



EMPLOYMENT TRIBUNALS

Claimant: Mr D Lewandowski

Respondent: Fishers Services Limited

Heard at: Newcastle Employment Tribunal

On: 2-6 March, 1, 5-8, 22 May 2026

Before: Employment Judge L Robertson
Mr S J Lie
Mrs L Jackson

Representation

Claimant: in person (supported by his mother, Ms I Kolsut)

Respondent: Mrs J Callan, counsel

JUDGMENT and written summary reasons were sent to the parties on 24 June 2026 and full reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

FULL REASONS

The claimant's claim

1. By a claim form presented on 18 November 2024, the claimant, Mr Lewandowski, brought complaints of direct race discrimination, race-related harassment and victimisation. These are complaints brought under sections 13, 26 and 27 of the Equality Act 2010 ("EqA") respectively.

The hearing

2. The claimant represented himself at the hearing and was supported in doing so by his mother, Ms Kolsut. The respondent was represented by Mrs Callan, who was instructed by Burness Paull LLP.
3. The claimant gave evidence on his own behalf and called his mother as a witness. His partner, Paulina Szramkowska, had also submitted a witness statement but did not appear to give evidence in person.

4. The respondent called five witnesses:

- 4.1. Jade Paterson (Production Supervisor or Process Operator at different times throughout the period which is the subject of the claim);
- 4.2. Amanda Bradley (former Production Manager);
- 4.3. Katarzyna Bladziak (Production Manager);
- 4.4. Lyndsey Keene (former Plant Manager); and
- 4.5. Cheryl McGrevy (Production Supervisor).

5. We explained to the parties that we would only read documents to which we were referred in the statements, in the list of key documents or in oral evidence. The parties had prepared an agreed bundle of documents consisting of 408 pages which by consent was added to during the hearing. The claimant referred to other additional documents in his possession which were not added because they were not relevant or withdrawn. There was a supplementary bundle of documents consisting of 20 pages, the relevancy of which was disputed by the respondent.
6. The claimant suggested, during his cross-examination of the respondent's final witness on the penultimate day of the resumed hearing, that the respondent ought to be directed to produce a list showing the scanned tickets for each member of the packing team for the period 28-31 August 2024. It was not clear whether the records would still exist. Although the claimant thought this would take around an hour to produce, Miss Bladziak and Miss Keene thought that, to work out how many tickets an individual packer had scanned on any given day, it would be necessary to go into the computer system and count the individual tickets. Miss Bladziak thought that, if this information was still available, it would take at least two days to produce as it could be around 20,000 tickets. Even if the information could be collated, the parties would then need time to review the information and further witness evidence would be needed. Following discussion, the claimant confirmed that he did not seek an adjournment for the respondent to look into whether the information was still available and, if so, for this document to be produced as he did not want the hearing to be delayed. He confirmed that he was content to continue.
7. A Polish interpreter had been appointed by the Tribunal service to assist the claimant, his mother and Miss Bladziak. Monika Panufnik was booked for the initial five day listing but she cancelled after the first day. It was then necessary to make alternative arrangements at short notice and this led to lost hearing time. Anna Maria Kaczmarczyk attended on the third day and Maciej Juszczyk attended on the afternoon of the second day, the fourth and fifth days.
8. On the morning of the fifth day, the claimant was cross examining the first of the respondent's witnesses. It was necessary for the Judge to clarify the English translation of the claimant's questions and this slowed the pace of the evidence considerably. Over lunchtime on the fifth day, the parties raised concerns about the accuracy of Mr Juszczyk's interpretation. The Tribunal was informed that those concerns had begun on the second day of the hearing. It was agreed with the parties that the hearing would be adjourned and would continue on later dates with a fresh interpreter.

9. During the adjournment, the Tribunal wrote to the parties, the Judge having reflected on the parties' concerns about the accuracy of Mr Juszczak's translation, expressing concern about whether the evidence before the Tribunal could be relied upon by the current panel in reaching its findings of fact and conclusions. The parties were informed that, as a result, the Judge was minded to direct that the case be re-heard by a new panel with a different interpreter. However, before a final decision was taken, the parties' views were invited.
10. Both parties expressed a clear preference for the hearing to resume before the same panel with a fresh interpreter. The claimant emphasised that he had full confidence in the current Tribunal panel; it was not necessary for the case to be reheard by a new Tribunal panel; he would find restarting the case from the beginning very difficult because of his health; and a more proportionate solution would be for the case to continue before the current Tribunal panel with a different interpreter. He submitted that the greatest difficulties with interpretation concerned the evidence of the witness Amanda Bradley on the Friday morning and suggested that, in order to address any potential concerns about the accuracy of the interpretation and to ensure fairness, that witness be heard again from the beginning.
11. The respondent's position was that the accuracy of Mr Juszczak's translation during part of the final hearing had no material impact on the substance of the evidence led, nor on the Tribunal's ability to assess the credibility or weight of the evidence, and it would not be proportionate for the evidence to be re-heard by a new panel. The respondent submitted that the overriding objective would be best served by permitting the proceedings to continue without any rehearing of evidence already given; it did not consider it consistent with the overriding objective for only one party's witness evidence to be reheard as that would risk undermining procedural fairness and equality of arms, and would not represent a proportionate or efficient use of Tribunal resources.
12. Having noted the content of the parties' correspondence, it was agreed that the hearing should proceed as listed with the current panel and a different interpreter. Adriana Bailey attended as interpreter for the resumed hearing. The parties confirmed that they understood each other and were asked to inform the panel if they had any concerns about accuracy of her translation. None were raised.
13. As to the claimant's request to restart Mrs Bradley's evidence, this was further discussed at the start of the resumed hearing. It was noted that the claimant had been content that, once his cross-examination questions had been clarified with the assistance of the Judge, the questions were accurately asked of Mrs Bradley. The panel had also heard Mrs Bradley's answers in English. On this basis the most proportionate way of addressing the concerns was for the claimant to identify the aspects of Mrs Bradley's evidence which he was concerned about and that half an hour be allowed to recall Mrs Bradley to clarify those areas. In the event, the claimant was allowed around one hour for this and confirmed that he was then content to move on to the next issue.

14. Prior to the start of the hearing, the claimant had raised concerns that, on 4 December 2025, Miss Paterson's mother had confronted him in a local supermarket and demanded that he withdraw alleged allegations against Miss Paterson and that this had led to a worsening of his health. Miss Paterson's mother was also an employee of the respondent but had no direct involvement in these proceedings. He had reported the matter to the Police. The claimant wanted the Tribunal hearing to proceed on the listed dates, but asked that the respondent's witnesses wait in a designated waiting room and be called into the hearing room individually.
15. This was discussed at the start of the hearing. The claimant confirmed that the list of issues reflected his complaints, but he had not made the accusation against Miss Paterson which her mother had suggested. All of his complaints were being pursued. During the discussion, the claimant confirmed that he was content for the respondent's witnesses to enter the hearing room after him and (with the exception of Miss Bladziak, who needed to be able to hear the interpreter) sit behind a screen so that he did not need to see all of them at the same time. He felt able to see the respondent's witness when he was cross-examining them. There being no objection from Mrs Callan, this was agreed.
16. By the time of the resumed hearing, the claimant told us that Miss Paterson's mother had admitted the alleged conduct to the Police and invited the Tribunal to ask for copies of the Police documents. He emphasised that the alleged allegations against Miss Paterson were not the actual subject matter of these proceedings, but asked the Tribunal to consider the potential impact of her mother's actions on the course of the case. The respondent's solicitors had responded that the matter: had no direct relevance to the current proceedings (as the claimant had noted that the alleged allegations did not constitute the actual subject matter of the claim); did not form part of current issues to be determined by the Tribunal; did not affect the witness evidence already given and to be given; and accordingly, no weight should be given to the email as part of these proceedings. It was noted that the respondent took this allegation seriously and had taken steps internally to address this matter. At the resumed hearing, the matter was discussed. The Tribunal did not consider it appropriate or necessary to obtain copies of the Police reports at that stage as the issues of liability in the current claim did not require the Tribunal to decide what Miss Paterson's mother had done; the claimant's extant claim was continuing; and the respondent had taken action to ensure the alleged conduct would not be repeated. We were mindful that the claimant was concerned about the impact of this incident on his health, and we were content that the claimant was able to participate in these proceedings fully.
17. Prior to or during the resumed hearing, the respondent's applications for witness orders were granted in respect of Mrs Bradley and Miss Keene, both of whom had by that time left the respondent's employment.
18. The Tribunal hoped to be able to deliver oral summary judgment on the final day of the resumed hearing but its deliberations were continuing and the parties were informed that this would not be possible. Oral summary judgment was instead

delivered on Friday 22 May 2026. David Skoczylas attended as interpreter on that day.

The Issues

19. The issues to be determined in this case were agreed and the list of issues is set out in the Annex to these Reasons. The claimant confirmed that he was not pursuing Complaint 7 (paragraph 2.1.7 and 3.1 of the list of issues).

Findings of fact

20. Having considered all of the evidence, we found the following facts on a balance of probabilities. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because, in the interests of some brevity, we have limited them to points that are relevant to the legal issues. The parties can, however, be assured that all of the evidence before the Tribunal was considered in reaching our decisions.

Context

21. This case is heavily dependent on evidence based on people's recollection of events that happened between around 18 months and over four years prior to the hearing. In assessing the evidence relating to this claim, we have borne in mind the guidance given in the case of *Gestmin SGPS v- Credit Suisse (UK) Ltd [2013] EWHC 3560*. In that case, the court noted that a century of psychological research has demonstrated that human memories are fallible. Memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. External information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all.
22. The process of going through Tribunal and other proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to the parties. It was said in the *Gestmin* case: *"Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*
23. Over the course of the hearing, various inconsistencies in the evidence of the claimant and the respondent's witnesses were identified. We deal with this further below. The claimant sought to argue that any inconsistency in the evidence of the respondents' witnesses meant that the evidence of that witness was not reliable, even if the inconsistency was about a matter which was not central to his own complaints. We have weighed all of the evidence and that submission carefully in reaching each of our findings below.
24. We start by dealing with some findings of fact that are not specific to particular complaints.

The claimant's role

25. The claimant's employment by the respondent as a Process Operator began in or around August 2021. He worked at the respondent's Newcastle site. It was common ground that, by the time of the final hearing in this claim, the claimant's employment had terminated but that termination was not relevant to these proceedings. By way of background, the claimant had had a prior period of employment by the respondent, which ended in 2020 during the COVID lockdown, and which was not the subject of the claim before us.
26. The respondent provides laundry services to hotels.
27. During the claimant's employment, he worked on Shift 2 (Wednesday to Saturday). He normally worked in the packing team which involved packing bags or cages with laundry, depending on what was needed at the time. However, he could be required to work on machines. Miss Keene's unchallenged evidence was that the claimant was experienced in his role and could work on more or less any machine across the factory. There were generally around six people in the packing team. We shall refer to members of the packing team as 'packers'. The claimant was a good packer.
28. A Production Supervisor supervised the packing team. The Production Supervisor was responsible for sorting and assigning the customer tickets to packers; overseeing the team's group target; and helping with packing or scanning tickets if targets were not being met or it was busy. So far as is relevant to this claim, the Production Supervisor Andrew Harvey stood down around July 2022; Jade Paterson carried out the role between around July and November 2022, Jane Johnson carried out the role between around November 2022 and February 2023; and Miss McGrevy has carried out the role from February 2023 onwards.
29. Mrs Bradley was appointed as Production Manager for Shift 2 in February 2022. She was more senior than the Production Supervisors. Production Managers' responsibilities included planning shifts, allocating staff to their tasks, ensuring that targets were met and completing return to work forms. Miss Bladziak (Production Manager for the other shift, Shift 1) covered Mrs Bradley's role between 21 August 2024 and 6 March 2025 due to Mrs Bradley's absence from work.
30. Production Managers reported to the Plant Manager. The Plant Manager's responsibilities included ensuring that the factory was hitting targets, deliveries were being made on time and general day to day management of staff. Miss Keene was promoted to this role in or around 2023, having previously worked in the Production Manager role.
31. It was common ground that:
 - 31.1. it was part of the claimant's role as a packer to pack bags as well as cages and all packers were at times required to pack bags and cages. Packers would be asked (usually by the Production Supervisor) to pack bags if there were more bags than cages needing to be packed;

- 31.2. although Process Operators working in the packing team have nominal individual targets of around 1000 items, they work as a team towards a group target. This was different from Process Operators working on the machine belts, who do work towards their own individual targets;
- 31.3. each Process Operator has their own number and, if that number is entered onto the computer, it will identify that employee's name;
- 31.4. there was a ticket for each bag or cage needing to be packed, which made it clear which items and how many of each item had to be packed into the bag or cage;
- 31.5. generally, packers would pack items in relation to tickets which had been given to them individually;
- 31.6. generally, if towards the end of a shift, a particular packer's tickets had not been completed, other packers would come to assist them if those tickets had to be done before the end of the shift (although the claimant denied this happened during the period 28-31 August 2024 and we deal with this further below);
- 31.7. when a cage or bag is packed and ready for dispatch, the customer ticket is scanned and it shows up as being scanned by the person doing the scanning. That is because, when scanning tickets, individuals do so using their own number;
- 31.8. normally, the person packing the bag or cage scanned the ticket themselves. That meant that the items for that ticket would show as having been scanned by the person who had done the packing. There was good reason for this: if the customer reported a problem with the bag or cage, the respondent would know which Process Operator to check with;
- 31.9. during some busy periods, it was faster if the Production Supervisor scanned the tickets on the Process Operator's behalf and moved the bags or cages (although the claimant denied this was the reason why this happened during the period 28-31 August 2024 and said that only his tickets were scanned by Miss McGrevy during this period). Although the claimant accepted initially that this made it easier, he disputed this in his later evidence;
- 31.10. once the ticket had been scanned and as long as the route was already in place, the bag or cage would be moved somewhere in the plant from which transport could pick it up and deliver it;
- 31.11. cages and bags would be loaded, to be taken by drivers to hotels on particular routes; and
- 31.12. the period 28-31 August 2024 was peak holiday season and it was busy.

