**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000120/2026**

**Held in Glasgow on 9, 10 & 11 September 2026**

**Employment Judge P O'Donnell**
**Members G Eckersley**
**R Taggart**

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| **W Johnston** | **Claimant**<br>**Represented by**<br>**Mr Gallagher,**<br>**Solicitor** |
| **Carntyne Transport Company Limited** | **Respondent**<br>**Represented by:**<br>**Mr Cheaitou,**<br>**Solicitor** |

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Employment Tribunal is that:-

1. The claim for unfair dismissal under the Employment Rights Act 1996 is not well-founded and is hereby dismissed.

2. The claims for direct age discrimination, age related harassment and victimisation under the Equality Act 2010 are not well-founded and are hereby dismissed.

## REASONS

Introduction

1. The claimant has brought complaints of unfair dismissal, age discrimination and victimisation in relation to his dismissal by the respondent. The claims are all resisted by the respondent.

Evidence

2. The Tribunal heard evidence from the following witnesses:-

a. The claimant.
b. Stacy Mills (SM) – a colleague of the claimant who had been in the initial group selected for redundancy.
c. Stuart McLean (SMc) – a colleague of the claimant who had been made redundant at the same time as the claimant.
d. Kris Baker (KB) – the respondent's group people business partner.
e. Corin Gentles (CG) – the respondent's operations director who heard the claimant's appeal.

3. There was an agreed file of documents prepared by the parties running to 122 pages. A reference to a page number below is a reference to a page in that file.

4. This was not a case where there was a significant dispute in relation to the relevant facts. The sequence of events giving rise to the claimant's dismissal were broadly agreed by parties. Where there was any dispute between the parties, the Tribunal preferred the version of events supported by contemporaneous documents.

Findings in fact

5. The Tribunal made the following relevant findings in fact.

6. The respondent is a transport company (part of the wider Russell Group) which operates in two units; one unit operates on customer sites in the whisky industry providing transport support; the second unit is a bulk transport business with 85% of the work being in the spirits industry with animal feed and chemical transport making up the remainder of the work.

7. The respondent operates its own sites in Aberlour, Mid-Town near Alloa and Springburn. It also has vehicles at customer sites.

8. The claimant was employed by the respondent as an HGV driver in the bulk transport part of the business from 18 September 2017. The duties of an HGV driver in bulk transport can involve driving a range of different vehicles including curtain-sided trailers, walking floor trailers, double-deck vans. It can also involve manual labour, loading and moving casks of whisky or other spirits. At the time of the redundancy process, the claimant was based at the Springburn depot and was aged 63.

9. In April and May 2025, the respondent saw a downturn in work. There was a decrease in production by their customers due to a range of factors such as the volatile US market (including tariffs) and the wars being waged in different

parts of the world. There had been a boom in the whisky industry after Covid with high volumes being produced but this had come to an end. One of their customers had been sending 4-4.5 million litres of spirits to bottling a week during the boom but this had reduced to 2-2.5 million litres in some weeks.

10. CG had taken up the position of operations director in April 2025 having worked his way up from a driver through supervisor roles to general manager and then operations director. He found that he was reporting a reduction in revenue to the board every week with losses of £15,000 each week.

11. CG looked at making efficiencies and reduce costs. It was identified that this would involve reducing the size of their fleet and reducing head count. This would lead to the number of drivers being reduced. Most of the reduction of the work affected the depots in the central belt.

12. The respondent had looked at other opportunities for work in other industries but their fleet of vehicles were specialised for the spirits industry making it difficult to pivot to other industries. They were able to find some small contracts with new clients but not enough to replace the business they were losing.

13. The respondent, therefore, decided that they would need to make redundancies and identified that a total of 8 drivers were to be made redundant.

14. On 26 August 2025, a letter was issued to employees from CG (p44) informing them that the financial situation of the business was no longer viable as a result of the downturn in work they were experiencing. It was explained that the business had tried to find other opportunities or make cost savings but the decision had been made to make redundancies and that a consultation process would begin. The letter goes on to explain that this process would affect drivers in the central belt (Springburn and Mid-Town).

15. The respondent identified that there would be eight redundancies made in total and consulted with the trade union over the selection criteria to be used. A number of criteria were discussed including length of service, attendance and disciplinary record. One criteria which the respondent considered essential was skillset. In particular, the respondent wanted to retain those employees skilled in cask work as this was a significant part of the work and a skill which was essential to their customers.

16. The respondent eventually decided to use the following criteria (p57):-

a. Length of service with 5 points for 0-1 years, 10 points for 2-5 years, 15 points for 5-10 years and 20 points for service over 10 years.
b. Attendance with 0 points for 4 or more instances, 5 points for 3 instances, 10 points for 2 instances, 15 points for one instance and 20 points for no instances. The period for assessing this was the year prior to 29 August 2025. Certain types of absence (for example, maternity leave) were not taken into account.
c. Skillset was based on the type of work an employee had done in the previous year weighted according to the importance of the skills to the business. An employee who had done every type of work could get a total of 20 points.
    i. Cask work – 5 points
    ii. General purpose – 5 points
    iii. WF/Curtain – 4 points
    iv. Containers – 3 points
    v. North/south – 2 points
    vi. Tanks – 1 point

17. The respondent measured skills based on the work done over the last year because it was felt this was a fair period and was consistent with the period for attendance.

