EMPLOYMENT TRIBUNALS

Claimant: **Mr. S Polanski**

Respondent: **Impact Ducting Sales Ltd**

Heard at: **Leicester**

On: **27th February 2026 (Reading in for the Tribunal)**
2nd, 4th, 5th and 6th March 2026

Before: **Employment Judge Heap**

Members: **Mr. K Rose**
Ms. J Dean

Representation
For the Claimant: **In person**
For the Respondent: **Mr. S Gittins – Counsel**
Interpreter: **Ms. A Bailey**

JUDGMENT

1. The complaint of unauthorised deductions from wages succeeds to the extent that the Tribunal makes a declaration that the Respondent made unauthorised deductions from the Claimant's holiday pay. No financial sum is Ordered to be paid as the Respondent has already repaid to the Claimant the sums deducted.

2. The complaint of constructive unfair dismissal fails and is dismissed.

3. The complaints of direct race discrimination fail and are dismissed.

4. The complaints of harassment related to the protected characteristic of race fail and are dismissed.

5. The complaint of detriment for having made a protected disclosure fails and is dismissed.

RESERVED REASONS

BACKGROUND & THE ISSUES

1. This claim is brought by Mr. Sebastian Polanski ("The Claimant") against his now former employer, Impact Ducting Sales Ltd ("The Respondent").

2. By way of a Claim Form presented on 29th May 2024 and following a period of early conciliation between 25th April and 29th April 2024 the Claimant brought proceedings against the Respondent complaining of constructive unfair dismissal, direct race discrimination, harassment related to the protected characteristic of race, whistleblowing detriment and unauthorised deductions from wages.

3. The claim came before Employment Judge Clark at a Preliminary hearing on 26th September 2024. At that hearing the Judge clarified the claims and the issues and Ordered further information to be provided in respect of some aspects of the claim.

4. Before the commencement of this hearing before us the Respondent had produced a draft list of issues. The Claimant had amended that and there were a number of differences in the two versions. We discussed those with the parties before we heard any evidence. The Claimant had added some additional allegations to the complaint of constructive dismissal than those which had been discussed at the Preliminary hearing but Mr. Gittins who appeared on behalf of the Respondent took no issue with that on the basis that they did form part of the pleaded case. They were therefore included.

5. Amendments to the list of issues were also made to the harassment complaints which had been understood by Employment Judge Clark from what it appeared that the Claimant had told him at the Preliminary hearing to be the same allegations as those in the direct race discrimination complaint. However, those allegations as set out in Further and Better Particulars produced by the Claimant differed from the direct discrimination complaints and so they were amended in the list of issues to reflect the pleaded case. Mr. Gittins again took no issue with that.

6. The only area of contention in respect of the variations between the lists of issues was in regard to the whistleblowing detriment complaint. Whilst the Claimant still sought to rely on the same communications which were said, singularly or cumulatively, to amount to protected disclosures he had expanded the categories of malpractice that he contended that those disclosures showed or tended to show from relying only on a criminal offence – namely fraud - being committed to breach of a legal obligation. Mr. Gittins confirmed that the Respondent objected to that reliance on the basis that it did not reflect the pleaded case in the Further and Better Particulars nor what the Claimant expressly told Employment Judge Clark at the Preliminary hearing.

7. The Claimant told us that he could not recall what he had told Employment Judge Clark and that the words in the record of the Preliminary hearing were not his. We

invited him to read the relevant parts of his Further and Better Particulars to determine whether those – which were in his own words – dealt with this point. The Claimant declined to do so saying that he was unable to read those passages because of his health.

8. We read them for ourselves and agreed with the Respondent that the pleaded case made no reference to a breach of a legal obligation. It was also clear from the record of the Preliminary hearing that that had been expressly raised and discussed with the Claimant by Employment Judge Clark and that the Claimant had eschewed any notion that he was relying on a breach of a legal obligation and set out that his case was advanced only on the basis of a criminal offence – again fraud – having been committed.

9. We therefore determined that that was the issue that we would determine and not anything now sought to be advanced as a breach of a legal obligation. We gave reasons for that decision at the time and no one has asked that those be set out within this decision and so we mention them only briefly.

10. Mr. Gittins agreed that the Respondent would revise the list of issues to reflect the position after discussion. We are satisfied that the revised list of issues represented the matters that we were required to determine and a copy is appended to this Judgment. We have not dealt with all issues because a number related to the question of remedy and as a result of our liability conclusions it has not been necessary to do so.

THE HEARING

11. The hearing was listed for six days. The morning of the first day was to be a reading morning but having seen the papers and the differing positions on the list of issues we notified the parties via our clerk that we would spend the whole day reading in and commence the hearing with their attendance on Monday 2nd March 2026.

12. Unfortunately, that was not possible because the Judge had an unexpected family emergency which arose late into the evening and into the early hours of 2nd March so that she was unable to attend the hearing centre on that date. The parties were notified of that by the Tribunal administration and so the Tribunal did not sit on that day.

13. We resumed the hearing on 3rd March 2026 with the parties both present. At the outset the Claimant made an application that the witness statements of the Respondent's witnesses not be permitted into evidence nor that they be allowed to give evidence at the hearing before us. We heard submissions from both parties in respect of that application. We refused it with oral reasons being given at the time. In short, the matter had already been considered by Employment Judge Adkinson at an earlier stage of the proceedings and he had refused the same application. It was not open to us absent a material change in circumstances – and none was identified - to go behind that decision nor would we have done so in all events.

14. However, during discussions about that application it transpired that despite having electronic copies of the Respondent's witness statements since early November 2025, the Claimant had not read them by the time that the hearing before us commenced. It was not easy to understand why he had failed to do so but nevertheless in order to ensure fairness to him we adjourned early into the afternoon on that day to allow the Claimant to read the statements and prepare his own cross examination questions before he began his evidence. We also adjourned the hearing after the close of the Claimant's evidence in order that he could further prepare cross examination questions for the Respondent's witnesses which we began the following day.

15. We sought to assist the Claimant during his cross examination of the Respondent's witnesses because there were areas where he focused on matters that did not form part of the issues before us, were not put on the correct premise or more importantly where he had simply not put his case to the Respondent at all. That included where it was not put that something had been done because of his nationality as was alleged in the claim for direct race discrimination or that the treatment that he alleged was detriment because of whistleblowing was influenced by any protected disclosure made. He also failed to challenge the evidence of the Respondent in respect of the calculation of back pay for the unauthorised deductions from wages claim despite his assertion that the calculation fell short of what he was entitled to. Whilst the Claimant referred to the Judge stopping his questioning, this was only where it was not relevant and to try to assist him to focus on the issues in the claim. We reminded the Claimant at the close of his questions for each witness what issues he had not covered and invited him to consider if he had further questions that he wanted to ask but on each occasion that was declined. We had already made him aware that for areas that were not challenged then it was highly likely that we would accept the Respondent's evidence on those points.

16. We also raised with the Claimant at the point of submissions the fact that the written document that he had prepared did not address the complaints of direct discrimination or harassment at all. Whilst he did make some further oral submissions, he told us that he did not attend to address us at all on those complaints at all but that he intended to maintain and pursue them nonetheless.

17. We deal with one further matter before the commencement of the evidence which was that the Claimant wished to adduce into evidence documents relating to an earlier period of employment with the Respondent. The Respondent objected to that on the basis that they were said not to be relevant. There were a small number of documents and ultimately we allowed the Claimant to refer to them in evidence.

WITNESSES

18. On commencement of the evidence, we heard from the Claimant in person and on his own behalf.

19. On behalf of the Respondent, we heard from the following witnesses:

    19.1. Jack Perkins – Sales Manager and Director at the Respondent;

    19.2. Melvyn Randall – Managing Director of the Respondent and one of the Claimant's former line managers;

    19.3. Georgina Squire – Finance Manager and Director of the Respondent;

    19.4. Oliver Gratrix – Plate Shop Manager, Director of the Respondent and the Claimant's other line manager; and

    19.5. Richard Green – Director of the Respondent.

20. We considered all of the Respondent's witnesses to be straightforward and honest and their evidence was credible and accorded with the contemporaneous documentation before us. Whilst there was very little factual dispute – most matters turning on interpretation and others where we had the benefit of documentary evidence to which we were taken to support one side or the other – where there was dispute we preferred the evidence of the Respondent's witnesses to that of the Claimant. That is because their evidence was much more forthcoming and not given through the prism of a strident, albeit wrongly held, notion of having been very badly treated which made it clear that the Claimant was unable to give an objective account.

THE LAW

21. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be below.

Constructive unfair dismissal

22. Section 95 provides for a situation where an employee terminates the employment contract in circumstances where they are entitled to do so on account of the employer's conduct – namely a constructive dismissal situation.

23. Tribunals take guidance in relation to complaints of constructive dismissal from the leading case of **Western Excavating – v – Sharp [1978] IRLR 27 CA**:-

    "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is

constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

24. Implied into every contract is a term that an employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee. Breach of that implied term, if established, will almost always inevitably be repudiatory by its very nature.

25. The question of whether or not there has been a repudiatory breach of the term of trust and confidence is to be judged by an objective assessment of the employer's conduct. The employers subjective intentions or motives are irrelevant. The actual effect of the employers conduct on an employee is only relevant insofar as it may assist the Employment Tribunal to decide whether it was conduct likely to produce the relevant effect.

26. If there is a fundamental breach of contract, an employee must, however, resign in response to it. That requirement includes there being no unconnected reasons for the resignation, such as the employee having left to take up another position elsewhere or any other such reason if that is unrelated to the breach relied upon. However, if the repudiatory breach was part of the cause of the resignation, then that suffices. There is no requirement of sole causation or predominant effect (see **Nottinghamshire County Council v Meikle [2004] IRLR 703**).

27. It is possible for an employee to waive (or acquiesce to) an employer's breach of contract by their actions, including continuing to accept pay or a lengthy delay before resigning. In those circumstances, an employee may affirm the contract and will be unable to rely upon any breach which may have been perpetrated by the employer in seeking to argue that they have been constructively dismissed.

28. Tribunals are also assisted by the guidance in **Kaur v Leeds Teaching Hospitals NHS Trust [2018] I.R.L.R. 833** which requires consideration of the following matters when determining a complaint of constructive dismissal:

    (i) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
    (ii) Has he or she affirmed the contract since that act?
    (iii) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence? and
    (iv) Did the employee resign in response (or partly in response) to that breach?

Unauthorised deductions from wages

29. Section 13 Employment Right Act 1996 provides for the protection of wages of a worker as follows:

> "***13 Right not to suffer unauthorised deductions.***
>
> *(1) An employer shall not make a deduction from wages of a worker employed by him unless—*
>
> *(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
>
> *(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*
>
> *(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*
>
> *(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
>
> *(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*
>
> *(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*
>
> *(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*
>
> *(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*
>
> *(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.*
>
> *(7) This section does not affect any other statutory provision by virtue of which*

> *a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer*."

