



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8002580/2025**

**Held in Glasgow on 26 & 27 March 2026**

**Employment Judge Campbell**

**Mr N Brown**

**Claimant  
In Person**

**Royal Mail Group Limited**

**Respondent  
Represented by:  
Mr D Cormack,  
Solicitor**

**JUDGMENT**

1. The claimant's legal complaints are unsuccessful and the claim is dismissed.

**Written Reasons**

**Introduction**

1. This was a full hearing in person over two days. The claimant represented himself and the respondent was represented by Mr Cormack.
2. On the first day of the hearing the claimant produced a written statement which he wished to be taken as his evidence in chief. After a short adjournment to consider this it was agreed that he could. He was cross-examined in the usual way.
3. Evidence on behalf of the respondents was heard from:
  - a. Lee Bannerman – Customer Operations Manager;

- b. Andrew Mullen, People Case Support Manager; and
  - c. Kirstyn Campbell, Employee Relations Case Manager.
4. A joint bundle of documents was prepared. Numbers in square brackets below correspond to pages within it. The claimant requested to add some further documents during the hearing, which was agreed.
5. An agreed list of issues was also provided at the start of the hearing. There were essentially two separate complaints and those are considered in detail below. One was a claim under section 80H of the Employment Rights Act 1996 that the respondent had not properly dealt with his flexible working request (in the terminology of that section, a 'contractual variation') and the other was of detriment as a result of having made that request, under section 47E of the same Act.
6. It is noted here that the second of those complaints was added to the claim by way of an amendment application made on 26 November 2025 and determined on 13 March 2026. Equally important is that a number of other complaints the claimant wished to introduce by way of that application were not permitted.
7. By agreement the parties provided their closing submissions in writing. Those were considered before this judgment was reached.

### **Findings of fact**

The following findings are made based on the evidence provided and on the balance of probabilities.

1. The claimant began working for the respondent on 8 April 2024 and is still in employment. He is based at the respondent's Victoria Road depot on the south side of Glasgow. He is engaged as a postal worker. He was interviewed for the role by Lee Bannerman, Customer Operations Manager for the depot and another manager in March 2024. At the interview some specific requirements of the role were discussed, including:
  - a. That the role was physically demanding;
  - b. It involved working on any day of the week;
  - c. There were 30 hours of core letter delivery work and one 5-hour 'parcel shift' between 3pm and 8pm each week;
  - d. Sunday work would be performed at the nearby Cathcart depot, normally one Sunday out of four;

- e. Flexibility and adaptability to the needs of the business were required.
2. The claimant was recorded as accepting those conditions and offered evidence of his ability to meet them. In particular he said he could adapt to any change and could deal with changes to duties at short notice [87-88]. He was offered the role later that day.
3. The claimant was engaged on a set of contractual terms agreed with a representative trade union and referred to as a '35-hour' contract. This entailed the terms and duties discussed in his interview. He would be required to drive a work vehicle.
4. The workforce of the Victoria Road depot was made up of workers on different contracts. The majority had been engaged at a time when driving was not a requirement of the role and either did not drive at all or did not wish to drive in the course of their duties. As a response to changing market demands the respondent at national level recognised that it needed more postal workers to drive and so this became a requirement under the latest version of the contract, which is the one the claimant entered into. Any shift involving parcel deliveries required the person to drive a work vehicle, and at times core mail delivery also required driving, for example so that more mail or larger items could be delivered in a shift or where the area being delivered to was further from the depot.
5. Similarly, although to a lesser extent, legacy contracts had not provided for Sunday working and the majority of employees at the depot could not be required to work on Sundays. Again, in response to the changing nature of the service the respondent provided it needed staff to work on Sundays. In particular, although normal mail was not delivered on that day, a large volume of parcels would be handled, whether in terms of being delivered (customers were more likely to be at home to receive them than on weekdays) or prepared for the next day. Hence the 35-hour contract required availability to work at least some Sundays.
6. In terms of numbers, around the time the claimant made his request for a contractual change discussed below around 78 postal workers were based at the Victoria Road depot. This was 10 workers short of the full complement. A freeze on recruitment had been imposed pending the outcome of negotiations with Ofcom at national level about the nature of the service which were expected to have an effect on shift patterns. Only around eight workers were engaged on a 35-hour contract and therefore could be required to drive and to work on Sundays.