18. In early 2025, the claimant had been absent from work for health reasons. When he returned to work, he was on antibiotics and did not want to stay away from home in case there were side-effects. As a result he did not go on long distance jobs. He had expected to return to long distance after two weeks but this did not happen.

19. The claimant sent an email on 21 July 2025 (p44) seeking to raise a grievance about his working conditions. The email complains about the trucks he has been allocated whilst the one he normally drives had been off the road. In particular, he complains about the state of these trucks which he considered were untidy and which he had to clean. He goes on to complain that the truck he was allocated on 21 July 2025 was filthy, smelling of smoke and with the no smoking sign missing. He complains that it was unfair to ask him to use this truck after his stay in hospital.

20. This email was received by the respondent's HR email inbox and was picked up by KB. She spoke to the transport manager at the time, Louise McGill, and informed her of the claimant's complaint. Ms McGill said she would speak to the claimant about it. KB chased Ms McGill about the email and she said that she had asked to meet the claimant. Ms McGill left the respondent thereafter although no witness could recall when. KB heard nothing further from either

the claimant or Ms McGill about the grievance and assumed it had been resolved.

21. In fact, Ms McGill and the claimant had not met and the grievance remained unresolved. The claimant did not, however, chase the grievance until the final redundancy consultation meeting on 15 September 2025 when he raised the fact that he had a grievance which had not been resolved (p66).

22. The claimant then resent the July email on 30 September 2025 (p80). A reply was sent by Janet Andrews from HR on 2 October 2025 explaining that it had been thought that Louise McGill had dealt with the grievance and offering to hold a grievance hearing if he still wished to have the grievance heard. The claimant did not reply to this email.

23. By letter dated 3 September 2025 (pp55-56), the claimant was invited to a first consultation meeting with Gary Miller (GM), general manager, on 5 September 2025. It was explained that he been placed in the pool for selection for redundancy and scored under the criteria previously circulated. The claimant was informed that he had scored 31.

24. This score was within the eight lowest scores and so the claimant was one of the employees who had been provisionally selected for redundancy.

25. The letter goes on to explain that the purpose of the meeting is to give him an opportunity to ask any questions, explore any ideas he has which would avoid redundancy, discuss the selection criteria, how he was scored and any alternative roles he could take.

26. The letter was accompanied by a copy of the selection matrix with the claimant's scores; he received 15 points for length of service; 15 points for attendance; 1 point for skillset.

27. The claimant attended the meeting on 5 September 2025 and a record of the meeting is at pp58-59:-

    a. GM explained that there had been a decline in work and the indication from customers was there was going to be a downward trend.
    b. When asked whether he had any suggestions, the claimant said the respondent could be more efficient and not have guys sitting around for hours. He also suggested that guys could be multi-skilled giving the example that he could do other work but had been put into tanker work.
    c. The claimant also raised something described as "70/30" which was a reference to reducing the hours worked by drivers.

d. When asked whether he disagreed with any of his scores, he stated that his absence was due to his car and he did not consider this was an absence.
e. GM asked the claimant if he would be interested in another role and he stated that he was not committing to anything. GM explained that he was not asking the claimant to commit to anything but just asking if he would be willing to transfer to another part of the business. The claimant replied that it would depend on the role and the terms and conditions.
f. The meeting concluded with GM explaining that there would be a further meeting as soon as possible.

28. SM was another HGV driver who was also provisionally selected for redundancy. She was 37 at the time of the redundancy selection process. When she received her score, it did not tally with what she had thought she would get.

29. In particular, she received a lower score for attendance than expected; she had been scored based on 3 instances of absence when she had only had one absence in the past year. SM queried this during the consultation process and it emerged that, because she only worked 3 days a week, an absence that started during one of her periods of work and continued to the next week had been counted as two absences instead of one. The other instance was never explained.

30. The respondent corrected this error when SM drew their attention to it and marked her as having only one instance of absence which increased her score for attendance. This increase took her total score above the level where she was at risk of redundancy and she was not selected for redundancy.

31. The claimant was invited to a second consultation meeting with GM by letter dated 8 September 2025 (p60). The letter stated that the purpose of the meeting was to provide an update on the redundancy process, consider any representations from the claimant and outline the next steps.

32. The second meeting took place on 10 September 2025 and the record of the meeting at p62 notes the following relevant matters:-

a. GM advised the claimant that the “70/30” raised at the previous meeting was not viable for the business.
b. GM informed the claimant that he had looked into the issue of the claimant’s absence and explained that there was no change to his score because he still had been absent from work. He also informed the

claimant that the skills score had not changed because it reflected what the claimant had been doing.

c. GM asked the claimant if he had anything to raise and the claimant replied that he did not have anything other than what he had raised at the first meeting.

d. The claimant was asked if he had thought about other opportunities in the business and he replied that he was not looking for other opportunities. GM asked him if he was looking for redundancy and the claimant asked if he was being told that he was being made redundant. GM replied that they were still in consultation.

e. The claimant complained that the process was taking too long and it was on his mind. He thought that the respondent would know if they were making him redundant. GM replied that they were still to meet with other drivers and that the process would conclude shortly.

33. The claimant was invited to a third consultation meeting with GM by letter dated 12 September 2025 (p63) which stated that the purpose of the meeting was to confirm the outcome of the consultation, discuss any alternative roles and the claimant's redundancy entitlement.