30. It follows from that that if there is a deduction made from the wages of a worker from that which are properly payable to them, that will be an unauthorised deduction from wages unless the provisions of Section 13 Employment Rights Act are satisfied by the employer or, otherwise, if the deduction is an excepted deduction within the meaning of Section 14 Employment Rights Act 1996.

31. For the purposes of the wages provisions, the definition of wages includes holiday pay.

Protected Disclosures

32. In any claim based upon "whistleblowing" (whether for detriment or dismissal) a Claimant is required to show that firstly they have made a "protected disclosure".

33. The definition of a protected disclosure is contained in Section 43A Employment Rights Act 1996 and which provides as follows:

> *"In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H*."

34. Section 43B provides as follows:

> *"In this part, a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is in the public interest and tends to show one or more of the following:*
>
> *a) that a criminal offence has been committed, is being committed or is likely to be committed;*
>
> *b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;*
>
> *c) that a miscarriage of justice has occurred, is occurring or is likely to occur;*
>
> *d) that the health and safety of any individual has been, is being or is likely to be endangered;*
>
> *e) that the environment has been, is being or is likely to be damaged; or*

> *f) that information tending to show any matter falling within one of the preceding paragraphs has been, or is likely to be deliberately concealed.*
>
> *For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is of the United Kingdom or of any other country or territory.*
>
> *A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.*
>
> *A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice."*

35. An essential requirement of a disclosure which qualifies for protection is that there is a disclosure of information. A disclosure is more than merely a communication, and information is more than simply making an allegation or a statement of position. The worker making the disclosure must actually convey facts, even if those facts are already known to the recipient (see **Cavendish Munro Professional Risks Management Ltd v Geluld [2010] IRLR 38 (EAT)**) rather than merely an allegation or, indeed, an expression of their own opinion or state of mind (See **Goode v Marks & Spencer Plc UKEAT/0442/09**).

36. A disclosure need not be embodied in one communication and it is possible, depending upon the content and nature of those communications, for more than one communication to cumulatively amount to a qualifying disclosure, even though each individual communication is not such a disclosure on its own (see **Norbrook Laboratories (GB) Ltd v Shaw UKEAT/0150/13**.)

37. It is not necessary for a worker to prove that the facts or allegations disclosed are true. Provided that the worker subjectively believes that the relevant failure has occurred or is likely to occur and their belief is objectively reasonable, it matters not if that belief subsequently turns out to be incorrect (See **Babula v Waltham Forest College [2007] IRLR 346 (CA)**.

38. A worker must establish that in making their disclosure they had a reasonable belief that the disclosure showed or tended to show that one or more of the relevant failures had occurred, was occurring or was likely to occur. That reasonable belief relates to the belief of the individual making the disclosure in the accuracy of the information about which he is making it. The question is not one of the reasonable employee/worker and what they would have believed, but of the reasonableness of what the worker himself believed.

39. However, there needs to be more than mere suspicion or unsubstantiated rumours and there needs to be something tangible to which a worker/employee can point to show that their belief was reasonable.

40. The questions for a Tribunal in considering the question of whether a protected disclosure has been made are therefore firstly, whether the Claimant disclosed "information"; secondly, if so, did he or she believe that that information was in the public interest and tended to show one of the relevant failings contained in Section 43B Employment Rights Act 1996, and, if so, was that belief reasonable.

41. In order for a disclosure to be a protected disclosure it must also be the case that the worker making it reasonably believed that the disclosure was in the public interest and not only serving the interests of that worker. However, even where the disclosure relates to a breach of the worker's own contract of employment (or some other matter where the interest in question is personal in character) there may nevertheless be features of the case that make it reasonable to regard the disclosure as being in the public interest, as well as in the personal interest of the worker (see **Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2015] I.C.R. 920**). In this regard, the following factors might be relevant:

    (a) the numbers in any group whose interests the disclosure served;
    (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
    (c) the nature of the wrongdoing disclosed, and
    (d) the identity of the alleged wrongdoer.

Detriment contrary to Section 47B Employment Rights Act 1996

42. If a worker can demonstrate that they have made a protected disclosure, then in order to succeed in a complaint under Section 47B Employment Rights Act 1996, they must also demonstrate that they have suffered "detriment". In this regard, Section 47B(1) Employment Rights Act 1996 provides as follows:

    "A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

43. A worker must therefore prove that they have made a protected disclosure and, further, that there has been detrimental treatment. The term "detriment" is not defined within the Employment Rights Act 1996 but guidance can be taken from discrimination authorities and, particularly, from **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285.** In this regard, for action or inaction to be considered a detriment, a Tribunal must consider if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. However, an "unjustified sense of grievance" is not enough to amount to a detriment.

44. If the worker satisfies the Tribunal that he has both made a protected disclosure and suffered detriment, the employer then has the burden of proving the reason for the treatment pursuant to the provisions of Section 48(2) Employment Rights Act 1996. If the employer fails to prove an admissible reason for the treatment, a Tribunal must conclude that it is because of the protected disclosure.

45. In a case of a detriment, a Tribunal must be satisfied that the detriment was *"on the ground that the worker has made a protected disclosure"* and there must be found to be a causative link between the protected disclosure and the reason for the treatment. The test to be considered if whether "*the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment*" of the Claimant (see **NHS Manchester v Fecitt & Others [2012] IRLR 64**).

Discrimination complaints under the Equality Act 2010

46. The Claimant's discrimination complaints all fall to be determined under the Equality Act 2010 ("EqA 2010) and, particularly, with reference to Sections 13, 26 and 39.

47. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

> *(1) An employer (A) must not discriminate against a person (B)—*
>
> *(a)in the arrangements A makes for deciding to whom to offer employment;*
>
> *(b)as to the terms on which A offers B employment;*
>
> *(c)by not offering B employment.*
>
> *(2)An employer (A) must not discriminate against an employee of A's (B)—*
>
> *(a)as to B's terms of employment;*
>
> *(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
>
> *(c)by dismissing B;*
>
> *(d)by subjecting B to any other detriment.*
>
> *(3)An employer (A) must not victimise a person (B)—*
>
> *(a)in the arrangements A makes for deciding to whom to offer employment;*
>
> *(b)as to the terms on which A offers B employment;*
>
> *(c)by not offering B employment.*

(4)An employer (A) must not victimise an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(5)A duty to make reasonable adjustments applies to an employer.

(6)Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a)unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

(b)if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.

(7)In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a)by the expiry of a period (including a period expiring by reference to an event or circumstance);

(b)by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8)Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

The EHRC Code

48. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The EHRC Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

Direct Discrimination

49. Section 13 EqA 2010 provides that:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

50. It is for a Claimant in a complaint of direct discrimination to prove the facts from which the Employment Tribunal could conclude, in the absence of an adequate non-discriminatory explanation from the employer, that the employer committed an unlawful act of discrimination (**Wong v Igen Ltd [2005] ICR 931**).

51. If a Claimant proves such facts, the burden of proof will shift to the employer to show that there is a non-discriminatory explanation for the treatment complained of. If such facts are not proven, the burden of proof will not shift.

52. In deciding whether an employer has treated a person less favourably, a comparison will in the vast majority of cases be made with how they have treated or would treat other persons without the same protected characteristic in the same or not materially different circumstances. Such a comparator may be an actual comparator whose circumstances must not be materially different from that of the Claimant (with the exception of the protected characteristic relied upon) or a hypothetical comparator.

53. Guidance as to the shifting burden of proof can be taken from that provided by Mummery LJ in **Madarassy v Nomuna International Plc [2007] IRLR 246:**

"'Could conclude' ….. must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of …… discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage …. the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example 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, however, 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. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful

discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

54. The protected characteristic need only be a cause of the less favourable treatment but need not be the only or even the main cause. A Tribunal when considering the cause of any less favourable treatment will be required to consider that question having regard not only to cases where the grounds of the treatment are inherently obvious, but also those where there is a discriminatory motivation (whether conscious or unconscious) at play (see **Amnesty International v Ahmed [2009] ICR 1450**).

Harassment

55. Harassment is dealt with by way of the provisions of Section 26 EqA 2010, which provide as follows:

> *"(1)A person (A) discriminates against a disabled person (B) if—*
>
> *(a)A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
>
> *(2)Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability".*

56. The conduct complained of, in order to constitute harassment under Section 26, must relate to the protected characteristic relied upon by the complainant. However, in respect of a complaint of harassment, the word "relate" has a broad meaning (see for example paragraph 7.10 of the EHRC Code).

57. As restated by the Employment Appeal Tribunal in **Nazir & Anor v Aslam [2010] UK EAT/0332/09** the questions for a Tribunal dealing with a claim of this nature are therefore the following:

    57.1. What was the conduct in question?

    57.2. Was it unwanted?

    57.3. Did it have the purpose of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant?

    57.4. Did it have the effect of doing so having regard to an objective, reasonable standard and the perception of the complainant?

57.5. Was the conduct related to the protected characteristic relied upon?

FINDINGS OF FACT

59. We ask the parties to note that we have only made findings of fact where those are necessary for determination of the issues which are before us. We have not therefore made findings on each and every area where the parties are in dispute with each other where it is not necessary for us to do so. These findings of fact should also be read in conjunction with the final list of issues appended to this Judgment.

The Respondent and the commencement of the working relationship

60. The Respondent is a relatively small operation dealing with sheet metal fabrication. We accept the evidence of Mr. Randall that most of the employees are longstanding members of staff, some who have been with the company for in excess of 30 years. Whilst Mr. Randall and Mr. Green have been directors of the Respondent for some time, the remaining directors – all of whom we heard from because all were accused by the Claimant of acts of direct discrimination – had been part of a management buy-out around six months before the events which led to this claim. Many were still finding their feet in terms of becoming directors.

61. The Claimant has had two periods of employment with the Respondent as a General Fabricator/Sheet Metal Worker Welder. The first ended on 28th August 2020 when the Claimant resigned with immediate effect. That followed him being forced by Covid-19 rules in place at the time to self-isolate when returning from a holiday in Poland when he had taken the decision to transit via France. The Claimant wanted to be paid during that self isolation period and asked the then Finance Director of the Respondent to be put on Furlough. Not unreasonably given that self isolation was not the purpose of the Furlough scheme, that was refused and it was suggested that the Claimant use his accrued holiday entitlement.

62. The Claimant did not accept that position and maintained that his case should be seen as an exception. On 28th August 2020 the Respondent reiterated the position and again indicated that the Claimant was free to use accrued annual leave. Less than three hours later the Claimant resigned with immediate effect. We accept the force in Mr. Gittin's submission that this came about because the Claimant had not got to have his own way. We deal with this matter not because of its relevance to the allegations in these proceedings but because of the distinct parallels that led to the Claimant's second resignation which is the subject of these proceedings.

63. The Claimant returned to work for the Respondent again on 15th March 2021 as a sheet metal fabricator. It is not in dispute that the Claimant was a valued and hardworking employee. We should observe that the Claimant has made a number of disparaging comments about the Respondent and their employment practices which he maintains were also present during his first spell of employment. It has to be said that if that was the case – and we do not accept that it was – it is unusual that the Claimant would have returned to work for the Respondent as he did.

