 5 November 2024.
2. The ET1 was filed on 16 November 2024 at which time the Claimant complained of unfair dismissal, race discrimination, detriment related to paternity leave, and victimisation. An ET3 was filed denying the complaints.
3. A private preliminary hearing for case management took place on 8 October 2025 where the final list of issues was agreed with the parties, and directions were made for the final hearing. It was recorded that the Claimant was complaining about automatic unfair dismissal for having taken paternity leave. The Claimant did not have sufficient continuous service for an ordinary unfair dismissal claim and that complaint was dismissed upon withdrawal, as was a claim for maternity and pregnancy discrimination.
4. Upon clarification of the complaints, the Respondent was granted permission to file an Amended Response to the claim. The Respondent also applied for a strike out of some of the complaints, however this was not

listed for a public preliminary hearing due to the proximity of this final hearing.

5. At the start of the final hearing I was provided with a witness statement from the Claimant, as well as statements on behalf of the Respondent from:
 - i. David Dunwoody – Senior Employee Relations Manager
 - ii. Claire Ridgers – Head of Commercial
 - iii. Craig Wallace – Senior HR Business Partner
 - iv. Kareen Bijlani – Head of Public Sector / Corporate Team
 - v. Kelly George – Senior Manager for SoHo, Medium and Enterprise
6. The above roles were as they were at the material time.
7. I was also provided with a document bundle of 371 pages, as well as a cast list, chronology and reading list.
8. Closing submissions were delivered orally and in writing on 19 March 2026 and I delivered oral reasons on 20 March 2026.
9. During the closing submissions the Respondent raised a concern that the Claimant may have electronically recorded the hearing in breach of my warning not to do so, and in breach of the notice which appears on the screen at the start of the CVP hearing. This is addressed at the bottom of the judgment.
10. At the start of the hearing I asked if anyone required any adjustments and was told that they did not. Later in the hearing the Claimant explained to me he was tired from fasting. I had not been aware of this from the start of the hearing but I ensured that the Claimant would have as many breaks as he needed in order to assist. I also explained concepts and checked the Claimant's understanding as he appeared as a litigant in person, and also due to his fasting.
11. The Claimant listened to the oral decision from his parked car on 20 March 2026 due to a celebration for Eid in his home that day. The Claimant assured me he would be able to listen to the judgment that day.
12. All of the witnesses, on both sides, gave reliable evidence, and I was grateful for the way in which the parties cooperated and conducted themselves before me in the hearing which meant that we were able to finish on time with an oral judgment.

List of Issues

Time limits

1.1 Were the Claimant's claims brought within 3 months of the acts complained of or, in the case where a continuing act is established, within 3 months of the last act? On the face of it the claims are out of time in respect of any acts or omissions occurred prior to 25 June 2024.

1.2 If not brought within time, can the Claimant show that his discrimination and/or victimisation claims were brought within such other period as the Tribunal thinks just and equitable?

1.3 If not brought within time, can the Claimant show that his detriment claim was brought within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months?

2 Automatic Unfair Dismissal – (section 99 (3) (ca) Employment Rights Act 1996)

2.1 Was the reason or principal reason for the Claimant's dismissal the fact that he took paternity leave?

3 Direct Race Discrimination (section 13 Equality Act 2010)

3.1 The Claimant identifies as British Pakistani.

3.2 Did the following occur:

3.2.1 The Claimant was passed over for promotion while less experienced colleagues such as Lauren Goddard were promoted;

3.2.2 The Claimant was subjected to a skewed and unprofessional interview on 3 May 2024;

3.2.3 The Claimant was dismissed;

3.2.4 The Claimant was not offered alternative employment.

3.3 Did that alleged treatment amount to treating the Claimant less favourably than it did treat or would have treated others in circumstances that were the same or not materially different including their abilities? The Claimant relies upon real comparators. Lauren Goddard, who had less experience but was promoted, and Dan Elmore, who was supported and encouraged by the same manager (Kelly), were both treated more favourably in circumstances not materially different to the Claimant's abilities.

3.4 If so, was that less favourable treatment because of the Claimant's race?

4 Detriment related to paternity leave

4.1 The Claimant relies upon his period of paternity leave during Ramadan, late March to April 2024.

4.2 Was that period of paternity leave a statutory period of leave in accordance with section 47C (2)(ca) ERA 1996 and regulation 5 of the Paternity and Adoption Leave Regulations 2002?

4.3 Did the following occur:

4.3.1 The Claimant was not promoted

4.3.2 The Respondent failed to undertake a fair interview;

4.3.3 The Claimant's interview on 3 May 2024 was 'skewed' and 'extremely unprofessional';

4.3.4 The Claimant was dismissed

4.3.5 The Respondent did not offer the Claimant alternative employment.

4.4 If yes, did this amount to a detriment?

4.5 If yes, was this because the Claimant had taken a period of statutory paternity leave?

5 Victimisation

5.1 Did the Claimant do a protected act?

5.1.1 The Claimant relies upon his grievance of 21 May 2024.

5.2 Did the following occur:

5.2.1 The Respondent dismissed the Claimant;

5.2.2 The Respondent failed to offer the Claimant alternative employment.

~~*5.2.3 In addition, the ER Manager threatened the Claimant that if he refused or did not agree to a change of his job role, working under protest meant he could and should be dismissed. This threat was made after the Claimant had raised his grievance, and forms part of the victimisation relied upon.*~~
[withdrawn during the final hearing]

5.3 Did the conduct amount to a detriment?

5.4 If so, was the Claimant subjected to this treatment because of the protected act(s) or for another reason unconnected to the protected acts?

6 Remedy

6.1 What is the Claimant's compensatory award?

6.2 Is the Claimant entitled to an award for injury to feelings in accordance with the guidelines set out in Vento v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102?

6.3 Has the Claimant taken reasonable steps to mitigate their loss?

Findings of fact

13. From the information and evidence before the Tribunal I made the following findings of fact. I made the findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which

was admitted at the hearing. I do not set out in this judgment all the evidence which was heard but only my principal findings of fact, those necessary to enable me to reach conclusions on the issues to be decided.

14. Where it was necessary to resolve conflicting factual accounts, I have done so by making a judgement about the credibility or otherwise of the witnesses I heard based upon their overall consistency and the consistency of accounts given on different occasions when set against any contemporaneous documents. I have not referred to every document I read or was directed or taken to in the findings below, but that does not mean they were not considered.
15. The Respondent is a well known communications provider.
16. The Claimant identifies as British Pakistani and he commenced employment with the Respondent during November 2022 as a Commercial Manager within the “SME” team. The Claimant initially reported to Kelly George who was at that time the Senior Manager for that team.
17. The Claimant’s grade was G11. Ms George was one of three Band F senior managers within the team, and each had a number of direct reports at grade G11. Ms George reported to Claire Ridgers the then Head of Commercial.
18. The Respondent’s employees are entitled to two periods of company paternity leave of 8 weeks up to a maximum of 16 weeks in total, which is in excess of the statutory entitlement of two weeks. The Claimant had already taken one period from 24 July to 25 September 2023. As the Claimant agreed in his oral evidence, his statutory leave was taken and expired on 6 August 2023.
19. On Friday 8 March 2024 the Claimant asked to take a second period of paternity leave the following Monday 11 March 2024. This was the equivalent of one day’s notice whereas the Respondent’s policy requires 8 weeks minimum.
20. Ms George sought HR advice and she referenced a performance concern about the Claimant that a piece of work had not been completed, nevertheless the Claimant’s request was granted to start his leave a week or so later once he had completed the task. The Claimant was therefore treated more favourably than the Respondent’s policy provides.
21. The Claimant went on his second period of paternity leave between late March and 20 May 2024 inclusive.
22. Ms George referenced some performance concerns before the Claimant’s paternity leave, however these were not raised with him formally.
23. I was referred to an internal exchange between Ms George and a member of the team about the Claimant’s work in early March 2024. The colleague said that the Claimant had not been in touch about a tablet strategy to which Ms George forwarded the email to another colleague and stated “SHOCK” in capitals. That colleague replied:

“Lol

Hasn't reached out to me either [sad emoji face]

Time to go... time to go... na na [smiling emoji]"

