



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001673/2025

Held in Glasgow on 28 & 29 July 2026

**Employment Judge Campbell
Members Ms E Farrell
Mr J McCaig**

Mr Luke McGinlay

**Claimant
In Person**

Smart Choice Metering Limited

**Respondent
Represented by,
Mr J Wilson,
Lay Representative**

JUDGMENT OF THE TRIBUNAL

1. The complaints of (i) unfair dismissal and automatic unfair dismissal under sections 94 and 103A respectively of the Employment Rights Act 1996 and (ii) discrimination arising from disability under section 15 of the Equality Act 2010 are unsuccessful, and dismissed.
2. The complaint of harassment under section 26 of the Equality Act 2010 is partly upheld and the respondent is ordered to pay the claimant the sum of £2,500 as compensation for injury to feelings together with interest at the rate of 8% per annum covering the period between 21 November 2024 to the date this judgment is issued.

WRITTEN REASONS

Introduction

1. References in this judgment to sections of 'ERA' and 'EqA' pertain to the Employment Rights Act 1996 and the Equality Act 2010 respectively.
2. This claim came to a hearing which took place over two days in person. The claimant gave evidence on his own behalf, followed by witnesses for the respondent as follows:
 - a. Mr James Wilson, People Business Partner, who also represented the respondent at the hearing;
 - b. Mr Jason Cordina-Wilson, Operations Manager; and
 - c. Mr Joseph Laborero, Managing Director.
3. The parties agreed a joint bundle of documents. Where numbers appear in square brackets below, those correspond to pages within that bundle. The claimant provided a small number of further documents on the morning of the first day, comprising a medical letter and a set of photographs.
4. A list of issues had not been prepared, but the issues had been discussed at a case management hearing on 8 January 2026 and set out at paragraphs 9 to 28 of the judge's note which followed. The complaints were as follows:
 - a. Unfair dismissal under section 94 of ERA;
 - b. Automatically unfair dismissal by reason of making protected disclosures under section 103A of ERA;
 - c. Discrimination arising from disability under section 15 of EqA – the sole discriminatory act complained of being the claimant's dismissal; and
 - d. Harassment under section 26 of EqA.
5. One alleged protected disclosure was noted at that time and the claimant applied to amend his claim to add further alleged disclosures. By way of a decision issued to the parties on 3 July 2026 a judge allowed three further alleged disclosures to be relied on by the claimant. Those were:
 - a. An email treated as a grievance and dated 27 November 2024;
 - b. An email containing grounds of appeal against the grievance outcome, dated 23 December 2024; and
 - c. An 'unfair treatment statement' which the claimant sent to the respondent on 6 January 2025.

Therefore, four protected disclosures were alleged in total.

6. The parties provided oral closing submissions which were noted.

Findings of fact

The tribunal made the following findings of fact based on the evidence before it and on the balance of probability. Not every issue raised in evidence is included as the tribunal's function is to focus on the evidence relating to the legal issues which it has to determine and not every dispute of fact between the parties.

Introduction

1. The claimant was employed by the respondent between 6 September 2021 and 9 April 2025. He worked for the respondent installing smart electricity and gas meters in the homes of the public. From some point in 2022 he was asked to work on a particular contract which the respondent had with a client, referred to as the 'Providor/Sureserve' contract. In this judgment that is referred to as 'the contract'. Under the contract the respondent had to meet certain performance targets, which in turn dictated the targets it set for its meter installers such as the claimant. Installers (referred to as 'engineers' in evidence and in this judgment) were paid a salary and were eligible for performance-related bonuses if they met their personal targets. The claimant was assigned to an area which notionally covered the central belt of Scotland, although occasionally he had to travel as far as the Carlisle area.
2. The claimant reported to various managers at different times. Latterly he reported to Jason Wilson who was a field manager.

Disability status – s6 EqA

3. The claimant alleged that he had a disability as the term is defined in section 6 EqA. This was said to be by way of depression and/or anxiety. The respondent did not concede that the claimant was disabled in the legal sense, although it did not challenge the claimant's evidence in cross-examination. The focus of the respondent's case on this issue was more that it did not have knowledge – whether actual or deemed – of any impairment of condition which amounted to a disability.
4. The tribunal accepted the claimant's unchallenged evidence as follows. He had suffered from both anxiety and depression since his teens, and

thus for over 20 years. He had at times sought and obtained medical help by way of prescribed antidepressant and anti-anxiety medication from his GP and also counselling and therapy, including a course of Cognitive Behavioural Therapy. He was not constantly or consistently affected or impaired to the same degree or in the same way, but the effects would recur and tend to be by way of anxiety triggered by certain situations, which led to depression following. The effects included inability to follow normal thought and speech patterns, short term memory loss, inability to focus on tasks needing to be done, inability to interact with other people, sleep disturbance and insomnia, and feelings of overwhelm and dread. Earlier in his life particularly he experienced prolonged depressive episodes and suicidal ideation.