32. Normally, in the packing team, three people were packing bags and three were packing cages. However, that depended on what was available to pack: sometimes the Production Manager would ask the Production Supervisor if some of the packing team could work on machines if the machines were under-staffed; and Miss McGrevy would try to ask different people from her team each time.
33. We heard unchallenged evidence from Miss Paterson that the claimant did not like working on bags and saw this as a punishment, and was reassured that working on bags was not a punishment. We also heard unchallenged evidence from Miss McGrevy that in reality Miss Paterson and the claimant mainly packed cages alongside Miss McGrevy.
34. As to the group packing target, packers could pack more in cages than in bags. One cage could hold 1,000 pieces (around the nominal individual target) but one bag would hold significantly fewer items. It is for this reason that the team work towards a group packing target and not individual targets.
35. We accepted Mrs Bradley's evidence that she has always got on well with the claimant but, if she was talking to another member of staff, the claimant would think that the discussion was about him without any reason for thinking that, approach Mrs Bradley to ask what they had been talking about and she would reassure him that it was not about him.

Alleged pattern of bias and discrimination against Polish employees

36. We have considered the claimant's case that other Polish employees (that is, not only him) had experienced poor treatment and there was a pattern of discrimination and bias against Polish employees. His mother had brought an ET claim against the respondent in which she had made complaints of race discrimination. Her claim had been settled and there is therefore no judgment determining the claim. We note here that the claimant told us that his mother had been pressured by her solicitors into settling her claim, but we make no finding in relation to that allegation. On the limited evidence before us, it was not possible to reach any findings on the balance of probabilities about whether the claimant's mother had suffered unlawful race discrimination.
37. The claimant accepted that the employment of Beata, a Polish employee, had terminated in the context of organisational change which made her working hours unsuitable for childcare. He was unaware if any English employees had been affected in the same way. The claimant accepted that three Polish employees had been dismissed for health and safety reasons, but disputed that those dismissals were justified. The claimant accepted that three English employees had been dismissed for health and safety reasons and that those dismissals were justified.
38. We had before us a breakdown of employees' roles and nationalities which showed that the respondent employed a diverse workforce which included Polish employees in promoted positions. This included:

38.1. Around 16 Polish Process Operators out of around 106 Process Operators;

- 38.2. Of around 10 Production Supervisors or Production Team Leaders, three were non-UK nationals (Portugal, India and Romania); and
- 38.3. Of around 17 managerial positions, two were Polish and one was Romanian.
39. Miss Keene's unchallenged evidence was that her best friend is Polish. Miss Keene had made the decision to promote Miss Bladziak to her current position. Whilst there was by the time of the hearing a family connection between Miss Keene and Miss Bladziak (Miss Bladziak is in a relationship with Miss Keene's ex-partner, the father of Miss Keene's children), there was no cogent evidence as to whether that was the case at the time of her promotion or, if so, whether that would have made it more or less likely that Miss Keene would have wanted to promote Miss Bladziak.
40. Although the claimant gave evidence that he would not be brave enough to approach Miss Keene, this was not supported by the evidence and there was some evidence of a positive relationship at times. Miss Keene had told the grievance investigation that the claimant is an artist, she had always encouraged him to put his pictures on the notice board, and they had exchanged drawing books as the claimant's son also draws. The claimant had approached Miss Keene initially about leaving work to attend the veterinary appointment about his cat. The claimant's position (which Miss Keene accepted) was that, after he had covered for his supervisor, Miss Keene had intervened to ensure that he received the correct additional payment to reflect this.
41. The claimant argued that his concerns about Miss Keene were not isolated. There was evidence that an English ex-employee called Julie had withdrawn a complaint because she had allegedly faced bullying and intimidation by Miss Keene. On the evidence before us, the claimant and two English employees, Gabi and Mrs Bradley, had discussed writing a letter to complain about matters including holidays which appeared to have some connection to Miss Keene. However, the claimant did not provide any cogent explanation as to why these matters supported his case that his alleged treatment was connected to his Polish nationality.
42. Even on the claimant's case that Miss Keene was difficult to work with, these matters did not amount to credible evidence of a pattern of discrimination or bias against Polish workers.

Timing of presentation of claim

43. The claimant raised several concerns informally with Mike Jones on 25 March 2024. In this email he stated, "I don't wanted make this letter official it only for your own knowledge (sic)." Mr Jones responded, informing the claimant that the appropriate route for raising his concerns would be by raising a formal grievance, and made suggestions to reassure him that any such grievance would be dealt with sensitively and objectively. The claimant responded on 27 March 2024 to confirm that he did not want to do this, saying, "like I says I don't wanna make any steps about it because is not my intention...I further believe any further steps

wouldn't be necessary." The claimant accepted that he did not raise a formal grievance at that point in time.

44. The claimant's mother brought an ET claim in 2022, in which the claimant gave evidence at the final hearing in January 2024. The claimant worked as normal from the conclusion of his mother's ET claim in January 2024 up to and including 31 August 2024. He then took a period of annual leave; following which, he was on sickness absence up to the termination of his employment in or around February 2026.
45. During his annual leave, he raised a formal grievance on 12 September 2024 setting out, in some detail, several matters about which he wished to complain. David Emslie, Operations Director of the respondent, was appointed to deal with the grievance. On 20 September 2024, Mr Emslie responded to invite the claimant to a grievance meeting. The claimant refused to meet Mr Emslie, in part because the claimant had concerns that Mr Emslie would not deal objectively with his grievance about Miss Keene.
46. An occupational health assessment on 20 November 2024 concluded that the claimant was unfit for work but was fit to participate in a formal grievance meeting with management as he would be able to understand the purpose of the meeting, follow the discussion and respond to questions. Various adjustments were recommended. The respondent appointed a different manager and offered to conduct the meeting at a different site or via Microsoft Teams.
47. Mr McDonagh was subsequently appointed as an independent manager to deal with the grievance. Trina Brunton, HR Manager, informed the claimant of Mr McDonagh's appointment and invited the claimant to a grievance meeting. Ms Brunton was also to attend the grievance meeting as a witness and note-taker. The claimant believed that Ms Brunton would be biased in dealing with his grievance: he accepted under cross-examination that he had no objective evidence to support that belief. In December 2024, the claimant declined to participate in the grievance process, noting that he had lodged an ET claim and that "it would not be appropriate for [him] to engage in further grievance meetings within the company's internal procedures." Mr McDonagh informed the claimant that the grievance process would continue in the claimant's absence. Mr McDonagh responded to the grievance in a letter on 5 March 2025.
48. The claimant's explanation for not bringing his claim sooner was that he did not want to lose his employment but, after the last week of August (2024), he was not able to continue. He told us that the reason he brought the claim when he did was because: that was the moment when the company broke him mentally and he knew that he had no future in the company at all. He told us that everything he had experienced over the years made him bring the claim and all of the earlier allegations were to do with the same person, Miss Keene. He did not accept that he was well enough to bring his claim sooner. The claimant gave evidence that a different doctor had confirmed that he was unable to bring proceedings sooner. However, when asked to clarify this he told us that in 2021 or 2022 a doctor at his GP surgery had described his situation as extremely difficult, but had neither been asked nor given an opinion that the claimant was so unfit.

49. We accept that the claimant was experiencing health problems by August or September 2024, and that the claimant was unfit for work from around mid-September 2024. However, taking into account the above findings, we have found that the claimant was capable of starting ACAS early conciliation and drafting and presenting his claim within the primary time limit - that is in fact what he did in November 2024.

50. We have found that the claimant decided not to bring a Tribunal claim sooner because he decided that it was in his best interests not to do so. The claimant subsequently changed his mind. There was no credible evidence that, had he brought a claim, his job would have been at risk.

CCTV

51. We shall deal now with the absence of CCTV footage. The respondent's CCTV footage is automatically overwritten every 30 days unless it is specifically retained and it was common ground that it was not available by the time of the Tribunal hearing. There was no claim for the Tribunal to determine about the CCTV footage, but the claimant argued that the respondent allowed the CCTV footage to be deleted so as to prevent it from being used as evidence in these proceedings. He argued that, had it been available, it would have evidenced his allegation that he had been singled out to work beyond his capacity during the period 28-31 August 2024. The claimant had been informed by EJ Sweeney at the case management hearing on 29 January 2025 that the Tribunal would not pay for an expert to review CCTV footage and the Tribunal would not view hours of CCTV footage. EJ Sweeney explained that, if either party considered it necessary for the Tribunal to view any CCTV they must clearly explain its relevance to the disputes; neither party should assume that the Tribunal will simply agree to a request to watch footage without being satisfied that it is reasonably necessary in order fairly to decide the issues in the case. By that time, the CCTV footage was no longer available in any event.

52. The claimant had, in his grievance (raised on 12 September 2024 by email to Mike Jones of the respondent) complained, "at the end of August 2024 I was assigned tasks well beyond any reasonable physical capacity, packing a massive amount of linens and towels, which is usually done by several people. I worked intensely, but despite my efforts, I was constantly monitored and hurried along. Later, I learned that this was Mrs. Keene's decision, seemingly intended to intimidate me. I kindly request that CCTV footage from that period be preserved."

53. Neither Mr Jones nor Mr Emslie had preserved the CCTV footage. By the end of September 2024 (and therefore by the time that the claimant's claim was presented to the Tribunal on 18 November 2024), the CCTV footage from August had been overwritten automatically because it had not been specifically retained. We accept that Miss Keene was not asked to retain the CCTV footage; she was consistent about that during the grievance investigation and before us, and she had not been provided with a copy of the grievance at the time of the investigation.

54. As part of Mr McDonagh's grievance investigation, he asked about the CCTV footage. On 5 March 2025, Mr McDonagh's letter setting out the outcome to the grievance stated that, "Given that you did not provide any specific dates and times in relation to the footage, no CCTV has been retained from August 2024. The CCTV automatically overrides any footage every 30 days, so footage from this period is no longer accessible."
55. The claimant drew our attention to previous issues with CCTV footage not being preserved in relation to incidents involving his mother and Angelika Bielawa.
56. However, in our judgment, there was insufficient persuasive evidence on which to reach a finding that the respondent allowed the CCTV footage to be deleted so as to prevent it from being used as evidence in these proceedings and we did not draw an adverse inference from the fact that it was not preserved. Although we did not hear from Mr Jones or Mr Emslie about why the footage had not been preserved, these proceedings were not in existence at the time the footage was overwritten. Footage was (unless specifically preserved) automatically overwritten after a 30 day period and required no action to be taken to delete it. We did not accept that the footage was deleted to prevent it being used as evidence in these proceedings. There was in any event no specific complaint for the Tribunal to determine about the CCTV footage. As can be seen from our findings below, we have upheld several of the claimant's factual allegations relating to the period 28-31 August 2024 in the absence of the CCTV footage, and the CCTV footage would have been unlikely to assist with the verbal discussions that took place in the packing team at that time.
57. Further, even if a list of tickets scanned by each individual in the packing team was available for 28-31 August 2024, it was not clear that it would assist us in light of our other findings. In particular, Miss McGrevy scanned tickets for everyone in the team at different times during that period, so it would remain unclear which packer had packed any given ticket. Further, each ticket was different and so the number of tickets which any individual had packed would not reflect how hard they had worked.
58. We shall now make findings in relation to the specific complaints. It was not possible to make findings in respect of all matters covered by the Earlier Complaints (as defined below) but we have made findings so far as possible. We deal with this further below. We have, of course, made findings of fact in relation to the complaints which had been presented in time.
59. Although we have, in the interests of clarity, set out our findings under the relevant headings, we emphasise that all of the evidence before the Tribunal was considered in reaching our decisions.