24. The Claimant only discovered this exchange, and others, following a Subject Access Request after his dismissal. Ms George tells me that she raised this with the colleague and told them that the comment was inappropriate. Whereas I have no documentary evidence to support that, I accept that evidence as I have found Ms George to have been an honest and reliable witness.
25. I have found the exchange to be unprofessional and demeaning of the Claimant, and it would have inevitably have caused him to query the reason why he was being spoken about like that by a colleague to his own line manager.
26. In his closing submissions, the Claimant refers me to a number of other emails which contain comments about him including one about fasting and food, however I make no findings about them given that these were not issues to be decided in this case; they were absent from his witness statement; and they were not put to the Respondent's witnesses during their evidence. The Respondent has been denied the opportunity to comment on them, therefore it would be incredibly unfair of me now to make findings on them, therefore I do not address them in this judgment, although I have of course read the contents.
27. During early 2024 the Respondent looked to restructure the Commercial function due to staff movement and overlap within the three commercial functions which were Indirect; Soho, Medium and Enterprise; and Public Sector and Corporate. The decision was made to reduce these three teams to two, one led by Ms George and the other by Ms Bijlani who was already leading one of the other teams. Indirect and SoHo merged and went to Ms George, and the remainder were merged and went to Ms Bijlani. The other team manager moved roles.
28. There was no reduction in staff numbers, but due to the increased size of the two teams the decision was taken to create three new people manager roles at G12 in both teams, thus six in total to assist with management. The role was the same band as G11 but more senior. It would still be possible for someone at G11 to apply for promotion to a band F, there was no need to attain G12 first.
29. The restructure was announced during the Claimant's second period of paternity leave and he was contacted by Ms George so he would have the opportunity to apply for one of the new G12 roles if he wished. The Claimant subsequently applied for three of the six roles.
30. Ten candidates applied for the six roles. The interviews were conducted by Ms George and Ms Bijlani, and they asked all candidates the same six questions. Where Ms George was the line manager of a candidate it fell to Ms Bijlani to ask the questions and then vice versa.

31. The questions were general and did not relate to things occurring during the Claimant's paternity leave – for example questions were asked about leadership and the candidates' 30, 60 and 90 day plan if appointed. Candidates were also asked to provide examples from their prior experience and to explain what they had achieved and how they had achieved it. It appeared to me that these were standard questions for someone seeking promotion in a professional environment like this.
32. Ms George and Ms Bijlani each scored each answer independently with a mark out of five, before pooling their scores at the end. Therefore, the maximum possible score was 60.
33. The Claimant was interviewed on 3 May 2024. The Claimant says that the interview was unfair, skewed and unprofessional but he did not put to any of the witnesses what that means although his questions suggested he considered it unfair to have based the decision on interview performance rather than assessing his performance in the role.
34. The Claimant's answers to the questions were brief and contained little in the way of detail, and he would often reply that Ms George knew his work. This required a great deal of prompting from Ms Bijlani however the Claimant's answers remained cursory.
35. The Claimant was asked about his greatest impact in the last 12 months. The Claimant mentioned a tablet strategy but was unable to explain what was involved nor to quantify the impact despite some prompting. Ms Bijlani scored the Claimant a 0 and Ms George scored him a 1. The Claimant expressed concern about such low scores given, as he says, he did provide an answer, even if it was unacceptable, he argues that a 0 would equate to no answer at all. Ms Bijlani agreed in her evidence and said it was marked as a 0 because the Claimant did not answer the question.
36. Ms Bijlani asked the Claimant about development areas to which the Claimant asked if she meant personal or professional. Ms Bijlani in particular was surprised by that which she did not consider to be professional. I note the Claimant then answered that most people considered themselves to be perfect, or words to that effect, and he said that as an accountant he might try to be too perfect with numbers, however there was not much more beyond that.
37. Based upon the evidence before me, including a list of the interview questions, the record of the Claimant's answers, and the written and oral evidence of the witnesses, I do not find as a fact that the conduct of the interview was skewed or unprofessional, nor unfair in any way. It appears to me that the Claimant had not fully understood that the outcome of the interview would depend upon his answers to questions he gave during that interview, and he erroneously assumed that Ms George's knowledge of his prior work would have been taken into account.
38. Once all the candidates were scored, the Claimant had achieved 20 which was the lowest score and significantly below the other candidates who had scored 43 or above.

39. Whereas the Claimant accuses Ms Bijlani (and others) of race discrimination, he did not put that allegation to her in her evidence. In order to provide some limited assistance to the Claimant as a litigant in person, and to ensure both sides had a fair hearing including the witnesses who were accused of discrimination, I therefore asked what factor the Claimant's race played in her conduct of the interview.
40. Ms Bijlani explained the Claimant's race was not a factor at all; she is from a minority background herself; she takes diversity and inclusion ("D&I") incredibly seriously; she acts as a D&I lead or champion, and she speaks internally and externally on the issue, referring to various protected characteristics; and she explained to me that she knows how it feels to experience different treatment and she would not act in that way herself. I have found Ms Bijlani to be an honest, credible, and a compelling witness.
41. Ms George gave similar evidence that she opposes discrimination having seen how family members from minority backgrounds had been treated, and she also explained how she advocates for equality and diversity. Again, I found this evidence to be honest, and credible, and I believed her.
42. The Claimant has compared his treatment to Lauren Goddard and Dan Elmore. Ms Goddard was already a G12 grade and also a line manager and she was recorded as a top talent which refers to those within the Respondent who are the in the top 10% of performers per band. Ms Goddard had also performed a number of roles with the Respondent and knew the business well, although she had not worked in SoHo before she had a great deal of experience and line management she was able to draw upon in the interview. Ms Goddard scored 56/60 and was therefore appointed to one of the roles.
43. As regards Mr Elmore, he did not apply for one of the roles and was not interviewed, and he was already a G12. Mr Elmore moved into the Claimant's team following a structural change and he performed a different role to the Claimant.
44. I understand that a colleague named Waleed Zahir who is of the same race as the Claimant was scored 53 and successfully appointed to G12, and in the intervening years he has been promoted again to Band F.
45. Having not been successful at interview on 9 May 2024 the Claimant was informed that he would report to Tom Foxton as his new line manager. Mr Foxton had just been successful in the promotions. The Claimant's role would remain the same, the products would remain the same, but the work would shift to the Indirect segment which meant that the route to market differed, but the actual functions of the job, and its level, remained precisely the same.
46. The Claimant opposed this and routinely insisted he would continue to report to Ms George. On 20 May Ms George told him the discussion was over; his agreement was not required; there was no barrier to the Claimant applying for promotion to Band F; however he would report to Mr Foxton.
47. On 21 May 2024 the Claimant attended a 1:1 introduction with Mr Foxton as his new line manager. The Claimant covertly recorded the meeting. I

understand that the Claimant made in the region of nine covert recordings of managers or colleagues towards the end of his employment.

48. The Claimant did not attend the team meeting later that day. Mr Foxton asked the Claimant why he had not done so. The Claimant replied that he was not aware that he needed to explain himself regarding trivial matters, especially when he had not accepted the role or the reporting lines which he had challenged and he was being made under duress to take the move. The Claimant said he did not see his future being in the Indirect team.
49. On the same date the Claimant brought a grievance about the reorganisation in which he complained about the conduct of the interview and the outcome. The Claimant alleged Ms Bijlani's questions and tone were highly prejudicial and patronising, and borderline rude. The Claimant also complained that Ms George was unwilling to deal with his concerns.
50. The Claimant said that favourable candidates had already been chosen and he complained of being demoted. There is no reference to discrimination or less favourable treatment on the basis of any protected characteristic, nor the Equality Act 2010, anywhere within the grievance.
51. The Claimant continued to refuse to engage with Mr Foxton as his line manager, and around this time Ms Wallis in HR explained to the Claimant that he needed to work normally and undertake work allocated to him. The Claimant continued to resist and said he was working under protest and would only take instruction from Ms George or her line manager Ms Ridgers.
52. On 24 May 2024 Mr Foxton emailed the Claimant as he failed to attend their scheduled 1:1 meeting and he provided the Claimant with four areas he asked the Claimant to explore from a knowledge and research perspective. No specific deadline was provided to the Claimant.
53. The Claimant failed to respond to that email, and he failed to respond to subsequent chasers from Mr Foxton on 3 and 6 June 2024. In his email of 6 June Mr Foxton recorded *"I'm genuinely concerned you haven't acknowledged any email or attended calls."*
54. The Respondent says that the Claimant did not do any work between 21 May and 19 June 2024. The Claimant disputes that and says working under protest does not mean he was not working. The Claimant was asked what work he had done to which he said it was two years ago now he could not remember.
55. I encouraged the Claimant to give this some thought, however he was unable to tell me what he had done save for reading some PowerPoint documents from Mr Foxton about the products in the Indirect team. The unchallenged evidence of Ms George was that the products were the same, the route to market may differ, and it would not have taken the Claimant four weeks to read PowerPoints on products he already knew.
56. The Claimant has argued there is no evidence he was not working, however the Respondent argues there is no evidence that he was. I am not required to determine what work the Claimant completed during that time, and I make

no criticism of the Claimant if he cannot remember now what he was doing at work some two years ago as many of us may struggle to do so.