5. By his own admission the claimant did not tell anyone within the respondent that he had suffered from depression. In particular, he completed a pre-employment medical questionnaire in July 2021 in which he was asked a series of questions about his health, and in particular whether he had a disability. He answered every question 'No' to indicate he had nothing to disclose. He did not ever say that he believed he had a legal disability or use that word. At certain times he raised with Mr Wilson or Mr Bates, another field manager, that he was experiencing anxiety over a given situation. This was primarily in relation to jobs he was allocated on a given day. He sometimes raised that he believed he was being given too many jobs to complete, or that the amount of travel he would have to undertake was excessive. At times he said that he felt under pressure or would not be able to cope. As discussed below in the section title 'Discussion and decision', the information he provided was not sufficiently clear or extensive to make it obvious that the anxiety he experienced amounted to a disability, however, in his evidence he said that he believed it should have been evident from his conduct that his anxiety was more severe than for a normal person. He added that this was exemplified by his challenging behaviour which he described as awkward and going beyond that of a typically disgruntled employee.

Harassment complaint – section 26 EqA

6. The claimant alleged two acts of harassment. The relevant facts were determined as follows.
7. The first alleged act was said to have been by his manager, Mr Wilson on 8 September 2022. The claimant sent WhatsApp messages to Mr Wilson on that day to point out that he had been asked to complete a job in Dumfries with a total travelling time of over four hours in addition to other

jobs he had already been assigned (in his evidence he said there had been five) [175-176]. The extract of the conversation did not show any messages from Mr Wilson. According to the claimant's verbal evidence Mr Wilson telephoned him to 'threaten' him by saying that he could not simply stop working at his normal daily finish time and needed to complete his workload, and that if he did not the matter would be 'escalated' as an example of insubordination. The claimant recalled that Mr Wilson later spoke to Mr Laborero, then an Operations Director, and also to the client. The claimant said he was anxious about staying so late to complete the job and then travelling for over an hour and a half to get home.

8. The second alleged act of harassment was said to have occurred on and shortly after 20 November 2024. Leading up to that, the claimant had been absent from work from 18 June 2024 as a result of injuries sustained in a road traffic accident. He took a period of paternity leave immediately following that before using some accrued annual leave, resulting in his return date being 18 November 2024. The respondent's practice is to ask engineers to undergo a week-long period of retraining after an absence of such length, which the claimant completed on his return.
9. During the retraining week the claimant was told about some changes to working practices under the contract. Those included rules about checking in during the working day and when lunch breaks should be taken. The claimant viewed this as more restrictive as he liked to manage his working time and breaks as much as he could, sometimes skipping them to begin travelling home earlier. He became anxious and telephoned Mr Wilson to convey his state of mind and to ask if it were possible to transfer him to another contract. Mr Wilson emailed the claimant the next day [143-144] to thank him for seeking clarity in relation to when lunch breaks could be taken, and confirming that had to be between 12 noon and 2pm. He then went on to ask the claimant to confirm he had indicated that he would not be doing that, and instead would be taking his break at 4pm. He copied in Mr Bates, his fellow field manager, and also a member of the HR team. The claimant had not said he would disobey the rule. He had said that it would make his working day more difficult if he were required only to take his lunch break within the stipulated window. The claimant took the email to be a breach of trust and an attempt by Mr Wilson to set him up for future disciplinary action.
10. On 26 November 2024 and after returning to work the claimant was visited in the field by Mr Wilson and Mr Bates. It was standard practice for this to occur so that engineers' work could periodically be assessed, and also particularly normal after an engineer's return to duties following a period

of absence. Mr Wilson asked the claimant to come into his car to discuss some new procedures and an observation he had about the claimant's work, which was that he had left meter units in the front of his vehicle, and therefore at risk of being either stolen or a danger when the claimant was driving. The claimant viewed Mr Wilson's demeanour as aggressive and again believed that the manager was there to try and catch him out and gather evidence of his insubordination. He said Mr Wilson used the words 'Up to your old tricks again' although could not recall what was being referred to.

Protected disclosures – section 43A to 43L

11. The claimant alleged that he had made four protected disclosures as below. He said that each contained information about a belief he reasonably held relating to potential risk to the health or safety of individuals, namely homeowners and others in their properties, likely being endangered, and that as such the issue he was raising was in the public interest.
12. **First**, the claimant had a verbal discussion with Mr Wilson in November 2024 around the time of his return to work. He said that he could not do all of the jobs allocated to him on that day within his working time. He said if he were to do so it was likely to result in mistakes being made and possibly 'Category 1 defects'. Those are recognised in the industry to mean the most potentially serious type of defect in the installation of a domestic meter on a scale of one to three. A Category 1 defect is one which carries a risk of harm to people or property. The claimant did not specify what type of defect could occur or that there was a risk of harm to individuals by effectively rushing installation jobs but believed that by referring to the Category 1 variety Mr Wilson would appreciate that he was thinking of something which could result in a serious electric shock or a gas explosion at the customer's home.
13. The **second alleged protected disclosure** was an email dated 27 November 2024 [212-213] which the claimant sent to a Ms Bury within the respondent's HR team. In essence it was a complaint about Mr Wilson who he accused of bullying him and trying to manage him out of the company. He referred to the events which made up his second allegation of harassment above. This email was treated as a grievance and led to a meeting with Mr Jason Cordina-Wilson, an Operations Director.
14. The **third alleged protected disclosure** was a document emailed by the claimant to the respondent's Human Resources department on 23

December 2024 [220-222]. This contained his grounds for appealing against Mr Cordina-Wilson's decision not to uphold his grievance against Mr Wilson. Unlike the original grievance email, this document went into detail about concerns the claimant held about the working practices he was required to follow. Among other things, he mentioned that he had 'highlighted concerns regarding malpractice within the working environment (unrealistic workloads, pressuring and bullying etc which impact health and safety standards at work)' in the context of illustrating issues he experienced when following protocols for completing his work on a daily basis.