Complaint 1 (paragraphs 2.1.1 and 3.1 of the list of issues)

60. This complaint was about the alleged refusal of one week's holiday pay in October 2021.

61. Leave was approved by Ian Roy, the claimant's line manager at the time, for 20-30 October 2021. The form records "days' absence/holiday authorised" but does not specify whether that leave was to be authorised absence or holiday.
62. It was common ground that, because the claimant's employment had only begun in August 2021, he was not entitled to paternity leave.
63. The claimant's contract of employment at that time provided that the holiday year runs from 1 April to 31 March each year and that, if his employment commenced part of the way through the holiday year, his annual entitlement to holidays during that year would be calculated on a pro rata basis each month. The handbook which applied at the time provided that, "new starts will be allocated holiday entitlement on a pro rata basis accruing 2.416 days for each completed month of service."
64. As the claimant's employment had started part of the way through the holiday year, Miss Keene calculated the claimant's accrued holiday on a monthly basis as provided for by the contract of employment and employee handbook. She calculated that the claimant had accrued 50 hours of holiday entitlement. Taking into account that his maximum basic weekly working hours were 40 hours each week, her calculation was that he had accrued enough holiday to be paid for the first week of leave, but not the second.
65. Miss Keene arranged for the claimant to be paid 40 hours' holiday pay which meant that the first week of leave was paid. She allowed the claimant to take authorised unpaid leave for the second week. Although there was a dispute about when the discussion took place, it was common ground that, either before his leave or on his return, Miss Keene had told him that the reason why he was not paid for the second week of leave was that he had not accrued enough holiday.
66. The claimant raised the matter in his informal complaint and his grievance, believing that he was entitled to his full annual holiday entitlement from the start of his employment and suggested that others with shorter service than him had been paid for two weeks' holiday. Mr McDonagh's response to the claimant's grievance stated, "the second week was also granted as authorised absence and was unpaid as you had not accrued enough holidays at this point for any further paid holiday."
67. We note that the claimant was paid for 40 hours' holiday but had accrued 50 hours. We were not satisfied that the claimant asked to be paid for the remaining 10 hours and in turn was refused it as there was no specific reference to this in the contemporaneous evidence or his own witness evidence; rather, he was asking for payment for the second week in its entirety.
68. The claimant relied on Miss Keene having offered him holiday after the start of the next holiday year which he had not accrued, and we accept his evidence that Miss Keene did this. We do not accept his submission that this showed that Miss Keene used the rules about holiday entitlement to suit her, because the circumstances were different then; as he was employed when the holiday year started, he accrued all of his holiday entitlement at the start of the holiday year.

69. The respondent's practice is that, where employees' employment had started part of the way through the holiday year, holiday must be accrued before it is authorised. That is consistent with the contract and the handbook and we preferred the cogent and persuasive evidence of Miss Keene in this regard, which was supported by that of Mrs Bradley (although she was not working for the respondent in October 2021).
70. We did not accept the claimant's evidence that English employees were granted leave shortly after their employment started, even if they had not accrued enough hours. He was unable to provide any names or any further detail. There was no credible evidence that any employee had started their employment part of the way through the holiday year and been granted more holiday than they had accrued at the time. We accepted Mrs Bradley's evidence that, in a recent situation, an English employee had been refused holiday by Miss Keene because he had not accrued enough holiday and this had had nothing to do with the employee's nationality.
71. The claimant believed that his Polish nationality was the reason for his treatment but accepted that he had no evidence for that. Although the claimant argued that he should have been informed before his holiday that he would not be paid for the second week (which was not the subject of his claim), there was also no credible evidence that any failure to do so had anything to do with his nationality.
72. Having heard all of the evidence, we find that the reason why the claimant was not paid holiday pay for the second week of leave was that his employment had started part of the way through the holiday year and, in line with the contract of employment, handbook and the respondent's usual practices, he had not accrued enough holiday to be paid for the second week. It was in no sense whatsoever to do with the claimant's Polish nationality.

Complaint 2 (paragraphs 2.1.2 and 3.1 of the list of issues)

73. This complaint was about the claimant being denied promotion in July 2022, November/December 2022 and February 2023.
74. In July 2022, Mrs Bradley decided to promote Miss Paterson to the supervisor role to replace the existing supervisor Andrew Harvey. This was, in essence, because Miss Paterson was already doing the job well. Miss Paterson was already supporting Mr Harvey in the supervisor role whenever he was struggling and, in Mrs Bradley's view, should have been promoted long before she was. Whilst there was no evidence that there was a formal advertisement and recruitment process, we prefer Mrs Bradley's clear recollection that the claimant did not tell her at that time that he was interested in the role and so he was not considered for promotion.
75. Although the evidence of the claimant and Miss Paterson was that the claimant did a trial for the supervisor position in July 2022, we find that they were mistaken about this. The claimant had covered for Mr Harvey's absence for a few days at that time with the support of Miss Paterson. We prefer Miss Paterson's evidence that drivers had complained about the claimant's work at the time as she clearly

recalled this and it is referred to in the text message exchange between the claimant and Josephine in September 2022.

76. In November or December 2022, Miss Paterson was stepping down from the supervisory role and the claimant expressed an interest to Mrs Bradley in being promoted. Around this time, the claimant did a two-day trial period in the role on a Thursday and a Friday. We prefer Mrs Bradley's cogent evidence in this regard as she clearly recalled that Jane Johnson did her two-day trial period the following week and it was Jane Johnson that was promoted on this occasion. The significance of the trial period being on a Thursday and a Friday was that, on a Friday, the drivers' routes had to be closed down because there was no Friday night shift.
77. Although the claimant disputed this in his evidence, we found that the claimant's trial period had not gone well: he became stressed at having to deal with the drivers' issues and questions; he did not close off the routes properly on the computer when he said that he had; he was unable to direct two of the Process Operators (Gosia and Dorota) and they were telling him what to do instead; and he became so stressed that Mrs Bradley had to support him in allowing him to take five minutes outside. As to the drivers' questions, the supervisor can have up to 10 drivers surrounding them and asking questions, and the supervisor has to be able to answer all of them as the drivers have deadlines, but the claimant became stressed by this during his trial.
78. Mrs Bradley did not believe that he was ready for the supervisor role and believed that he was unable to handle the pressure of the job. Although we accept that the claimant was able to produce hourly reports of the team's performance from the computer, computer skills were only one factor in Mrs Bradley's considerations. Mrs Bradley discussed with the claimant how he thought the trial had gone. Initially he said it was okay. Mrs Bradley had then explained that she felt he was not ready, and the claimant agreed and went on to tell her that he had not realised how much there was to the supervisor role. She recalled this clearly as she was shocked by this at the time. The claimant accepted that Mrs Bradley had told him that he had potential for the future. Mrs Bradley informed the claimant that she could provide some training to him when he was ready, but the claimant accepted that he never asked her for this and it was common ground that she had not provided any. In Mrs Bradley's view, the claimant did not try after their discussion to learn the things he needed to learn in order to be successful the next time. We preferred Mrs Bradley's cogent evidence in relation to the trial period, which was supported in some respects by the claimant's evidence about being told that he had potential for the future and his acceptance that he had not asked her for training subsequently.
79. Mrs Bradley had informed Miss Keene that the claimant had had a trial period and how it had gone, and that she had planned to give Jane Johnson a trial too. Jane Johnson did her two-day trial period the following week. Mrs Bradley's observation was that Jane Johnson was not afraid to speak to and question colleagues, she had shown initiative and was always on the computer wanting to learn. Mrs Bradley made the decision to promote Miss Johnson. Mrs Bradley took into account that Miss Johnson's trial period had gone well. Although Jane Johnson

had shorter service than the claimant when she was promoted, Mrs Bradley's decision was, in essence, based on the person whose knowledge and actions had showed they were ready for the job, even if they still had some things left to learn.

80. In February 2023, Miss McGrevy was promoted. She had been team leader (a similar role) for Shift 1 and covered the absence of the production supervisor in the claimant's shift (Shift 2); she had done well in the role and the team was doing well. She was asked by Mrs Bradley to stay on. Mrs Bradley had not considered the claimant for promotion on this occasion as he had not expressed an interest in promotion after his unsuccessful trial period, his previously excellent packing performance had declined by this time and he had not tried to learn the things he had struggled with on the trial.

81. We accepted Mrs Bradley's clear and consistent evidence that promoting employees to the Production Supervisor role in these situations was her decision as she was able to cogently explain her reasoning on each occasion. Although Mrs Bradley approached Miss Keene to tell her who she had in mind for promotion, and Miss Keene might offer her thoughts, Miss Keene had never overruled Mrs Bradley. Miss Keene left the decisions to Mrs Bradley because it was Mrs Bradley who had to run the shift.

82. There was a text message exchange between the claimant and 'Josephine', a former employee of the respondent, in September 2022. In that exchange, Josephine had told the claimant that Miss Keene told Josephine that she would not give the supervisor role to the claimant. The claimant responded, "ohh it's even better if that was Lindsey." What he meant by this was not clarified in the evidence.

83. However, we did not accept that Miss Keene had blocked the claimant's promotion. Josephine did not give evidence to the Tribunal, Miss Keene denied speaking to Josephine about the matter, Josephine had left the respondent by the time of these messages in difficult circumstances, and we preferred Mrs Bradley's evidence that she made the decisions. Although there was no structured advertisement and recruitment process on any of these three occasions, Mrs Bradley was able to cogently explain her reasoning on each occasion which had nothing to do with nationality. As we have set out above, the respondent had supervisors and managers of different nationalities, including two managers who were Polish.

Complaint 4 (paragraphs 2.1.4 and 3.1 of the list of issues)

84. This complaint was that, between 2022 and 19 September 2024, Lyndsey Keene blamed the claimant for low packing output, despite this being due to lack of materials.

85. Miss Keene had not blamed the claimant for low packing output. The claimant accepted that there was no occasion on which Miss Keene had blamed him for low packing output and there was no evidence that she had. This was consistent with the respondent's evidence, which we accept, that: although individuals in the packing team have theoretical targets of around 1000 items, they work as a team towards a group target; individuals (including the claimant) were not questioned or challenged about their individual performance against targets; and the Production

Manager (but not the Plant Manager) would approach the Production Supervisor (and not Process Operators) about low packing. This was also consistent with Miss McGrevy's evidence, which we accept, that she had not witnessed Miss Keene speaking to a Process Operator about their work.

Complaint 5 (paragraphs 2.1.5 and 3.1 of the list of issues)

86. This complaint was that Lyndsey Keene falsely alleged that the claimant had left work without notifying a manager on 9 July 2023 and required the claimant to sign a return to work form on 12 July 2023.
87. It was common ground that, before the start of the claimant's night shift on 9 July 2023, he had spoken to the night shift supervisor Jack and told him that he was unable to stay beyond 2am. Jack had told him that it was fine to leave early.
88. Unfortunately, there was then a breakdown in communication as Jack did not inform the day shift managers that he had authorised this. That is why Miss Keene had asked Mrs Bradley to complete a return to work form with the claimant on the next shift, which she did. Miss Keene did not ask Jack directly about this because he would have been asleep following the night shift.
89. We did not accept the claimant's evidence that, after the claimant signed the form with Mrs Bradley, Miss Keene had falsely alleged to him that he had left work without notifying a manager. We did not find the claimant's evidence in this regard to be credible. Mrs Bradley had already completed the form with the claimant and accepted that his supervisor had agreed to him leaving early, and so there was no reason for Miss Keene to allege that he had done otherwise. Miss Keene denied they had spoken about the matter and was not cross-examined about this aspect of her evidence. None of the claimant's return to work forms (including this one) were signed by Miss Keene. Further, the claimant's March 2024 complaint and September 2024 grievance complained about being required or pressured into signing return to work forms in unreasonable situations and not about a false allegation by Miss Keene after having signed the form in July 2023.
90. We preferred the cogent and persuasive evidence of Mrs Bradley that completing a return to work form was the respondent's usual practice in these circumstances, where an employee returned from absence or lateness, and was for welfare purposes (that is, to check the returning employee was well enough to work and whether any adjustments were needed) and completing those forms had no negative consequences for employees. She told us that, "I do know that I do these for everything." This was supported by Jack's messages with the claimant confirming that, even when employees are sent home early during a shift, they have to sign a return to work form. Having heard all of the evidence, we find that employees would not be required to sign a form if the whole shift had ended early because of a machine breakdown.
91. The claimant was concerned that the Capability Policy for sickness absence provided that, if employees were absent or late due to sickness on more than two occasions in any rolling two month period or had more than two periods of absence lasting 7-21 days in any twelve month period, action would be taken under the

sickness absence procedure. However, this was not linked to completion of return to work forms which were completed and signed in a wider set of circumstances as described above.