34. The third meeting took place on 15 September 2025 and the note of the meeting (p65-66) records the following relevant matters:-

a. GM asked the claimant if he would like to explore alternative roles; he replied that he was not interested and queried why he would want to work for the company. When GM asked him to elaborate, the claimant stated that GM could not give him details of any other role and that he did not want to work for the respondent any more. He stated that it was not the company it used to be and the way that the redundancy had been handled was disgusting.

b. GM explained that he had a list of vacancies that could be discussed; the claimant replied that it was too late and he was not interested.

c. GM then confirmed that the claimant was being made redundant and set out the amount of redundancy pay due to him. GM explained that he was being given 8 weeks' notice and that he was being asked to work his notice.

d. The claimant queried whether GM wanted him working for the company when he was unhappy. He complained that he had been lied to throughout the process; he had asked for his scores to be checked and GM had told him this was not something they were willing to do but other scores had been adjusted.

e. GM asked the claimant what he had lied about and the claimant replied that it was the skills matrix. He stated that GM had told him he would not

review this. GM disputed this and said that he had told the claimant he would review these and give feedback at the second meeting.

f. The claimant also asserted that GM had lied about the matrix because the trade union had told him that they had not agreed this and were not allowed to sit in with people who got below a certain score. He went on to say that it was all lies and that he had submitted a grievance which had not been heard and swept under the carpet (this was a reference to his email of 21 July 2025).

35. The claimant's dismissal was confirmed by letter dated 17 September 2025 (pp69-70). In the event, the claimant was not required to work all of his notice; he asked CG to be released early because he found a new job and had to attend training; CG agreed to this and the claimant's employment ended on 3 October 2025 (pp82-83).

36. The claimant appealed his dismissal by emails dated 16 and 21 September 2025 (p67 & p71) setting out the following grounds of appeal:-

a. The claimant believed that he had been unjustly judged on the matrix; others had raised concerns, were re-evaluated and removed from the process but he was not.
b. He had queried two days marked as sick leave but had been agreed as unpaid leave due to transport issues.
c. At the final meeting he was given a sheet with little information; it said 8 weeks' notice but no indication when this began; it stated that holidays were to be confirmed; there was no mention of references.
d. He felt that, given the time he had worked for the respondent, throughout Covid and all the different jobs he had done, the process had been handled badly and that the company had changed to one which no longer cared.
e. He felt that the jobs he had done throughout his time with the business had not been represented in his score.
f. He asserted that not all drivers had been included in the selection.

37. An appeal meeting was arranged to be heard by CG on 23 September 2025 and the claimant was advised of this by letter dated 22 September 2025 (p74). The meeting, in fact, took place on 25 September 2025 and the record of the meeting (pp77-79) notes the following relevant matters:-

a. At the start the claimant asks CG what the possible outcomes of the meeting could be and he replies that he can uphold the points, change the scores, move the scoring up or down and take the claimant out of selection. The claimant then stated that CG cannot back out of it now

that notice has been given; he has taken advice from ACAS and it (meaning his dismissal) cannot be revoked. (The Tribunal pauses to note that this assertion by the claimant is wrong as a matter of law; there is nothing to stop an employer overturning a decision to dismiss on appeal and, indeed, if they could not then every such appeal would be pointless).

b. CG asks the claimant to discuss the grounds of his appeal and the claimant says he raised a concern about absence; he explained that he had unpaid time off approved with the planner which has counted against him.

c. He went on to discuss the skills and explains that he had done other types of work in the past. He asserted that others were told that they would be given training on areas of work (specifically casks) and got points for that. CG stated that he was not sure that this was correct and asks if the claimant can share the names of the persons the claimant was talking about. CG stated that he did not want people to get their scores changed just because they were willing to do something.

d. The claimant went on to say that people on the same points as him for length of service were not called in and he was. He explained that he felt that he hit a brick wall with GM.

e. There was a discussion about how the claimant felt there was a disconnect between drivers and management and how he felt things had changed in the company.

38. CG issued a letter dated 6 October 2025 to the claimant (pp87-89) providing his decision on the appeal:-

a. In relation to the issue of absence, CG explained that all absences were taken into account whether sickness, authorised absence or unauthorised absence. The only absences which were excluded were bereavement, time off for dependents, paternity and maternity leave. CG considered that the claimant had, therefore, been scored correctly and consistently with others.

b. CG noted that the claimant had not provided the names of anyone else who had been treated differently in terms of skills. He had reviewed the scores of other employees and could find no evidence that scores had been changed on the basis that people would do different tasks in the future.

c. He noted the claimant's position that he was doing the work allocated to him but considered that employees could volunteer to do different work.

d. In terms of alternative roles, CG had reviewed the minutes of the consultation meetings and identified that it was the claimant who had ruled this out. He did not consider that anything had been withheld from the claimant.

e. As a result, CG did not uphold the claimant's appeal.

Submissions

39. The respondent's agent produced written submissions and adopted those. The claimant's agent made oral submissions. For the sake of brevity, the Tribunal does not intend to set out the submissions in details. These have been noted and the Tribunal will refer to any point raised that requires to be specifically addressed in its decision below.