57. However, I find that the Claimant's conduct reasonably caused the Respondent to genuinely form the conclusion he was not working as he was not engaging; he was not attending meetings or responding to emails; and he had not provided evidence of his work.
58. The Claimant spoke to Mr Wallace in HR on 3 June 2024 and he said he had been unreasonably asked to attend meetings with the line manager he did not accept. The Claimant covertly recorded that conversation.
59. The Claimant previously complained that Mr Wallace had threatened him that he could and should be dismissed (Issue 5.2.3). The Claimant has since withdrawn that complaint having re-read the transcript which contains no such comments, however I record for completeness that Mr Wallace engaged with the Claimant professionally and respectfully during that call, and urged the Claimant to engage.
60. I have also found Mr Wallace to be an honest and reliable witness, and the comments he made to the Claimant were supportive and he urged the Claimant to think about what he was doing by refusing to engage with his line manager. No threats were made by Mr Wallace, and it appeared to me that the allegation against him was unjustified and unfair as he was genuinely trying to help the Claimant.
61. On 10 June 2024 Ms George emailed the Claimant to raise concerns about his non-engagement and he was directed to attend a meeting on 12 June 2024 with her and Mr Foxton. The Claimant says he cannot recall if he attended, I find that he did not as he cannot remember whether he did, Ms George denies that he did, and by this time the Claimant's engagement with management was minimal. Overall, it is highly likely that the Claimant did not attend.
62. In June 2024 Mr Dunwoody, Senior Employee Relations Manager, was asked by Mr Wallace to assist in finding a resolution to the issue about the Claimant not engaging with Mr Foxton.
63. On 14 June Mr Dunwoody called the Claimant and explained the grievance outcome was due to be issued and he asked him to reconsider his position about working with Mr Foxton. The Claimant advised he would do his job but felt the process has not been correct. It was agreed by both to await the grievance outcome.
64. I also found Mr Dunwoody to be a truthful and reliable witness, and I accepted his evidence that he was trying to find a resolution for the Respondent and the Claimant, but it would be dependent upon the Claimant engaging with his own line manager.
65. Around this time HR advised Ms George not to email or to engage with the Claimant whilst they attempted to resolve the matter.
66. On 17 June 2024 the Claimant was informed that his grievance was upheld in part solely in reference to change of role and reporting line as the

reorganisation meant that he would require new knowledge and skills, but the underlying tasks of the role remained the same. The Respondent has explained to me that this was akin to roasting a chicken in someone else's kitchen – the duties were the same, it was the route to market that differed.

67. The complaints about the failed application for the new role and the interview process followed, and alleged demotion, were all rejected and the Claimant was told that the process followed had been fair and equal. The grievance outcome recommended a development plan for the Claimant and the provision of interview feedback and interview coaching when applicable.
68. On 18 June 2024 Mr Dunwoody called the Claimant to discuss the grievance outcome which the Claimant again covertly recorded. The Claimant explained the situation had ruined his relationship with Ms George, it had totally broken down, and that he was at an impasse and the working relationship was untenable.
69. Mr Dunwoody spoke to the Claimant frankly, making it clear he did not see what way forward there was if the Claimant would not report to Mr Foxton and if the relationship could not be restored. Mr Dunwoody warned the Claimant that if the matter could not be resolved the Respondent would issue notice to terminate his employment as the relationship was untenable, although he would be able to bring an appeal and challenge the notice, but there were no alternative roles for him.
70. At or closely around this time, the decision was reached in consultation between Mr Dunwoody and Mr Wallace, and approved by Ms Ridgers, that the situation had become untenable and the Claimant would be dismissed. Ms Ridgers, as a very busy senior leader, would have been unaware of the Claimant's paternity leave.
71. The following day on 19 June Mr Dunwoody met with the Claimant and informed him he would be placed on garden leave until the end of the month and then paid in lieu of notice and he would be dismissed. Mr Dunwoody advised the Claimant of his right to appeal the decision and also his entitlement to go to ACAS. The Claimant told me in evidence he was aware of ACAS.
72. The dismissal letter does not state a specific reason for termination, however the Respondent says that it was due to the breakdown of the relationship.
73. The Claimant's development plan was therefore not advanced, and there was no consideration of an alternative role as the Respondent witnesses said there was no alternative role to post him to. Further the Respondent's witness evidence was that as the Claimant was refusing to do the job he was employed to do, the development plan and alternative role were not appropriate.
74. The Respondent did not consider mediation and Mr Dunwoody explained to me there was nothing to mediate if the Claimant would not report to his line manager.

75. The Claimant filed an appeal on 20 June 2024, in that appeal the Claimant explained how unfair he considered the treatment to be. The Claimant's appeal contained his first reference to discrimination as he said:

"I firmly believe if I had been a young white male, and raised these concerns my grievance, my outcome would have been more favourable. This is evident in Kelly's team, the only ethnic minority that was effectively messed around and put in a position to leave. Throughout all of this, Vodafone have tried to dress me up as the typical trope young Asian men have 'as non-compliant, not following rules and aggressive' for standing up to something that was incorrect. Which is why David Dunwoody spoke to me the way he did and was patronising me; typical of the mindset of people who don't think we (ethnic minorities) have a right to defend ourselves."

76. The Claimant went on to state *"I look forward to hearing your skewed and unjust outcome. I have no faith for your company to do the right thing."* The Claimant's comments clearly recognised that the relationship with the Respondent had broken down.

77. The Claimant's employment terminated on 30 June 2024, and his appeal was dismissed on 19 September 2024. The Claimant was informed that due process had been followed through the restructure and all candidates were treated the same, there was no evidence of bullying, harassment, or discrimination nor any evidence the treatment was due to paternity leave or race.

78. The Claimant was informed that it had been appropriate to terminate his employment in circumstances where he would not engage with, or take instructions from his line manager.

79. Whereas the Claimant filed his ET1 on 16 November 2024, he provided no explanation in his witness statement or oral evidence about why he did not bring his claim any sooner.

Respondent's Submissions

80. The Respondent argues that with the exception of the automatic unfair dismissal claim, all the complaints are out of time and no extension of time should be granted.

81. With respect to the complaints under the Employment Rights Act 1996, the Respondent says the Claimant has not shown that it was not reasonably practicable for him to have brought his claims in time.

82. With respect to the Equality Act 2010 complaints, the Respondent says that the Claimant cannot establish an act extending over a period / a continuing course of conduct, and that the Tribunal should not exercise its discretion to extend time without justification, and that an extension is the exception, not the rule.

83. The Respondent says that anything allegedly occurring before 25 June 2024 is out of time, and this includes:

- i. The decision to dismiss him taken on 18/19 June 2024 (although for the purposes of the unfair dismissal claim it did not take effect until 30 June 2024);
- ii. The failure to offer the Claimant alternative employment (which must be before the decision to dismiss);
- iii. The call with Craig Wallace when the Claimant alleges he said that the Claimant “could and should be dismissed” on 3 June 2024;
- iv. The decision not to promote him to one of the G12 roles following his interview on 3 May 2024;
- v. The conduct of the interview on 3 May 2024.

84. The Respondent says that the Claimant was expressly advised on 19 June 2024 to seek legal advice or contact ACAS but provided no explanation for the delay in initiating conciliation.

85. As to the substantive complaints, the Respondent argues that none of the claims are made out on the evidence, and that the Claimant’s dismissal and treatment were due to his persistent refusal to accept management instruction and an irretrievable breakdown in the working relationship, not because of paternity leave, race, nor any protected act.

86. With respect to the automatic unfair dismissal complaint, the Respondent says the Claimant exhausted his statutory entitlement in July/August 2023; the March–May 2024 leave was purely contractual under the Respondent’s enhanced policy; and contractual paternity leave does not engage s. 99 Employment Rights Act 1996. The Respondent further argues that even if statutory leave were relied upon, there was a significant temporal gap between summer 2023 and dismissal in June 2024; and the restructuring and dismissal were not linked to paternity leave.

87. As to the true reason for dismissal, the Respondent says that following his return to work on 21 May 2024, the Claimant (i) refused to accept his new line manager; (ii) refused to attend meetings; (iii) sent repeated emails describing himself as “working under protest”; and (vi) failed to undertake any meaningful work for almost a month. The Respondent characterises this as refusal to comply with reasonable management instructions and it reminds me that the Claimant himself accepted that the relationship had “totally broken down” and reached an “impasse”. In summary the Respondent invites me to find that the principal reason for dismissal was breakdown of the employment relationship caused by the Claimant’s conduct, not paternity leave.