92. We found that completing a return to work form in these circumstances was the respondent's usual practice in these circumstances and had nothing to do with the claimant's Polish nationality.

Complaint 8 (paragraphs 2.1.8 and 3.1 of the list of issues)

93. This complaint was that the respondent required the claimant to sign a return-to-work form on 10 May 2024 following bereavement leave and failed to advise him of his total entitlement to bereavement leave. The claimant's written evidence was that Miss Keene had ordered the completion of the form, but he was unsure in cross-examination whether it was Mrs Bradley's decision to complete the form.

94. On or around 9 May 2024, the claimant's father unfortunately passed away. He asked Mrs Bradley for a day's holiday, which she granted. This was subsequently changed so as to be treated as paid bereavement leave. Although there was an error on the absence record, the claimant had been correctly paid 12 hours' bereavement leave for the day.

95. The claimant returned to work on 10 May 2024 and Mrs Bradley completed a return to work form with him. Mrs Bradley decided to do so because, although the respondent's written sickness absence policy required return to work forms to be completed following sickness absence, as we found above, the respondent's practice was to require such forms to be completed where any employee returned from absence or lateness. The purpose of completing the forms in these circumstances was to ensure the employee's welfare (that is, to check they were well enough to work and whether any adjustments were needed). As set out above, we accepted Mrs Bradley's evidence that, "I do know that I do these for everything." Completing forms had no negative consequences for employees. The claimant was not aware of anyone who had been in similar circumstances. There was no credible evidence that Miss Keene had ordered the completion of the form.

96. Mrs Bradley did not inform the claimant of his total bereavement leave because she did not know this herself. The claimant accepted that she must not have known about the total bereavement leave entitlement when this was first discussed between them. Although it would have been preferable for the claimant to have been informed verbally about his total bereavement leave entitlement, employees' entitlement was set out in the employee handbook which employees could request or view in the staff canteen, and which the claimant demonstrated during the course of these proceedings that he was able to understand.

97. We found that neither matter had anything to do with the claimant's nationality.

Complaint 9 (paragraphs 2.1.9 and 3.1 of the list of issues)

98. The claimant complained that Lyndsey Keene overruled Amanda Bradley's decision to allow the claimant leave on 15 August 2024 to attend a veterinary appointment.
99. We found that the claimant initially approached Miss Keene to ask about leaving work early to attend the appointment, and she told him to speak to Mrs Bradley. Although the claimant's evidence was inconsistent about this, we note that he accepted in both his grievance and the claim form that he initially approached Miss Keene to ask about leaving work early to attend the appointment, and she told him that he would need to speak to Mrs Bradley. Mrs Bradley and Miss Keene's evidence was consistent with that position and we find that is what happened.
100. During the discussion between the claimant and Mrs Bradley, Mrs Bradley allowed the claimant to leave work. Mrs Bradley told the claimant that she would ask Miss Keene if the time could be treated as paid holiday. However, Mrs Bradley clearly told the claimant that there was no guarantee that he would be paid holiday. Mrs Bradley made a note 'H' on the rota and asked Miss Keene if it was possible to treat the time as paid holiday. We prefer Mrs Bradley's cogent and clear recollection of that. Although we note from Mrs Bradley's grievance investigation meeting that granting holidays was usually a matter for Mrs Bradley's discretion, she would check with Miss Keene about holiday requests if she was unsure whether to grant them, such as where several employees were already on holiday.
101. The claimant's contract provided, "all holidays must be authorised by your Manager. All holidays must be taken at times convenient to the Organisation," and, for holidays of two days or less, one week's notice was required.
102. The claimant told us that, the day after the leave, Mrs Bradley told him that Miss Keene had refused payment for the hours after he had left to attend the appointment. Mrs Bradley told us that she only found out that those hours had not been paid when the claimant told her. Taking into account these matters, on balance we have found that Miss Keene decided not to treat this time as paid holiday, not Mrs Bradley. This meant that the claimant was only paid for the hours he worked on that day.
103. We therefore find that Miss Keene did not overrule Mrs Bradley's decision to allow him leave – he was allowed to leave work to attend the vet's appointment. We also find that Miss Keene did not overrule Mrs Bradley's decision about whether the leave was paid. That is because Mrs Bradley did not decide that the leave would be paid – the decision not to treat the leave as holiday (and thus as paid leave) was a decision reached by Miss Keene. Miss Keene did not overrule Mrs Bradley's decision in either respect.
104. In any event, the claimant accepted that mid-August was a busy holiday period and that, if others had taken the same day as holiday, it might be that holiday at short notice would not be granted. The claimant accepted that he did not know anyone in a similar situation and so he could not say whether he had been treated differently to anyone else or to a hypothetical comparator. Although the claimant believed that he had some accrued holiday entitlement, even he was not sure about that.

105. The claimant's evidence was that not granting him the holiday was pure malice on Miss Keene's part and that, when a decision was taken at Miss Keene's level, it might have something to do with nationality. Taking into account our finding that on the evidence before us there was no pattern of discrimination or bias against Polish employees, there was no credible evidence for this belief, however.

106. We preferred Miss Keene's cogent evidence that, although she could not recall this individual incident, her decision not to treat the time as holiday would have been taken either because the maximum number of people were on holiday already; someone had already been declined holiday who had had to work that day; or the claimant did not have accrued holiday at the time, and not because of or related to the claimant's Polish nationality. This was the way she approached last minute holiday requests. We prefer Miss Keene's clear and cogent evidence that her decision had nothing to do with someone's nationality; she was able to clearly explain her reasoning and approach to these requests.

Complaint 10 (paragraphs 2.1.10 and 3.1 of the list of issues)

107. This allegation was that, between 28 and 31 August 2024, Lyndsey Keene transferred the claimant from packing cages to packing bags as a punishment for speaking to Richard Huskinsson (Assistant Transport Manager).

108. The claimant had spoken to Richard Huskinsson. Although there was a dispute about how long that conversation lasted, to have been noticed and worthy of comment by Miss Keene it must have been more than an exchange of a few words and they must have been standing chatting. There was also a dispute about where the conversation happened, but what was clear was that it was either outside or in the doorway to the outside and not in the packing area.

109. Miss Keene was on the factory floor at the time and noticed this. Although there was a dispute about whether it was Miss Keene or Miss McGrevy that spoke to the claimant about it, we find that Miss Keene spoke to Miss McGrevy about the claimant standing chatting; that was part of the reason why Miss McGrevy subsequently spoke to the claimant about two managers seeing him chatting (which we deal with later).

110. At some point after that, the claimant was moved from packing cages to bags. It was Miss McGrevy's responsibility to decide where individual packers worked and the claimant accepted that, normally, the Production Supervisor would decide where individual packers worked. We find that, on this occasion, Miss McGrevy made this decision. We prefer Miss McGrevy's cogent evidence in this regard, which was supported by Miss Keene's evidence. Although Miss Keene might suggest to supervisors that it might be better to have an extra person on a particular area or machine, Miss Keene did not decide where individual packers worked. Miss Keene recognised that she did not know the individual packers as well as the Production Supervisors and Production Managers and so she (Miss Keene) would not make decisions about where individual packers were to be deployed.

111. In any event, it was common ground that this period of time (28-31 August) was peak holiday season and it was busy. Miss Paterson's unchallenged evidence was that, around August 2024, the respondent began to have more bag customers than cage customers. Miss Bladziak was covering Mrs Bradley's role during this period. Miss Bladziak wanted the day shift to focus more on packing bags because there were more staff on shift. The claimant accepted that everyone in the team was asked to pack bags during this period.
112. Supervisors had been told that, on Thursdays (which the claimant accepted was the day with the highest number of tickets for bags), they must automatically move a packer from cages onto bags. This explained the message exchange in which Gabi told the claimant that Miss McGrevy told Gabi that, "there's nothing she could do [about you packing bags etc.] because she had been told she had to do it like that."
113. It was common ground that, during this period, the packing team was made up of Miss McGrevy – an English supervisor; Miss Paterson – a UK national, Scottish; Gabi – a UK national; and the claimant, Gosia and Dorota who were all Polish.
114. We accept that the claimant was unhappy about being reassigned to packing bags. He believed that he was working over capacity. He gave evidence that he thought it was to do with him being Polish. Taking into account our other findings, however, we preferred Miss McGrevy's clear and cogent evidence that she ensured that everyone took a turn on busy packing days and her decision to move packers between cages and bags depended on business need and not nationality. This was supported by Miss Paterson's evidence that, although she and the claimant mainly packed cages, everyone takes a turn working on bags and cages. Having heard all of the evidence, we find that the claimant was not moved onto packing bags as a punishment. Although the claimant perceived that packing bags was a punishment, he had been reassured that it was not.

Complaint 11 (paragraphs 2.1.11 and 3.1 of the list of issues)

115. This complaint was that, between 28 and 31 August 2024, Cheryl McGrevy and Katarzyna Bladziak, on the instruction of Lyndsey Keene, told the claimant to "hurry up".
116. We find that Miss McGrevy had asked the claimant and others in the team, including Miss Paterson who is a UK national, to hurry up if they had been standing talking for too long or they were not packing enough. The packing team had targets to meet and Miss McGrevy, as Production Supervisor, oversaw those targets and would need to provide an explanation if the team did not meet its target. Miss McGrevy accepted that, although she could not recall any specific incidents, she probably had asked the claimant and others in team, including Miss Paterson who is not Polish, to hurry up if they had been talking too long or not packing enough.
117. This was supported by Miss Paterson's evidence as she clearly recalled being told by Mrs Bradley and Miss McGrevy to hurry up when she was a Process Operator on occasions when she had been chatting, and recalled the claimant

being told and others in the team being told the same if they have been standing talking and not packing. The claimant's evidence was inconsistent in that he accepted that Miss McGrevy would say 'hurry up' to all Production Operatives regardless of nationality, and that she would speak to them if they were chatting and not packing enough, but then went on to dispute that Gabi and Miss Paterson had ever been told to hurry up even when they had been standing and chatting a lot.

118. We find that Miss Bladziak did not ask the claimant to hurry up; she was covering for Mrs Bradley during this period, but as Production Manager, she would approach the Production Supervisor if she had concerns about team targets not being met, and she would only step in to speak to Process Operators if approached by the Production Supervisor. She did not recall ever having told the claimant to hurry up and she was open about her recollection that she had spoken to the claimant on one occasion after Miss McGrevy had informed her that the claimant had been speaking to other colleagues and not concentrating on his job. Miss Bladziak's approach on that occasion – in common with other situations – was to ask if he had any problems and the claimant told her that he was looking for more work.

119. We have found that Miss McGrevy and Miss Bladziak had never been asked by Miss Keene to tell the claimant to hurry up. The claimant's evidence lacked specificity as to why he believed that Miss Keene was responsible for him being told to hurry up; his oral evidence was that he did not think that Miss McGrevy had told him to hurry up on her own initiative because she had no reason to do so. Mindful that this was a busy period, we prefer the consistent and persuasive evidence of the respondent's witnesses in this regard.

120. The claimant also appeared to rely on having allegedly been told that he was being watched. The claimant gave evidence that he had been told at each and every conversation that he was being observed and needed to be careful, and speculated that it was Miss Keene watching him although he conceded that Miss McGrevy had not said this at the time. We did not accept the claimant's evidence in this regard. Miss McGrevy was open about having told the claimant on one occasion that he needed to be careful because two managers (Miss Keene and another manager) had spotted him talking. That followed the discussion between Miss McGrevy and Miss Keene about the claimant speaking to Richard Huskinsson, and we preferred her evidence in that regard.

121. We find that Miss McGrevy's instruction to 'hurry up' was given to all team members if they had been talking too long or not packing enough, to ensure that the team met its target and had nothing to do with nationality.

Complaint 12 (paragraphs 2.1.12 and 3.1 of the list of issues)

122. This complaint was that, between 28 and 31 August 2024, unidentified individuals, on the instruction of Lyndsey Keene, did not scan tickets under the claimant's name to set him up for accusations that he was doing no work.