Relevant Law

40. The test for unfair dismissal can be found in s98 of the Employment Rights Act 1996 (ERA).

41. The initial burden of proof in such a claim is placed on the respondent under s98(1) to show that there is a potentially fair reason for dismissal. There are 5 reasons listed in s98 and, for the purposes of this claim, the relevant reason is redundancy.

42. Redundancy is defined in s139 ERA and, for the purposes of this claim, the relevant definition would be that the requirements of the business for employees to carry out work of a particular kind had ceased or diminished.

43. The test then turns to the requirements of s98(4) for the Tribunal to consider whether dismissal was fair in all the circumstances of the case. It is worth noting that there is a neutral burden of proof in relation to this part of the test.

44. In assessing the fairness of a dismissal on the grounds of redundancy, the first question is whether there has been a proper pool of employees from which selection for redundancy is made.

45. The principles to be applied by the Tribunal in assessing whether a proper pool for selection has been used are set out by Silber J at para 31 of *Capita Hartshead Ltd v Byard* [2012] IRLR 814:-

*"Pulling the threads together, the applicable principles where the issue in an unfair dismissal claim is whether an employer has selected a correct pool of candidates who are candidates for redundancy are that*

*(a) "It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted" (per Browne-Wilkinson J in Williams v Compair Maxam Limited [1982] IRLR 83);*

*(b) "…the courts were recognising that the reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn" (per Judge Reid QC in Hendy Banks City Print Limited v Fairbrother and Others (UKEAT/0691/04/TM);*

*(c) "There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem" (per Mummery J in Taymech v Ryan EAT/663/94);*

*(d) the Employment Tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has "genuinely applied" his mind to the issue of who should be in the pool for consideration for redundancy; and that*

*(e) even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it."*

46. The Tribunal would then, normally, go on to consider the fairness of the selection criteria applied to the pool. The Tribunal are not entitled to substitute their own criteria for those of the employer and are simply to assess the fairness of the criteria used.

47. Any criteria used for selection must be capable of some degree of objective assessment (*Williams v Compare Maxim* above) but there is no absolute requirement for objectivity and criteria which have some degree of subjectivity such as performance or quality of work can be proper criteria (see, for example, *Graham v ABF Ltd* [1986] IRLR 90). In particular, in *Mitchells of Lancaster (Brewers) Ltd v Tattershall* UKEAT/0605/11 it was said that:-

*"Just because criteria of this sort are matters of judgment, it does not mean that they cannot be assessed in a dispassionate or objective way, although inevitably such criteria involve a degree of judgment, in the sense that opinions can differ, possibly sometimes quite markedly, as to precisely how the criteria are to be applied, and the extent of which they are satisfied, in any particular case. However, that is true of virtually any criterion, other than the most simple criterion, such as length of service or absenteeism record. The concept of a criterion only being valid if it can be "scored or assessed" causes us a little concern, as it could be invoked to limit selection procedures to box ticking exercises."*

48. The Tribunal must be satisfied that the selection criteria has been genuinely and fairly applied to the individual employee bringing the claim of unfair dismissal. However, this does not involve the Tribunal in carrying out a detailed re-assessment of the claimant's score (*Eaton Ltd v King* [1995] IRLR 75, *British Aerospace plc v Green* [1995] IRLR 437).

49. In making the decision to dismiss, a senior manager is entitled to rely on any assessment made by a subordinate (*Eaton*, above). This is particularly the case where the decision maker has no reason to doubt the reliability of the information before them which is being used to make the decision (*Buchanan v Tilcon Ltd* [1983] IRLR 417).

50. In relation to the obligation to consult, the law was summarised by the EAT in *Mugford v Midland Bank* [1997] IRLR 208 at paragraph 41:-

"*Having considered the authorities we would summarise the position as follows:*

*(1) Where no consultation about redundancy has taken place with either the trade union or the employee the dismissal will normally be unfair, unless the industrial tribunal finds that a reasonable employer would have concluded that consultation would be an utterly futile exercise in the particular circumstances of the case.*

*(2) Consultation with the trade union over selection criteria does not of itself release the employer from considering with the employee individually his being identified for redundancy.*

*(3) It will be a question of fact and degree for the industrial tribunal to consider whether consultation with the individual and/or his union was so inadequate as to render the dismissal unfair. A lack of consultation in any particular respect will not automatically lead to that result. The overall picture must be viewed by the tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy.*"

51. There is a requirement on an employer to make efforts to find alternative employment for a redundant employee (*Vokes Ltd v Bear* [1973] IRLR 363). However, this duty is only to take reasonable steps and not every conceivable step to find alternative employment (*Quinton Hazell Ltd v Earl* [1976] IRLR 296).

52. The duty does not, in particular, require an employer to "bump" another employee out of their job in order to create a vacancy for a redundant employee (*Byrne v Arvin Meritor LUS (UK) Ltd UKEAT/0239/02*). As Burton P put it in that case:-

*"The obligation on an employer to act reasonably is not one which imposes absolute obligations, and certainly no absolute obligation to "bump", or even consider "bumping". The issue is what a reasonable employer would do in the circumstances, and, in particular, by way of consideration by the Tribunal, whether what the employer did do was within the reasonable band of responses of a reasonable employer?"*

53. The Equality Act 2010 protects individuals from discrimination on the grounds of various protected characteristics. These include, for the purposes of this case, race, sex and religion/belief (or the lack of a particular religion or belief).