88. With respect to the direct race discrimination complaint, the Respondent says that the Claimant’s evidence contains no factual basis linking any treatment to race; and it reminds me that race is barely mentioned in his

witness statement and not supported by examples. As to the failure to promote, the Respondent says that promotions were determined entirely by interview performance; the Claimant scored 20/60, the lowest of all candidates; successful candidates, including Lauren Goddard, scored substantially higher and gave clear, structured answers and the named comparators were either (i) not interviewed at all; or (ii) were already more senior and therefore not in materially similar circumstances.

89. As to the interview process, the Respondent says that all candidates were asked the same six questions; the questions were reasonable for a people-management role and not dependent on recent work activity.

90. As regards the dismissal and decision not to offer the Claimant alternative employment, the Respondent says that the dismissal resulted from non-engagement and failure to follow management requests; the Claimant was not redundant; his role remained available; and there was no obligation to offer alternative work, and in any event, redeployment would not have resolved the broken relationship.

91. The Respondent says that the Claimant fails to discharge the initial burden of proof, but even if he had, the Respondent has provided cogent, non-discriminatory explanations for all treatment complained of.

92. As regards detriment related to paternity leave, the Respondent says that protection is limited to detriment because of statutory paternity leave; the Claimant relies on the same matters as for discrimination and dismissal however dismissal cannot be pursued as a detriment under s. 47C Employment Rights Act 1996; and the remaining alleged detriments should fail because (i) the leave relied on was non-statutory; and (ii) the acts complained of were not caused by paternity leave but by interview performance and the Claimant's refusal to engage.

93. Finally, with respect to victimisation, the Respondent says whereas the Claimant relies on his grievance of 21 May 2024, this did not allege discrimination, and made no reference to race, nor did he invoke the Equality Act 2010, and furthermore paternity leave is not a protected characteristic. Further the Respondent says that even if the grievance were a protected act, the Respondent submits that the Claimant's dismissal resulted from his refusal to follow instructions; and the failure to offer alternative employment arose because the Claimant was not redundant and the relationship had broken down.

Claimant's Submissions

94. The Claimant submits that the evidence, when examined as a whole, shows unfair treatment influenced by his race, his paternity leave, and his decision to raise a formal grievance, culminating in a dismissal carried out without a fair or lawful process. The Claimant says he was dismissed the day after his grievance was partially upheld where the investigator concluded that his

role had changed and recommended a development plan, and he was dismissed before that plan could be implemented, before any appeal against the grievance outcome was heard, and without any disciplinary process. The Claimant says that only after his dismissal he discovered, through a Subject Access Request, internal communications about him which the appeal investigator found fell short of expected professional standards.

95. The Claimant submits that his claims are in time and argues that the effective date of termination was 30 June 2024, when his notice expired, and that ACAS early conciliation was commenced within three months of that date. For the Equality Act claims, the Claimant says that the Tribunal should find a continuing act, and he relies on internal emails and conduct spanning from February 2023 to May 2024, involving the same managers and the same treatment, culminating in his dismissal, and as such earlier acts are brought into time by the dismissal itself.
96. In the alternative, the Claimant submits that it is just and equitable to extend time, and he attributes any delay in approaching ACAS to the Respondent's prolonged handling of the internal appeal.
97. Turning to victimisation, the Claimant submits that he carried out a protected act by raising his grievance on 21 May 2024. The Claimant argues that s. 27 Equality Act 2010 does not require technical legal language and that the substance of his grievance alleged unfair treatment connected to paternity leave and his position as the only ethnic minority directly reporting to his line manager. The Claimant further relies on his appeal against the grievance outcome, in which he explicitly stated his belief that he would have been treated more favourably had he been a young white male, and that the grievance and appeal together plainly amount to allegations that the Equality Act had been breached. The Claimant rejects the Respondent's argument that the grievance was merely a complaint about unfairness and not discrimination.
98. The Claimant submits that his dismissal was because of the grievance, and he relies on the timing, noting that the grievance was raised on 21 May 2024, partially upheld on 18 June 2024, and followed by his dismissal the very next day, while the appeal remained outstanding and before any recommended development plan could be implemented. The Claimant points out that the conduct relied upon by the Respondent as justification for dismissal had been present for several weeks, yet no action was taken until immediately after the grievance outcome. The Claimant further submits that the Respondent's arguments that he was not working is based on assumptions not evidence and no specific task with a deadline was ever identified that he failed to complete.
99. The Claimant says that his dismissal was discussed as a solution while the grievance was still live, and he alleges contradictions between different witnesses and documents as to who made the decision to dismiss him and

on what basis. The Claimant argues a breach of the ACAS Code, he says there were no written allegations, no formal hearing, and no dismissal letter setting out a clear reason. The Claimant says that the explanations for dismissal given at different times — refusal to work, lack of output, breakdown in relations — are inconsistent and were never properly investigated.

100. The Claimant also submits that no genuine alternatives to dismissal were explored, and the development plan recommended by the grievance investigator could not possibly have been implemented before his dismissal, and his role was not backfilled after his departure and was treated as a cost saving, which he submits undermines the Respondent's reason for dismissal.

101. The Claimant submits that the paternity leave he took in March to May 2024 fell within the statutory framework, as it was taken within 18 months of his child's birth, and that internal descriptions of the leave as "enhanced" do not displace statutory protection. The Claimant says that, even if there were ambiguity as to the statutory nature of the leave, the evidence demonstrates that his dismissal was connected to his having taken that leave and he relies on the fact that the restructure and interviews occurred while he was on paternity leave, that he was the only candidate on paternity leave at the time, that no adjustments were made for his absence, and that concerns about his performance were raised contemporaneously with his paternity leave request which he says was the trigger for a chain of events which culminated in his dismissal.

102. In relation to race discrimination, the Claimant relies on a pattern of internal communications spanning many months, which he only discovered through a Subject Access Request, and which included dismissive, mocking, or hostile remarks about him, including references to his fasting during Ramadan. The Claimant relies on these communications, together with early probation queries, repeated attempts to require him to report to colleagues of the same grade, his treatment during the restructure, and the disparity between his interview score and those of other candidates, as giving rise to an inference of race discrimination. The Claimant submits that, taken cumulatively, these matters shift the burden of proof to the Respondent which he says has not discharged.

103. On the promotion process, the Claimant submits that the interview was conducted at speed, during his paternity leave, and without adequate regard to his absence from the workplace. The Claimant says that he was the only candidate on paternity leave, that the scoring showed a disparity, and that successful candidates benefited from internal career infrastructure and prior endorsement as "top talent" from which he was excluded. The Claimant submits that the interview questions, particularly those requiring demonstration of impact over the preceding year, placed him at a disadvantage because he had been on paternity leave for a significant portion of that period.

104. The Claimant argues that the Respondent's arguments and concerns about his performance are retrospective, inconsistent, and unsupported by contemporaneous evidence; he says that no performance concerns were raised with him at the time, that no formal or informal performance process was commenced, and that managers' accounts of performance concerns changed during the course of proceedings. The Claimant argues that the Respondent's own grievance finding that his role had changed is incompatible with the suggestion that he should simply have performed as before without adjustment or support.

105. In conclusion, the Claimant submits that the Respondent changed his role without consultation; dismissed him in the immediate aftermath of a grievance which vindicated his position; failed to follow any fair or lawful process; and treated him unfavourably in a manner connected with his race and his paternity leave.

Law

Direct discrimination

106. Section 13(1) Equality Act 2010, together with section 9 of that Act, provides that direct discrimination takes place where an employer treats an employee less favourably because of race than it treats (or would treat) others. Race includes national and ethnic origins.

107. Under s. 23(1), when a comparison is made there must be no material difference between the circumstances relating to each case. A comparison may be made with an actual comparator, or with how a hypothetical comparator would have been treated.

108. Given that a tribunal may take into account a wide range of factors including circumstantial evidence, there may be cases where there is someone who, whilst materially different to a claimant, may be of assistance as an evidential comparator. They may, depending upon the circumstances and in conjunction with other material, justify a tribunal drawing an inference that a claimant was treated less favourably than he or she would have been treated.

109. Section 39 of that Act provides that an employer must not discriminate against its employee by dismissing them or subjecting them to any other detriment.

110. It is often appropriate to first consider whether a claimant has in fact received less favourable treatment than an appropriate comparator, and then consider whether this less favourable treatment was because of the protected characteristic, in this case that is race. In some cases, particularly if there is only a hypothetical comparator relied upon, it may be appropriate to first consider the reason why the claimant was treated as they were – ***Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285** [8].

111. The reason for decisions or treatment can often be for more than one reason. Provided that the protected characteristic (here race), had a

significant influence on the outcome, then discrimination will be made out – per Lord Nicholls in **Nagarajan v London Regional Transport [1999] IRLR 572**. The Tribunal may need to consider the mental processes of the alleged discriminator, and whereas this is often referred to as motivation, it is not to be confused with motive as this is not a relevant consideration. It is possible for an employer to discriminate unlawfully even with a benign motive – **Amnesty International v Ahmed UKEAT/0447/08**.