64. The Claimant worked within a team of 15 people. He is Polish and was the only foreign national employed in that team at the time with which we are concerned.

65. It is not in dispute that at all times that the Claimant has worked for the Respondent he has communicated in English and has not needed, or ever requested, an interpreter. It was noted that the Claimant had a good understanding of English at the Preliminary hearing before Employment Judge Clark and despite having an interpreter for this hearing it was clear that that was the case and he often lapsed back into speaking English rather than utilising the interpreter.

The Claimant's contract of employment

66. The Claimant was provided shortly after the commencement of his second period of employment with the Respondent with a contract of employment which set out his main terms and conditions. The Claimant signified his acceptance of the terms of his employment and acknowledged receipt at the same time of the Company Handbook (see page 116 of the hearing bundle).

67. The contract set out the position in respect of salary reviews which was as follows:

> *"Salaries are reviewed annually in January each year at the absolute discretion of the company with no commitment to increase. Any salary increase will take effect from the beginning of that month and will be notified in writing".*

68. The contract also set out the process to be undertaken in the event of absence from work including that any absence of any duration as a result of sickness needed to be certified. That could be self certification for the first seven days of absence but from the eighth day onwards a medical certificate (now a Fit Note) was required. Payment for sick pay during periods of absence was dependant upon following the Respondent's sickness absence procedure, including the provision of certifications (see page 111 of the hearing bundle). The contract also included a flow chart of how employees were required to report and deal with sickness absence (see page 114 of the hearing bundle).

69. The contract also set out the Respondent's grievance procedure. That was a simple three stage process which required the employee to first set out the details of their concerns about their employment or conditions. The second stage was that the Respondent would then arrange a face to face meeting to discuss the grievance before a decision was taken and then where necessary the third stage involved attendance at an appeal meeting before a final decision was taken.

70. The contract provided that the Respondent reserved the right to vary the terms and conditions of employment after giving reasonable notice (see page 112 of the hearing bundle).

71. As we have observed, the Claimant signified his agreement to all of those terms within the contract of employment.

The attendance bonus

72. The Respondent had in place an attendance bonus scheme which would see employees who attended work without missing a day receive £50.00 per month. The maximum that any employee received during the year was therefore £600.00. We accept the evidence of Mr. Randall that few employees actually received the maximum bonus because of time off work or absences.

73. The attendance bonus was in place during the Claimant's first spell of employment and some members of staff wished to have it paid in one lump sum just before Christmas rather than on a monthly basis. There was a vote about that within the workforce with the majority opting for the annual Christmas payment. The Claimant objected to being paid on an annual basis as he disagreed with the majority decision and informed the Respondent that his view was that that did not legally accord with the terms and conditions of his employment.

74. The Respondent dealt with this - and for any others who still wanted to receive the bonus on a monthly basis – by continuing to pay them in that way and for the remainder to receive the annual payment. The Respondent met the additional administrative costs of those arrangements in respect of those, including the Claimant, who still wanted to receive the bonus monthly.

75. We raise this matter because again it resonated with what happened later before the Claimant resigned for a second time and it is indicative of the steps taken by the Respondent to try to accommodate their employees.

76. During the second period of the Claimant's employment the directors of the Respondent became concerned that the attendance bonus may cause those with disabilities - who were more likely to be unable to meet the requirements of full time attendance - to be disadvantaged. The decision was therefore taken to replace the attendance bonus with an increase in the hourly rate paid to employees which would increase their pay by twenty five pence per hour for normal working hours and 37.5 pence per hour for overtime. The Respondent had calculated that that would cover the whole of the attendance bonus but would be fairer and ensure that the workforce would be financially better off, particularly those who missed a day of work in any given month. We accept the evidence of Mr. Randall that that is in fact what has happened and that all of those affected have benefitted from the revised arrangements.

Meeting of 8th April 2024

77. Around the same time as the decision was taken in respect of the attendance bonus, Mr. Randall had discovered by chance in a conversation with a business associate that the Respondent had been incorrectly calculating holiday pay entitlement because they had not been factoring in overtime. This was discussed amongst the directors and raised with the Company accountant at their next meeting. External human resources advice on the issue was also taken.

78. Upon this error coming to light and following that advice, Mr. Randall and Mr. Gratrix held a meeting with the 15 employees, of which the Claimant was one, affected by this issue. Three issues were discussed at that meeting. One was the issue of holiday pay and how that was going to be calculated moving forward. That was to include overtime so that holiday pay would be correctly calculated in the future. The second was that there was also to be a 3% pay increase (this was in later correspondence incorrectly said to be a rate of 2.7% but we accept the evidence of Mr. Randall that it was 3%) applied to all of that group and the third was the replacement of the attendance bonus with the hourly pay increment. We accept the Respondent's evidence that other than the Claimant, in circumstances which we shall come to, all other employees accepted the proposal and were happy with the changes which have been more financially beneficial to them.

79. The Claimant did not make any comment at the meeting. Instead towards the end of the working day the Claimant sought out Ms. Squire in her office. She was and is the Respondent's Finance Manager. She had not been present at the meeting and therefore felt unprepared to answer the Claimant's questions. She did say that she thought that if the Claimant attended work on 15th April 2024 then he would have been deemed to accept the changes proposed. However, she indicated that she would revert to the Claimant.

80. Much has been made of the Claimant approaching Ms. Squire about this matter but little if anything actually turns on it and so it is not necessary for us to make any findings about why he chose to do that rather than raising matters in the meeting or directly with Mr. Randall or Mr. Gratrix.

Meeting on 9th April 2024

81. Before Ms. Squire could revert to him, the Claimant sent an email to her and Mr. Randall. The Claimant's email said this:

"After yesterday meting (sic) about pay review and variation to my contract with Impact Ducting Sales Ltd I have to not accept variation to my contract about Attendance Bonus. Please consider also my counter offer of 7% rise of my hourly rate pay and sick pay scheme for my future employment in the Company. My dedication in last years for the good of company is my reason to ask you to consider my counter offer."

82. Mr. Randall called the Claimant to his office for a follow up the next day. We do not accept the evidence of the Claimant that Mr. Randall threw printed copies of his emails onto the table and said "these mean nothing". We prefer the accounts of Mr. Randall and Mr. Gratrix that that did not happen and it does not appear to be in keeping with the way in which Mr. Randall approaches valued members of staff.

83. The purpose of the meeting was to follow up on the Claimant's email because Mr. Randall was struggling to understand what the concerns were about the proposal that had been explained at the meeting given that it would result in all employees being financially advantaged and he was not sure whether the Claimant had fully understood what had been said. As he said before us, Mr. Randall was "baffled" why

the Claimant had taken umbrage at the changes to be made.

84. The Claimant's "counter offer" of a 7% pay rise was considered but we accept that that was not financially viable for the Respondent and had that been given to the Claimant then it would also have had to be applied to the other members of staff.

85. At the meeting the Claimant was told that he could either accept the proposed terms of the hourly increase without the attendance bonus or retain his existing attendance bonus with the same hourly rate. However, crucially we accept the evidence of Mr. Randall that in either case the Claimant would still receive a 3% pay rise whether he retained the attendance bonus or not. The Claimant's position that he was given an "ultimatum" to accept the new terms or lose a pay rise is therefore factually inaccurate.

86. The position taken by the Respondent was more than fair as the Claimant was given the option of retaining the existing arrangements which he had been working under without issue plus the 3% pay rise or accept the revised terms which the Respondent believed would be financially more viable for him. There was no ultimatum, there was simply a choice. It was no different to the position when he was permitted to retain a monthly rather than annual attendance bonus when he had objected to that.

87. We accept the evidence of Mr. Randall that the Claimant declined the options given immediately. We consider that that was because he wanted a 7% pay rise although it is difficult to see the basis upon which he considered a discretionary pay rise to be subject to a negotiation process or why he felt that he should be afforded more favourable terms than everyone else.

<u>Request for a new contract of employment</u>

88. On 10th April 2024 the Claimant emailed Ms. Squire again. The email was titled "Request new employment contact with Impact" and it said this:

"I trust this email finds you well. I am writing to request a new draft contract for my employment at Impact Ducting Sales LTD. Before my employment takes effect, I would appreciate receiving the updated terms and conditions. This will allow me to thoroughly understand any new rules and variations.

As an employee, I believe it is essential to have the right to make an informed decision regarding the acceptance of these new conditions. Your prompt assistance in providing the draft contract would be greatly appreciated."

89. The Claimant's evidence was that this request was intended to be one for the proposed new terms relating to the attendance bonus to be put in writing and not that he wanted new terms and conditions issuing but that is not how his email read.

Email of 10th April 2024 from Mr. Gratrix

90. In all events, on the same day Mr. Gratrix wrote to the Claimant setting out the Respondent's proposals. The Claimant takes issue with the content of the letter and so it is worthwhile setting it out in full. The letter said this:

"Following on from our meetings regarding new pay structures and contracts. Please see below details of offer in writing.

The proposed offer we have discussed is a wage increase from £14.75 per hour to the new rate of £15.40 per hour starting from any hours worked from 15th April 2024 with the removal of the attendance bonus as this has been reflected in the increase (sic) amount.

This offer has been well received by all other members of staff.

Following on to your email sent on 9th April 2024 at 12.33pm, a counteroffer of a 7% increase plus sick pay for any days off which you have requested has been rejected as this would not be cost effective to the company and we would have to offer this to all other employees also.

If the proposed offer above is not agreeable, then the only other offer we can suggest is to keep your contract the same as it currently is with an hourly rate of £14.75 plus the attendance bonus. As, per your contract, any salary reviews made by Impact Ducting Sales are at the absolute discretion of the company with no commitment to increase.

In response to your email sent to Georgina Squire on 10th April at 7.43am, we will not be issuing any changes to your contract until there has been an agreement between yourself and Impact Ducting Sales Limited.

I hope that we can come to an agreement, as we do see you as a valued member of staff. Please agree in writing, either by email or letter."

91. The email was clearly not as the Claimant alleges an "ultimatum". What the letter clearly set out was that the Claimant could either remain on his existing terms at the same hourly rate and with receipt of the attendance bonus or accept the increased hourly rate without the attendance bonus. Whatever the position with that was, the Claimant would still receive the 3% pay rise and the correctly calculated holiday pay. Again, this was the Claimant being given options and not an ultimatum and it is difficult to understand what other suggestion the Respondent could have made in the circumstances.

92. Again, in essence, this was no different to the previous issue with the attendance bonus where the Respondent had proposed to pay this annually and after the Claimant objected he then continued to receive the payment on a monthly basis.

93. It is not the case as alleged that any refusal of the replacement arrangements for the attendance bonus would have resulted in the loss of an annual pay rise and if the Claimant misunderstood what the position was then, as we shall come to below, the Respondent gave him plenty of opportunity to speak to them about that but that was eschewed.

94. As set out in his letter, Mr. Gratrix addressed the point raised by the Claimant about a revised contract of employment and it made logical sense not to issue anything until some agreement had been reached. To the extent that the Claimant now says that he was simply asking for what was discussed on 8th April 2024 to be provided, Mr. Gratrix's letter covered that.