7. The claimant's written contract was provided [203-219]. Terms regarding working hours were contained in clause 9. The claimant's core hours were stated and it was specified that more specific times and duties would be allocated by his line manager. An expectation of availability to work overtime was expressed to help ensure that the respondent met its particular obligations as the provider of a public service.
8. The claimant has a son and shares responsibility for caring with the mother of the child. He began verbally raising the prospect of seeking a variation to his contractual hours around December 2024. He asked to be released from his weekly parcel shift. Mr Bannerman told him he would not be able to obtain that change as drivers were needed.
9. The claimant took on more responsibility for his son's care around June 2025 and contacted the respondent's Human Resource team who pointed him to a form he had to complete, but explained that the request had to be dealt with by his manager.

*Initial request for contractual change/flexible working*

10. The claimant submitted a request for a variation to his contract by letter on 4 July 2025 [109-112] (the 'request'). The key details were:
  - a. He wished to move from five days working across a seven-day rota to working Monday to Friday only each week;
  - b. He wished to stop his afternoon/evening parcel shift;
  - c. He asked to have the five hours which would not be worked as a result of that to be spread across each weekday morning, so that he would start an hour earlier and thus still be engaged to work 35 hours per week;
  - d. He proposed that the arrangement would start on 1 August 2025.
11. In the letter the claimant said he was the primary carer for his son between Friday and Sunday evening each week.
12. Mr Bannerman invited him to a meeting to discuss the request, to take place on 26 July 2025 [113]. In his letter doing so he said he wished to fully explore the request, understand how it might work, discuss the effects on the business and to discuss possible alternatives if appropriate. A right to be accompanied was confirmed.
13. The claimant attended the meeting along with a trade union representative. It was not minuted. The claimant was given the opportunity to explain his

request. The request was neither granted nor refused in the meeting. Mr Bannerman suggested a partial compromise of allowing the claimant to move to a 30-hour contract, which would mean dropping his parcel shift and continuing the remainder of his shifts. As documented by the claimant in an email later that day [117-118], Mr Bannerman said he could not discuss the individual circumstances of other employees and also raised that staff shortages made it more difficult to grant the request. He also mentioned that future restructuring driven by the Ofcom negotiations could require revision of current shift patterns.

14. On the morning of 31 July 2025 Mr Bannerman handed the claimant a letter which confirmed he had decided to refuse the request [119(a)]. An updated version of the letter was sent to him by email the following day [123]. It added that the reason for refusing the request was 'effect on ability to meet customer demand' and that the claimant had the right of appeal, two details which were not in the first letter. The claimant had already appealed on receipt of the first letter, doing so by email [120-121].
15. The respondent operates a 'Working Arrangements Procedure' which among other things contains the process for making and responding to requests for contract changes [229-231]. This was followed by Mr Bannerman save that he did not initially specify the claimant's right of appeal, as the procedure permits, although that was corrected in the second version of his letter. The claimant was sent a link to the document by HR along with the relevant form in June 2025.

#### *Appeal process*

16. The claimant's appeal was passed to Andrew Mullen, a People Case Support Manager. His role is to investigate matters such as staff grievances and disciplinary cases.
17. Mr Mullen had a high caseload at the time but arranged to meet the claimant by video on 30 August 2025, which was a Saturday and a non-working day for him. The claimant was allowed to be accompanied but chose to join alone. Notes of the discussion were taken [127-131]. They show the discussion lasting half an hour. Mr Mullen said at its conclusion that as a result of his workload and as he was about to go on annual leave, he expected to deliver a decision to the claimant in October 2025. The claimant did not object.
18. The claimant emailed Mr Mullen a number of times after the meeting with some further submissions. He also sent additional text messages. He fully explained his position. Among other things he asked whether, if his request

genuinely could not be accommodated, would a transfer to Govan be possible. He knew that workers there did not work on Saturdays or have parcel shifts, two of the issues he had with his own contract. Mr Mullen emailed the meeting notes to the claimant to review. The claimant provided further comments in relation to those.