112. The test to be adopted is to ask “why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason?” – **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] 1 WLR 1947 [29]**.

113. Very little discrimination today is overt or deliberate, and those accused of discrimination are usually unlikely to accept that they have done so, and possibly will be unlikely to recognise it in themselves. In cases of direct discrimination (or victimisation), an examination of the “reason why” someone was treated as they were should not be reduced to a simple “but for” question. It is therefore not appropriate to ask but for the protected characteristic (here it is race) would the Claimant have been treated better? Rather we must conduct a more rigorous inquiry into the mental processes of the Respondent to establish the underlying core reason for the treatment. This might be easier in cases where there is an overt or obvious reason for the treatment, however in other cases a more detailed analysis of the facts will be necessary. As per Sedley LJ in **Anya v University of Oxford and another [2001] ICR 847**:

“Very little direct discrimination is today overt or even deliberate. What King and Qureshi tell tribunals and courts to look for, in order to give effect to the legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias.” [11]

114. The Court in **Anya**¹ made it clear that when considering primary facts from which inferences may be drawn, a tribunal must consider the totality of the facts, and must not adopt a fragmented approach which would have the effect of diminishing any eloquence the cumulative effects of the primary facts might have on the issue of the prohibited ground.

115. In **Earl Shilton Town Council v Miller [2023] IRLR 532** the court provided guidance on the approach to the reason why analysis in discrimination claims. Here HHJ Tayler noted that when considering whether treatment was due to a protected characteristic the tribunal spends much of its time considering the mental processes of the alleged discriminator in order to ascertain the reason why someone was treated as they were. However, the court held that there are at least two types of cases where it is unnecessary to consider the mental processes of the alleged discriminator, the first is where the reason was obvious, and the second is where a criterion is used which corresponds exactly with the protected characteristic. The court also concluded that a “good” motive will not prevent discrimination from having occurred, and this is of course consistent in **Ahmed** to which we have already referred.

¹ Paragraph 9

116. In **Chattopadhyay v Headmaster of Holloway School [1981] IRLR 487** the court noted the special nature of discrimination proceedings and that the person complaining of discrimination may face great difficulties when it comes to proof. The court held that where it may be appropriate to take into account evidence of hostility before and after the event (or act complained of) where it is logically probative of a relevant fact.

117. The term “detriment” should be given its broad ordinary meaning, and a detriment will exist if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment – per Brightman LJ in **Ministry of Defence v Jeremiah [1980] QB 87**.

Victimisation

118. Section 39 of that Act also provides that an employer must not victimise the employee by dismissing them or subjecting them to any other detriment.

119. Section 27 Equality Act 2010 provides:

“Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.”

120. When assessing whether a Claimant has been victimised it is appropriate for a Tribunal to ask:

- i. did the alleged victimisation arise in any of the prohibited circumstances covered by the Equality Act 2010?
- ii. if so, did the employer subject the Claimant to a detriment? and
- iii. if so, was the Claimant subjected to that detriment because of having done a protected act, or because the employer believed that the Claimant had done, or might do, a protected act?

121. The detriment relied upon by a claimant must be linked to the protected act. Whereas conscious motivation on the part of the discriminator is not a necessary ingredient of victimisation – **Nagarajan**, it is still necessary to determine the reason for the treatment complained of – **Chief Constable of West Yorkshire Police v Khan**.

122. A detrimental act in response to a complaint of discrimination will not constitute victimisation if the reason for it is not the complaint as such, but rather some feature of it which can properly be treated as separable – **Martin v Devonshires Solicitors EAT/0086/10** here it was held:

“The question in any claim of victimisation is what was the “reason” that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and if not, not. In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable.” [22]

123. If the protected act has a “significant influence” on the employer’s decision-making, victimisation will be made out – **Nagarajan**. The word “significant” was considered by the Court of Appeal in **Igen** (below), where it was clarified that for an influence to be “significant” it does not have to be of great importance – is “an influence which is more than trivial.”

124. The words “significant” and “trivial” were again considered by the EAT in **Villalba v Merrill Lynch and Co Inc and ors [2007] ICR 469, EAT** where the EAT upheld a first instance decision that the protected act complaint was “only a very small factor, not a significant influence”² in the decision to remove that Claimant from her role therefore it did not amount to an act of victimisation.

Burden of proof

125. The initial burden of proof rests on the Claimant to prove facts from which it could be determined, in the absence of any other explanation, that discrimination has occurred – **Ayodele v Citylink Ltd [2017] EWCA Civ 1913**. It is not until the Claimant discharges that burden that the burden of proof then shifts to the Respondent to show that it did not discriminate against the Claimant.

126. Section 136 of the Equality Act 2010 provides that 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. However, this does not apply if A shows that A did not contravene the provision.

127. Guidance on the application of the burden of proof in discrimination complaints was provided in **Igen Ltd v Wong [2005] IRLR 258**:

² Paragraph 82

“(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of [the protected characteristic], since no discrimination whatsoever is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof....”

128. That judgment refers to the law under the previous Sex Discrimination Act 1975 prior to the Equality Act 2010, however the decision of the Court of Appeal in ***Efobi v Royal Mail Group Ltd* [2019] ICR 750** confirms this guidance also applies under the Equality Act 2010.

129. It is not sufficient for a claimant to merely to prove facts from which the tribunal could conclude that the Respondent “could have” committed an unlawful act of discrimination. Rather a claimant must establish a *prima facie* case of discrimination. As was held in ***Madarassy v Nomura International Plc* [2007] ICR 867**:

“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.” [56]

130. The court in ***Madarassy*** indicated that at the first stage the tribunal would need to consider all the evidence relevant to the discrimination complaint such as evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like; and available evidence of the reasons for the differential treatment. The absence of an adequate explanation for differential treatment of the complainant is not relevant to whether there is a *prima facie* case of discrimination by the Respondent. The absence of an adequate explanation only becomes relevant if a *prima facie* case is proved by the complainant.

131. At the first stage the tribunal should take into account all of the relevant evidence from both sides and usually disregard any explanation provided the Respondent. The consideration of the tribunal then moves to the second stage whereby the burden is on the Respondent to prove that it has not committed an act of unlawful discrimination. The Respondent may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If it does not, the tribunal must uphold the discrimination claim.

132. As regards the “something more” needed to shift the burden of proof onto a Respondent, this will depend upon the facts of each case but it may

include evidence of stereotyping, statistical evidence, lack of transparency or inadequate disclosure, or inconsistent explanations. However, mere unreasonable treatment by an employer “casts no light whatsoever” as to the question of whether an employee has been treated unfavourably - **Strathclyde Regional Council v Zafar** [1998] IRLR 36. This has also been followed by the Employment Appeal Tribunal in **Law Society and others v Bahl** [2003] IRLR 640 where it was held that mere unreasonableness is not enough as it tells us nothing about the grounds for acting in that way.

133. In **Laing v Manchester City Council and others** [2006] IRLR 748 the EAT provided helpful guidance on the application of the burden of proof, and in particular the potential for a tribunal to move direct to the second stage where the evidence suggests that the employer had discriminated against the claimant:

“75. The focus of the tribunal’s analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, “there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race”.

76. Whilst, as we have emphasised, it will usually be desirable for a tribunal to go through the two stages suggested in Igen, it is not necessarily an error of law to fail to do so. There is no purpose in compelling tribunals in every case to go through each stage. They are not answering an examination question, and nor should the purpose of the law be to set hurdles designed to trip them up. The reason for the two-stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the employer. But where the tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever.

77. Indeed, it is important to emphasise that it is not the employee who will be disadvantaged if the tribunal focuses only on the second stage. Rather the risk is to an employer who may be found not to have discharged a burden which the tribunal ought not to have placed on him in the first place. That is something which tribunals will have to bear in mind if they miss out the first stage. Moreover, if the employer’s evidence strongly suggests that he was in fact discriminating on grounds of race, that evidence could surely be relied on by the tribunal to reach a finding of discrimination even if the prima facie case had not been established. The tribunal cannot ignore damning evidence from the employer as to the explanation for his conduct simply because the employee has not raised a sufficiently strong case at the first stage. That would be to let form rule over substance.”

134. The court in **Brown v London Borough of Croydon and anor**

[2007] ICR 909, CA recognised that in some cases the issue of less favourable treatment is so intertwined with the “reason why” that a sequential analysis can give rise to needless problems and should be dispensed with, and a tribunal may therefore be entitled to go to the second stage and to focus on the reason for the treatment complained of.