15. The **fourth alleged protected disclosure** was a statement the claimant sent to the respondent on 6 January 2025 [231-234]. On that date a meeting was scheduled to take place with the purpose of investigating two Category 1 defects which had been discovered among jobs the claimant had completed in late November or early December 2024. The claimant had been notified of the issue and invited to the meeting by letter dated 17 December 2024 [229-230] from a Lead Field Manager, a Mr Gall. On discovery of the defects the claimant had been 'stood down', i.e. taken off his duties but still paid as normal. That is standard practice after the detection of at least one Category 1 defect.

16. The claimant's statement went into more detail than any of the other alleged disclosures about his concerns over the working practices he was required to follow. He spoke about what he saw as a pressured working environment driven by client demands which led to engineers being asked to complete too many jobs, creating the risk of errors and harm to customers.

Process leading to dismissal

17. The investigation meeting, originally proposed for 6 January 2025 to discuss the Category 1 defects the claimant had caused, was postponed to 15 January 2025. The claimant and Mr Gall discussed the issues on that date. Mr Gall believed there was a disciplinary case to answer and a disciplinary hearing was arranged for 28 January 2025, later postponed to 31 January. A Mr Brewer-Dalziel, Head of Customer Experience, headed up a panel which conducted the hearing. He issued an outcome letter on 3 April 2025 [252-256]. The panel's decision was that the claimant was responsible for the defects and for general breaches of his duty of care and other workmanship standards. This amounted to gross misconduct which normally would have warranted dismissal, but

mitigating factors were considered which led to a decision to issue the claimant with a final written warning instead.

18. The claimant appealed against the decision of the panel by email on 9 April 2025 [257-258]. An appeal hearing took place on 7 May 2025 before Mr Laborero and two others as a panel. The appeal was unsuccessful and the warning stood, as explained by Mr Laborero in a letter dated 4 June 2025.
19. Upon the claimant being stood down in December 2024 the respondent notified the client, as was standard practice. The client indicated that it did not wish the claimant to return to working under the contract. It had a contractual right to make that stipulation. After the warning was issued to him, the respondent updated the client and asked it whether the claimant could return to working under the contract. The client would not allow him to do so.
20. The respondent therefore began a process of consulting with the claimant over whether there was alternative work for him to carry out. Mr Cordina-Wilson met with him on 1 April 2025 to discuss the situation and what alternative working options there might be. Two vacant roles were identified but they did not require an engineer with the claimant's skills. They were for a scheduler and an accounts assistant. The claimant did not wish to take them up. Although the respondent at this time had two similar contracts for the installation of smart meters, those were for the London area and the south coast of England. Mr Cordina-Wilson said that if an alternative role could not be identified and agreed on, the claimant would be treated as redundant. In a follow-up letter dated 2 April 2025 he itemised the redundancy and notice pay the claimant would receive in that scenario.
21. The claimant was given time to consider his position before a second meeting with Mr Cordina-Wilson on 9 April 2025. At that meeting the claimant suggested that an employee welfare-related role could be created for him. This was taken away for consideration but the respondent did not believe that a separate role was required for this purpose. Welfare responsibilities were already part of the roles of a number of other employees.
22. The claimant's dismissal was confirmed in a letter dated 10 April 2025 [271-272]. It said that the claimant was deemed dismissed with effect from 9 April 2025 on grounds of redundancy. The claimant accepted in

evidence that he received a statutory redundancy payment and pay in lieu of notice and accrued holidays as the letter stated.

23. The claimant appealed against the decision to dismiss him by way of a short email dated 16 April 2025. He was invited to a hearing which took place on 11 June 2025 before Mr Laborero and an HR colleague, Ms McDermott. The gap in time between the appeal email and the hearing was attributed to the need to conclude the claimant's appeal against his disciplinary warning first. At the hearing the claimant referred to a number of matters which were related to his conduct and considered within the disciplinary process. Mr Laborero emphasised that he had not been dismissed for misconduct, but rather redundancy in the sense that the client had exercised its right to prevent the claimant from working on its contract, leaving no role for him to fulfil. He did not see any issue with the fairness of the process which had been followed and the appeal was not upheld. The claimant therefore remained dismissed and the respondent's internal process was treated as concluded. A letter dated 19 June 2025 confirmed that outcome.

24. The claimant began a period of illness-related absence some time in 2025. It was unclear exactly when the period started, because he was stood down at the time and therefore not being asked to do any work. He referred in the note he submitted to the respondent on 6 January 2025 as being 'clinically signed off from being able to work right now' but there was no evidence that he submitted a fit note from his GP until one dated 12 March 2025 which certified he was unfit to work for 28 days owing to 'anxiety states' [195].

Discussion and decision

Disability status

25. The legal question to be determined was whether the claimant was a disabled person at the material time for the purposes of his claim, taken to be from 2022 onwards, the date of the first act complained of.