123. We found that the claimant was not singled out and deprived of scanning tickets to make it look like he was doing no work during this period.
124. Sometimes, when it was busy, to get through the work, one person (usually the Production Supervisor, in this case Miss McGrevy) would scan the tickets and move the cages, whilst the rest of the team packed bags and cages. Also, during this period, Miss Bladziak was covering Mrs Bradley's role and asked Miss McGrevy to do more of the scanning when it got busy to allow Process Operators to focus on packing. This enabled the Process Operators to concentrate on packing and helped to speed things up. Miss Bladziak had scanned tickets for her team when she was Production Supervisor and Miss McGrevy did this for her team as part of her Production Supervisor role. The claimant accepted that it was quicker to do it this way.
125. We find that Miss McGrevy had scanned tickets for everyone in her team when it was busy, including during this period, and had decided to do this for some of the period in question with the claimant. We do so because it is consistent with our findings as to the way the packing team worked. Although the claimant's evidence was that only his tickets were scanned by Miss McGrevy during this period, when questioning Miss Bladziak his position was that two of the other packers (Gosia and Dorota, who were also Polish) were allowed to scan their tickets themselves. We acknowledge that all packers' tickets might not have been scanned by Miss McGrevy at any given time, but we accept Miss Bladziak's explanation that that situation might have been because the claimant was packing bags containing a single item at that time and Gosia and Dorota were packing bags containing mixed items (such that they needed to move around the factory to collect different items anyway).
126. The claimant accepted initially that Miss McGrevy scanning tickets made it easier, but went on to dispute this later in his evidence. He was unhappy about someone else scanning his tickets because it meant that he had to pack more bags than usual, and walking to the computer and doing the scanning was an opportunity for him to 'have a breather'. He also thought that it was part of a plan by Miss Keene to accuse him of doing no work because tickets were not scanned in his name. He believed that he had disrupted this plan by filing a grievance during his holiday which took place over the following two weeks.
127. We found that tickets were scanned in the name of the person doing the scanning. That was because each employee uses their own number to scan tickets onto the system. An employee can only scan a ticket under the name of another employee if they have that employee's number. Employees are not supposed to share numbers with anyone else. This explained why, when Miss McGrevy scanned the claimant's tickets, they appeared on the system in her name. There was no evidence before us that employees shared numbers with each other.
128. If individual employees in the packing team had fewer tickets scanned against their name, this had no negative impact on individual employees. That was because the team had a group target (and were not assessed against individual targets) and the Production Supervisor would know that that individual had been packing and not scanning. The claimant accepted that he had never

been spoken to about not meeting an individual packing target. We did not therefore accept that Miss McGrevy was scanning tickets to set the claimant up for accusations that he had been doing no work.

129. We have found that it was Miss McGrevy's decision to scan the claimant's tickets and Miss Keene did not instruct her to do so. We prefer the cogent and consistent evidence of Miss Paterson, Miss McGrevy and Miss Bladziak in this regard. Miss McGrevy recalled one occasion (although was not sure when) when she was scanning tickets for the claimant and the claimant asked her if Miss Keene had told her to do it. Miss McGrevy had informed the claimant that Miss Keene had not done so, and explained to him that the reason she was doing that was that she had seen that they were behind target and it was easier for the claimant if she scanned and moved the cages so he did not need to move the cages around. Miss Bladziak also believed that it was easier for the claimant so that he did not need to walk back and forward to the computer and it helped to speed things up a bit.

130. We find that Miss McGrevy's decision to scan the claimant's tickets had nothing to do with the claimant's Polish nationality. Rather, it was for business reason – to help and to speed things up. Although the claimant thought it made things harder for him as he did not get a breather, believed that the intention was to "finish him off physically" (that is, exhaust him), and that it was to set him up, we find that Miss McGrevy's purpose was to make things easier for him so he did not have to walk up and down the factory, move the cages around and stand in a queue at the computer and to speed things up so that the team could achieve its target. Miss McGrevy had scanned tickets and moved the cages for everyone in the packing team when it was busy, including during this period.

Complaint 13 (paragraphs 2.1.13 and 3.1 of the list of issues)

131. This complaint is that, between 28 and 31 August 2024, Cheryl McGrevy told the claimant that he was not allowed to speak with colleagues. The claimant did not know whether this had anything to do with his nationality and felt that it was not justified in his case.

132. It was common ground that, as long as the team target was being met, Miss McGrevy as supervisor had no issue with Production Operatives talking whilst they worked alongside each other during a shift. She recognised that they work as a team.

133. The claimant appeared to rely on having been told that he was being watched but, for the reasons set out above, we found that Miss McGrevy had told the claimant on one occasion that he needed to be careful, as two managers had spotted him talking. To that end, Miss McGrevy had encouraged the claimant to concentrate on his work against the background of the claimant having been seen talking by two different managers. The claimant accepted that this was not a warning as such. However, the claimant gave evidence that he had not witnessed English workers being warned to stop talking by Miss McGrevy.

134. We preferred the clear and consistent evidence of Miss McGrevy and Miss Paterson who were open about Miss McGrevy having told everyone in the team,

including the claimant and Miss Paterson who is not Polish, to stop talking and get back to work at different times. Miss Paterson clearly recalled this. Miss McGrevy had done so because they had been talking too much and not packing enough and because the team needs to hit its target. If the team did not achieve its packing target, Miss McGrevy would need to provide an explanation to the Production Manager. We found that Miss McGrevy treated everyone in the team in the same way and it had nothing to do with nationality.

Complaint 14 (paragraphs 2.1.14 and 3.1 of the list of issues)

135. This complaint was that, between 28 and 31 August 2024, colleagues were prevented from assisting the claimant with his packing duties.

136. The claimant was not consistent in his account of what happened. In oral evidence, he told us at one point that others were almost told not to help him and later told us that Cheryl McGrevy and Katarzyna Bladziak had told other employees that the work had to be done by the claimant and to walk away when they approached him with a view to helping him and not to help. He also told us that he had been working beyond his capacity and that tickets were scanned before being packed to put him under pressure. Although the claimant told us that he was only packing bags (not cages) during this period of time, we did not accept this as, on his own case, he was transferred from packing cages to packing bags following the discussion with Richard Huskinsson.

137. We preferred the cogent evidence of Miss McGrevy and Miss Bladziak, which was supported by that of Miss Paterson in this regard. We found the evidence of the respondent's witnesses to be cogent and mutually supportive, and reliable as they each described the situation from the perspective of their own role. We also noted that the claimant accepted that he had not raised any issue about his workload at the time to Miss McGrevy.

138. We have found each member of the team has a job to do, and Miss McGrevy ensured that they took a turn doing different tasks, including packing bags and packing cages. If team members were not helping each other out throughout their shift, that was because they each had been assigned a job to do. However, team members did help each other at times; indeed, the claimant accepted that the packing team would often help each other. In particular, towards the end of shifts, team members did step in to help out if someone still had tickets which needed to be packed before the next shift. We preferred Miss Paterson's cogent evidence that she had never been told not to help other team members, she and the claimant did help each other out and managers preferred the team to help each other rather than stand around. We have found that Miss Bladziak and Miss McGrevy did not prevent people from helping the claimant.

139. We did not accept that the claimant's tickets were scanned before being packed to put him under pressure. That is because of our earlier finding that team members did step in to help out if someone still had tickets which needed to be packed towards the end of a shift and so the claimant was not under pressure to complete all tickets which had been allocated to him.

140. Having heard all of the evidence, we find that Miss McGrevy's decisions about the work that the claimant did and the help he received had nothing to do with his Polish nationality and were for the non-discriminatory reasons we have set out.

Complaint 15 (paragraph 4 of the list of issues)

141. The claimant's victimisation complaint was that, because the claimant gave evidence in his mother's ET claim, Miss Paterson had refused to speak to the claimant because an unidentified individual had told her that the claimant had called her 'racist' during his mother's ET proceedings.

142. The claimant's unchallenged evidence was that he had not given any evidence about Miss Paterson in his mother's ET proceedings.

143. We preferred Miss Paterson's evidence that she did not refuse to speak to the claimant as it was inherently unlikely that she could carry out her work as part of the team without doing so. She was quiet with everyone in the team, but discussions about work continued as necessary to get the work done.

144. We also found that Miss Paterson was not quiet because the claimant had given evidence. She became quiet because of the way Gosia and Dorota had made her feel, after they had allegedly been told about evidence which the claimant did not give.

145. Standing back and considering all of our findings of fact, we preferred the evidence of the respondent's witnesses that the decisions and actions which the claimant complains about had nothing to do with the claimant's Polish nationality. Although there were some inconsistencies, their evidence was in overall terms mutually supportive, and each relevant witness was able to give a cogent explanation about the reason why things were done in a particular way, which reflected common workplace practices. Their evidence did not appear rehearsed and each relevant witness gave an account or explanation from the perspective of their own role and experience. In cross-examining Miss McGrevy, the claimant conceded that, from his perspective, Miss McGrevy never bullied him or bullied him because of nationality. Miss Paterson's perspective was that within the respondent's business, "it's about whether you're a hard worker." Miss Bladziak had not experienced any poor treatment from Miss Keene or anyone else within the respondent because of her Polish nationality.

Submissions

146. After the evidence had been concluded, the claimant and Mrs Callan made submissions. It is not necessary to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from our findings and conclusions below. Suffice it to say that we fully considered all the submissions made, together with the statutory and case law referred to, and the parties can be assured that they were all taken into account in coming to our decisions.

Law, briefly

Section 13 complaints - direct race discrimination

147. Section 13 Equality Act provides:

(1) 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.

148. In determining whether there is direct discrimination it is necessary to compare like with like. This is provided for by section 23 of the Act, which says that in a comparison for the purposes of section 13 there must be no material difference between the circumstances relating to each case. In these proceedings, therefore, the comparator must be an individual whose nationality is not Polish.

149. This means that the comparator must be someone in the same position in all material respects as the claimant, save only that he is not a member of the protected class: *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] I.C.R. 337 HL. This does not mean that the circumstances of the claimant and the comparator must be identical in all respects. Only those circumstances that are 'relevant' to the treatment of the claimant must be the same or nearly the same for the claimant and the comparator (see also paragraph 3.23 of the EHRC Code of Practice on Employment 2015).

150. This principle of material similarity applies whether the comparator is an actual or hypothetical comparator: *Shomer v B and R Residential Lettings Ltd* [1992] IRLR 317, CA. Where there is no actual comparator, it is incumbent upon the Tribunal to consider how a hypothetical comparator would have been treated: *Balamoody v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* [2002] I.C.R. 646, CA.

151. Where a complainant relies on a hypothetical comparator, the 'circumstances' of the comparator must be constructed. When considering whether the employer would have treated the comparator any differently from the claimant, it may draw inferences from (among other things) the treatment of a person whose circumstances are not sufficiently similar to warrant them being treated as an actual comparator. Although not actual comparators, their circumstances may be sufficiently similar, and their treatment such, as to justify an inference that the Respondent would have treated a hypothetical comparator in similar circumstances to the claimant, more favourably.

152. For there to be direct discrimination, the treatment needs to be because of the protected characteristic. Where the reason for the treatment is not immediately apparent – or inherently discriminatory - it is necessary to explore the mental processes, conscious or unconscious of the alleged discriminator to discover the facts that operated on his or her mind: *Nagarajan v London Regional Transport* [1999] IRLR 572, HL; *Chief Constable of West Yorkshire Police v Khan* [2001] UKHL 48, [2001] IRLR 830. The test is: what was the reason why the alleged discriminator acted as they did; what, consciously or unconsciously, was their reason? The subject of the inquiry is the ground of, or reason for, the putative

discriminator's action, not his or her motive: *Amnesty International v Ahmed* [2009] IRLR 884, EAT. 32.

153. However, the protected characteristic need not be the only reason or even the main reason for the treatment for it to be said to be 'on grounds of' or 'because of'. It is enough that the protected characteristic is an effective cause. In *Nagarajan* Lord Nicholls said:

"Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out."

Harassment

154. The definition of harassment is contained in section 26 of the Act. So far as relevant, section 26 provides as follows:

'(1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and*
- (b) the conduct has the purpose or effect of—*
 - (i) violating B's dignity, or*
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

....

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;*
- (b) the other circumstances of the case;*
- (c) whether it is reasonable for the conduct to have that effect.'*

155. It is the 'conduct' that must be 'related to' the protected characteristic. If it is asserted that a failure properly to investigate a grievance alleging discrimination constitutes harassment, it is not sufficient that the grievance was related to the protected characteristic; the failure properly to investigate the grievance, which constitutes the conduct, must be related to the protected characteristic: *Worcestershire Health and Care NHS Trust v Allen* [2024] EAT 40 (unreported).

156. The test of whether conduct was related to a protected characteristic is a different and broader test from that of whether conduct was "because of" a protected characteristic. Whether or not the conduct is related to the characteristic in question is a matter for the tribunal, making a finding of fact drawing on all the

evidence before it and its other findings of fact. A finding about the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question. Nevertheless, there must be still, in any given case, be some feature of the factual matrix which can properly lead the Tribunal to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim: *Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and another* [2020] IRLR 495.