135. Similarly the Supreme Court has held that the burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another - **Hewage v Grampian Health Board** [2012] IRLR 870 [32].

136. However the EAT in **Field v Pye Co Ltd & others** [2022] IRLR 948 restated the importance of applying the burden of proof provisions, noting that if a tribunal chooses to disapply them it should explain why, but it urged caution before doing so as significant evidence of discrimination should not be ignored – the danger of going straight to the reason why question risks ignoring evidence of discrimination. If the claim fails at the first stage because there is no evidence of discrimination which could have shifted the burden of proof, it remains open to a tribunal to state that it nevertheless accepted the employer’s explanation anyway.³

Time limits – Discrimination complaints

137. Section 123 Equality Act 2010 provides that proceedings on a complaint may not be brought after the end of (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.

138. The normal time limit must be adjusted to take into account the early conciliation process and any extensions provided for in section 140B.

139. In **Hendricks v Metropolitan Police Commissioner** [2002] EWCA Civ 1686, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. In **Hale v Brighton and Sussex University Hospitals NHS Trust** UKEAT/0342/17 it was found that the respondent’s decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.

140. When determining if there was a continuing state of affairs the tribunal will consider what the acts were, the context and who was involved. A tribunal may decide that some acts form part of a continuing act, while others remain unconnected - **Lyfar v Brighton and Sussex University Hospitals Trust** [2006] EWCA Civ 1548.

141. It is for the Claimant to show that it would be just and equitable to extend time - **Bexley Community Centre (t/a Leisure Link) v Robertson** [2003] EWCA Civ 576.

³ Pye [43].

142. The court in ***British Coal Corporation v Keeble* [1997] IRLR 36** provided guidance to tribunals when considering whether to exercise its discretion to extend time on this just and equitable basis. This will include consideration of the length of and reasons for the delay, but might include the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued had co-operated with any requests for information; the promptness with which the claimant acted once they knew of the possibility of taking action; and the steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

143. The court in ***Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23** has confirmed that the correct approach is for the tribunal to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. The court advised against using a mechanistic approach and using the examples in ***Keeble*** as some sort of checklist.

144. In ***Dr Nicholas Jones v Secretary State for Health and Social Care* [2024] EWCA Civ 1568** the Court of Appeal held:

“As the EAT observed, strictly speaking section 123 does not set out a primary time limit that may be extended but a time limit of three months or “such other period as the employment tribunal thinks just and equitable”. Where the Employment Tribunal decides that a period other than three months is just and equitable, that is the time limit. Nonetheless, the use of the term “primary time limit” for the three months period (with an extension for ACAS early conciliation where appropriate) is a useful shorthand.” [26]

Automatic unfair dismissal

145. Section 99 Employment Rights Act 1996 provides as follows:

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

a. The reason or principal reason for the dismissal is of a prescribed kind, or

b. The dismissal takes place in prescribed circumstances.

(2) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

(3) A reason or set of circumstances prescribed under this section must relate to—

...

(ca) paternity leave

146. Regulation 29 of The Paternity and Adoption Leave Regulations 2002 (“the Regulations”) provides:

(1) *An employee who is dismissed is entitled under s99 of the 1996 Act to be regarded for the purpose of Part 10 of that Act as unfairly dismissed if—*

a. The reason or principal reason for the dismissal is of a kind specified in paragraph (3), ...

(2) ...

(3) *The kinds of reason referred to in paragraph (1) and (2) are reasons connected with the fact that—*

...

a. the employee took, or sought to take, paternity or adoption leave

...

147. Regulation 5 provides that:

(1) *An employee may choose to take either—*

a. A single period of leave of either one week or two weeks, or

b. Two non-consecutive periods of leave of a week each in respect of a child under regulation 4.

148. Section 108(3)(b) Employment Rights Act 1996 provides that the two year qualifying period for a claim for unfair dismissal does not apply where s. 99(1) (read with any regulations made under that section) applies.

149. A dismissal for the principal reason of having taken statutory paternity leave (which is prescribed as 2 weeks only by regulations made by the Secretary of State) is an automatic unfair dismissal, regardless of the employee's length of service.

150. However, the burden of proving that the reason for dismissal was an automatically unfair one rests with the Claimant in a case where they have less than 2 years' service under s. 108(1) Employment Rights Act 1996 - ***Maund v Penwith District Council [1984] IRLR 24 and Kuzel v Roche Products Ltd [2008] EWCA Civ 380.***

151. The Tribunal must assess as a question of fact whether the reason (or principal reason) for dismissal is connected with the fact that a claimant has taken paternity leave. In ***Atkins v Coyle Personnel PLC UKEAT/0206/07*** the dismissal during paternity leave was not unfair because the dismissal was not connected with the fact that the claimant had taken paternity leave.

Detriment related to paternity leave- s.47C Employment Rights Act 1996

152. Section 47C of that Act provides that:

(1) *An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.*

(2) *A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—*

...

(ca) paternity leave

153. The aforementioned Regulations provide at Regulation 28:
- (1) *An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer because—*
- ...
- (b) *the employee took or sought to take paternity leave or ordinary or additional adoption leave*
- ...

154. Section 47C(2) of the Act makes clear that detriment claims must relate to paternity leave as prescribed by regulations (the two weeks' statutory paternity leave per Regulation 5 of the Regulations).

Time limits - Employment Rights Act 1996 claims

155. A claim for detriment related to paternity leave must be brought within three months (as extended by early conciliation, if applicable) pursuant to s.48.
156. Section 48(3)(a) provides that an act may be in time if it is one of a series of similar acts, the last of which would be in time.
157. In the alternative, the Tribunal must be satisfied that (i) it was not reasonably practicable for the complaint to be presented within the primary time limit and (ii) that it was then presented within such further period as the Tribunal considers reasonable - s. 48(3)(b). The burden of proving the first limb rests on the Claimant.
158. Where the reason for not presenting the claim within the primary time limit is because of a mistake or ignorance of time limits, the question is whether the mistake or ignorance was reasonable per Brandon LJ at [60]-[61] of ***Wall's Meat Co Ltd v Khan* [1978] IRLR 499**, taking into account whether the claimant has taken advantage of the opportunities available to them of finding out that they had rights.
159. If the reason for a failure to bring a claim in time was because of incorrect legal advice, then the Tribunal must find that it was reasonably practicable to bring the claim in time - ***Dedman v British Building and Engineering Appliances Ltd* [1974] All ER 520**. This principle also applies to trade union advisors/representatives - ***Cullinane v Balfour Beatty Engineering Services Ltd* UKEAT/0537/10**.
160. Additionally, there must be some factor beyond the mere invocation of an internal appeal process, which justifies a claimant's failure to meet the primary time limit - ***Palmer v Southend-on-Sea Borough Council* [1984] IRLR 119**).

Conclusion and decision

161. I will start with the victimisation complaint first (Issue 5). As above, a protected act under s. 27 Equality Act 2010 involves either (i) alleging that someone has contravened the Equality Act; (ii) bringing discrimination

proceedings; (iii) giving evidence in discrimination proceedings; (iv) doing anything else with reference to the Equality Act; or (v) making an allegation of discrimination, even informally

162. The Claimant did none of those things and did not mention discrimination nor any breach of the Equality Act 2010 in his grievance. There was no reference to less favourable treatment on grounds of a protected characteristic, noting that paternity leave is not one of the protected characteristics.

163. The Claimant did not start to complain about discrimination until the appeal stage which is after the detriments he seeks to complain about. The Claimant has suggested that the grievance should be read alongside the appeal where he alleged discrimination, however the difficulty is that (i) it is the grievance itself which he has relied upon as the protected act; and (ii) in any event the detriments cannot have been caused or influenced by his appeal which had yet to happen.

164. I therefore find that the Claimant did not carry out a protected act, and as a result the victimisation complaint must fall at the first hurdle. I therefore dismiss the complaint of victimisation.

165. Whereas it is not necessary for me to go on to examine causation (because there is no protected act in the first place), I have addressed this later in this judgment by reference to the decisions to dismiss and not to offer alternative employment. I do not address Issue 5.2.3 which was withdrawn during the hearing.

166. As regards the complaint of automatic unfair dismissal (Issue 2), the Claimant's statutory paternity leave was used, as he agreed, in August 2023, and was not the period of additional contractual leave which he utilised in March – May 2024, accordingly the complaint would have failed on that basis alone as the gateway for protection was not even met. There was no evidence to suggest any form of link between that far earlier period of paternity leave and the treatment complained of the following year.

167. However, and in order to satisfy myself that I have fully and fairly considered this complaint (and not followed a fragmented approach) I have gone further, and looked at the reason why the Claimant was dismissed, noting that the burden rests with him to persuade me that the reason, or the principal reason, was due to his paternity leave.