26. As is made clear by the Employment Appeal Tribunal in **Goodwin v Patent Office [1999] IRLR 4**, an employment tribunal should approach the four key questions relating to disability status in order. The questions are:

- a. Does the claimant have a physical or mental impairment;
- b. Does the impairment have an adverse effect on their ability to carry out normal day-to-day activities;
- c. Is that effect substantial; and

d. Is that effect long-term?

27. It was later added in **J v DLA Piper UK LLP UKEAT/0263/09** that it can in some cases be helpful to consider the effect of an alleged impairment before deciding whether there is an impairment. This may be so particularly in cases involving a claimed mental impairment which is disputed.
28. The onus is on the claimant to establish that each factor was present at the material time. He argued that he was disabled by way of anxiety or depression, or both combined and had been since his teenage years. The respondent did not accept that he was, although nor was the main body of his evidence in chief challenged in cross-examination.
29. Although there was little by way of supporting documentation from treating medical professionals, the tribunal accepted the claimant's evidence in chief which supported that each element of the definition of disability was present in relation to the condition of anxiety and had been since before 2022. The claimant did not satisfy the tribunal that he qualified as having a disability in relation to depression, however. This is explained further below.
30. The claimant provided uncontested evidence that he had suffered from anxiety since a teenager. There was a generalised and constant background level of anxiety in his life and he gave examples of situations which triggered more extreme and debilitating anxiety which included being in the company of others, particularly larger groups, and becoming overwhelmed by everyday demands which on other days he would manage to deal with, such as when he was busy at work or had to travel. The effects ranged from inability to think and speak in an ordered way to disturbed sleep and insomnia. In this way he satisfied the tribunal that at least some normal day to day activities were commonly and materially impacted by the condition. The occurrence of these situations and effects was sufficiently long-term to meet the requirements of section 6 of EqA. It is not necessary that he was constantly affected by them, but the fact that the symptoms regularly occurred over a lengthy period is sufficient.
31. The tribunal did not find sufficient evidence to make a finding that depression as a separate condition was a disability. The claimant provided less detail on this and the tribunal's impression was that it was more a secondary or reactive state, for example being triggered by some of his anxiety episodes, than a long-term impairment of its own.

Respondent's knowledge of disability status

32. The tribunal next considered whether the respondent had knowledge of the claimant's disability, and if so when. This is a specific requirement under his section 15 EqA complaint. Although it is not a strict requirement for his harassment complaint under section 26, it can be helpful to know whether any alleged perpetrators knew about the disability which the claimant relies on as a protected characteristic, given that it is not as self-evident as other protected characteristics.
33. In this context, knowledge means actual or deemed knowledge – i.e. whether the respondent (or the individual perpetrator) did know of the disability or reasonably ought to have known about it.
34. As found in evidence, the claimant did not disclose any medical conditions when joining the respondent despite the opportunity to do so. He did not ever use the term 'disability' to describe any condition or set of symptoms which affected him. He was not absent from work for a reason given as anxiety until during his absence some time between January and April 2025, when at least one fit note specified 'anxiety states'.
35. Although the claimant clearly made a connection in his mind between his difficulty with fulfilling some of the requirements of his role and his anxiety condition, that did not amount to proof that the respondent did as well. The claimant relied on them deducing that he had a disability from what he described as his difficult or awkward conduct. Examples given were that he resisted being put on the contract and, after he was, he complained about not being able to meet the demands of the role.
36. Considering all of the evidence that it had, the tribunal was not satisfied that there was enough to amount to knowledge of the claimant's disability by the respondent. This was not the most probable reason for his challenging conduct when it arose. It was more likely that he simply felt he was being asked to do too many jobs on a given day, or spend too much time travelling. It did not follow that the respondent recognised, or should have recognised, his anxiety as a condition amounting to a disability because he did so. On the occasions of that nature that he specifically referred to in evidence the tribunal could appreciate why any engineer would try to push back on what was being asked of them. For example, being allocated a new job in the afternoon of a working day that appeared to require nearly four and a half hours of travel there and back would be likely to trigger some resistance from any engineer, whether suffering from anxiety or not.

37. The claimant referred in the opening paragraph of his statement of 6 January 2025 to not being 'in a fit place mentally' and being 'clinically signed off from being able to work right now due to its [i.e. the disciplinary investigation] impact on my wellbeing.' The context of those words and the timing and nature of the document as a whole convey that the recent events comprising being removed from his duties and then required to attend a disciplinary interview were causing the claimant stress. He was being directly accused of gross misconduct and breaches of his duty of care. It was understandable that he was mentally affected by the process. The statement however was not explicit enough to put the respondent on notice of his disability in that context.

38. The claimant produced one fit note in relation to his period of absence from work in early 2025. This was dated 12 March 2025, was for 28 days and referred to the claimant's reason for being unfit to work as 'anxiety states'. Given that this was the first reference to stress by a medical professional, that it was issued at a time when the claimant was going through a disciplinary process, and that it was of 28 days' duration, this was not evidence sufficient to give the respondent actual or deemed knowledge of the condition. In particular, even if it had been an indicator of a sufficiently impactful mental impairment at the time, it did not suggest anything long-term as defined in section 6 of EqA. Like his own evidence discussed above, it was more likely to be taken as an indicator of a shorter-term situational state of health.

39. In summary therefore, the claimant had not shown that the respondent had, or reasonably should have had, knowledge of his disability.