157. If the conduct is found to have had the purpose of creating the proscribed environment, it does not matter that it did not actually have that effect. Where a claimant contends that the employer's conduct has had the effect of creating the proscribed environment for them, they must actually have felt or perceived that their dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for them. The Tribunal must also consider whether it was reasonable for the conduct to be regarded as having that effect and take into account all the other circumstances: *Pemberton v Inwood* 2018 ICR 1291, CA.

158. The Court of Appeal has also warned Tribunals against cheapening the significance of the words of section 26(1)(b) as they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment: *Land Registry v Grant* [2011] ICR 1390, CA. Furthermore, whilst a one-off incident may amount to harassment, a Tribunal must bear in mind when applying the test that an 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration: *Weeks v Newham College of Further Education* UKEAT/0630/11, [2012] EqLR 788, EAT.

Victimisation

159. The provisions of section 27 EqA are, so far as relevant, as follows:

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

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

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

- (a) bringing proceedings under this Act;*
- (b) giving evidence or information in connection with proceedings under this Act;*
- (c) doing any other thing for the purposes of or in connection with this Act;*
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.*

160. As to victimisation, section 27 EqA provides that an employer victimises an employee if they subject them to a detriment because they have done a protected act. The respondent accepts that the claimant had done a protected act. This case

therefore turns on whether the claimant was subjected to a detriment because he had done a protected act.

161. This is not a 'but for' test. Rather, it requires the Tribunal to identify 'the real reason, the core reason, the *causa causans*, the motive' for the treatment complained of: *Chief Constable of West Yorkshire Police v Khan* 2001 ICR 1065, HL.

162. For a victimisation claim to succeed, it is not necessary for the protected act to be the only reason for the detriment; where there are mixed motives, the Tribunal must consider whether the protected act had 'sufficient weight' in the decision-making process so as to be treated as 'a cause': *Nagarajan v Agnew* [1994] IRLR 61, EAT and *O'Donoghue v Redcar and Cleveland Borough Council* [2001] EWCA Civ 701, CA.

163. A subtle distinction may be made where the reason for the detriment was not the protected act as such, but some feature of it which could properly be treated as separable: *Martin v Devonshires Solicitors* 2011 ICR 352, EAT.

Burden of proof

164. Discrimination can be subtle. The law recognises that there is rarely evidence of discrimination, such that much depends on inferences to be drawn from the facts. People usually do not admit to discrimination, not even to themselves. The law tries to assist in section 136 EqA which sets out the burden of proof provisions as follows:

(1) *This section applies to any proceedings relating to a contravention of this Act.*

(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

(4) *The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.*

(5) *This section does not apply to proceedings for an offence under this Act.*

(6) *A reference to the court includes a reference to—*

(a) an employment tribunal;...

165. There may be times, as noted in the cases of *Hewage v Grampian Health Board* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we

remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.

166. In cases where the tribunal is not in a position to make positive findings, s136(2) means that if there are facts from which the tribunal could properly conclude, in the absence of any other explanation, that the respondent had directly discriminated, it must so conclude unless A satisfies it otherwise on the balance of probabilities. In considering whether it could properly so conclude, the tribunal must consider all the evidence, not just that adduced by the Claimant but also that of the Respondent. That is the first stage, which is often referred to as the 'prima facie' case. The second stage is only reached if there is a prima facie case. At this stage, it is for A to show that he did not breach the statutory provision in question. The Respondent must show a non-discriminatory reason for the treatment in question. It is not required to show that it acted reasonably or fairly, although unreasonable and unfair treatment is not irrelevant. Therefore, the Tribunal must carefully consider A's explanation for the conduct or treatment in question: *Madarassy v Nomura International plc* [2007] I.C.R. 867, CA; *Igen Ltd v Wong* [2005] I.C.R. 931, CA.

Time limits

167. Section 123 of the Equality Act 2010 provides, so far as relevant, as follows:

- (1) *Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*
(a) *the period of 3 months starting with the date of the act to which the complaint relates, or*
(b) *such other period as the employment tribunal thinks just and equitable.*

.....

- (2) *For the purposes of this section—*
(a) *conduct extending over a period is to be treated as done at the end of the period;*
(b) *failure to do something is to be treated as occurring when the person in question decided on it.*

168. In deciding whether there was 'conduct extending over a period' in cases involving numerous discriminatory acts or omissions, it is not necessary for the claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he or she has to prove, in order to establish conduct extending over a period, is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs': *Hendricks v Metropolitan Police Comr* [2002] EWCA Civ 1686, [2003] IRLR 96.

169. In *South Western Ambulance Service NHS Foundation Trust v King* [2020] IRLR 168, the EAT considered the authorities on this issue and held that the only acts that can be considered as part of a continuing course of conduct are those that are upheld as acts of discrimination or some other contravention of the Equality Act 2010.

170. The three month time limit set out in section 123(1)(a) is not absolute. An employment tribunal has discretion to, in essence, extend the time limit for presenting a complaint where it thinks the complaint was brought within such other period as the Tribunal thinks just and equitable. Although this is a broader discretion than is the case in unfair dismissal claims, it is not without limits. In *Robertson v Bexley Community Centre t/a Leisure Link* [2003] IRLR 434 (at para 25), the Court of Appeal stated:

"It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

171. There is no requirement for exceptional circumstances to exist before time may be extended, simply that it must be just and equitable to do so. The Court of Appeal emphasised that there is no need to go through every factor set out in the s33 Limitation Act 1980 'checklist' recommended in *British Coal Corporation v Keeble* [1997] IRLR 336. Underhill LJ stated at paragraph 38 of his judgment: *"The best approach for a Tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time including.....the length of, and the reasons for, the delay."*

172. In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194, it was held that section 123 gave the tribunal the widest possible discretion to extend time, with no list of factors to consider. However, the length of and reasons for the delay would almost always be relevant, as would prejudice to the respondent. The discretion's width meant that there was limited scope to challenge it on appeal, unless the tribunal had erred in principle (paras 18-20).

173. That case also held that there was no justification for reading into s.123 a requirement that the tribunal had to be satisfied that there was a good reason for the delay, let alone that time could not be extended absent an explanation from the employee. Whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the Tribunal ought to have regard. However, the identification of reasons and the weight given to them were matters for the tribunal (paras 25-26).

174. In *Secretary of State for Justice v Alan Johnson* [2022] EAT 1 (28 September 2021, unreported), the EAT held (at paragraph 23) that prejudice caused to the respondent may be a reason which weighs against a just and equitable extension, even in relation to prejudice which is not the fault of either party.

175. Delay caused by a claimant invoking an internal grievance or disciplinary appeal procedure prior to commencing proceedings may justify the grant of an

extension of time but it is merely one factor that must be weighed in the balance along with others that may be present: *Robinson v Post Office [2000] IRLR 804, EAT*.

Conclusions

176. We will start by setting out our judgment on the complaints which have been brought within the primary time limit set out within the Equality Act 2010 (“EqA”).

177. Each of these complaints was pursued as a direct race discrimination complaint pursuant to section 13 EqA and a complaint of harassment related to race pursuant to section 26 EqA. For the direct race discrimination complaints, the claimant relied on a hypothetical comparator and complained that the alleged treatment was because of his Polish nationality. For the harassment complaints, the claimant complained that the alleged treatment was related to his Polish nationality.

Complaint 4 (paragraphs 2.1.4 and 3.1 of the list of issues)

178. This complaint was that, between 2022 and 19 September 2024, Lyndsey Keene blamed the claimant for low packing output, despite this being due to lack of materials.

179. ACAS early conciliation started on 25 September 2024 and ended on 1 November 2024. The claim was presented on 18 November 2024. Although the latter part of this complaint (26 June 2024 to 19 September 2024) was brought in time, the earlier part of this complaint would only be in time if it formed part of a continuing course of unlawful conduct extending over a period ending on or after 26 June 2024. The complaint might therefore be in time in its entirety.

180. We found that Miss Keene had not blamed the claimant for low packing output. This complaint therefore fails on the facts and is dismissed.

Complaint 9 (paragraphs 2.1.9 and 3.1 of the list of issues)

181. The claimant complained that Lyndsey Keene overruled Amanda Bradley’s decision to allow the claimant leave on 15 August 2024 to attend a veterinary appointment.

182. We found that Mrs Bradley allowed the claimant to leave work. We found that Miss Keene decided not to treat this time as paid holiday, not Mrs Bradley. This meant that the claimant was only paid for the hours he worked on that day.

183. We therefore found that Miss Keene did not overrule Mrs Bradley’s decision to allow him leave – he was allowed to leave work to attend the vet’s appointment. We also found that Miss Keene did not overrule Mrs Bradley’s decision about whether the leave was paid. That is because Mrs Bradley did not decide that the leave would be paid – the decision not to treat the leave as holiday (and thus as paid leave) was a decision reached by Miss Keene. Miss Keene did not overrule Mrs Bradley’s decision in either respect.

184. This complaint therefore fails on the facts and is dismissed.

185. In any event, as to the section 13 complaint, the hypothetical comparator in this case would be a Process Operator who was not Polish and who asked to take paid holiday at short notice. We found that Miss Keene would have treated a request made by a hypothetical comparator in the same way. There was no disparity in treatment between the claimant and a hypothetical comparator and the claimant was not therefore treated less favourably. The claimant has not established a prima facie case of discrimination but, even if he has, we were positively satisfied that Miss Keene's decision not to treat the time as holiday was in no sense whatsoever to do with the claimant's Polish nationality and was for the non-discriminatory reasons we have set out.

186. In any event, as to the section 26 complaint, although Miss Keene's decision not to treat the time as holiday would amount to unwanted conduct, it was not related to the claimant's Polish nationality. 'Related to' is a broader test than 'because of' but we conclude that the conduct was in no sense whatsoever to do with his Polish nationality.

Complaint 10 (paragraphs 2.1.10 and 3.1 of the list of issues)

187. This allegation was that, between 28 and 31 August 2024, Lyndsey Keene transferred the claimant from packing cages to packing bags as a punishment for speaking to Richard Huskinsson (Assistant Transport Manager).

188. We found that the claimant had spoken to Richard Huskinsson and this had been noticed by Miss Keene who was on the factory floor at the time. We found that Miss Keene spoke to Miss McGrevy about the claimant standing chatting and, at some point after that, the claimant was moved from packing cages to bags. We found that it was Miss McGrevy, not Miss Keene, that decided to transfer the claimant from packing cages to packing bags and this was not a punishment. This complaint therefore fails on the facts.

189. As to the section 13 complaint, in any event, the statutory comparator in this case would be a Process Operator working in the packing team who was not Polish. During this period, the packing team was made up of Miss McGrevy – an English supervisor; Miss Paterson – a UK national, Scottish; Gabi – a UK national; and the claimant, Gosia and Dorota who were all Polish.

190. This period of time (28-31 August) was peak holiday season and it was busy. We found that, in August 2024, there were more bag customers than cage customers and Miss Bladziak wanted the day shift to focus more on packing bags. Everyone in the team was asked to pack bags during this period. Supervisors had also been told that, on Thursdays (which were busy bag days), they must automatically move a packer from cages onto bags. Gabi, a UK national, had responded to the claimant's message of 31 August 2024 about his work packing bags on Thursday, which reads "probably it'll be me next week bc you and Doti are both off right?" Miss McGrevy ensured that everyone took a turn on busy packing

days and her decision to move packers between cages and bags was not a punishment and depended on business need and not nationality.

191. There was no disparity in treatment between the claimant and other non-Polish members of the packing team in similar circumstances and the claimant was not therefore treated less favourably. The claimant has not established a prima facie case of discrimination but, even if he has, we were positively satisfied that Miss McGrevy's decision to transfer the claimant to packing bags was not because of the claimant's Polish nationality. Her decision was in no sense whatsoever to do with the claimant's Polish nationality and was for the non-discriminatory reasons we have set out.

192. As to the section 26 complaint, in any event, although Miss McGrevy's decision to transfer the claimant from packing cages to packing bags would amount to unwanted conduct as the claimant did not like packing bags, it was not related to the claimant's Polish nationality. 'Related to' is a broader test than 'because of' but we conclude that the conduct was in no sense whatsoever to do with his Polish nationality.

Complaint 11 (paragraphs 2.1.11 and 3.1 of the list of issues)

193. This complaint was that, between 28 and 31 August 2024, Cheryl McGrevy and Katarzyna Bladziak, on the instruction of Lyndsey Keene, told the claimant to "hurry up".

194. We found that Miss McGrevy had asked the claimant and others in the team, including Miss Paterson who is a UK national, to hurry up if they had been standing talking for too long or they were not packing enough. We found that Miss McGrevy's instruction to 'hurry up' was given to all team members if they had been talking too long or not packing enough, to ensure that the team met its target and had nothing to do with his Polish nationality.