Absence from work

95. On 11th April 2024 the Claimant emailed Ms. Squire, Mr. Randall and Mr. Gratrix. He said that he would not be attending work because he was not feeling well. He described that he was having chest pain, a headache and was feeling anxious due to what he referred to as a work related dispute. He said that he was accordingly taking a sick day in order to focus on self care and recovery (see page 130 of the hearing bundle).

96. The Claimant emailed Ms. Squire, Mr. Gratrix and Mr. Randall again on 15th April 2024 saying that he would not return to work until a resolution was reached in respect of what he termed the dispute between himself and the Respondent. Whilst as we understand it the Claimant attended his General Practitioner, he did not obtain a Fit Note or at least he did not submit one to the Respondent. He had no authorisation not to attend work and we accept the submissions of Mr. Gittins that he had effectively gone on strike.

97. Unsurprisingly, Mr. Gratrix raised this with the Claimant on behalf of the Respondent. He wrote to the Claimant in that regard on 23rd April 2024. The Claimant takes issue with the content of the letter so it is worth setting it out in full. The letter said this:

"I am writing in relation to your current absence from work.

Summary

11th April 2024 *Absence due to sickness*

12th April 2024 *Holiday*

15th April 2024 *Ongoing as at the date of this letter, unauthorised absence*

Your current period of absence from work is unauthorised and unpaid.

Background

We believe the events leading to your period of unauthorised absence is as follows:

1. *A communication on 8th April 2024 to 15 employees regarding the proposed withdrawal of the contractual attendance bonus with a value of £50 gross per month, to be replaced with an increase of 25p per hour to the normal hourly rate.*

2. *14 out of 15 employees have agreed to this variation to their contract with the exception of yourself.*

3. *The Company has also awarded an annual payrise of 2.7%[1] effective from 15th April 2024 and to be paid in this week's pay.*

4. *You declined the proposed variation to your contract and requested a draft contract with a 7% pay increase.*

5. *As a result of the discussions connected to the withdrawal of the attendance bonus, you have communicated to the Company that your absence is due to a dispute at work.*

Currently, there has been no change to your contract of employment with the exception of the 2.7% pay increase.

Attendance Bonus

The Company wishes to withdraw this bonus and one of the reasons is in connection to the risk of discriminatory claims against the business. The reason is valid and fair in the circumstances.

Communication

We have been in discussion with you regarding this matter and have directed you to our grievance procedure which you did not want to utilise.

Next Steps

You are required to return to work by 24th April 2024, unless you are unfit for work, in which case a GP note will be required as you have been off for more than 7 days. In the absence of your attendance to work or a GP fit note, the Company will process your ongoing absence under the formal disciplinary procedure for being unauthorised.

Contract

We do not propose to change your contract, you will still be eligible for the attendance bonus.

Please be mindful that the number of hours of overtime available to you could result in you being better off financially if you chose to accept the proposed removal of the

[1] As above, we accept the evidence of Mr. Randall that this was a mistake as the pay rise was 3%.

attendance bonus in respect of the 25 pence per hour uplift.

Payrise

Your request to have an increase of 7% is dismissed.

Contact

If you wish to discuss any aspect of this letter, please contact Oliver Gratrix".

98. The letter was entirely in accordance with the Respondent's policies regarding absence because the Claimant was taking unauthorised absence. We remind ourselves that the Respondent required certification of ill health absence for a period of 7 days followed by provision of a Fit Note. Despite the Claimant's assertion otherwise, at no point was his absence ever authorised by the Respondent and he was not entitled to simply absent himself from work.

99. The sending of the letter and the content had nothing whatsoever to do with the Claimant's nationality. We accept Mr. Gratrix's evidence on that point and the Claimant elected not to challenge that during cross examination despite being reminded of the need to do so. It is clear that the reason for the letter making reference to the Claimant's unauthorised absence was because quite simply the absence was unauthorised. There is no evidence or basis to say that anyone who was of a different nationality who had absented themself from work in this way would have been treated any differently.

100. We would also point out that had there been any doubt before that the Claimant was getting a pay rise irrespective of whether he stayed on his old terms or accepted the new proposal, the letter from Mr. Gratrix would have remedied that.

101. The Claimant replied to say that he did not agree with what he termed to be Mr. Gratrix's assumptions and indicated that he did not consider there to be any evidence for his beliefs. He attached a copy of a grievance statement and we come to that further below.

<u>Further communications about contractual changes</u>

102. The Claimant emailed Ms. Squire, Mr. Randall and Mr. Gratrix again on 11th April 2024 headed "Contract dispute" saying that he did not agree to change his "current contract" with the Respondent (see page 133 of the hearing bundle).

103. Ms. Squire replied the following day to say that she was sorry to hear that the Claimant was not in agreement with the proposal and saying that she therefore presumed that he wanted to keep his current contract. The Claimant again refers to this being an ultimatum. It was clearly nothing of the sort and was simply an enquiry whether the Claimant wanted to retain the attendance bonus and lower hourly rate rather than accept the revised terms that the other employees had done. Again, it is difficult to see what else the Respondent could have been expected to do in the circumstances.

104. The Claimant replied later the same day and the relevant parts of his email said this:

> *"To clarify I don't agree for changing my current contract and I also disagree to not get annually pay rise".*

105. Mr. Gratrix replied to the Claimant later the same day. It was suggested by the Claimant before us that this was somehow Mr. Gratrix becoming involved and making the email exchange into a public forum but that neglects the fact that the Claimant had sent his email to which Mr. Gratrix was replying to all of the same recipients. Again, the Claimant takes issue with the content of Mr. Gratrix's email so that it is worth setting it out in full. The email said this:

> *"In your current contract that you have signed (on 28th June 2021) and agreed to, on page 2, salary reviews, salaries are reviewed annually each year at the absolute discretion of the company with no commitment to increase. Which when you signed the contract you agreed to this*
>
> *Also on your current contract that you have signed and agreed to, page 5, contract variations, "the company reserves the right to vary the contract of employment after giving reasonable notice of such"*
>
> *Based on what you are saying, are you saying you now disagree with your current contract that you have signed?"*

106. The Claimant contended in his evidence before us that the final two lines of that communication were such that they made unfair and humiliating comments questioning his understanding of his contract. It is plain that Mr. Gratrix was simply asking a question because it was difficult to understand what the Claimant's position was. The comment was neither humiliating nor unfair and was not questioning the Claimant's understanding of the contract, it was merely asking him what his position was.

107. The Claimant replied to say that he did not disagree with his current signed contract but that he did not agree to any changes being made. He said that whilst the Respondent reserved the right to vary the contract, he did not agree to the variation.

108. As we have touched upon above, on 15th April 2024 the Claimant emailed Ms. Squire, Mr. Randall and Mr. Gratrix indicating that he would not be returning to work until the "ongoing dispute" with regard to his contract of employment was resolved. The Claimant also said this regarding his complaints about the issue of the contractual changes:

> *"1. Lack of Transparency: Throughout this process, I have noticed a lack of transparency on your part. Specifically, you have not provided me with a draft contract that clearly outlines the proposed changes. As an employee, I believe it is my right to understand any modifications to my existing contract.*

2. Timing of Proposal: The written proposal dated 10.04.2024 was presented after I expressed my disagreement with the proposed changes. It appeared more like an ultimatum rather than a collaborative effort to address my concerns. Consequently, I find it difficult to take this proposal seriously.

3. Contractual Rights: I want to reiterate my position: I am not in agreement with altering my current contract. My entitled rights, including annual pay raises, are essential to my job satisfaction and financial stability. These rights were established when I initially joined the company, and I believe they should remain intact".

109. An impasse effectively having been reached Ms. Squire emailed the Claimant inviting him to a meeting to discuss matters. She did that because it was hoped that by discussing matters with the Claimant it would enable him to properly understand the proposals and it was also advice that the Respondent had received from external Human Resources consultants. The meeting was also intended so as to follow the Respondent's grievance procedure which required a meeting to take place to discuss the grievance prior to a decision being taken on it.

110. The meeting was arranged for 22nd April 2024 which was the earliest that could be arranged due to annual leave commitments. Whilst the Claimant is critical that he was not given more details about that in terms of who was on annual leave, nothing turns on that and we accept that annual leave prevented the meeting taking place earlier. We do not accept as the Claimant contended in his later grievance statement that this was an excuse and ignorance towards him.

111. In all events, the Claimant declined to attend the meeting. He wrote to the Respondent the same day by email indicating that he wanted the discussions to continue in writing. The relevant parts of his email said this:

"Given the circumstances, I kindly request that we continue our discussions via written correspondence. This approach allows both parties to express their viewpoints thoughtfully and ensures a documented record of our communication. I am committed to promptly responding to any emails or letters you may send.

I believe that maintaining transparency and clear communication will contribute to a fair and equitable resolution. Please let me know your preference for correspondence, and we can proceed accordingly."

112. Ms. Squire replied on 18th April 2024 noting the Claimant's preference but indicating that the Respondent wanted to deal with the dispute in accordance with their grievance procedure. As we have already set out above, the second stage of that process once the Claimant had set out the grievance was to hold a face to face meeting. The way in which the Respondent wanted to deal with matters was entirely in keeping with that procedure and the external advice that they had received.

113. Ms. Squire's email attached a letter inviting the Claimant to a rearranged grievance meeting on 23rd April 2024. The Claimant's right of accompaniment at the meeting was explained and a factsheet was enclosed setting out those rights in detail. Part of that factsheet said this:

"In some circumstances, it may be reasonable and appropriate to allow the companion to support the worker in ways that go beyond the strict letter of the law. For example, if the worker is not fluent in the English language, the companion could also act as an interpreter".

114. The Claimant at no stage contacted the Respondent to suggest that he needed an interpreter or attended a meeting with someone who could do that despite the information provided by the Respondent in that regard. It is also common ground that the Claimant had always communicated at work in English and had never needed or requested an interpreter at any stage.

115. The Claimant declined to attend the meeting and instead emailed reiterating that he wanted to deal with matters via written communication. The relevant parts of the Claimant's email said this:

"I understand the importance of adhering to the established grievance policy. However, I would like to reiterate my preference for written communication as a means to ensure transparency and fairness in resolving the issue at hand.

Written communication allows for a clear record of our discussions, which can be invaluable in achieving a comprehensive understanding of the situation. It also provides an opportunity for both parties to express their perspectives thoroughly.

In light of this, I kindly insist on continuing our communication through written channels. I believe this approach will contribute to a more equitable resolution.

Should you choose not to accommodate this request, I propose involving an ACAS mediator to facilitate the process. Their impartial guidance can help ensure a fair and constructive outcome for all parties involved".

116. We accept the Respondent's evidence that they did not consider it appropriate to involve ACAS at that stage because they wanted to seek to resolve matters via the grievance process but had not closed their minds to it if the situation could not be resolved directly.

117. Mr. Gratrix replied to the Claimant to acknowledge receipt of his email. He indicated that he understood that the Claimant wanted to proceed without the need for a meeting but that the Respondent wanted to invite him to have the opportunity to clarify the grievance further.