Harassment complaints

40. The tribunal moved on to consider the claimant's complaints of harassment.

41. Neither of his two complaints was brought within the statutory time limit of three months. The first was based on alleged events on 9 September 2022 and the second related to conduct between 21 and 26 November 2024. Given that the claimant commenced ACAS early conciliation on 27 June 2025 even the latter was late by some four months. Nor was the alleged conduct claimed to be, or found by the tribunal to be, a continuing act. Each centred around what the claimant said Mr Wilson said or did on one or a short range of given dates.

42. The starting point in such situations is section 123(1) of the Equality Act 2010 which states as follows:

'123 Time limits

Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

the period of 3 months starting with the date of the act to which the complaint relates, or

such other period as the employment tribunal thinks just and equitable.'

43. An employment tribunal has a wide discretion to extend time under section 123(1)(b). However, the starting point should always be that the primary time limit of three months should be applied. Only if it is just and equitable to extend time should that happen. In that sense an extension should be an exception rather than the default rule.

44. Neither party is subject to a burden of proof in relation to the issue, although a decision to extend time must be based on some relevant material or facts. That need not necessarily be provided by the claimant in such a case, although often this will happen as they are the party seeking the exercise of the discretion.

45. A helpful list of factors to consider was provided in the cases of ***British Coal Corporation v Keeble [1997] IRLR 336 and DPP v Marshall [1998] IRLR 494***, namely:

- a. The length of and reasons for the delay,
- b. The extent to which the cogency of the evidence is likely to be affected by the delay,
- c. The extent to which the respondent had co-operated with any requests for information,
- d. The promptness with which the claimant acted once they knew of the possibility of taking action,
- e. The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

46. However, it has been made clear in subsequent cases that this is not a closed or definitive list to be slavishly followed. Some factors will be more relevant in each claim than others.

47. A further matter which has been held to be of potential relevance is the apparent merits of the case, although care should be taken when assessing those at a preliminary stage and before all possible evidence has been heard. Some matters disclosed at an early stage in a claim may be agreed or uncontroversial whereas others may be more nuanced, or later squarely contested. If this is a potentially relevant factor, there is no rule that it is more or less important than any others.
48. The tribunal reached the conclusion that the complaints should be decided on their merits because it was just and equitable to extend time in order to do so. The reasons for that were:
- a. each was at least potentially valid complaint. It was competently framed and could have succeeded had there been sufficient evidence to support it;
 - b. The claimant was not represented at the time; and
 - c. the prejudice to him in potentially having valid complaints rejected because of questions of timing was greater than the prejudice caused to the respondent in having to answer it on its merits. There was no suggestion from the respondent that it was hampered or prejudiced in any way were it to be required to do so.
49. The tribunal therefore, having heard all of the evidence, decided to determine both of the claimant's harassment complaints on their merits.
50. For a harassment complaint to succeed, there has to be some form of unwanted conduct 'related to' the protected characteristic relied on, in this case disability. That does not require the perpetrator to have knowledge of the protected characteristic, or be consciously motivated by it in doing or saying what is complained of. But there must be a connection of some sort between the two things.
51. When considering whether that relationship exists the tribunal must consider all relevant circumstances, which include the claimant's perception. It must test whether any such perception is reasonably held. An unduly sensitive perception, however genuinely felt, will not lead to a finding of harassment.
52. The tribunal considered the evidence of the **first alleged act of harassment**. The WhatsApp conversations the claimant produced did not support his complaint as none of the messages at that time were from Mr Wilson. Only the claimant's side of the conversation could be seen. The claimant's evidence was that Mr Wilson telephoned him back after he sent

a series of messages on 9 September 2022 about having to cover a job in Dumfries that afternoon. Mr Wilson was said to have told the claimant that he could not just finish when he wanted to, and needed to complete his workload for the day. By his own admission the claimant was insubordinate during this conversation, and Mr Wilson said he would raise the matter with Mr Laborero if the claimant did not complete the job. Apparently, Mr Wilson later did so.

53. Ultimately, the evidence did not establish a sufficiently close connection between Mr Wilson's words or actions and the claimant's anxiety. On the balance of probability the manager said what he did in the way that he did because the claimant had, not for the first time, challenged instructions he had been given. The claimant's reason for doing so was not his anxiety and more because he believed it would unduly prolong his working day. His messages are consistent with that finding. They do not refer to his anxiety but focus on how much working time he had expended and how unreasonable he considered it to be asked to complete the extra job.
54. The **second harassment allegation** involved a complaint that Mr Wilson bullied the claimant between 21 and 26 November 2024 for expressing concerns and feelings about being overwhelmed and unable to perform at work during his retraining after returning from absence.
55. More specifically, the initial act complained of was Mr Wilson's email of 21 November 2024 in which he clarified the permitted window of time for taking lunch breaks under the contract, and asked the claimant to confirm what he had said about intending instead to take his break at a later time. The email was copied to two other managers and an HR colleague.
56. As well as giving evidence in chief on this matter, he narrated it in his grounds of appeal against the outcome of his grievance [221].
57. The tribunal found that an act of harassment had occurred. The claimant had approached Mr Wilson because he was genuinely concerned about complying with some additional working protocols. He believed that they would allow him less flexibility to manage his working and travelling time. He foresaw that this would lead to him being unable to comply with his daily job lists and would 'lead to conflict and tension between myself and the company, which I always seek to avoid.' Unlike the first alleged act of harassment, the matter he was raising was about the whole set of conditions he would have to work under and not just one job or instruction on a given day which objectively any engineer would have been entitled to consider unreasonable. His concern was rooted in his anxiety condition

because the prospect of every subsequent working day becoming more difficult to complete was more impactful. In this way Mr Wilson's treatment of the matter was 'related to' his disability.