54. The definition of direct discrimination in the 2010 Act is as follows:-

***13 Direct discrimination***
*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.*

55. These provisions do not stand on their own and any discrimination must be in the context of the provisions of the Act which makes it unlawful to discriminate in particular circumstances. The relevant provision in this case is:-

***39 Employees and applicants***
*An employer (A) must not discriminate against an employee of A's (B)—*
*by dismissing B*.

56. The burden of proof in claims under the 2010 Act is set out in s136:-

***136 Burden of proof***
*(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.*

57. The burden of proving the facts referred to in s136(2) lies with the claimant. If this subsection is satisfied, however, then the burden shifts to the respondent to satisfy subsection 3.

58. Although the test for direct discrimination forms a single question, the caselaw indicates that it is often helpful to separate this into two elements; the less favourable treatment and the reason for that less favourable treatment.

59. In order for there to be less favourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).

60. A claimant can rely on an actual or hypothetical comparator for the purposes of establishing less favourable treatment. There must be no material difference in the circumstances of the claimant and comparator (s23 of the Equality Act 2010). In deciding how a hypothetical comparator would have been treated, the Tribunal is entitled to have regard to the treatment of real individuals (see, for example, *Chief Constable of West Yorkshire Police v Vento* [2001 IRLR 124).

61. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; "something more" is required (*Madarassy v Nomura International* [2007] IRLR 246). The Tribunal needs evidence from which it could draw an inference that race was the reason for the difference in treatment.

62. It is important to remember that unreasonable or unfair behaviour is not enough to allow for an inference of direct discrimination (*Bahl v The Law Society* [2004] IRLR 799).

63. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in *Igen v Wong* [2005] ICR 931 (as approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] IRLR 870):-

64. Any detriment does not have to be *solely* by reason of the protected characteristic; if any protected characteristic has a 'significant influence' on the treatment of a claimant then direct discrimination is made out. (*Nagarajan v*

*London Regional Transport [1999] ICR 877, HL*; *Villalba v Merrill Lynch and Co Inc and ors 2007 ICR 469, EAT*. In *Igen (above)* Lord Justice Peter Gibson clarified that for an influence to be 'significant' it does not have to be of great importance and is something more than trivial.

65. The definition of indirect discrimination is found at s19 of the Equality Act:-

"*(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice (PCP) which is discriminatory in relation to a relevant protected characteristic of B's.*

*(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*

*(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

*(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

*(c) it puts, or would put, B at that disadvantage, and*

*(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*"

66. There is no definition of PCP in the Act; the EAT has held that the words 'provision, criterion or practice' must not be given a narrow meaning and that the PCP need not be an 'absolute bar' but can allow for exceptions to be made (*British Airways plc v Starmer [2005] IRLR 862)*.

67. In terms of justification, the EAT in *MacCulloch v ICI* [2008] IRLR 846 set out four principles to be applied by the Tribunal. These have since been approved by the Court of Appeal in *Lockwood v DWP* [2013] IRLR 941:-

*"(1) The burden of proof is on the respondent to establish justification: see Starmer v British Airways [2005] IRLR 862 at [31].*

*(2) The classic test was set out in Bilka-Kaufhaus GmbH v Weber Von Hartz (case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end" (paragraph*

*36). This involves the application of the proportionality principle, which is the language used in reg. 3 itself. It has subsequently been emphasised that the reference to "necessary" means "reasonably necessary": see Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26 per Lord Keith of Kinkel at pp.30–31.*

*(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: Hardys & Hansons plc v Lax [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60].*

*(4) It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable response" test in this context: Hardys & Hansons plc v Lax [2005] IRLR 726, CA."*

68. Harassment is defined in s26 of the Equality Act 2010:-

"***26 Harassment***
*(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.*
*(2) A also harasses B if—*
*(a) A engages in unwanted conduct of a sexual nature, and*
*(b) the conduct has the purpose or effect referred to in subsection (1)(b).*
*(3) …*
*(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.*
*(5) The relevant protected characteristics are—*
*age;*
*…*"

69. In Hartley v Foreign and Commonwealth Office UKEAT/0033/15 (27 May 2016, unreported) it was held that the question whether there is harassment must be

considered in the light of all the circumstances of the case. Where the claim is based on things said it is not enough only to look at what the speaker may or may not have meant by the wording.

70. However, even where certain elements of the test for harassment are met (for example, unwanted conduct and the violation of the claimant's dignity), the Tribunal must still consider the "*related to*" question and make clear findings as to why any conduct is related to a protected characteristic (*UNITE the Union v Nailard* [2018] IRLR 730; *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam* [2020] IRLR 495, EAT).

71. In *Pemberton v Inwood* 2018 ICR 1291, CA, Lord Justice Underhill gave guidance on how the test for the effect of any alleged harassment should be applied:-

*'In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider* both *(by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question)* and *(by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so' (original stress).*

72. The test for victimisation is set out in s27 of the Equality Act 2010:-

"***27 Victimisation***

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

*(*a*) B does a protected act, or*

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

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

*(*a*) bringing proceedings under this Act;*

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

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

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

73. In determining a claim for victimisation, the Tribunal is required to determine the following questions (*HM Prison Service v Ibimidun* [2008] IRLR 940):-

    a. Whether the claimant has done a protected act.
    b. Whether he was treated less favourably than others who did not do the protected act.
    c. Whether he was subject to a detriment because he did the protected act.
    d. Whether he is disqualified from claiming under s27(3) [not relevant to these proceedings].