19. Mr Mullen agreed to the immediate step of exploring whether the claimant could transfer to Govan which was closer to his home and did not deliver parcels in afternoons or evenings. He contacted the manager. Were the claimant to transfer he would still have to work at weekends. The claimant asked him to go ahead with deciding his appeal.

20. Mr Mullen interviewed Mr Bannerman on 3 October 2025 and took a note of the points covered. Mr Bannerman explained what terms the claimant had agreed to and confirmed that others were engaged on the same terms.

21. Mr Mullen reached a decision around 7 October 2025 and confirmed on that day by letter that he had re-heard the claimant's application and confirmed the original decision to refuse his request. This was now on two grounds – the effect that granting it would have on the respondent's ability to meet customer demand and ability to manage impact on quality and performance. He provided a one-page rationale for his decision [166]. He concluded that:

- a. No other colleague at Victoria Road worked under a variation to their original contract;
- b. Three employees who Mr Bannerman believed were engaged on 30-hour contracts were found to be on 35-hour contracts as a result of the claimant bringing this to his attention. They had then been asked to work on Sundays and to work parcel shifts;
- c. Sunday continued to be a key day of demand;
- d. It is difficult to recruit staff to work on Sundays and resource Sunday shifts
- e. The claimant was still needed to perform the duties he had agreed to upon recruitment and the depot could not facilitate his request;
- f. As previously confirmed, a transfer to Govan was possible which would allow the claimant to cease working parcel shifts but he would still need to be available to work five days out of any seven per week;
- g. Separately, the respondent's Collections team had vacancies. They did not work on Sundays but did have to cover at least some Saturday shifts according to a rota.

22. Mr Mullen's letter confirmed that his decision marked the end of the respondent's procedure for considering his request.

*Dependent's leave day and events following*

23. The claimant took 23 August 2025 as a day of dependent's leave. He called the depot that morning and explained he would not be at work that day.
24. He believed that he had been detrimentally treated as a result of this and raised an internal grievance under the respondent's 'Raising Concerns' policy. This led to an investigation carried out first by Mr Bannerman and later by Kirstyn Campbell, Employee Relations Manager.
25. However, it became clear during evidence that this was essentially a separate legal complaint. He had previously applied to amend his claim to include it but that had been refused. It is therefore not considered further in this judgment.
26. Some aspects of the claimant's complaint under section 47E were investigated by Mr Bannerman and Ms Campbell, and their evidence was considered in that respect.
27. Further, events arising out of Mr Bannerman's handling of the complaint became part of the section 47E complaint in their own right. This was as below.
28. The claimant and Mr Bannerman met on 5 September 2025 to discuss the claimant's concerns that he believed he had been taken off his 'duty' – i.e. the area he had become accustomed to delivering to for the previous ten months or so. The claimant believed this was prompted by his taking of the dependent's leave day.
29. Between the end of that meeting and the following morning the claimant sent three text messages to Mr Bannerman relating to the matter. These were not produced as part of the bundle. Mr Bannerman approached the claimant to give him some labels to use, said that he did not appreciate the tone of the messages and asked the claimant not to send any more. Later that morning the claimant sent a further text message to Mr Bannerman saying he did not like how he had been spoken to. Mr Bannerman asked the claimant to come into his office to discuss the matter along with a workplace union representative, Mr Henaghan. Mr Bannerman asked the claimant why he had sent a further text after being asked not to, and was he trying to goad Mr Bannerman. The claimant did not respond and the discussion ended.