58. The claimant had gone to Mr Wilson with a genuine concern, in confidence, and seeking support. He had asked for help, for example by being moved to another contract. Mr Wilson appeared sympathetic and agreed to consider the situation. However, the following morning his email focussed on one part of the discussion, portraying it as an advance admission by the claimant that he would not comply with the new rules. He copied in others. His intention was clearly to warn the claimant that disciplinary action could follow. No support was provided in the email or around the time. The claimant justifiably felt that his confidence had been betrayed and that his misgivings had been turned against him. In doing so Mr Wilson engaged in conduct which was clearly unwanted by the claimant and which in its effect violated his dignity and created an intimidating and humiliating environment for him. The claimant was objectively entitled to view that conduct as such. Being sufficiently 'related to' his disability, it therefore amounted to harassment.

59. Another part of the second allegation of harassment was that, after he returned to work after retraining, Mr Wilson and Mr Bates had arrived unannounced at a location where he was working to perform spot checks. He felt they were trying to gather evidence to use against him in a future disciplinary process. The tribunal was not satisfied any harassment occurred at this time. Firstly, the managers were entitled to conduct checks of the claimant's work. This was standard practice in general, and especially so after an engineer's return to work after retraining. Nor was there evidence of the points raised being unreasonable – there appeared to be valid reasons for the managers raising the issues which they did. The tribunal had some sympathy with the claimant over the manner of the two managers towards him, particularly Mr Wilson who appeared to take the lead. The claimant felt somewhat humiliated by their approach. However, that was connected to genuine observations and criticisms of his working practices and not related to his disability. It was not objectively reasonable for him to connect the way he felt to his disability. It was not therefore harassment.

60. In summary, part of the complaint of harassment was upheld.

Protected disclosures

61. An employee has a right not to suffer a detriment on the ground that they made one or more protected disclosures - section 47(B) of the Employment Rights Act 1996.
62. An employee is separately protected against being dismissed for the sole or principal reason that they made one or more protected disclosures - section 103A.
63. A protected disclosure must first be a 'qualifying disclosure' – section 43B:

“43B Disclosures qualifying for protection.

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.”

64. A qualifying disclosure will be protected if it is made in the way permitted within section 43(C) to (H).

65. A qualifying disclosure must be all of the following:

- a. A disclosure of information,
- b. Reasonably believed to be made in the public interest, and
- c. Reasonably believed to show the existence of one or more circumstances within section 43(B)(1)(a) to (f).

66. Unless all of the above apply, there will not be a qualifying disclosure – see for example the judgment of the Employment Appeal Tribunal *in Williams v Brown UKEAT/0044/19*.

67. The requirement to disclose ‘information’ means that there must be some specific factual detail - *Cavendish Munro Professional Risks Management Ltd v Geduld UKEAT/0195/09*. Whether that has occurred will depend on the individual features of each case, including the context in which a statement is made. Reference to a hypothetical situation, expression of an opinion or the mere suggestion that a law or legal obligation has been breached without further specification may not be enough.

68. There must be a belief that the disclosure of the information in question is in the public interest, and that belief must be objectively reasonable - *Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2017] EWCA Civ 979*. What is in the ‘public interest’ is not further defined. It need not apply to all of the public at large, and can involve a smaller group such as all employees, customers or service users of an organisation, or even potentially a sub-group within one of those categories. If the matter raised only relates to the person raising it there will be a greater risk that it is not in the public interest (or that any belief that it is would not be reasonably held when objectively assessed). It is however possible that a disclosure could be made (or reasonably believed to be made) both for personal reasons and in the public interest at the same time. Who is affected, in what way and whether the alleged conduct was intentional could all be factors.

69. There must also be a reasonable belief that at least one of the circumstances in section 43(B)(1) has arisen. The complainant therefore need not know for sure that the relevant situation exists but they must believe that it does. That belief must then be assessed in order to understand whether it is reasonable. It may be reasonable even if later proved to be factually incorrect, for example by evidence which the individual did not know about at the time of the disclosure. Of more relevance is what the individual knew, or ought to have known, at the time

of the disclosure. Because the requirement is that the information disclosed 'tends to show' that a relevant scenario exists, the individual making the disclosure does not have to provide absolute proof of it or have gone through an extensive process of weighing up the evidence for and against before their belief is formed – see for example ***Durey v South Central Ambulance Service NHS Foundation Trust and Protect (Intervenor) [2024] EAT 173***.

'Protected' disclosure defined

70. A qualifying disclosure can be protected by being made in various ways or to certain parties. A disclosure by a worker to their employer will qualify under section 43C(1)(a). Normally, a report by them to a more senior colleague will be to their 'employer'. A report to someone equally or less senior is less likely to be, although the recipient's role and specific responsibilities may be relevant, as may be the worker's intention in choosing the recipient and the contents of any specific policy which the employer has put in place.