168. The Claimant has not persuaded me that the reason was due to his paternity leave as there is an absence of any evidence to suggest that this was even a remote factor in the consideration of Mr Dunwoody, Mr Wallace, and Ms Ridgers at that time. I noted that the Claimant had already been treated more favourably by allowing him to take the leave after 2 weeks notice rather than 8 weeks. It would make no sense that the Respondent would then seek to dismiss the Claimant for exercising that right.

169. It was abundantly clear to me that the reason for dismissal was due to the breakdown in the relationship between the Claimant and the Respondent, including Mr Foxton as his line manager, and also Ms George as the senior manager. There is overwhelming evidence that the Claimant

was refusing to be managed by Mr Foxton, he would not attend meetings with him, he would not reply to his emails and as the Claimant himself confirmed at the time, the relationship was ruined, and both sides agreed there was an impasse, and the situation was untenable. There was simply no more to it than that. The Claimant's paternity leave, whether statutory or contractual, had no influence at all on the decision to dismiss the Claimant.

170. I therefore dismiss the complaint of automatic unfair dismissal.

171. As regards the complaints of detriment related to paternity leave (Issue 4), I would dismiss the complaints on the same basis as earlier, namely that the period of paternity leave relied upon by the Claimant was contractual rather than statutory paternity leave, and therefore it is not subject to the protection under the Employment Rights Act 1996. Nevertheless, and to ensure that I have fully and fairly considered these complaints, I have gone further to look at each alleged detriment and the matter of causation.

172. As regards not promoting the Claimant, I find that this did occur and it also amounts to a detriment, however the complaint fails because the reason for not promoting the Claimant had absolutely nothing at all to do with the Claimant taking paternity leave.

173. The reason for not promoting the Claimant was due solely to the scoring lower than the other candidates for the six roles available.

174. I am not satisfied that the scoring by Ms Bijlani nor Ms George were influenced by the Claimant's paternity leave in any way. The reason for the Claimant's scores were because his answers were not as detailed or developed as the other candidates, and whereas the Claimant may have had the relevant experience, it fell to him to explain that in his answers during the interview. Simply repeating that Ms George knew his experience was insufficient, this was a competency based interview where candidates were competing against each other and were being asked the same general open questions, and it was for the Claimant to provide his answers to the questions.

175. As regards the allegations that the interview was not fair, or that it was skewed or extremely unprofessional, I have found it was nothing of the sort. This was a fair and equal process where the candidates were all asked the same questions and the Claimant was provided with prompting where his answers fell short. I was concerned that the Claimant had been scored a 0 for one question by Ms Bijlani as this was very harsh, however I accepted her evidence that the Claimant failed to answer the question about his greatest impact in the past year.

176. This ought to have been a relatively straight forward question for someone at the Claimant's level and of his clearly high intelligence to answer, and whereas the Claimant suggests that he was at some sort of prejudice because he had been on paternity leave and absent for part of that period, that is to misunderstand this cause of action. There is no such cause of action of discrimination arising from paternity leave. Whilst I find that the score of 0 was harsh given that the Claimant did attempt to answer it in some way, I am not persuaded that the Claimant's paternity leave was

a factor in that treatment – rather it was because Ms Bijlani genuinely considered that the Claimant had not answered that question.

177. As regards the decision to dismiss the Claimant, this cannot, as a matter of law, amount to a detriment under s. 47C Employment Rights Act 1996 as the correct cause of action is automatic unfair dismissal which I have already determined.

178. As regards not offering alternative employment to the Claimant, this did occur and it is a detriment (as he was then dismissed), however I am not persuaded that this had anything whatsoever to do with the Claimant's paternity leave. The overwhelming evidence from the Respondent, including responses from the Claimant at the material time, demonstrates that this was a relationship which had broken down, it had become untenable, the Claimant was immovable that he would not report to Mr Foxton, and whereas he had insisted that he would report to Ms George, she too was the subject of the Claimant's grievance and he explained his relationship with her too was ruined. The Claimant's appeal reads as though he had lost all trust and confidence in his employer, and it appeared to me the relationship was irreparable.

179. This was not a redundancy situation, and whereas the Claimant was not dismissed for misconduct, the reality is that he was refusing to comply with management requests as Mr Wallace helpfully tried to caution him, as did Mr Dunwoody, both of whom went to exhaustive lengths to talk the Claimant round, sadly to no avail.

180. There was no obligation upon the Respondent to offer the Claimant another role; the Claimant has not identified another role which was available and suitable in any event; and moreover as I have found, both sides were in agreement the situation had become untenable.

181. I therefore dismiss all of the complaints of detriment relating to paternity leave.

182. As regards the Claimant's complaints of direct race discrimination (Issue 3), it is for the Claimant to prove facts from which I could conclude, absent an explanation from the Respondent, that he had been treated less favourably on grounds of his race as a British Pakistani.

183. The burden of proof does not shift simply on the basis of a difference in treatment, something more is required to shift the burden onto the Respondent to provide an explanation.

184. If the burden shifts and if I am not persuaded that the treatment was in no sense connected to race, then I must uphold that complaint.

185. I remind myself that findings of discrimination (or discriminatory intentions) are serious matters, and care should be exercised before drawing such an inference, not least where there have been a number of interactions between the parties, but only a small number are alleged to be tainted by discrimination. I should look at conduct before and after the matters complained of and avoid adopting a fragmented approach which could lose some of the eloquence of the evidence.

186. As regards the complaint about passing the Claimant over for promotion whilst promoting Lauren Goddard as a less experienced colleague, I agree that not promoting the Claimant was a detriment. I do not however find that Ms Goddard is an appropriate comparator. Ms Goddard had been employed for considerably longer than the Claimant, and whereas she did not have the same experience in that team as the Claimant, Ms Goddard was much more experienced in the Respondent generally; she was already a line manager and a G12; and part of the top talent group. Ms Goddard was not therefore an appropriate comparator as she was not in a materially similar situation to that of the Claimant.
187. Likewise, I do not find that Mr Elmore is an appropriate comparator either because he didn't apply for the promotion, and he was not appointed to one of the roles the Claimant applied for, rather was transferred across later and he was already a G12.
188. I have considered whether there was any evidence of hostility before and after the promotion decision was made. There was none on the part of Ms Bijlani who hardly knew the Claimant. Likewise, there was none on the part of Ms George, although in March 2024, two months before Ms George had used the word "SHOCKED" to a colleague about the Claimant not updating a colleague. I have interpreted this as an expression of frustration about the Claimant's perceived lack of communication; it did not appear to me to have anything to do with the Claimant's race. I found the "time to go" comment from the colleague to be unprofessional and demeaning of the Claimant, but Ms George did not write it, and I believed her when she said she challenged the colleague about it.
189. Likewise, when the Claimant applied for the second period of paternity leave, the Claimant gave one day's notice, and Ms George's concern was about a piece of work not being done. There was no connection to the Claimant's race.
190. I was not provided with evidence from which I could conclude that the decision not to promote the Claimant was due to his race, the evidence was simply not there to reach that conclusion.
191. The Claimant has not established a *prima facie* case of direct discrimination so as to shift the burden of proof onto the Respondent to provide an explanation.
192. I could therefore dismiss this complaint on that basis alone, however cases such as **Hewage**, **Laing**, and **Brown** make it clear that it is permissible in some cases to go to the second stage, and to simply ask the reason why the Claimant was treated as he was? This does not prejudice a Claimant, rather it assumes that they have discharged the burden, and it is to their advantage.
193. I have therefore considered the reason why the Claimant was not promoted, and specifically the explanation from the Respondent. The Respondent argues that the Claimant scored the lowest due to brief, undeveloped answers which lacked detail and did not demonstrate both what he had achieved and how he achieved it.