74. It is important to distinguish between cases where the alleged detriment has a connection to the protected act but is not *"because"* of it from those cases where the detriment is directly because of the protected act.

75. For example, in *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, it was held that a refusal of a reference did not amount to victimisation on the basis that it was not refused because of the fact that the claimant had brought a race discrimination but because of the imminence of the hearing in the case and the respondent's desire to protect their position in the litigation.

76. The principles set out above in relation to detriment, "significant influence" and the burden of proof apply equally to a victimisation claim as they do to a claim for direct discrimination.

**Decision – unfair dismissal**

77. The Tribunal will address the unfair dismissal claim first before turning to the claims of age discrimination and victimisation.

78. The claimant accepts that he was dismissed by reason of redundancy and does not dispute that there was a genuine redundancy situation. If this had been an issue in dispute, the Tribunal would have found that there was a genuine redundancy situation and that this was the reason for the claimant's dismissal; based on the evidence heard by the Tribunal, there was a clear downturn in the respondent's work which necessitated a need to reduce the number of employees. This is the epitome of a redundancy situation.

79. In these circumstances, the Tribunal finds that there was a potentially fair reason for dismissal.

80. The question is then whether the claimant was fairly selected for redundancy in terms of the pool for selection, the selection criteria and how these were applied to him. The Tribunal reminds itself that is not to substitute its own decision in relation to these matters for that of the respondent but, rather, it is deciding whether what the respondent did in respect of these matters was within the band of reasonable responses open to them in all the circumstances of the case.

81. In terms of the pool for selection, the respondent had identified this as being all drivers based across the Central Belt. The Tribunal considered that the respondent had applied their mind to the issue of the pool for selection in terms of identifying that the reduction in work mostly impacted drivers in this region.

82. In these circumstances, the Tribunal considers that it is clearly within the band of reasonable responses for redundancies to come from those jobs in those areas which are most affected by the downturn in work.

83. In terms of the selection criteria, these were clearly all capable of objective application; length of service is obviously a matter of fact rather than any subjective opinion as is attendance. The skillset criteria is one that can involve some subjective assessment but the respondent avoided this by assessing this based on what duties each employee had actually carried out.

84. The claimant's objection to the selection criteria relates to the fact that attendance and skillset were only assessed over the previous year. In particular, he had not carried out certain types of work in that time but had done so in the past. However, the Tribunal considers that the respondent's approach to this was within the band of reasonable responses; they had applied their mind to how they wished to assess the skills of their employees; they had identified what skills they most needed their employees to have and weighted these accordingly; they decided that they wished to retain those staff whose skills were most up-to-date and that the best way to assess this was by identifying those who had done the relevant work in the last year.

85. The Tribunal considers that, having applied their mind to the matter, the selection criteria used by the respondent was within the reasonable band of responses. Whilst other criteria could have been used, the Tribunal would be substituting its own decision if it were to find that the respondent should have used other criteria.

86. In terms of the period over which the skillset criteria was scored, the Tribunal would, again, be substituting its own decision if it was to say that a longer period should have been used. The claimant complained that it was not within his control what work he was allocated over the previous year but the same

could be said both by every employee in the pool for selection and in respect of any period used by the respondent.

87. In any event, the respondent was entitled to decide that they wanted to retain staff with the most up-to-date skills and assessing this based on what work employees had done most recently was clearly within the band of reasonable responses.

88. In terms of the application of the criteria to the claimant, there is no dispute about his score for length of service and he does not dispute the score for skills beyond the issue set out above about this being based on the work done in the past year.

89. The claimant did have an issue with his score for attendance because his absence in the relevant period was due to an issue with his car rather than ill health. However, the claimant had still been absent and the reason why was not one which the respondent had excluded. In these circumstances, the Tribunal does not consider that the selection criteria had not been properly applied to the claimant.

90. Turning to this issue of consultation, the respondent had consulted with the trade union when they first decided that redundancies were necessary. In relation to the claimant they held three meetings with the claimant at which they consulted with him about the redundancy situation. He was given the opportunity to challenge his score and discuss alternative roles.

91. The claimant was also given the right of appeal which he exercised and an appeal hearing was held. An issue was raised during the hearing that CG was not impartial in hearing the appeal because the early correspondence in the process (that is, the initial communication to all affected staff and the invite to the first consultation meeting) had gone out in his name. The Tribunal does not consider there is anything in this that is sufficient to render the process unfair; the claimant did not raise any issue with CG hearing his appeal at the time; CG was the next level of management up from GM who had made the decision to dismiss and there was no suggestion that there was anyone else who should have heard the appeal; CG had not been involved in scoring employees or any of the consultation meeting; it is unsurprising that the initial correspondence about redundancy would come from a senior employee such as CG.

92. The Tribunal considers that the process followed by the respondent was, again, within the band of reasonable responses open to them and it is difficult to see what more they could have done.

93. In terms of alternative employment, the claimant had indicated at the second consultation meeting that he was not looking for other opportunities and

confirmed this at the third meeting when a list of vacancies was available for discussion. Indeed, even at the first consultation meeting, when the claimant was asked if he would be open to alternative roles, he replied he was not committing to anything.