195. We found that Miss Bladziak did not ask the claimant to hurry up.

196. We found that Miss McGrevy and Miss Bladziak had never been asked by Miss Keene to tell the claimant to hurry up.

197. This complaint therefore fails on the facts and is dismissed.

198. As to the section 13 complaint, in any event, the statutory comparator in this case would be a Process Operator working in the packing team who was standing talking for too long or not packing enough and who was not Polish. As we found that Miss McGrevy's instruction to 'hurry up' was given to all team members if they had been talking too long or not packing enough, there was no disparity in treatment between the claimant and other non-Polish members of the packing team in similar circumstances and the claimant was not therefore treated less favourably. The claimant has not established a prima facie case of discrimination but, even if he has, we were positively satisfied that Miss McGrevy's instruction to hurry up was not because of the claimant's Polish nationality. Her decision was in

no sense whatsoever to do with the claimant's Polish nationality and was for the non-discriminatory reasons we have set out.

199. As to the section 26 complaint, in any event, although Miss McGrevy's instruction to 'hurry up' would amount to unwanted conduct as the claimant did not like being hurried along, it was not related to the claimant's Polish nationality. Although 'related to' is a broader test than 'because of', we conclude that the conduct was in no sense whatsoever to do with his Polish nationality.

Complaint 12 (paragraphs 2.1.12 and 3.1 of the list of issues)

200. This complaint was that, between 28 and 31 August 2024, unidentified individuals, on the instruction of Lyndsey Keene, did not scan tickets under the claimant's name to set him up for accusations that he was doing no work.

201. We found that the claimant was not singled out and deprived of scanning tickets to set him up for accusations that he was doing no work during this period.

202. We found that it was Miss McGrevy's decision to scan the claimant's tickets for some of this period and Miss Keene did not instruct her to do so. The complaint therefore fails on the facts.

203. As to the section 13 complaint, in any event, the statutory comparator in this case would be a Process Operator working in the packing team at a busy time who was not Polish. As we found that Miss McGrevy decided to do this with the claimant for some of the period in question and had done the same with everyone in the team at other times during the period, there was no disparity in treatment between the claimant and other non-Polish members of the packing team in similar circumstances and the claimant was not therefore treated less favourably. The claimant has not established a prima facie case of discrimination but, even if he has, we were positively satisfied that Miss McGrevy's decision to scan the claimant's tickets was not because of the claimant's Polish nationality. Rather, it was for a business reason – to help and to speed things up. She also believed it made things easier for the claimant. Her decision was in no sense whatsoever to do with the claimant's Polish nationality and was for the non-discriminatory reasons we have set out.

204. As to the section 26 complaint, although Miss McGrevy's decision to scan the claimant's tickets would amount to unwanted conduct as the claimant wanted to have a breather while he waited to scan his tickets at the computer, it was not related to the claimant's Polish nationality. Although 'related to' is a broader test than 'because of', we conclude that the conduct was in no sense whatsoever to do with his Polish nationality.

Complaint 13 (paragraphs 2.1.13 and 3.1 of the list of issues)

205. This complaint is that, between 28 and 31 August 2024, Cheryl McGrevy told the claimant that he was not allowed to speak with colleagues.

206. We found that, as long as the team target was being met, Miss McGrevy as supervisor had no issue with Production Operatives in the packing team talking as they worked alongside each other during a shift. She recognised that they work as a team. We found that she had told everyone in the team, including the claimant and Miss Paterson who is not Polish, to stop talking and get back to work at different times: this was because they had been talking too much and not packing enough. Miss McGrevy had encouraged the claimant to concentrate on his work against the background of the claimant having been seen talking by two different managers. If the team did not achieve its packing target, she would need to provide an explanation to the Production Manager.

207. As to the section 13 complaint, the statutory comparator in this case would be a Process Operator working in the packing team who was not Polish who had been talking too much and not packing enough. As we found that everyone in the team had been told to stop talking and get on with work when they were not doing so, including Jade, there was no disparity in treatment between the claimant and other non-Polish members of the packing team in similar circumstances and the claimant was not therefore treated less favourably. The claimant has not established a prima facie case of discrimination but, even if he has, we were positively satisfied that Miss McGrevy's instruction to stop talking to colleagues was not because of the claimant's Polish nationality. Rather, it was because he had been talking too much and not packing enough, and she needed to ensure that the team packing target was met. Her decision was in no sense whatsoever to do with the claimant's Polish nationality and was for the non-discriminatory reasons we have set out. The direct discrimination complaint therefore fails.

208. As to the section 26 complaint, although Miss McGrevy's instruction would amount to unwanted conduct, it was not related to the claimant's Polish nationality. Although 'related to' is a broader test than 'because of', we conclude that the conduct was in no sense whatsoever to do with his Polish nationality. The harassment complaint therefore fails.

Complaint 14 (paragraphs 2.1.14 and 3.1 of the list of issues)

209. This complaint was that, between 28 and 31 August 2024, colleagues were prevented from assisting the claimant with his packing duties.

210. We found that Miss McGrevy and Miss Bladziak did not prevent people from helping the claimant. We found each member of the team has a job to do, and Miss McGrevy ensured they each took a turn doing different tasks. However, team members did help each other at times. In particular, towards the end of shifts, team members did step in to help out if someone still had tickets which needed to be packed. Miss Paterson had never been told not to help other team members. This complaint therefore fails on the facts.

211. We recognise however that, by Miss McGrevy assigning tasks to individual members of the packing team, that was the task that they were required to carry out and they were not all jointly engaged in doing the same task. In that sense, even though team members were not instructed not to help the claimant, in reality they were not helping each other at all times throughout the shift. With that in mind,

even if we are wrong in concluding that this complaint fails on the facts, we have considered the remainder of the statutory tests on the basis (which we do not accept) that colleagues were prevented from helping the claimant.

212. As to the section 13 complaint, the statutory comparator in this case would be a Process Operator working in the packing team who was not Polish. We found that everyone in the team had a job to do; helped each other at times - in particular, towards the end of shifts, they stepped in to help out if someone still had tickets which needed to be packed; and had never been told not to help other team members. There was no disparity in treatment between the claimant and other non-Polish members of the packing team in similar circumstances and the claimant was not therefore treated less favourably. The claimant has not established a prima facie case of discrimination but, even if he has, we were positively satisfied that Miss McGrevy's decisions about the work that the claimant did and the help he received were not because of the claimant's Polish nationality. Rather, it was to ensure that the team's packing target was met and everyone took a turn doing different tasks. Her decisions were in no sense whatsoever to do with the claimant's Polish nationality and were for the non-discriminatory reasons we have set out. The direct discrimination complaint therefore fails.

213. As to the section 26 complaint, although Miss McGrevy's decisions about the work that the claimant did and the help he received would amount to unwanted conduct (in that he was busy and working more on bags than usual, which he did not like), the conduct was not related to the claimant's Polish nationality. Although 'related to' is a broader test than 'because of', we conclude that the conduct was in no sense whatsoever to do with his Polish nationality. The harassment complaint therefore fails.

Complaints with potential time issues

214. We will now move on to the complaints about matters which were alleged to have taken place earlier, those being Complaints 1 to 3, 5, 6, 8 (paragraphs 2.1.1 - 2.1.3, 2.1.5 – 2.1.6, 2.1.8 respectively, and paragraph 3.1, of the list of issues) and 15 (paragraph 4 of the list of issues). We will refer to these as "the Earlier Complaints."

215. The Earlier Complaints were alleged to have taken place between October 2021 and 10 May 2024. ACAS early conciliation started on 25 September 2024 and ended on 1 November 2024. The claim was presented on 18 November 2024.

216. We have not upheld any of Complaints 4 or 9 to 14 as contraventions of the Equality Act 2010. Therefore, those matters do not form part of a continuing course of unlawful conduct and cannot bring the Earlier Complaints within the time limit.

217. We must therefore decide whether the claim was brought within 'such other period as the employment tribunal thinks just and equitable'. In other words, we must decide whether it is just and equitable to extend the time for bringing these claims. ACAS early conciliation was not commenced within the primary time limit and therefore does not extend the time limit. The time limit for presenting the claim for the latest Earlier Complaint therefore expired on 9 August 2024. Therefore,

even if all of the Earlier Complaints were to be upheld and found to be conduct extending over a period, the complaints have still been made over 3 months after the primary three month time limit expired for the last complaint in time.

218. With regard to the reason for the delay in bringing these claims, this is not a case involving someone who was unfamiliar with their employment rights or employment tribunal procedures. The claimant's mother brought an ET claim in 2022, in which the claimant gave evidence at the final hearing in January 2024. By the time that his mother's ET claim was presented, he was aware of his rights to bring discrimination claims to the ET. If he was not aware of the specific time limits, he was therefore on notice to find out what these were.

219. The claimant's explanation for not bringing his claim sooner was that he did not want to lose his employment but, after the last week of August (2024), he was not able to continue. He told us that the reason he brought the claim when he did was because: that was the moment when the company broke him mentally and he knew that he had no future in the company at all. He told us that everything he had experienced over the years made him bring the claim and all of the earlier allegations were to do with the same person, Miss Keene. He did not accept that he was well enough to bring his claim sooner.

220. Although we accept that the claimant was experiencing health problems by August or September 2024, we have found that the claimant was capable of starting ACAS early conciliation and drafting and presenting his claim within the relevant primary time limit. The claimant worked as normal from the conclusion of his mother's ET claim in January 2024 up to and including 31 August 2024.

221. During his annual leave, he was able to raise a formal grievance on 12 September 2024 setting out, in some detail, several matters about which he wished to complain. An occupational health assessment on 20 November 2024 concluded that the claimant was unfit for work but was fit to participate in a formal grievance meeting with management as he would be able to understand the purpose of the meeting, follow the discussion and respond to questions. Various adjustments were recommended. The respondent appointed a different manager and offered to conduct the meeting at a different site or on Teams. Although the claimant was unfit for work at this time, we are satisfied that the claimant was capable of bringing his complaint within the time limit. Had he wanted to bring a claim, he could have done so within the time limit - that is in fact what he did in November 2024.

222. Raising his informal concerns in March 2024 does not explain the delay in bringing his claim because the claimant did not want to pursue it any further. Nor does raising his grievance in September 2024 because he began ACAS early conciliation shortly after that and then presented this claim, and did not engage further in the grievance process.

223. We found that the claimant decided not to bring a Tribunal claim sooner because he decided that it was in his best interests not to do so. The claimant subsequently changed his mind. There was no credible evidence that, had he brought a claim, his job would have been at risk.

224. It is for the claimant to satisfy the Tribunal that the complaint was brought within such other period as was just and equitable. He had ample opportunity to do so. We are entitled to take into account all of the circumstances in reaching this decision, including the length of and reasons for the delay. There is no requirement that the Tribunal must be satisfied that there was a good reason for the delay or that time could not be extended without an explanation for the delay.

225. As for the length of delay, and the impact of delay, the Earlier Complaints are about several alleged incidents which are several months apart and span a wide period. We address this further as follows.

Complaints 3 and 6

226. Complaint 3 was that Amanda Bradley, on the instruction of Lyndsey Keene, assigned heavy duties to the claimant following an incident concerning fractured fingers in August 2022 – over two years before the claim was brought and over three years before the final hearing. Complaint 6 was that he suffered direct race discrimination and race related harassment in January 2024 because an unidentified individual spread a false story that the claimant had called Jade Paterson ‘racist’ during the claimant’s mother’s employment tribunal proceedings the same month – over 10 months before the claim was brought.

227. It was inevitable that memories will have degraded in the interim. By the time of the hearing in early 2026, the witnesses’ recall of the events in question was, at times, poor. The variations in accounts of those giving evidence about these complaints showed that the evidence of what happened was likely to be less good than if the claim had been brought nearer the time. There was such a significant variation in recollections that we could not reach findings on the balance of probabilities in relation to these complaints with any confidence.

228. In terms of the alleged rumour, it was not clear who this person was and we did not hear evidence from them. There was no evidence about whether the unidentified individual had decided to ‘spread a false story’, as alleged, or whether they were merely describing their genuinely held belief about what the claimant had said in his evidence. Although the context was a race discrimination complaint, the claimant’s case was that this unidentified individual spread a false story so that he and Miss Paterson would fall out - which does not have any overt link to his Polish nationality. It was not possible to enquire into the mind of such individual, or hear evidence from them about whether their conduct was because of, or related to, the claimant’s Polish nationality.