118. He gave the Claimant a further opportunity to attend a meeting and re-arranged the grievance meeting for 30th April 2024 (see page 179 of the hearing bundle).

The Claimant's grievance

119. The Claimant did not attend the revised grievance meeting. Instead, he submitted what he titled a "Formal Grievance Hearing Statement" on the day of the meeting. Two different versions were submitted by the Claimant although they were largely the same.

120. The statement pasted in the text of many of the emails and letters sent since 8th April 2024. It also included a photograph of a packet of anti-depressant tablets. If the Claimant had attended his General Practitioner to obtain medication as he says was the case, then it is difficult to see why he did not obtain a Fit Note if his position was that he was unfit to attend work as he had already been told to do by Mr. Gratrix. The sending of a photograph of a packet of medication was no substitute for a Fit Note which was required by the Respondent's absence management procedures.

121. The Claimant went on to say that his absence was due to *"discrimination acts at many forms, constant misleading, threatening, lack of transparency, attempts to breach a contract and [my] financial loss and injury of [my] feelings"* (see page 158 of the hearing bundle). He made it plain that he would be presenting a claim to the Tribunal.

122. The Claimant relies on the following paragraph within that statement as being a protected disclosure for the purposes of this claim which read as follows:

"Regularly received attendance bonus as part of a normal pay and regularly works overtime should be factored into my holiday pay calculation as my right by Employment Rights Act 1996. Please that I never received any of that calculation payment in the past during my employment".

123. The Respondent had of course notified all employees at the meeting on 8th April 2024 that they had been calculating holiday pay incorrectly and that that would be rectified moving forward.

Letter from Mr. Gratrix of 30th April 2024

124. Mr. Gratrix wrote to the Claimant following his failure to attend the grievance meeting. The letter served two purposes. The first was to reiterate that the Respondent's view that it was not practical to deal with the grievance in writing and to again re-arrange a meeting to discuss it. That was set for 3rd May 2024 and it was made plain that if the Claimant still failed to attend then the outcome would be communicated in writing based on the information to hand. There would be no other option than to do that as the Claimant was persistently refusing to attend.

125. The second purpose of the letter was to set out the Respondent's position with regard to the Claimant's absence as he had not attended work since absenting himself from doing so. The letter required the Claimant to contact Mr. Gratrix by 3rd May 2024 to discuss his absence and the date that he intended to return to work.

126. The letter also said this:

"Your absence from work since 13th April 2024 is unauthorised and despite our request for a fit note should you not be fit for work; this has not been forthcoming.

You are required to provide by Friday 3rd May 2024 a backdated fit note covering your absence from 13th April 2024 or evidence that such a document will take longer to obtain. In the event that this is not provided, we will commence with a formal disciplinary process for the unauthorised absence.

Upon receipt of a fit note, we can make payment to you in accordance with the statutory sick pay scheme. As you know, currently as your absence is unauthorised, there is no payment connected to it".

127. The Claimant was invited to contact Mr. Gratrix in the event that he had any questions.

128. We accept that the Claimant's absence was unauthorised and that writing the letter to either request a Fit Note if the Claimant was saying that he was ill or otherwise indicating that disciplinary action may follow was entirely in keeping with the Respondent's procedures. It was also entirely proper to say that the Claimant would not be paid in circumstances where he was refusing to undertake any work and had not submitted a Fit Note which would have seen the Respondent pay him statutory sick pay.

129. The Claimant emailed Mr. Gratrix in the afternoon of 3rd May 2024. He said that he had taken legal advice, that he was on medication and in terms that he would not be attending work. Mr. Gratrix replied to say that the Respondent would be in touch in due course (see page 186 of the hearing bundle).

<u>The Claimant's resignation</u>

130. On 3rd May 2024 the Claimant emailed the directors of the Respondent tendering his resignation. His email said this:

"I am writing to formally resign from my position as Sheet Metal Worker effective 10 May 2024 because of our ongoing dispute.

Today I had legal advice on our dispute and I have to take this decision for my well-being.

Currently I am on medication and can't work on leaving notice.

Thank you for your cooperation".

131. It is not in dispute that the Claimant did not return to work during the period of notice that he had given nor did he submit a Fit Note.

The Claimant's request for an exit package and Respondent's response

132. The Claimant emailed all of the directors of the Respondent on 7th May 2024 about what he termed a "Request for exit package due to unresolved grievance".

133. The Claimant's letter said this:

"I am writing this to formally address several concerns that have arisen during my employment tenure at Impact Ducting Sales LTD. Unfortunately, despite my best efforts to resolve these issues, they remain unresolved, leading to significant distress and hardship on my part.

1. Unfair Treatment:

- *I have experienced instances of unfair treatment, including humiliating ultimatum offer (after I disagreed with the removal of attendance bonus from my contract), unauthorized of my absence (initially authorized due to my grievance but later deemed unauthorized), ignored request for written communication (which took away my right to be heard) and attempt to disciplinary actions due to my absence during grievance. This has adversely affected my morale and overall job satisfaction.*

- *I believe that every employee deserves to be treated with respect and fairness, regardless of their position within the company.*

2. Delays of Addressing Grievance:

- *I have raised my concerns with you on multiple occasions, but the response has been slow and inadequate, resulting in financial losses.*

- *Timely resolution is crucial to maintain a healthy work environment and ensuring employee well-being.*

3. Lack of Duty of Care:

- *As an employee, I expected a duty of care from the company. Unfortunately, this duty has not been fulfilled in my case.*

- *Due to your negligence in fulfilling your duty of care, I have encountered discrimination, attempt to breach the contract, constructive dismissal, ultimatum offer, harassment, unlawful treatment and misleading actions.*

4. Financial Loss and Health Problems:

- *The unresolved issues have caused financial strain due to the loss of my savings and the use of my credit card.*

- *Additionally, the stress and anxiety resulting from these grievances have huge impact on my health.*

I am committed to resolving this matter professionally and constructively. I kindly request that we engage in a discussion to reach satisfactory agreement.

Thank you for your attention to this matter. I look forward to hearing from you soon".

134. Despite the Claimant indicating in that letter that his absence had originally been authorised, we accept that it never was and we were not able to glean from his evidence how it was said to have been authorised. Again, we accept the submissions of Mr. Gittins that the Claimant was effectively on strike.

135. Mr. Gratrix replied on behalf of the Respondent on 14th May 2024. That dealt with both the Claimant's grievance and his request for an exit package and the relevant parts of the letter said this:

"You initially sent a letter to the Company which we believed to be a grievance, this was dated 24th April 2024. You were subsequently invited to a grievance meeting to discuss this. You did not attend the meeting or communicate your non-attendance.

You had stated that your preference was to manage the concerns you had raised by written communication. Our view is that it would not be practical or reasonable to do so, with consideration of the number of emails and the timing involved, additionally there is a higher potential for information to be misinterpreted. As in-person meeting helps with clarification in a timely manner if the facts so that a response which is considered and fair can be provided.

We have now invited you on 3 separate occasions to attend a grievance meeting, the most recent being scheduled for Friday 3rd May 2024. As a consequence of your non-attendance we have now determined that a written response to you based on the information provided is a suitable action.

Grievance

Having considered your written grievance statement, I am writing to summarise your grievances and confirm my decision.

Based on your grievance letter of 24th April 2024, I believe the key issues raised in your letter are as follows:

1. *Payment in relation to overtime rates*

2. *Discrimination*

3. *An inability to return to work.*

I have detailed my findings in respect of each of your allegations below.

1. *Payment in relation to overtime rates*

Having looked into regulations regarding holiday pay based on overtime rates. The Company accepts that this had been an error on our behalf and will look to rectify this issue as soon as possible. There is a two year limit on back dated holiday claims so we will calculate the amount due and get this paid.

2. Discrimination

You have not detailed the type of discrimination which you believe you have experienced. Having reviewed the situation with the information available, I am satisfied this is not a valid grievance point. I consider in my finding of that fact the number of affected employees and the only resistance being from yourself.

3. An inability to return to work

The company have actively pushed to arrange grievance meetings to enable them to resolve the issue but you have chosen not to attend to allow any problems to be resolved.

The company have also requested a backdated fit note to enable us to pay sick pay for your absence but this has not been acknowledged.

As a result of these findings, I do not uphold your grievance in relation to points 2 and 3 as outlined in this letter.

***Other Concerns:** Unfair treatment, lack of duty of care, financial loss and health problems.*

The company disputes the claims relating to these concerns".

136. The letter went on to deal with monies outstanding, including the issue of underpaid holiday pay which we come to further below.

137. Prior to receipt of that letter, the Claimant had of course resigned with immediate effect from 10th May 2024. That was acknowledged by Mr. Gratrix who confirmed that all monies owed to the Claimant would be processed and paid to him.

138. The Claimant replied to Mr. Gratrix's letter on the same day. He made it plain that he intended to commence proceedings in the Employment Tribunal and civil Courts with regard to a variety of complaints and it appears that proposals were put forward for a settlement.

Outstanding holiday payment

139. On 16th July 2024 Ms. Squire wrote to the Claimant regarding the outstanding sums for his previously incorrectly calculated holiday pay. The relevant parts of the letter said this:

"Following discussions with our solicitors we have arranged payment of the outstanding mistakenly calculated holiday pay for two years prior to your resignation.

Holiday payslip in relation to overtime rates will be paid to you on 18th July 2024: £3218.02 gross. Payslip enclosed.

This payment covers backdated holiday pay owed to you for a two year period. The payment is the difference between payment made to you at your weekly rate and payment as an average including overtime payments.

As above, it has been calculated based on your average earnings for a 52 week period excluding any weeks with absences from each holiday taken."

140. The payment for two years rather than for the whole of the second period of the Claimant's employment was in accordance with The Deduction from Wages (Limitation) Regulations 2014. There is no suggestion that that sum was not paid to the Claimant although he disputes that it was the correct sum.

141. The evidence of Ms. Squire dealt with how that sum had been calculated. Despite a reminder from the Tribunal, the Claimant declined to cross examine Ms. Squire about those calculations or suggest that they were wrong. He did not put his own figures, which were in all events what he termed as estimated calculations, to Ms. Squire either. We therefore accept her evidence and find that there are no further sums in outstanding holiday pay due to the Claimant.

142. The Claimant is critical that Ms. Squire did not provide details of the calculation to him before the commencement of these proceedings. However, we accept her evidence that the Claimant never asked her for the calculations and had he done so then she would have happily provided them.

CONCLUSONS

143. Insofar as we have not already done so we now deal with our conclusions in respect of the remining issues that are before us.

Direct discrimination related to the protected characteristic of race

144. We deal firstly with the acts which are said to amount to direct discrimination relying on the protected characteristic of race. As we have already observed, the Claimant relies on his Polish nationality for the purposes of this part of the claim.