30. When interviewed later by Ms Campbell Mr Henaghan said that Mr Bannerman had conducted himself appropriately in that discussion and that his request to the claimant to refrain from sending further messages appeared reasonable.
31. The claimant referred to two colleagues as essentially comparators. One was a Mr Arnold. He worked on a 40-hour contract, with the single difference between his contract and the claimant's being that he worked two parcel shifts per week. The respondent had found that workers engaged on this contract did not remain in the role long before resigning due to its demands. To pre-empt Mr Arnold resigning, he was asked if he would prefer to work only one parcel shift per week. He said that he would and his contract was varied to that extent. This happened around two weeks after the claimant made his own request.
32. The second colleague the claimant referred to he did not know by name. That person had reached an arrangement with the respondent where he would work as normal but could request in advance not to work on a Tuesday. This was related to his childcare responsibilities. He had no absolute right to Tuesdays off, but that would be accommodated as far as reasonably possible. It was put in place before a restructure in 2024 required the respondent to provide a more flexible service to customers. In practice the individual rarely made such a request and worked flexibly across seven days per week as the claimant did. The claimant did not know which contract the person was engaged under.

## **Discussion and decision**

### **Treatment of flexible working request – s80H ERA**

33. The relevant provisions dealing with how workers should make a flexible working request and how employers should deal with them, are found in sections 80F to 80I of ERA.
34. It was not in issue that the claimant was entitled to make a request, or did so validly by way of his request letter.
35. Section 80G focusses on what an employer must do when a request is made. The claimant alleged that the respondent had not done the following:
- a. Dealt with the request in a reasonable manner – subsection (1)(a);
  - b. Notified him of the decision in relation to his appeal within the 'decision period' – (1)(aa);

- c. Reasonably refused the request on the grounds it relied on – (1)(b)(ii);  
or
- d. Explained why it was considered reasonable to refuse the request on those grounds – 1ZB.

36. This part of ERA gives little further guidance as to whether and how an employer has fulfilled these requirements. ACAS published a Code of Practice on requests for flexible working on 6 April 2024 which is advisory but not mandatory for employers to follow.

37. Through a body of case law it has been established that an employment tribunal can only scrutinise the employer's process so far. It may assess whether the statutory process was properly followed in good faith and whether the evidence relied on to deny a request was adequate, but it cannot second guess the employer's belief about the effect of granting the request on the business. As in other areas of employment law, those who own and run a business are deemed best placed to make operational and economic decisions.

38. Each of the claimant's individual complaints is considered below in turn.

39. The claimant firstly alleged that the respondent had not dealt with his request in a reasonable manner. Particular criticisms which went towards supporting this argument were:

- a. **Mr Bannerman did not properly engage with the request** - this was evident, he said, from even before the request was made when Mr Bannerman told him words to the effect that 'we don't do flexible working in this office' and 'you can ask but you won't get it'. After the request was made and in their meeting on 26 July 2025, the claimant had a sense that Mr Bannerman had a closed mind and was merely going through the motions of discussing the request. It was accepted as genuine that the claimant had this perception of the process. It is more likely than not that Mr Bannerman did provisionally think that the request could not be accommodated, and was effectively waiting to be convinced otherwise. This was because the issue was factually simple. The unit was clearly and measurably short of drivers and Sunday workers and the claimant was asking to opt out of both. Nevertheless, he fulfilled the requirement of holding the meeting and listening to what the claimant had to say. The claimant had applied for the role and discussed, then agreed to, those precise requirements just over a year before. The claimant believed that someone else had been granted flexibility in the way he was asking for but they had not

and Mr Bannerman was aware of that. Whilst the statutory provisions recognise that an employee's circumstances could change in that period, the respondent's requirements had not.