Were protected disclosures made?

71. Each alleged protected disclosure was considered in turn. The claimant relied on section 43B(1)(d) of ERA – i.e. that he was making disclosures which in his reasonable belief tended to show 'that the health or safety of any individual has been, is being or is likely to be endangered'.

72. The **first alleged protected disclosure** was the claimant's conversation with Mr Wilson in November 2024. He said he could not complete his jobs within the time allocated for them, that that could lead to mistakes being made and that Category 1 defects could be the result. He was providing information about the jobs he and other engineers were being asked to undertake and the time they were permitted to complete them. He was explicitly saying that that was inadequate, leading to work being rushed and errors being likely. He said that those errors could be of the most serious type. Mr Wilson would have understood clearly what he was conveying. Mr Wilson, being the claimant's line manager, was tantamount to his employer.

73. The information provided tended to suggest there was a likelihood of danger to the health or safety of individuals, principally homeowners and anyone else entering their homes. The claimant genuinely believed that there was such a likelihood. The tribunal had to consider whether that belief was reasonable. After deliberation the tribunal accepted that it was.

It took into account in particular that the claimant was experienced in his work over a number of years and that hundreds of installations were being carried out under the contract. If he was correct that engineers were working to time pressures which ranged from demanding to simply not possible without rushing or working beyond scheduled hours, day in and day out, then it was reasonable for him to believe that at some point a dangerous error could be made. The tribunal stresses however that it did not make a finding that the respondent's practices were in fact dangerous or carried an unduly high level or risk to customers. It was not required by section 43B(1) to do so. It merely concluded that the claimant's belief at the time, whether ultimately proven to be correct, was a reasonable one to hold.

74. The final and less controversial element of the test to consider was whether the claimant genuinely and reasonably believed he was making his disclosure in the public interest. Although clearly he was considering his own position, there was also an element of concern for the wider public – customers and their families, visitors and neighbours.

75. The first disclosure therefore met all of the requirements of a protected disclosure.

76. The **second alleged protected disclosure** was the claimant's grievance email. This dealt with a different matter, namely Mr Wilson's treatment of the claimant which was perceived as evidence of the manager trying to build a disciplinary case against him. The claimant did not raise the working conditions of engineers, the pressures they were under, or the potential risks or adverse outcomes which could occur as he had done in his first disclosure. Arguably he could have been providing information about another scenario within section 43B(1), namely the breach of a legal obligation, in the sense that Mr Wilson's conduct could have been perceived as a breach of the duty to preserve mutual trust and confidence. However, the claimant did not suggest that and the tribunal concluded that a disclosure framed as such would not have met the public interest test – it was solely a concern about the claimant's circumstances and not with regard to any wider situation. This email was therefore not found to be a protected disclosure.

77. The **third alleged protected disclosure** was the claimant's email where he set out grounds for appealing against the outcome of his grievance. This returned to the subject matter of the first disclosure and specifically raised 'malpractice within the working environment (unrealistic workloads, pressuring and bullying etc which impact health and safety standards at

work)'. Had this disclosure been the only one the claimant relied on it likely would not have qualified as a protected disclosure because what was said was not specific and substantial enough to amount to 'information', but the tribunal considered it should more properly be read alongside the first disclosure as it described the same concerns the claimant had and referred back to those being made. He was in effect summarising what he had said before in more detail. This was therefore a further protected disclosure of the same type.

78. The **fourth alleged protected disclosure** was the claimant's 'unfair treatment statement', submitted on 6 January 2025. This also qualified as a protected disclosure for essentially the same reasons as the first and third disclosure. It raised the same issues in even more detail, particularly within the text on the second last page [233].

79. The tribunal moved on to consider whether the protected disclosures played any part in the decision to dismiss the claimant.

Complaints related to the claimant's dismissal

80. The claimant made three separate legal complaints about the decision to dismiss him. The first was that it was said to have been automatically unfair because the sole or principal reason behind it was the making of protected disclosures. The second was that it was an act of discrimination arising from his disability. The third was that it was more generally unfair in its own right.

81. The tribunal considered each of these complaints together initially by examining what was the reason, or were the reasons, for the respondent dismissing the claimant and identifying whether it fell foul of the statutory provisions in question, namely sections 98 and 103A of ERA and section 15 of EqA.

82. The findings made were that the reason for the claimant's dismissal was that there was no longer a role for him to perform. Specifically:

- a. He had caused two Category 1 defects, which he did not dispute and for which he accepted responsibility;
- b. The respondent had taken him off his duties and notified the client, as was its normal practice and/or contractual obligation;
- c. It had followed a disciplinary procedure which resulted in the claimant avoiding dismissal (when that would normally have been the outcome), instead receiving a final warning;

- d. The client had continued to insist that it did not want the claimant to perform installations under the contract, as it had the right to do;
- e. The respondent explored whether another role could be found for the claimant and gave him time to consider the position himself; and
- f. It concluded that there were not suitable options, and dismissed him.