94. In these circumstances, the Tribunal considers that the respondent had sought to explore alternative employment and that it was the claimant who did not take this forward.

95. The claimant's issue with this is that the respondent did not present the detail of alternative employment at an earlier stage. However, until the claimant had been made redundant, it would have been premature to have a detailed discussion about this.

96. In relation to other alternatives, the Tribunal is satisfied that the respondent had put their mind to the question of voluntary redundancy but had decided not to proceed with this because they were concerned that employees with the skills they wished to retain would volunteer and they could potentially lose those employees. The Tribunal considers that this is a legitimate concern and so it was within the band of reasonable responses for them to decide not to offer voluntary redundancy.

97. Taking account of all of these matters, the Tribunal considers that the claim for unfair dismissal is not well-founded; there was a potentially fair reason, the respondent used objectively fair criteria to select those to be made redundant, those criteria were properly applied to the claimant, there was a fair consultation process and there were alternative roles which could have been discussed with the claimant but he declined to do so.

98. In these circumstances, the claim for unfair dismissal is hereby dismissed.

**Decision – age discrimination**

99. The claimant alleges a number of actions by the respondent amounts to direct age discrimination and harassment related to age as follows (taken from the agreed list of issues):-

    a. Being subjected to an unfair redundancy process.
    b. Younger employees who scored lower in the scoring matrix were either retained or re-marked at a higher score to remove them from redundancy consideration and/or were offered additional training not offered to the claimant to improve their scores.
    c. Being subjected to stressful redundancy process.
    d. Treating him in a hostile and intimidating manner.
    e. Dismissing him.

100. The Tribunal considers that detriments a) and c) are the same thing (that is, the redundancy process) with different adjectives applied to them and that they are inextricably connected to detriment e) given that the redundancy process culminated in the claimant's dismissal. The Tribunal will, therefore, address these together.

101. The Tribunal considers that there is no evidence that the claimant was subject to the redundancy process and dismissed at the end of that process because of his age and neither was any of this related to his age.

102. As noted above in the context of the unfair dismissal claim, the claimant accepts that he was dismissed by reason of redundancy and the Tribunal considers that there was clearly a redundancy situation. In these circumstances, the reason why the claimant was subject to a redundancy process was because he was one of a large number of employees who were in the pool of employees at risk of redundancy. It had nothing to do with the claimant's age and the limited information which the Tribunal has about the age of those in the pool for selection (pp45-46) shows that employees of all ages were in the pool.

103. The reason why the claimant was selected for redundancy and ultimately dismissed was because his score under the selection criteria was such that he was within the eight lowest scores. This was nothing to do with his age; the criteria used to score employees did not discriminate against the claimant because of his age nor were they related to his age; in particular, there was no evidence that the criteria were selected in order to select the claimant (or any other employee) for redundancy because of their age; the scores awarded to him under those criteria had nothing to do with his age and, rather, were based on objective facts which the claimant did not dispute.

104. There was simply no evidence from which the Tribunal could draw any inference that the respondent, consciously or unconsciously, did anything during the redundancy process that was significantly influenced by, or related to, the claimant's age.

105. For these reasons, the Tribunal considers that the claimant's claim of direct discrimination and harassment in respect of detriments a), c) and e) are not well-founded and are hereby dismissed.

106. Turning to detriment b), this is based on the assertion by the claimant that SM (whose initial score under the selection criteria had placed her within the group to be made redundant) had been given the opportunity to be trained up on different types of work and have her score for skillsets adjusted accordingly. As result, the claimant asserted that SM had her score for skillsets changed

and was not made redundant. The claimant asserted that he had not been given the same opportunity.

107. However, it was the evidence of SM (who was called by the claimant and who the Tribunal found to be a reliable and credible witness) that her score for skillsets was not changed at all. Rather, it was her score for attendance that had been changed when she pointed out that she had only been off once in the past year but her score was based on three absences. Once this had been amended then her score increased to the extent that she moved out of the group to be made redundant.

108. In these circumstances, SM does not provide the claimant with a comparator for the direct discrimination claim because she was not treated differently in the manner alleged by the claimant. Given the reason why her score was changed, SM's circumstances provide no useful evidence from which the Tribunal could draw an inference about how a hypothetical comparator would have been treated.

109. The claimant led no evidence about any other younger employee whose score was changed in the circumstances alleged by him. There is, therefore, no evidential basis on which the Tribunal could conclude that what he alleges actually happened. There was, therefore, no less favourable treatment nor was there any unwanted conduct related to age.

110. In the list of issues at 6.2, the claimant identifies two named comparators other than SM in his direct discrimination claim but no evidence was led about how they were treated. At the end of submissions, the Judge clarified with Mr Anderson whether those comparators were still relied upon or whether it was just SM. Mr Anderson confirmed that it was just SM.

111. In these circumstances, the claims for direct discrimination and harassment in respect of detriment b) are not well-founded and are hereby dismissed.

112. Finally, in respect of detriment d), this detriment was not particularised beyond the broad assertion of such treatment and it was not clear from the evidence of the claimant or the submissions made on his behalf what the alleged "*hostile and intimidating"* treatment was said to be.