145. The first of those allegations is said to be imposing an ultimatum on the Claimant which would result in no pay rise on 9th to 12th April 2024. This allegation fails on its facts. The Claimant was never given an ultimatum. It was in fact quite the opposite as he was given the option to retain his attendance bonus on the same hourly rate or accept the new proposal which everyone else had accepted. It had been made clear that he would, in either case, still be getting the same 3% pay increase that everyone else had been given and he was treated no differently to any of the comparators on which he relies in respect of his annual pay rise. In all events, the comparators relied upon were not appropriate comparators because they all had circumstances that were materially different to that of the Claimant – namely they

had accepted the proposals made for removal of the attendance bonus whilst the Claimant did not.

146. It appears to us that the real issue was that the Claimant wanted a 7% pay increase and had not realised that matters were not a negotiation and that, contractually, the Respondent did not need to make any increase at all because the bonus was discretionary. We have accepted that the Respondent was not in a position to pay a 7% pay rise which they would then have to pay to everyone and which was therefore not financially viable.

147. Other than give the Claimant the options of taking the increase in an hourly rate and giving up the attendance bonus or staying on his existing terms and conditions, it is difficult to see what more the Respondent could have been expected to do and we can well see why the Respondent directors felt somewhat baffled about the Claimant's reaction to the 8th April 2024 announcement.

148. However, even if the allegation had been made out on its facts then there was nothing at all to say that it would have had anything at all to do with the Claimant's nationality. Other than an assertion to that effect, there were no facts given in the Claimant's evidence that suggested any link at all to his nationality nor was it even put to the Respondent's witnesses that that was the case. For all of those reasons, his allegation therefore fails and is dismissed.

149. The second allegation is said to be the disregarding of the Claimant's request for written communication between 15th April 2024 and 14th May 2024. We would not categorise what the Respondent did as disregarding the Claimant's requests. On each occasion it was explained to the Claimant the reasons why the Respondent considered it important to meet face to face to discuss the grievance.

150. However, even if matters could be characterised in that way, the Claimant has proved no facts from which we could infer that his nationality had anything to do with the matter. The Claimant's position as we understood it appeared to be that the Respondent intended to take advantage of him in a face to face meeting because English was not his first language. However, that was not put by the Claimant in cross examination to any of the Respondent's witnesses who would also not have understood at the time from his correspondence that the Claimant was concerned that that might be the case. He at no time referenced English not being his first language as a reason for requesting written communication only, he had never previously requested or shown any need for an interpreter or had difficulties communicating in English and did not request an interpreter at any meeting that he was invited to which the factsheet sent to him by the Respondent had highlighted.

151. In all events, it is clear from the evidence that the "reason why" the Respondent wanted to hold a grievance meeting rather than correspond entirely in writing was because that was in accordance with external HR advice and the Respondent's own grievance procedure and their belief that that would be the best way of understanding the Claimant's "dispute". The situation had nothing at all to do with the Claimant's nationality and therefore this allegation also fails and is dismissed.

152. We would also comment that in respect of both this allegation that the comparators relied on by the Claimant – namely all directors of the Respondent – were not the correct comparators as none of them had raised a grievance and insisted that it be dealt with in writing. Their circumstances were therefore not materially the same as the Claimant's.

153. The third allegation is a failure to address the Claimant's grievance in writing on 15th to 19th April 2024. Factually, this allegation is not made out. The Claimant submitted his grievance at 7.30 a.m. on 15th April 2024. That grievance was acknowledged by Ms Squire on the same day with a request to attend a grievance meeting in accordance with the Respondent's grievance procedure and the external advice that had been received. That meeting was unable to take place until 22nd April 2024 due to annual leave commitments of the Respondent. The Claimant declined to attend the meeting by email of 15th April 2024 requesting that the matter be dealt with in written communication. Mr. Gratrix wrote to the Claimant on 18th April 2024 again inviting him to a further grievance meeting which the Claimant again declined to attend.

154. The Respondent did not, therefore, fail to address the Claimant's grievance. They addressed matters by inviting the Claimant to a meeting to discuss the grievance so that it could be properly understood and which was entirely in keeping with both the Respondent's grievance procedure and the ACAS Code of Practice on Grievance and Disciplinary Procedures. Even if there had been a failure to address the grievance in writing during the period specified by the Claimant, he did not prove any facts from which we could infer that this was in any way related to his nationality nor was this put to any of the Respondent's witnesses in cross examination.

155. Insofar as this allegation was a duplicate of the second allegation in that the Respondent did not provide a written outcome to the Claimant's grievances between those dates, our conclusions are exactly the same as in respect of that part of the claim. This allegation therefore also fails and is dismissed.

156. The final allegation of direct race discrimination is Mr. Gratrix asserting in his letter of 23rd April 2024 that the Claimant's absence from work was unauthorised and accordingly unpaid. It is factually accurate that Mr. Gratrix made plain that the Claimant's absence as from 15th April 2024 was unauthorised and that he was not paid for that period. The Claimant has not proved any facts from which we could infer that the content of the letter of 23rd April 2024 had anything at all to do with the his nationality and there was no more than assertion to that effect. It was also not put to Mr. Gratrix or any other witness for the Respondent that that was the case.

157. Moreover, it is also clear that the "reason why" Mr. Gratrix said that the Claimant's absence was unauthorised was that that was precisely what it was. Despite the Claimant asserting in correspondence that it was originally authorised, we have been taken to nothing in evidence to suggest that that was the case and it is clear from the Claimant's email stating that he would not return to work until the "dispute" was resolved that it was him absenting himself. We have been unable to ascertain how

in those circumstances the Claimant could have believed that his absence was not unauthorised.

158. Insofar as the matter of pay was concerned, the Respondent was entitled to withhold pay where the Claimant was withholding his labour and there is force in Mr. Gittins submission that the Claimant had effectively gone on strike and that is the "reason why" that reference was made. Moreover, Mr. Gratrix made it clear in his letter that if the Claimant was saying that he was not fit for work then upon receipt of a Fit Note he would be paid statutory sick pay. However, the Claimant elected not to submit a Fit Note and did not return to work. That was the reasons that he was not paid and why the reference with which the Claimant takes issue was included within the letter.

159. For all of those reasons, this complaint of direct discrimination therefore also fails and is dismissed.

160. We should observe that it was of concern to us that the Claimant was making and continued to pursue serious allegations of direct discrimination but elected not to put any of the allegations as being related to his nationality in cross examination nor to assert any factual basis upon which he said that his nationality played any part in the treatment complained of. Allegations of this nature can be upsetting to those individuals against whom they are levelled and it is difficult to see why the Claimant decided not to cross examine in respect of those matters despite continuing to maintain the allegations.

Harassment related to the protected characteristic of race

161. The first allegation of harassment relating to race is said to be Mr. Gratrix, in an email on 12th April 2024, making unfair and humiliating comments questioning the Claimant's understanding of his contract. As we have observed above, the Claimant's evidence before us was that the following words in the email were said to be unfair and humiliating:

"Based on what you are saying, are you saying you now disagree with your current contract that you have signed?"

162. We do not accept that factually those words were either unfair or humiliating and we accept the evidence of the Respondent that they were simply trying to understand the Claimant's position and objection to the proposals made on 8th April 2024 that all other relevant employees had accepted. Mr. Gratrix was simply pointing out that what the Claimant was saying at that time appeared to be at odds with the provisions of his contract of employment which he had previously signed to signify his agreement to.

163. The words were not capable of and we do not accept that they did have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. We have considered whether that may have been the Claimant's perception but other than assertion,

there was nothing to support that position and having regard to the ongoing discussions about the contract changes it would not have been reasonable for the Claimant to have held that perception.

164. Even if we had found that not to be the case, there is nothing at all to suggest that what Mr. Gratrix wrote related in any way to the Claimant's nationality and again that was not put to him or any other witnesses for the Respondent is cross examination nor explained in the Claimant's own evidence.

165. For all of those reasons, this part of the claim therefore fails and is dismissed.

166. The second allegation of harassment is that the Respondent in its letter of 23rd April 2024 made false and derogatory statements about the Claimant, including that he lied about wanting a 7% pay rise and did not wish to use the grievance procedure. The way in which this allegation was phrased suggested that there were other matters other the issue of the 7% pay rise and not wishing to use the grievance procedure which were said to be false and derogatory but the Claimant confirmed in cross examination that his allegations were limited to those points.

167. Insofar as the first part of the allegation is concerned, the relevant part of Mr. Gratrix's letter said this:

"You declined the proposed variation to your contract and requested a draft contract with a 7% pay increase".

168. The only issue which we understand there to be with this sentence is that the wording suggested that the Claimant had requested a draft contract of employment which had a 7% pay increase reflected within it. Factually, as we have set out above the Claimant did request a draft contract of employment. Equally, he had also requested a 7% pay increase and the documents before us which the Claimant wrote are clear on both points. If Mr. Gratrix had used the word "and" instead of "with" there could have been no issue at all taken with the sentence because it would have been entirely accurate as to what the Claimant had in fact asked for. It cannot reasonably be said that the comments were, as the Claimant alleges, false and derogatory.

169. Whilst the sentence was clumsily worded, the words were not capable of and we do not accept that they did have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. Even if that had been the Claimant's perception, given that there is one word in that sentence that he takes issue with and factually both things had in fact happened, it would not have been reasonable for the Claimant to have held that perception.

170. Again, even if this had created the prescribed effect, this had nothing at all to do with the Claimant's nationality. That was not explained in the Claimant's evidence or submissions nor was it put to Mr. Gratrix in cross examination. This part of the allegation accordingly also fails and is dismissed.

171. The second part of the allegation is that it was said that the Claimant did not want to use the grievance procedure. That statement is also factually accurate. The Respondent was seeking to engage with the Claimant entirely in accordance with their grievance procedure which required them to invite him to a meeting to discuss the grievance. The Claimant did not want to engage with that and was insistent that he would not attend and that all dealings with his complaints must be done in writing only. As such, there cannot reasonably be any complaint about what Mr. Gratrix had said because it was neither false nor derogatory. It was a statement of fact.

172. On that basis, it clearly did not have the purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment nor was that put to Mr. Gratrix in cross examination or explained in the Claimant's own evidence. We also do not accept that it had that effect and even if the Claimant had perceived that to be the case, that perception was not reasonable given the circumstances and his own refusal to attend a number of grievance meetings that had been arranged.

173. Finally, even if we had not reached that conclusion then again that statement of fact was in no way related to the Claimant's nationality. It was not a matter explained as to how that was said to be so in the Claimant's evidence nor was it something that was put to Mr. Gratrix in cross examination.

174. For all of those reasons, all acts of harassment fail and are dismissed.

Whistleblowing allegations

Did the Claimant make a protected disclosure?

175. We begin with the first disclosure relied on by the Claimant which is words contained in his original grievance of 15th April 2024.

176. We have set out the words which the Claimant put in that grievance above. We consider firstly whether there as any disclosure of information. We are not satisfied that there was. All that the Claimant was doing was setting out his stall about the subjects that had been discussed at the 8th April 2024 meeting. Even if that was not the case, there was nothing that the Claimant said in that email that showed or tended to show that a criminal offence – namely fraud – had taken place. The Claimant contends that the incorrect calculation of holiday pay amounted to fraud but nothing at all was said about holiday pay in the email.