- b. **He was inconsistently treated compared to other employees** – this was a reference to Mr Arnold and the other unnamed colleague. On consideration of the relevant evidence it was clear that Mr Arnold was not a valid comparator. He was working to a 40-hour contract involving two parcel shifts per week. He was asked if he wished to move to one parcel shift per week. The claimant's perspective was that Mr Arnold had been allowed to drop a parcel shift and that was all he was asking for. This overlooked the reason why Mr Arnold was asked the question, the fact that he would still be carrying out one parcel shift per week and that he continued to be available to work Sundays. What happened with Mr Arnold did not create inconsistency. Similarly, the other colleague benefitted from a significantly more minor concession which had been put in place under a different set of working conditions, and which they rarely used. Both employees worked Saturdays and Sundays as required and Mr Arnold continued to work parcel shifts. Those were the key duties that the claimant wished to stop performing but which were particularly needed.
- c. **Alternatives to the request as framed were not considered at the initial stage, and those offered at the appeal stage were unsuitable** –Mr Bannerman did offer the claimant the option to move to a 30-hour contract which would have entailed dropping his weekly parcel shift, albeit not ensuring weekday-only working. This was an alternative and potentially viable, given that it essentially would have given the claimant one of the two things he was asking for, and would have allowed him not to work at a time of day when parental obligations were particularly likely to arise. As the claimant acknowledged, two further options were identified at the appeal stage by Mr Mullen, namely a transfer to the Govan depot or a move to the Collections team. Those must also be acknowledged. Govan was closer to the claimant's home and did not require afternoon parcel shifts, even if it would not automatically have resulted in an end to weekend shifts. The Collections team did not work on Sundays although Saturdays were part of the shift rotation. Neither the statutory rules nor the ACAS Code requires an employer to find an alternative which the employee considers suitable to them come what may, only (in the case of the Code) to make reasonable attempts to identify modifications or alternatives and offer them to the individual.

40. For completeness the tribunal considered the respondent's process in its entirety. The key steps – written request, meeting, outcome and appeal – were followed. The claimant was allowed to be accompanied at the meetings. The decision was communicated in writing. Although it was briefly and succinctly dealt with, this was related to the simplicity of the situation and the obviousness of the respondent's need for the claimant to continue carrying out the duties from which he was asking to be released.
41. The claimant's second point of complaint was that the respondent had not notified him of its decision within the 'decision period'. Section 80G(1B) states that this period is for two months beginning with the date when the request is made, or such longer period as the parties agree.
42. The original decision of Mr Bannerman was issued within that period, given that it was done on 31 July 2025 following the request on 4 July 2025. Mr Mullen's appeal decision was issued on 7 October 2025.
43. The statutory provisions are less clear than they could be regarding the treatment of time spent considering an appeal against an employer's initial refusal to grant a request. Ostensibly they require that any appeal (or appeals if more than one) should also be concluded within the same two-month period. This could be a disincentive to an employer considering offering a right of appeal, since by doing so they may be setting up a situation where they fail to meet the deadline.
44. The remedy to that appears to be that the parties can agree to extend the deadline as per the second option under section 80G(1B). It is not clarified how such agreement must be constituted, and it appears that it can be done retrospectively – see section 80F(4A)(c). The ACAS Code recommends recording any agreement in writing, but recognises that this is not mandatory.
45. Clearly the appeal was not concluded before the end of the decision period beginning on 4 July 2023, and even had a fresh decision period been deemed to have started with the appeal on 31 July 2023, it was not concluded within two months of that either, although the default would have been more minor, namely around a week.
46. No agreement appeared to have been reached in writing to extend the decision period, but Mr Mullen said unchallenged in evidence that he had spelled out to the claimant when they met that he had a high workload and would additionally be taking some leave, so that he expected to issue his decision in October. He did not recall the claimant objecting. That discussion took place on 30 August 2025 which was within the original decision period.

47. As this was the only evidence on the point it was accepted to be both true and an indication that the decision period was extended by verbal agreement to the end of October 2025. The respondent was therefore not in default when Mr Mullen issued his decision on the seventh day of that month.
48. The claimant's third and fourth grounds of complaint are considered together next given how closely they relate. They were that the respondent did not reasonably refuse his request on the grounds given and nor did it adequately explain why the request was refused.
49. As stated above, a tribunal has power to scrutinise the process an employer follows, the adequacy of the reasons it gives, whether it has acted genuinely and whether it has relied on accurate information to reach its decision. If an employer appears to have acted correctly in those ways then a tribunal cannot evaluate the same information as the employer did, reach a different conclusion on whether the request could have been accommodated and therefore declare that the employer was 'wrong'.
50. Mr Bannerman stated simply in his initial refusal letter that the request had been declined as it would impact on ability to meet customer demands. Mr Mullen said in his appeal outcome letter that this still applied and that additionally the respondent's ability to manage impact on both quality and performance was affected. His report which accompanied the letter went into more detail. This had been informed by his meeting with the claimant, an interview of Mr Bannerman and his own enquiries, for example with the Govan depot. The report in particular both demonstrates that it was reasonable to refuse the claimant's request and why it was considered so. Given how straightforward the issue ultimately became, it adequately met the respondent's statutory obligations.
51. On the above basis the claimant was unsuccessful in arguing that the respondent had failed to meet the requirements of part 8A of ERA.