113. At most, it was said in submissions that the claimant was upset and distressed by the redundancy process. The Tribunal does not doubt this; most employees at risk of losing their job in a redundancy process will be worried about that prospect but this does not mean that they are being treated in a hostile and intimidating manner.

114. In particular, there was no evidence that any treatment of the claimant in relation to the redundancy process was because of, or related to, his age. In

reaching this conclusion, the Tribunal relies on its reasoning above about why the claimant went through the redundancy process and why he was dismissed at the end of that process.

115. In these circumstances, the Tribunal considers that the claims of direct discrimination and harassment in respect of detriment d) are not well-founded and are, hereby, dismissed.

116. Turning to the claim of indirect age discrimination, the Tribunal accepts that the respondent applied a PCP to all those in the pool for selection that it would assess skills on the basis of the duties carried out over the previous year.

117. However, in relation to the second element of the test for indirect discrimination, the claimant presented no evidence at all that this created any group disadvantage. The burden of proving group disadvantage lies on the claimant and he presented no evidence about this. During the submissions on behalf of the claimant, the Judge specifically asked Mr Anderson about what the group disadvantage was and where there was evidence of this but he could give no answer to this.

118. Whilst the Tribunal had information about the age of those who were selected for redundancy at p52 which shows they were aged between 51 and 63, it has no information about the age of those who were not selected. In other words, the Tribunal has evidence about the disadvantaged group but none about the advantaged group.

119. The closest the Tribunal has to evidence about the advantaged group is in the table at pp45-46 but it was the evidence of CG that this was an incomplete list of the employees who were in the pool for selection. Other than the claimant who is identified by name on this table, it is unclear which (if any) of the employees on this incomplete list were selected for redundancy and which were not selected. No useful conclusions can be drawn from this table in light of these problems.

120. In these circumstances, the Tribunal considers that the claimant has failed to discharge the burden of proof in respect of the claim for indirect discrimination because he has led no evidence that the PCP applied by the respondent would put people who share the claimant's protected characteristic of age at a substantial disadvantage compared to those who do not.

121. In any event, even if there had been a *prima facie* case of indirect discrimination, the Tribunal considers that the respondent would have been able to objectively justify this.

122. The PCP applied clearly had the legitimate aim of retaining those employees with up-to-date skills in the types of work that were important to the respondent.

The Tribunal considers that the PCP was a proportionate means of achieving that aim; it identified those employees who had carried out the type of work most recently; the claimant did not identify any alternative means of achieving this aim other than to say that the respondent should have used a longer period which would not achieve the aim of ensuring staff had up-to-date skills.

123. For these reasons, the Tribunal considers that the claim of indirect age discrimination is not well-founded and is hereby dismissed.

**Decision - victimisation**

124. The claimant relies on two emails as being the protected act for the purposes of his victimisation claim but these are the same email sent twice, first on 21 July 2025 and then, again, on 30 September 2025.

125. The latter email does not provide the claimant with any assistance as it was sent after the alleged acts of victimisation are said to have occurred. Even if it amounted to a protected act, the email of 30 September cannot be the cause of alleged acts by the respondent which happened before it was sent.

126. Turning to the email of 21 July 2025 (p42 with an attached picture at p43), the Tribunal does not consider that this amounts to a protected act as defined in s27 of the Equality Act. It is a complaint about the truck which the claimant had been allocated that day and the condition in which he found it. This clearly does not fall within s27(2)(a) and (b) as it has nothing to do with proceedings under the Act. Further, the email, on a plain reading, does not allege a breach of the Equality Act nor does it involve the claimant doing anything in connection with the Act.

127. If there was no protected act then there is no basis to any victimisation claim and that would be sufficient to dispose of the victimisation claim. However, even if the email of 21 July was a protected act, the Tribunal does not consider that the claimant was subject to any of the alleged detriments because he sent that email.

128. In respect of the detriment of being dismissed for redundancy, the Tribunal relies on the same reasoning as set out above in respect of the claims for direct discrimination and harassment; there was a genuine redundancy situation and the claimant was selected for redundancy based on his score under the selection criteria. There is no evidence at all that his dismissal was in any way because he had sent the email of 21 July 2025.

129. The claimant also alleges that the respondent's failure to respond to the email of 21 July amounts to an act of victimisation. There is a degree of circular reasoning in the argument that sending an email is the reason why there was

no response to that email but, in any event, the Tribunal accepts the evidence of the respondent that it had been understood that the former transport manager had dealt with this before she had left the respondent. The Tribunal considers that this provides a reason why the claimant had no response to the email.

130. The two remaining detriments are said to be an allocation of smaller vehicles (which reduced his earnings) and less shifts after sending the email. However, the claimant led no evidence about this at all. Indeed, the only evidence the claimant gave about a reduction in earnings was that this occurred after he returned to work from a period of absence in early 2025 (and before he sent the email of 21 July) when he did not carry out long distance work.

131. In these circumstances, the Tribunal can make no findings of fact that the claimant was allocated less shifts or that he was allocated smaller vehicles after 21 July 2025.

132. In the absence of such findings of fact, the Tribunal cannot find that these detriments actually occurred, let alone draw any inference that they were done because he sent the email of 21 July 2025.

133. For all these reasons, the Tribunal considers that the claim for victimisation is not well-founded and is, hereby, dismissed.

**Date sent to Parties** **30 October 2026**