177. Even if it had, we also do not accept that the Claimant could have had any reasonable belief that fraud had taken place. The issue of holiday pay calculations was something that had been raised by the Respondent itself which flies in the face of fraud having taken place. A genuine misunderstanding about the calculation of holiday pay in previous years which the Respondent had drawn to the attention of its employees and committed to remedy going forward cannot possibly in the Claimant's mind have been viewed as amounting to fraud nor was anything to do with fraud put in cross examination to any of the Respondent's witnesses.

178. Moreover, we do not accept that the Claimant was at any time raising any matter about holiday pay (when he did reference it) in the wider public interest. He now contends that this was done for the benefit of other existing and future employees but it is clear that this communication was entirely personal to the Claimant and his own circumstances and it is difficult to see how he could be acting for the benefit of others when the Respondent had already committed at the meeting on 8th April 2024 to remedying the miscalculation of holiday pay going forward. We therefore do not accept that either on its own or in conjunction with any other later communication this email amounted to a protected disclosure.

179. The second alleged disclosure relied upon by the Claimant is the following reference within his grievance statement which was as follows:

> *"Regularly received attendance bonus as part of a normal pay and regularly works overtime should be factored into my holiday pay calculation as my right by Employment Rights Act 1996. Please that I never received any of that calculation payment in the past during my employment".*

180. That was not a disclosure of information. It was simply a statement. Even if that was not the case, there is nothing at all within that paragraph which showed or tended to show that fraud had taken place nor, for the reasons that we have already given above, could the Claimant have held a reasonable belief that it had. We also do not accept, again for the same reasons as given above, that the disclosure was made in the public interest.

181. The final disclosure which the Claimant alleges that he made was on 7th May 2024 in his request for an exit package from the Respondent. We have set out the words used by the Claimant in that document. Nothing at all was said about holiday pay which is what the Claimant now says amounted to fraud and there was nothing within the document that showed or tended to show that such an offence had taken place nor could the Claimant have reasonably believed that it could. Any alleged disclosure of information within the document was also plainly not made in the public interest as the purpose of that document was to seek an exit payment from the Respondent. It was accordingly entirely personal to the Claimant.

182. That document did not, therefore, either on its own or read in conjunction with the other documents which the Claimant relies upon, amount to a protected disclosure.

183. The Claimant therefore did not make a protected disclosure in respect of any of the matters relied on.

<u>Detriment – Section 47B Employment Rights Act 1996</u>

184. The detriment complaint fails on the basis that the Claimant did not make a protected disclosure.

185. However, we have nevertheless gone on to consider if we had found that the Claimant had made a protected disclosure or disclosures whether he had been subjected to detriment as a result.

186. The sole act of detriment is said to be the Respondent invoking the disciplinary process in respect of the Claimant's absences prior to his resignation. Factually, this allegation is not made out given that the Respondent never invoked the disciplinary process against the Claimant. Mr. Gratrix merely – and quite accurately – raised with the Claimant that his absence was unauthorised and that he should either return to work or obtain and submit a Fit Note and that if he did neither then disciplinary action may follow.

187. Even if the allegation had been phrased differently as to the accurate content of the letter, that was not something that subjected the Claimant to detriment. It was simply warning him of the potential repercussions of containing to remain on unauthorised absence and giving him the opportunity to remedy that position so that he did not face disciplinary action. If anything, it would have been more detrimental not to warn the Claimant about the potential repercussions.

188. Finally, even if all that was not the case, we were entirely persuaded from the unchallenged evidence of Mr. Gratrix that the reason that the letter was sent was because the Claimant was on unauthorised absence – which was entirely accurate – and not in any way because of any of the communications that he relied upon as being protected disclosures. We accept that they did not materially influence Mr. Gratrix at all and it is difficult to see how issues raised about holiday pay would have landed poorly with the Respondent when they had first raised the matter with all affected staff of their own volition.

189. Moreover, the final alleged disclosure of 7th May 2024 could not in all events have been causative of Mr. Gratrix's communication because it post dated that particular correspondence, a matter which the Claimant appeared to accept in questions from the Tribunal.

190. The complaint of whistleblowing detriment therefore fails and is dismissed.

Constructive unfair dismissal

191. The claim of automatically unfair dismissal fails on the basis that the Claimant did not make a protected disclosure nor was he subjected to any detriment for doing so.

192. However, we go on to consider the complaint of "ordinary" constructive unfair dismissal. In that regard, the Claimant relies on a number of matters which he says were destructive of the implied term of mutual trust and confidence. We deal with each allegation which is said to breach that implied term separately before considering whether singularly or cumulatively and on an objective assessment of the Respondent's conduct, they amounted to a fundamental breach of the Claimant's contract of employment.

193. The first allegation is that the Respondent subjected the Claimant to discrimination and harassment between April and May 2024. We can deal with this allegation in

short form because for the reasons that we have already given above, as a matter of fact the Respondent did not subject the Claimant to discrimination or harassment during the period in question.

194. The second allegation is that the Respondent incorrectly compensating the Claimant for three years. Factually this is borne out as the Respondent candidly accepts that there was an inadvertent miscalculation of holiday pay which saw overtime not being included in the way in which holiday pay was paid.

195. The third matter relied upon was unilaterally attempting to vary the Claimant's contract by removing his attendance bonus. This has to be considered in context. The Respondent did indicate at the meeting that they intended to remove the attendance bonus for the Claimant and others. However, the reason for that as because of concerns that it may be discriminatory and instead it would be replaced with an increase to the hourly rate of pay which would see the workforce being better off financially. When the Claimant objected to that, he was told that if he did not want to accept that change then he did not have to do so and he could remain on the existing terms, which still included a 3% pay rise. That cannot in the circumstances be said to be in any way unreasonable and it was no different to the situation when the Claimant objected to payment of the attendance bonus being made annually.

196. The fourth allegation was that the Respondent had failed to provide a draft contract on request. It is correct to say that the Claimant asked for a draft contract of employment to reflect the changes which he had already said that he did not want to accept and that the Respondent did not provide one. However, the Claimant already knew what the proposed changes were because he had been told about that on both 8th and 9th April 2025 and it was also followed up in writing by Mr. Gratrix. It was also made clear to the Claimant that there would be no changes to any contract until the parties had reached agreement on the terms. The Claimant's refusal to attend the meetings arranged to discuss that meant that such agreement never came to fruition. There was nothing at all unreasonable about the way in which this issue was handled and not providing the Claimant with the draft contract that he had requested and if, as he now says, he was asking for the terms discussed on 8th April 2024 to be put in writing, Mr. Gratrix's letter dealt with that.

197. The next matter relied upon by the Claimant is subjecting him to humiliating and aggressive treatment in the meeting of 9th April 2024, including dismissing his concerns and shouting "*these* (namely his emails) *mean nothing*". As we have found above, factually we do not accept that this happened.

198. The sixth allegation relied upon is imposing an ultimatum on the Claimant which would result in no pay rise on 9th to 12th April 2024. As we have found above, the Claimant was not subjected as a matter of fact to any ultimatum. When he objected to the terms that the Respondent sought to impose to remove the attendance bonus and replace it with an increased hourly rate, he was simply given the option to either agree that or keep matters as they were. That was an option; not an ultimatum and at no point was there any suggestion that the Claimant would not get the same 3% pay rise as everyone else irrespective of which option he chose. It is difficult to see

what else the Claimant expected the Respondent to do other than agree to an increased pay rise of 7% which was not commercially viable. There was nothing at all wrong with the approach taken by the Respondent to the Claimant in this regard.

199. The next matter is disregarding the Claimant's request for written communication between 15th April and 14th May 2014. It is not correct to say that the Respondent disregarded the Claimant's request for written communication. They clearly explained to him why they wanted him to attend a meeting which was entirely in keeping with the grievance procedure and the external advice that they had received.

200. Nothing in the Claimant's communications to the extent that that is now alleged gave any hint that he considered that he might be disadvantaged or in some way taken advantage of because English is not his first language and in all events it had been drawn to his attention that he could be accompanied to any meetings by an interpreter. Whilst there was no disregarding of the Claimant's request, the refusal to proceed in the manner that he proposed was not unreasonable because the Respondent wanted to discuss and understand the Claimant's concerns and it was felt that a meeting, in accordance with the grievance procedure and advice received, was the appropriate way forward. There was nothing at all unreasonable or detrimental about that.

201. The next issue is failing to address the Claimant's grievance in writing on 15th to 19th April 2024. Whilst this is factually accurate, that has to be considered in the context that the Respondent was still trying to get the Claimant to attend a grievance meeting to discuss and understand his concerns. There was nothing unreasonable about that for the same reasons as we have given immediately above. When the Claimant persistently refused to attend and did not participate in the final meeting that was arranged other than to send in the grievance statements, the Respondent still addressed the concerns raised insofar as they were able to do without discussion with the Claimant.

202. The penultimate matter relied upon is Mr. Gratrix in his letter of 23rd April 2024 asserting that the Claimant's absence from work was unauthorised and unpaid. Factually, that is correct. However, it was also entirely correct for Mr. Gratrix to have said that the absence was unauthorised because it was. The Claimant had simply absented himself from work and would not provide a Fit Note if he was saying that he was unwell. It was equally correct for Mr. Gratrix to say that the absence was unpaid. The Claimant was withholding his labour and his entitlement to pay depended upon him either returning to work or, if he was saying that he was ill, providing a Fit Note which would entitle him to statutory sick pay that he would then have been paid. The Claimant did neither. The stance taken by Mr. Gratrix in his letter was entirely correct and in no way unreasonable.

203. The final allegation relied upon by the Claimant is that Mr. Gratrix made false allegations against him in his letter of 23rd April 2024. We remind ourselves in the context of the harassment claim that this was that the Claimant had requested a draft contract of employment with a 7% pay rise and that he did not want to use the grievance procedure. Those were not false allegations for the reasons that we have

already given in respect of the harassment claim. Whilst the contract of employment and pay rise issues was conflated into one and not two issues and the letter was in that regard clumsily worded, the substance was nevertheless accurate. There were therefore no false allegations made and this issue is not made out on the facts.

204. For the reasons that we have given, other than in respect of the issue of holiday pay which we deal with below, there was no wrongdoing on the part of the Respondent in respect of the above matters which could either singularly or cumulatively be said to amount to a breach of the implied term of mutual trust and confidence. They either did not happen as claimed or were entirely innocuous and reasonable decisions.

205. The question now falls to be considered as to whether the sole allegation made out in respect of which the Respondent could be said to be culpable – that being that the Claimant's holiday pay was incorrectly calculated - amounted to a breach of the implied term of mutual trust and confidence. We do not find that it was given the circumstances. The miscalculation was an innocent mistake by the Respondent. Once it came to their attention it was communicated to the workforce, the Claimant included, and remedied moving forward. Had the Respondent not brought the matter to the Claimant's attention no doubt he would have been none the wiser and in such circumstances their previous inadvertent action and steps taken to remedy matters cannot objectively speaking be said to be a breach of the implied term of mutual trust and confidence.