#### **Detriment on ground of making flexible working request – s47E ERA**

52. The list of issues outlined two alleged acts which constituted detrimental treatment of the claimant on the ground that he made a request for flexible working under section 80F. Both acts were alleged against Mr Bannerman. The tribunal decided those issues, as below. It did not go into other issues which appeared to stray outside of the claimant's case which was contained in his original claim form, amended as permitted.

53. The first alleged act was that Mr Bannerman approached him in an aggressive manner on the shop floor on 6 September 2025 in relation to text messages the claimant had sent him about their meeting the day before, saying that he didn't like their tone. Mr Bannerman was also said to have accused the claimant of goading him in a meeting which was convened slightly later that morning, and allegedly told the claimant not to 'back chat' to him.
54. Dealing with the first part of that allegation, and as noted in the findings of fact, the claimant had sent Mr Bannerman three text messages relating to the meeting, but those had not been produced. Mr Bannerman accepted he had told the claimant that he did not appreciate the tone used in the messages, but that he had not done so aggressively. The difference between the two individuals was a matter of perception.
55. The tribunal had to consider (i) whether Mr Bannerman acted as alleged, (ii) if so, did that amount to subjecting the claimant to a detriment and, if so, (iii) was it done 'on the ground' that he made his request for flexible working.
56. On the evidence, Mr Bannerman did not act as alleged. He made the comment attributed to him, as he admitted, but not in an aggressive way when considered objectively. It was still capable of being seen by the claimant as a detriment, in the sense that he would have preferred for the encounter not to take place, but only just qualifies as such. A detriment is something a reasonable employee would consider to be disadvantageous to them in relation to their work but does not go so far as to cover an unjustified sense of grievance – ***Shamoon v Chief Constable of the RUC [2003] IRLR 285***. Mr Bannerman was entitled to express the view that he did but could have done so differently. In this claim it is essentially the difference between a manager reinforcing appropriate boundaries of communication and tipping over into bullying behaviour.
57. As to the third element - whether any detriment was on the ground that the request had been made - the tribunal applied similar principles as would apply to a complaint under section 47B of detriment on the ground that a protected disclosure had been made, since the test is identically worded and there is a more developed body of case law in that area which provides guidance. It noted that the making of the request did not have to be the only or even the main reason for the detriment alleged, but merely had to be a 'material factor' or influence.
58. Undoubtedly the task of reaching a decision on this point was rendered more difficult by the absence of the text messages in question. It was not possible,

for example, to evaluate what the claimant had said in them to reach any view on whether Mr Bannerman was justified or not in taking issue with the tone used and raising that with the claimant as he did.

59. Ultimately it was not possible on the less specific evidence available to identify any connection of materiality between the claimant's request for a contractual change and Mr Bannerman speaking to him on that morning. On the face of it the issue for Mr Bannerman was with the claimant's manner of communication rather than the subject of the messages themselves or, by extension, the flexible working request. It was noted in particular that the meeting was primarily to discuss events which the claimant believed had a different cause, namely his taking a day of leave. In a very general sense his comments related to the request but they were not 'on the ground that' he had made it.

60. Dealing next with the second part of the allegation, there was little factual dispute if any. Mr Bannerman accepted that he had asked the claimant whether he was trying to goad him by sending a further message after being asked not to do so. A witness was present in the capacity of representing the claimant, and said that there was nothing untoward in Mr Bannerman's words or his manner. This was not a detriment in the legal sense and again in any event did not appear to have been influenced, materially or otherwise, by the making of the claimant's request for contractual changes.

### **Conclusions**

61. On the evidence neither of the claimant's legal complaints was well founded when the relevant legal tests were applied to the evidence. The claim must therefore be dismissed.

**Date sent to Parties**

**16 April 2026**