83. Against that sequence of events:

- a. The claimant was not dismissed for the sole or principal reason of having made protected disclosures in terms of section 103A of ERA. Making those disclosures was entirely unconnected to his errors which amounted to Category 1 defects and triggered the process which followed;
- b. Nor was he dismissed because of any product or effect of his anxiety under section 15 EqA. The errors he made were not connected to his disability in that way. Had they been, it would have been a proportionate means of achieving a legitimate aim for the respondent to follow the process which it did. Ensuring the safety of the public was a legitimate aim and removing engineers from duties where they made potentially serious errors was a proportionate step. This was the decision which led to dismissal as no other options remained; and
- c. The claimant's dismissal was for a fair statutory reason under section 98(1) and (2) of ERA. The respondent argued that the reason was redundancy within section 98(2)(c), failing which 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held' under section 98(1)(b), both of which are lawful. The tribunal considered the definition of redundancy in section 139 of ERA. It envisages firstly in section 139(1)(a) the cessation of business either altogether by the employer, or in the location where the worker in question was based. Neither of those applied. The second scenario is where there is a reduced requirement for workers to carry out work of a particular kind – section 139(1)(b). this was not applicable either as the claimant's work still needed to be done, it just could no longer be done by him. The tribunal did accept however that the reason for the claimant's dismissal was some other substantial reason. That reason was that the client justifiably exercised its contractual right to have the claimant removed from the contract in which he was employed, and there was no suitable alternative work for him to perform. This was the sole reason for his dismissal. The

onus was on the respondent to establish a fair reason for dismissal and in this way it did so.

84. The consequence of these findings was that the complaints under sections 103A of ERA and section 15 of EqA could not succeed. The reason for dismissal did not relate in any recognisable way either to the making of protected disclosures or anything arising from the claimant's disability.
85. The tribunal noted that a claim of unfair dismissal under section 94 of ERA involves a two-part test. The first part is whether the sole or principal reason for dismissal was a fair one and, as above, this had been established. The second part of the test requires the tribunal to consider whether the respondent complied with section 98(4) of ERA – i.e. whether in all the circumstances, including on the size and administrative resources of the respondent, it acted reasonably in dismissing the claimant for the reason that it did. The onus is neutral in that evaluation – neither party has to prove its position but the tribunal has to consider all of the available evidence and reach an overall conclusion.
86. This led to the tribunal considering the process which the respondent followed from the point that the claimant was suspected of causing Category 1 defects, as this was the origin of the issues which led to his dismissal. The respondent was found to have acted reasonably for the following particular reasons:
- a. The precaution of 'standing down' the claimant from his duties under the contract upon detection of potential Category 1 defects was proportionate in light of the potential safety ramifications, and particularly given that he continued to be paid in full;
 - b. Additionally, the investigation process was completed within a reasonable time and the claimant was given the opportunity to make submissions;
 - c. The claimant ultimately did not dispute the evidence which led to the finding that there had been two Category 1 defects (as well as other matters of conduct);
 - d. Despite it being customary for the respondent to dismiss an engineer who had caused even merely one Category 1 defect, the respondent took into account the claimant's mitigating circumstances and did not terminate his contract for that reason;
 - e. Having notified the client of the issue, as it was bound to do, the respondent went back after the conclusion of the disciplinary

process to ask whether the claimant could be restored to the contract;

- f. When the client refused that request, the respondent undertook a consultation process in which both parties considered alternatives;
- g. The respondent was not required to create a role for the claimant as he had suggested. It was entitled to conclude as it did that a separate employee welfare officer or similar was not required within its structure; and
- h. As no realistic roles were identified, the claimant was dismissed and paid his full entitlement to notice and accrued holidays. He also received a statutory redundancy payment which the respondent was arguably not obliged to pay.

87. The tribunal accepted that, having been told by its client that the claimant could no longer be assigned to the contract for reasons which were permissible, the respondent reasonably explored the alternatives within a suitable timescale and using a proportionate process.

88. The tribunal could not identify any particular shortcomings in the process, or other steps that the respondent could reasonably have taken. The claimant did not suggest any.

89. It followed from the above that the 'ordinary' unfair dismissal complaint under section 94 ERA was unsuccessful.

Conclusions and remedy

90. Only the harassment complaint was successful, in part. The tribunal considered what compensation was appropriate to award.

91. The tribunal had to consider the extent to which the claimant sustained an injury to his feelings as a result of the successful part of the harassment complaint. The claimant did not lead medical evidence but gave oral evidence to say that he had felt betrayed, intimidated and humiliated.

92. The tribunal also took note of the relevant principles for determining an award of compensation for injury to feelings as set out in ***Eddie Stobart Limited v Graham [2025] EAT 14***.

93. The tribunal considered the nature of the act of harassment. It occurred by way of one email. It was a single act and not an ongoing course of conduct, albeit that the claimant felt the act had effect for some time after. The email caused the claimant upset but it was not particularly aggressive or offensive. This fell within the lowest of the three bands evolved in ***Vento***

v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102

and as revised annually by way of Presidential guidance. At the time when the claim was submitted that corresponded to an award of between £1,200 and £12,100. The tribunal judged the overall effect to be nearer the lower end of that band and reached the view that an award of £2,500 is appropriate.

94. The final matter to consider is interest on the award for injury to feelings. Interest runs from the date of the discriminatory act (since this occurred on a single date) which is 21 November 2026 until the date of calculation, taken to be the date of issuing this judgment. A calculation has not been made. If the parties are unable to agree the relevant figure one will be provided.

Date sent to Parties: 4 September 2026