194. Whereas I considered the score of 0 from Ms Bijlani for the Claimant's answer to the impact question to have been a harsh score, however after reviewing the Claimant's answers to that question, and the prompting from Ms Bijlani, and Ms George's score of 1, I am satisfied that Ms Bijlani genuinely considered that the Claimant had not provided an answer to the question about his greatest impact in the last 12 months. It did not appear to me that race was a factor in that score, nor any of the scores from either interviewer given the Claimant's answers were brief and lacked sufficient detail, and given the Claimant's propensity to answer that Ms George knew what he had done.
195. The process adopted by the Respondent was a fair one – the interviewers put to one side their knowledge of the applicants and based the scores on their performance in the interview. The applicants were treated equally and consistently.
196. It also appeared to me unlikely that the Claimant's race was a factor in the treatment given that a colleague of the same race as the Claimant was promoted in that process, and has since been promoted a further time. This would tend to suggest that race was not an influence on the treatment complained of. This was of course not determinative in my view, but it was a relevant factor and was suggestive that race was unlikely to have been a factor.
197. It also seemed to me that it was inevitable that Ms Goddard would have scored higher than the Claimant given her longer period of employment with the Respondent; she was already a line manager; she was already a G12; and designated top talent; therefore it would be very surprising if her answers to those leadership questions were not stronger than someone without that experience. This had nothing whatsoever to do with race.
198. Had the burden of proof therefore shifted to the Respondent, I am satisfied by the Respondent's explanation that the decision was due to the Claimant's performance in the interview and had nothing whatsoever to do with his race. I appreciate that the Claimant may feel that some of the scores were low or harsh, however I find that his race was not any influence at all in how his answers were marked. I dismiss this complaint.
199. I also dismiss the complaint that the Claimant was subjected to a skewed and unprofessional interview on 3 May 2024 as I have already found that it was a fair process, it was not skewed nor unprofessional and the factual premise of that complaint was not made out.
200. As regards the Claimant's dismissal, this was clearly a detriment, and the issue is whether this was less favourable treatment on grounds of the Claimant's race. It is not disputed that the Claimant had failed to attend meetings with Mr Foxton; nor that he failed to respond to emails from him; nor that the Claimant did not revert back to Mr Foxton on the four pieces of work he assigned him. The Claimant was refusing to work under Mr Foxton as he considered this to be a demotion notwithstanding his grade remained the same, and his job remained the same, save for a different route to market for the products.

201. I have already found the Respondent had a genuine and a reasonable belief that the Claimant was not undertaking any work in that four week period prior to dismissal. It is not for me to determine what work the Claimant produced, my focus is on what the Respondent genuinely and reasonably believed. For the avoidance of doubt, I do not find that the Claimant was not working – rather there is little to no evidence of what work he did during that time, but I do not criticise the Claimant for that as it was a long time ago.
202. By the time of the dismissal, both the Respondent and Claimant were in agreement that they were at an impasse, the situation had become untenable, and the parties had lost trust and confidence in each other. The Claimant admitted his relationship with Ms George was ruined.
203. The question is whether someone in the same situation as the Claimant that I have described, but not of his race, would also have been dismissed.
204. I have not been provided with evidence from which I could conclude, absent an explanation from the Respondent, that the Claimant's race was the reason for, nor even a factor in his treatment. The Claimant has not established a *prima facie* case of direct discrimination. The burden of proof did not shift onto the Respondent to provide an explanation and I would have dismissed the complaint on that basis.
205. Nevertheless, for the sake of completeness, and on the basis of the cases of **Hewage, Laing** and **Brown**, I have again gone to the second stage of the burden of proof and examined the Respondent's explanation of why the Claimant was dismissed.
206. I have already accepted the Respondent's explanation that the dismissal was due to the breakdown in the employment relationship.
207. I am satisfied that the Claimant's race played no part whatsoever in the decision to dismiss him, and that the dismissal was due solely to the breakdown in the relationship. I therefore dismiss the complaint about the Claimant's dismissal.
208. As regards the final complaint that the Claimant was not offered alternative employment, I repeat my earlier determination that this was not a redundancy situation, there was no entitlement or expectation that he would be considered for alternative roles, and as such the Claimant has not established a *prima facie* case of less favourable treatment on grounds of race. There were no facts from which I could conclude, absent an explanation, that the Claimant had been discriminated against on grounds of race.
209. As above, even had the burden of proof shifted to the Respondent, I would have accepted its explanation that there was no alternative role for the Claimant, and moreover the employment relationship had irretrievably broken down and an alternative role would not have remedied that. I am satisfied that the Claimant's race played no part whatsoever in the decision

not to offer him alternative employment, and I therefore dismiss the complaint.

Time

210. As all of the complaints have failed and been dismissed it is not necessary for me to deal with the issue of time to any degree. I simply record that the complaint of automatic unfair dismissal was brought within time. The discrimination and victimisation complaints were brought outside of the time limit under s. 123 Equality Act 2010. There was no continuing course of conduct nor an overarching discriminatory state of affairs culminating in a final act that was within time.

211. It would not have been just and equitable to have extended time as the Claimant did not address in his witness evidence why the claim was not brought earlier, but even if he had, Mr Dunwoody advised the Claimant to go to ACAS, the Claimant knew about ACAS, and as the Claimant is undoubtedly a highly intelligent professional, he has been able to conduct these proceedings as well as any lawyer could have done, and he could have researched time limits if he wished.

212. Moreover, the Claimant had been able to raise and take part in an appeal. It would not have been just and equitable to have extended time for the discrimination complaints had they succeeded.

213. As regards the detriment complaints, different time provisions apply. I find that the detriment complaints were brought outside of the time limit under s. 48(3) Employment Rights Act 1996 and there was no series of similar acts of which the last was in time.

214. The Claimant has not provided evidence as to why it was not reasonably practicable to have brought those detriment complaints within time, and given that he was able to take part in the internal appeal process I find there was no reason preventing him from bringing those complaints within time.

215. All of the complaints did not succeed and were dismissed in full.

Covert recording whilst at work

216. I have not excluded any evidence that was covertly recorded, and the Respondent has not invited me to do so. I place on record my observation that this is a distasteful thing to do. Higher courts have also reached the same conclusion. In **Vaughan v Lewisham Borough Council and others [2013] UKEAT/0534/12/SM** it was held:

“We should say, in order to get this point out of the way, that the practice of making secret recordings in this way is, to put it no higher, very distasteful; but employees such as the Claimant will no doubt say that it is a necessary step in order to expose injustice. Perhaps they are sometimes right... The law is now established that covert recordings are not inadmissible simply because the way in which they were taken may be regarded as discreditable: see in particular the judgment of this Tribunal, Mr Recorder

217. I nevertheless appreciate there may be situations whereby it is impossible to gain evidence of discrimination by other legitimate means, as few people would be prepared to admit that they have discriminated against others. However, this was not one of those situations, and the making of repeated covert recordings was in my view distasteful.

Alleged recording of these proceedings

218. The Respondent has raised concerns that the Claimant may have recorded these proceedings, and it points to the verbatim accounts of the evidence provided by the Claimant in his closing submissions, whereas he was not seen to have made any notes during the hearing.

219. In addition, the Claimant had misattributed oral evidence to the wrong people, including things he said. The Respondent says that this is an error which a human would unlikely make, and rather it is something which may have been produced by transcription software. The Respondent also reminds me I had witnessed the Claimant's wife in the room behind him whereas I had been told that he was alone.

220. Upon reading the Claimant's closing submissions I shared those concerns.

221. If these proceedings had been recorded without my consent, in breach of my warning not to do so, and in breach of the warning on the CVP screen, this could amount to a contempt of court. I warned the parties that if it happened I would escalate the matter and serious consequences may follow.

222. After having given the Claimant the caution about self-incrimination under s. 14 Civil Evidence Act 1968, and after insisting he take a break, upon his return the Claimant told me he had not recorded the hearing; he said that he took my warning seriously; he recognised he had made covert recordings at work before but he had not done so here; and he agreed he made errors in the closing submissions. The Claimant reminded me he had been fasting and he would not lie as that would be akin to breaking his fast and as a Muslim he took this matter very seriously.

223. This is a matter which I also take very seriously. I have no jurisdiction to decide if a party is in contempt of court, but I am empowered to make a finding that somebody has recorded the hearing without consent if the evidence supports it.

224. Based upon the evidence before me, I had concerns that these proceedings may have been recorded as there is some evidence to support that given the verbatim account in the Claimant's closing submissions and the misappropriation of quotes.

225. However, the consequences of making such a finding could be severe for the Claimant, and as such I must satisfy myself on the balance of probabilities whether a recording has been made.
226. Notwithstanding my concerns, I am not persuaded to the level that I need to be, on the balance of probabilities, that the Claimant did make a recording. I do not have sufficient evidence before me that a recording was made, therefore I am not prepared to make that finding.
227. However, if a recording was made of this hearing, not only could that amount to a potential contempt of court, it would also show enormous disrespect to this Tribunal, and to me, and I would be extremely disappointed if that were the case as I have strived throughout this hearing to give both sides the fair hearing they are entitled to expect from this Tribunal.
228. I apologise in advance if there is a delay in these reasons being sent to the parties. I have produced the reasons within two working days of the Claimant's request being passed to me, however there is a backlog of work within the Tribunal administration which means that there are delays in sending out decisions, for which I can only apologise in advance on behalf of the Tribunal.

Approved by:

Employment Judge Graham
8 April 2026

SENT TO THE PARTIES ON

26 April 2026

FOR THE TRIBUNAL OFFICE