206. We therefore do not accept that the actions of the Respondent amounted to a breach of the implied term of mutual trust and confidence and even had we found that to be the case in respect of the issue of holiday pay, that was not the reason for the Claimant's resignation. In regard to that latter issue, we are satisfied that the reason for the Claimant's resignation from the evidence before us was because he had taken umbrage over the issue of the proposed changes to his contract communicated on 8th April 2024 and the fact that he was aware that his continued unauthorised absence from work may result in disciplinary action being taken which he would find stressful. The Claimant accepted in cross examination that that latter point was the reason that he had resigned and that was reflected in his own particulars of claim (see page 30 of the hearing bundle).

207. The resignation was therefore not in any way connected to the issue of unpaid holiday pay which the Respondent itself had raised and which was going to be remedied moving forward. As above, had the Respondent not raised the matter, the Claimant would doubtless have been none the wiser.

208. The complaint of constructive unfair dismissal therefore fails and is dismissed.

Unauthorised deductions from wages

209. The onus is on the Claimant to demonstrate that there were deductions made from monies which were properly payable to him. However, in these circumstances it is accepted by the Respondent that a deduction in the sum of £3,218.02 was made due to the incorrect calculation of holiday pay during the Claimant's employment by failing to take into account overtime worked.

210. We therefore make a declaration to that effect. However, we make no award that any further monies be paid to the Claimant by the Respondent because the sum previously unpaid over the last two years of the Claimant's employment by way of incorrectly calculated holiday pay have already been paid to him. It is only those last two years that we take into account in accordance with The Deduction from Wages (Limitation) Regulations 2014.

211. The Claimant has not persuaded us that the way in which the repaid sum has been calculated was incorrect. He did not deal with that in his own evidence nor in cross examination of Ms. Squire challenge her calculations nor put how he had reached his own. There is also no evidence of any loss contingent upon the deductions having been made. There is therefore no further remedy other than a declaration which we make in respect of this part of the claim.

212. We would observe on a final note that we agree with the submissions of Mr. Gittins that this is a sad case. We find it difficult to see why the Claimant took such umbrage at proposals which were designed to be financially beneficial to all members of staff or for him to retain the attendance bonus if that was what he wanted. The matter appears to be that the Claimant believed that he should be entitled to re-negotiate a pay rise but that overlooks the term of the contract on which the Claimant relied that a pay rise was in all events discretionary and there was no obligation to increase pay at all. Had the Claimant properly engaged with the Respondent, he may well have been able to continue in what otherwise appeared to be a good working relationship where he was valued and respected as a hardworking member of the team.

Approved by:

Employment Judge Heap

Date: 4th May 2026

JUDGMENT SENT TO THE PARTIES ON
04.06.2026

.....
Hrishiraj Pramanik

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording of the hearing and transcription
The audio of this hearing has been recorded in accordance with the procedure now operated by the Employment Tribunals.

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

LIST OF ISSUES

"ERA" means Employment Rights Act 1996 "**EqA**" means Equality Act 2010

ISSUES

1 Constructive Unfair Dismissal (Pursuant to section 95 ERA)

1.1 Was the Claimant constructively dismissed?

1.2 Did the Respondent do the following things:

1.2.1 Subject the Claimant to discrimination and harassment between April and May 2024;

1.2.2 Incorrectly compensate the Claimant for three years;

1.2.3 Unilaterally attempting to vary the Claimant's contract by removing his attendance bonus;

1.2.4 Failing to provide a draft contract upon request;

1.2.5 Subjecting the Claimant to humiliating and aggressive treatment in a meeting on 9 April 2024, including dismissing his concerns and shouting "These mean nothing";

1.2.6 Impose an ultimatum on the Claimant which would result in no pay rise on 9 to 12 April 2024;

1.2.7 Disregard the Claimant's request for written communication between 15 April and 14 May 2024;

1.2.8 Fail to address the Claimant's grievance in writing on 15 to 19 April 2024;

1.2.9 Assert the Claimant's absence from work was unauthorised and unpaid on 23 April 2024;

1.2.10 Making false accusations against the Claimant in its letter of 23 April 2024.

1.3 Did that breach the implied term of trust and confidence. Specifically: -

1.3.1.1 Did the Respondent behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

1.3.1.2 Did it have a reasonable and proper cause for doing so.

2 Remedy for Unfair Dismissal

2.1 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.1.1 What financial losses has the dismissal caused the Claimant?

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

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

2.1.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.1.5 If so, should the Claimant's compensation be reduced? By how much?

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

2.1.7 Did the Respondent or the Claimant unreasonably fail to comply with it by

2.1.7.1 The Respondent not addressing the Claimant's grievance promptly or impartially

2.1.7.2 The Respondent refusing the Claimant's requests for the grievance to be determined in writing

2.1.7.3 The Respondent threatening the Claimant with disciplinary action without an investigation

2.1.7.4 Recording absences as 'unauthorised' and requesting medical documentation

2.1.7.5 Making contractual changes without consultation or providing draft contracts

2.1.8 If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

2.1.9 If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

2.1.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

2.1.11 Does the statutory cap of 52 weeks' pay or [£89,493] apply?

2.2 What basic award is payable to the Claimant, if any?

2.3 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

3 <u>Direct Race Discrimination (Pursuant to section 13 EqA)</u>

3.1 Did the Respondent do the following things:

3.1.1 Impose an ultimatum on the Claimant which would result in no pay rise on 9 to 12 April 2024;

3.1.2 Disregard the Claimant's request for written communication between 15 April and 14 May 2024;

3.1.3 Fail to address the Claimant's grievance in writing on 15 to 19 April 2024;

3.1.4 Assert the Claimant's absence from work was unauthorised and unpaid on 23 April 2024.

3.2 Was this less favourable treatment, i.e. was the Claimant treated worse than a hypothetical comparator in relation to paragraphs 3.1.1 – 3.1.4 above? There must be no material difference between the circumstances of the comparator and the circumstances of the Claimant.

3.3 Was this less favourable treatment i.e. was the Claimant treated worse than the following actual comparators, the other fourteen workers affected by the annual pay rise increase, in relation to paragraph 3.1.1 above? There must be no material difference between the circumstances of the comparator and the circumstances of the Claimant.

3.4 Was this less favourable treatment i.e. was the Claimant treated worse than the following actual comparators, the five other directors of the business specifically Richard Green, Oliver Gratrix, Georgina Squire, Jack Perkins, Melvyn Randall in relation to paragraph 3.1.2 above? There must be no material difference between the circumstances of the comparator and the circumstances of the Claimant.

3.5 If so, was it because of the Claimant's race? The Claimant relies on his Polish Nationality.

3.6 Did the Respondent's treatment of the Claimant amount to a detriment?

4 Harassment (Pursuant to Section 26 EqA)

4.1 Did the Respondent do the following things:

4.1.1 Did Mr. Gratrix, in an email on 12 April 2024, make unfair and humiliating comments questioning the Claimant's understanding of his contract;

4.1.2 Did the Respondent, in its letter of 23 April 2024, make false and derogatory statements about the Claimant, including that he lied about wanting a 7% pay rise and did not wish to use the grievance procedure.

4.2 If so, was it unwanted conduct?

4.3 Did it relate to the Claimant's race? The Claimant relies on his Polish Nationality.

5 Remedy for discrimination or victimisation

5.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the claimant? What

should it recommend?

5.2 What financial losses has the discrimination caused the Claimant?

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

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

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

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

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

5.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures ("**ACAS Code**") apply?

5.9 Did the Respondent or the Claimant unreasonably fail to comply with it? In particular:

5.9.1 Did the Respondent fail to address the Claimant's grievance promptly or impartially; and / or

5.9.2 Did the Claimant request for his grievance to be determined in writing? If so, was this request unreasonably refused by the Respondent;

5.9.3 If so, did this conduct breach paragraphs 5 to 12 of the ACAS Code, as alleged by the Claimant.

5.9.4 Did the Respondent:

5.9.4.1 Threaten the Claimant with disciplinary action

without proper investigation and / or formal procedure being followed;

5.9.4.2 Unreasonably record the Claimant's absences for 'stress' as 'unauthorised'; and / or

5.9.4.3 Place undue pressure on the Claimant to provide medical documentation with regards to his absences.

5.9.5 If so, did this conduct breach paragraphs 18 to 29 of the ACAS Code, as alleged by the Claimant?

5.9.6 Did the Respondent breach paragraphs 6 to 10 and / or 34 to 36 of the ACAS Code by allegedly making contractual changes to the Claimant's contract of employment without meaningful consultation or provision of draft contracts, as alleged by the Claimant?

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

5.11 By what proportion, up to 25%?

5.12 Should interest be awarded? How much?

6 Whistleblowing (Pursuant to sections 43A, 43B, 47B and 103A ERA)

6.1 Did the Claimant make a protected disclosure within section 43A ERA?

6.2 Specifically:

6.2.1 The Claimant's original grievance of 15 April 2024;

6.2.2 The documents dated 24 April 2024 titled 'Formal Grievance Hearing Statement (v1)' and 'Formal Grievance Hearing

Statement (v2)' which identified the incorrect calculation of holiday pay;

6.2.3 The letter dated 7 May 2024 entitled 'Request for Exit Package Due to Unresolved Grievance' and the correct payment for holiday.

6.3 With respect to each alleged protected disclosure:

6.3.1 Did the Claimant make a disclosure of information?

6.3.2 Did the Claimant believe that the disclosure was made in the public interest?

6.3.3 Was that belief reasonable?

6.3.4 Did the Claimant believe that the disclosure tended to show that a criminal offence had been, was being, or was likely to be committed?

6.3.5 Was that belief reasonable?

6.3.6 Was the disclosure made to the Respondent?

6.4 Did the Respondent invoke the disciplinary process to the Claimant's absences?

6.5 By doing so, did it subject the Claimant to a detriment? If so, was it done on the ground that the Claimant made a protected disclosure?

7 Remedy for protected disclosure detriment

7.1 What financial losses has the detrimental treatment caused the Claimant?

7.2 Has the Claimant taken reasonable steps to replace their loss

of earnings for example by looking for another job?

7.3 If not for what period of loss should the claimant be compensated?

7.4 What injury to feelings has the detrimental treatment caused the Claimant?

7.5 How much compensation should be awarded for that?

7.6 Has the detrimental treatment caused the Claimant personal injury?

7.7 If so, how much compensation should be awarded for that?

7.8 Is it just and equitable to award the Claimant other compensation?

7.9 Does the ACAS Code apply?

7.10 If so, did one of the parties unreasonably fail to comply with it?

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

7.12 By what proportion, up to 25%?

7.13 Did the Claimant cause or contribute to the detrimental treatment by their own actions?

7.14 If so, would it be just and equitable to reduce the compensation?

7.15 If so, by how much?

7.16 Was the protected disclosure made in good faith?

7.17 If not, is it just and equitable to reduce the Claimant's compensation?

7.18 If so, by what proportion, up to 25%?

8 Unlawful Deduction from Wages (Pursuant to Section 13(1) ERA)

8.1 Did the Respondent make any unauthorised deduction(s) from the Claimant's wages in terms of section 13(1) ERA 1996?

8.2 If so, what was the extent of such unauthorised deduction?