229. The delay in bringing this claim has affected the cogency of the evidence and this weighs against granting an extension of time for Complaints 3 and 6, as does the public interest in the enforcement of time limits. Even when the claimant raised concerns informally with Mike Jones on 25 March 2024 (which he expressly stated he did not want to take further), it may well have been difficult for the respondent to investigate the events of 2022 and an alleged rumour on the factory floor over two months earlier. This was even more difficult by the time he raised his formal grievance in September 2024.

230. We recognise that there will be prejudice to the claimant if we do not exercise our discretion to extend time in that the claimant will not have these matters determined and, if we were to decide the claims are well founded, would not have a remedy for unlawful acts. However, that was a risk the claimant took when he decided against pursuing these complaints in the tribunal in a timely manner.

231. Weighing the relevant factors in the balance, the claimant has not persuaded us that it is just and equitable to exercise our discretion to extend time and allow Complaints 3 and 6 to be determined.

Complaints 1, 2, 5, 8 and 15

232. Although the respondent was able to lead evidence on these matters at the hearing, the witnesses' recall of the events in question was, at times, poor. For this reason, we have been able to make findings on many but not all factual matters in these complaints. We consider that the delay caused some prejudice to the respondent's ability to defend the claims. The issues at the centre of these claims were the motivations of various individuals for doing the acts said to be unlawful, whether those acts were related to the protected characteristic and, in some cases, whether the alleged act occurred at all, or happened in the way alleged. Whilst some facts that may have a bearing on those issues could be established by reference to documents, others were dependent on the recollections of individuals. Evidence of various factual issues was less good than if a claim about it had been brought nearer the time and even where witnesses believed their evidence to be accurate, the passage of time left their evidence more vulnerable to being considered unreliable.

233. Deciding the claims on evidence that is less good than it would have been if a claim was brought sooner would also be prejudicial to the individuals who are said to have committed the unlawful acts. None of those individuals are respondents: therefore, they do not face the risk of having a judgment made against them personally and being liable to pay any compensation. Nevertheless, several of those individuals remain in the respondent's employment and, if we were to determine these claims, we would be reaching conclusions about the lawfulness of their conduct, in a public forum and in a public judgment, with potential implications for their professional reputations (and, in turn, the reputation of the respondent's business). Even if there were no forensic prejudice, His Honour Judge Auerbach recognised in the case of *Wells Cathedral School Ltd and anor v Souter and anor EAT 0836/20*, that they are still 'on the receiving end' of this litigation and there is a public policy in them, not just the respondent, 'benefitting, so far as possible, from the certainty and finality which the enforcement of time limits potentially gives them'.

234. We recognise that if we do not extend time for these claims, the claimant will experience prejudice in that he will not have these matters determined and, if the Tribunal were to decide the claims are well founded, would not have a remedy for unlawful acts. However, that was a risk the claimant took when he decided against pursuing these complaints in the Tribunal in a timely manner.

235. Furthermore, in weighing that prejudice to the claimant we have regard to the merits of the claims. In this regard we have concluded that, if we were to extend time, these complaints would not succeed, for the reasons that follow.

236. **Complaint 1:** The claimant's complaint that he was harassed and directly discriminated against by being refused one week's holiday pay in October 2021 would not succeed if time were extended. He was granted holiday for the first week and authorised unpaid leave for the second week of leave. The reason why he was not paid holiday pay for the second week of leave was that his employment had started part of the way through the holiday year and, in line with the contract of employment, handbook and the respondent's usual practices, he had not accrued enough holiday to be paid for the second week. It was in no sense whatsoever to do with the claimant's Polish nationality.

237. **Complaint 2:** The claimant's complaint that he was denied promotion in July 2022, November/December 2022 and/or February 2023 would not succeed if time were extended. Mrs Bradley made the decision about which individual to promote on each of these occasions. Each of those decisions was in no sense whatsoever to do with nationality.

238. **Complaint 5:** The claimant's complaint that Lyndsey Keene falsely alleged that the claimant had left work without notifying a manager on 9 July 2023 and required the claimant to sign a return to work form on 12 July 2023 would not succeed if time were extended. We found that Miss Keene had not falsely alleged that the claimant had left work without notifying a manager on 9 July 2023. On 9 July, Jack, the claimant's night shift supervisor authorised the claimant to leave early. Unfortunately, there was then a breakdown in communication as Jack did not inform the day shift managers that he had authorised this. That is why Miss Keene had asked Mrs Bradley to complete a return to work form with the claimant on the next shift, which she did. Completing a return to work form was the respondent's usual practice in these circumstances, had no negative consequences for employees, and was in no sense whatsoever to do with the claimant's nationality.

239. **Complaint 8:** The claimant's direct race discrimination and race related harassment complaints that the respondent required the claimant to sign a return-to-work form on 10 May 2024 following bereavement leave and failed to advise him of his total entitlement to bereavement leave would not succeed if time were extended. Requiring a return to work form to be completed was the respondent's usual practice in these circumstances and had nothing to do with the claimant's nationality. Mrs Bradley did not inform the claimant of his total bereavement leave because she did not know this herself. Each of those matters was in no sense whatsoever to do with the claimant's nationality.

240. **Complaint 15:** The claimant's victimisation complaint was that, because the claimant gave evidence in his mother's ET claim, Miss Paterson had refused to speak to the claimant because an unidentified individual had told her that the claimant had called her 'racist' during his mother's ET proceedings. This complaint would not succeed if time were extended. The claimant did not suffer a detriment. Miss Paterson did not refuse to speak to the claimant. She was quiet with

everyone in the team, but discussions about work continued as necessary to get the work done. Even if we are wrong on that, we will deal with the reason. Although the claimant's evidence in the race discrimination complaint provided the context, this is not a 'but for' test – that is, but for the claimant having given evidence, would the claimant have been subjected to a detriment? Rather, the test was what, consciously or subconsciously, was Miss Paterson's motivation for subjecting the claimant to the alleged detriment? Did the protected act have a significant influence? Miss Paterson was not quiet because the claimant had given evidence. She became quiet because of the way Gosia and Dorota had made her feel, after they had allegedly been told about evidence which the claimant did not give. This is separable from the protected act itself.

241. The respondent would face the greater prejudice if these complaints were allowed to proceed. This was a lengthy delay (the shortest delay was over three months, and the longest was just over three years), the claimant was aware of his right to bring ET claims, and the reason for the delay was, in essence, that the claimant had changed his mind about wanting to pursue a claim. All of those factors above weigh against granting an extension of time as does the public interest in the enforcement of time limits. Having weighed these factors in the balance we conclude that the complaints were not brought within such other period as was just and equitable. It would amount, in essence, to allowing the claimant to change his mind after several months or years had passed, long after the expiry of the primary time limit and it is not just and equitable to allow him to do so.

242. Weighing all of the relevant factors the claimant has not persuaded us that it is just and equitable to extend time for any of the remaining complaints. It follows that the Tribunal does not have jurisdiction to determine Complaints 1, 2, 5, 8 and 15.

Conclusion

243. The Earlier Complaints are struck out because the Tribunal does not have jurisdiction to determine them.

244. None of the claimant's remaining complaints are well founded. The complaints are dismissed.

Approved by:

Employment Judge L Robertson

2 September 2026

Notes

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

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

ANNEX

1 TIME-BAR

- 1.1 Have the Claimant's complaints of discrimination been raised against the Respondent within the applicable statutory time limits in accordance with section 123 of the Equality Act 2010 ("**EQA**")?
- 1.2 If so, are some or all of the alleged acts or omissions capable of forming part of a continuing act of discrimination?
- 1.3 If so, which alleged acts of discrimination form part of a continuing act?
- 1.4 Did the Claimant present his claim in respect of any continuing act of discrimination within the applicable statutory time limit?
- 1.5 Have any discrimination complaints in relation to any alleged acts which are not capable of forming part of a continuing act of discrimination also been brought within the applicable statutory time limits?
- 1.6 If any of the Claimant's complaints of discrimination have been presented outwith the applicable statutory time limits, would it be just and equitable for the Tribunal to grant an extension to the ordinary time limit?

2 DIRECT DISCRIMINATION (RACE – EQA SECTION 13)

- 2.1 Did the Respondent treat the Claimant less favourably than it treats or would treat others, namely by (allegedly):
 - 2.1.1 Refusing to pay one week's holiday pay in October 2021 (referred to as 'Complaint 1');
 - 2.1.2 Denying the Claimant promotion in July 2022, December 2022 and/or February 2023 (referred to as 'Complaint 2');
 - 2.1.3 Amanda Bradley, on the instruction of Lyndsey Keene, assigning heavy duties to the Claimant following an incident concerning fractured fingers in August 2022 (referred to as 'Complaint 3');
 - 2.1.4 Lyndsey Keene blaming the Claimant for low packing output, despite this being due to lack of materials, between 2022 and 19 September 2024 (referred to as 'Complaint 4');
 - 2.1.5 Lyndsey Keene falsely alleging the Claimant had left work without notifying a manager on 9 July 2023 and requiring the Claimant to sign a return-to-work form on 12 July 2023 (referred to as 'Complaint 5');

- 2.1.6 An unidentified individual spreading a false story that the Claimant had called Jade Paterson 'racist' during his mother's Employment Tribunal proceedings in January 2024 (referred to as 'Complaint 6');
- 2.1.7 *[Failing to investigate the spreading of stories by an unidentified individual leading to argument with Shawn McCabe in April or May 2024 (referred to as 'Complaint 7')][the claimant confirmed that he was not pursuing this complaint];*
- 2.1.8 Requiring the Claimant to sign return-to-work form on 10 May 2024 following bereavement leave and failing to advise him of his total entitlement to bereavement leave (referred to as 'Complaint 8');
- 2.1.9 Lyndsey Keene overruling Amanda Bradley's decision to allow the Claimant leave on 15 August 2024 to attend a veterinary appointment (referred to as 'Complaint 9');
- 2.1.10 Lyndsey Keene transferring the Claimant from packing cages to packing bags as punishment for speaking to Richard (Driver's Manager) between 28 and 31 August 2024 (referred to as 'Complaint 10');
- 2.1.11 Cheryl McGrevy and Katarzyna Bladziak, on the instruction of Lyndsey Keene, telling the Claimant to hurry up between 28 and 31 August 2024 (referred to as 'Complaint 11');
- 2.1.12 Unidentified employees, on the instruction of Lyndsey Keene, not scanning tickets under the Claimant's name to set him up for accusations that he was doing no work between 28 and 31 August 2024 (referred to as 'Complaint 12');
- 2.1.13 Cheryl McGrevy telling the Claimant that he was not allowed to speak with colleagues between 28 and 31 August 2024 (referred to as 'Complaint 13');
- 2.1.14 Cheryl McGrevy and Katarzyna Bladziak preventing colleagues from assisting the Claimant with his packing duties between 28 and 31 August 2024 (referred to as 'Complaint 14');
- 2.2 If the answer to any of the above questions is yes, was that less favourable treatment because of the Claimant's race?
- 2.3 Has an appropriate comparator been identified for the purposes of each of the Claimant's direct discrimination (race) complaints? The claimant has named comparators for Complaint 2: he relies on Jade Paterson for the July 2022 promotion; Jane Johnson for the November 2022 promotion; and Cheryl McGrevy for the February 2023 promotion. In the alternative,

and for the remainder of the complaints, he relies on a hypothetical comparator.

- 2.4 If not, what are the characteristics of an appropriate hypothetical comparator?
- 2.5 Are there facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent discriminated against the Claimant as alleged at paragraph 2.1 above? (EQA, s 136(2))
- 2.6 If so, has the Respondent shown that it did not discriminate against the Claimant? (EQA, s 136(3))?

3 HARASSMENT RELATED TO RACE (EQA SECTION 26)

- 3.1 Did the Respondent subject the Claimant to alleged unwanted conduct, as set out at 2.1.1 to 2.1.14?
- 3.2 If the answer to any of the above questions is yes, did that unwanted conduct relate to the Claimant's race?
- 3.3 If the answer to 3.2 is yes, did that unwanted conduct have the purpose or effect of either
 - 3.3.1 violating the Claimant's dignity; or
 - 3.3.2 creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, having regard to the factors in section 26(4) of the EQA?

4 VICTIMISATION (EQA SECTION 27)

- 4.1 The respondent accepts that the claimant did a protected act within the meaning of section 27(2) EQA in the form of giving evidence or information in connection with proceedings under the EQA (section 27(2)(b)).
- 4.2 Did the Respondent subject the Claimant to the following detriment:
 - 4.2.1 Jade Paterson refusing to speak to the Claimant because an unidentified individual had told her that the Claimant had called her 'racist' during his mother's Employment Tribunal proceedings?
- 4.3 If the answer to 4.2 is yes, was the Claimant subjected to that detriment because the Claimant had done a protected act (referred to as 'Complaint 15')?