EMPLOYMENT TRIBUNALS

Claimant: **Mr Giles Marcus**

Respondent: **Made Tech** Ltd

Heard at: South London Employment Tribunal

On: 21, 22, 23 and 24 October 2025, 8 and 27 January 2026 (by videolink) 28 January (for deliberations)

Before: **Employment Judge RS Drake** (of the VR) - sitting alone

Representation
Claimant: Ms A Brown, of Counsel
Respondent: Mr A Johnston, of Counsel

RESERVED JUDGMENT

1. C's complaints of direct race discrimination are dismissed.

2. C's complaints of harassment related to his race are dismissed.

REASONS

Introduction and Preliminary Issues

1. The claims relate to C's employment by R as what is described as a "Client Partner (Health)" which started on 20 March 2023 and ended on 29 September 2023 by dismissal. ACAS Early Conciliation procedure followed and was certified as completed on 02 February 2024, following which C presented his claims on 07 March 2024.

2. I use the following abbreviations to clarify and shorten this Decision:-

Claimant	"C"
Respondents	"R"
Mr Ian Southward	"IS"
Ms Hazel Jones	"HJ"
Ms Nina-Marie Purcell	"NMP"
Ms Tori Chapman	"TC"
Agreed Bundle Pages	"PP1 – 787"
Transcript of first three days of hearing	"T1-287"
Equality Act 2010	"EqA"
Client Partner	"CP"
Mr Chris Wilson – nominated comparator	"CW"
Mr Adam Jones - nominated comparator	"AJ"
Mr Ian Gibbons – alternative comparator	"IG"

3. R responded on 9 April 2024 by denying and/or traversing the claims.

4. The case was listed for 4 days to commence on Tuesday 21 October 2025, but I advised that, if as seemed very likely it would overrun, I would not be available for a fifth day on Monday 27 October as I would be abroad. I discussed how to continue with both Counsel. We all anticipated a further two days might be needed necessitating reconvening as soon as possible after Friday 24 October. The earliest availability of Tribunal resource and both Counsel was Thursday 08 and Friday 09 January 2026. However, on 08 January the parties had to apply for a further hearing day so as to secure availability of a transcript of the recording of the hearing thus far, so as to enable C's Counsel in particular to review witness testimony cross examination. The transcript could not be available in time to enable the hearing to conclude on 09 January, so it was agreed that the final day (limited to Final Submissions) could be made available on 27 January 2025. I advised that reservation of Judgment would be inevitable and for that reason it was

agreed that I would deliberate thereafter and if necessary, set a separate Remedies Hearing date.

5. Below, I refer to documents in an agreed bundle comprising over 700 pages (PP1 to 787) and several witness statements identified by the initials of the witnesses and paragraph numbers. I note that claims of automatic unfair dismissal, (presumably under Section 39(2)(c) of EqA, victimisation and personal injury have been dismissed by Judgment on withdrawal – (PP83-84 refer). This leaves extant only claims under Section 13 EqA (direct race discrimination) and Section 26 EqA (harassment) to be determined.

6. At the start of the hearing, C applied for a Witness Order to require the attendance of HJ (C's initial line manager) to support his claims. He also objected to my being empaneled to hear this case as a Judge sitting alone without a lay panel. I dealt with both matters in the following manner:-

5.1 I made a Witness Order which I arranged to be served immediately;

5.2 I proceeded to hear the case without a lay panel, as authorised by the Regional Judge due to insufficient lay member resources, considering key factors which guided my decision:-

5.2.1 Corrected Case Management Orders (made 7 June 2024 – PP80-81) envisaged a full panel final hearing, but I had noted on the Listing Schedule for the start of the hearing that the mode was marked as Judge alone; I took this up with the Regional Judge who advised that there were insufficient lay members available to populate all cases listed for full panels for that or several subsequent days, so he authorised me to hear the case alone in accordance with Presidential Guidance issued 29 October 2024 if I deemed appropriate;

5.2.2 I discussed this situation with both Counsel and noted carefully Ms Brown's earnest concern that though I had advised both sides as to the range of my past professional and ongoing judicial background and continuing training, she argued that I could not have had the "lived experience" of a person of C's background – he describes himself as British Afro-Caribbean; I noted also that R, for the sake of expedition of the hearing of the case, did not object to me sitting alone – Mr Johnston expressed confidence that my background and judicial training since my appointment in 1997 would equip me sufficiently to enable me to avoid either conscious or unconscious bias; Without wishing to appear presumptuous or immodest, I share his confidence but nonetheless strived throughout this case to exercise my duties with judicious caution out of respect for C's concerns and in fulfilment of my duty to seek to fulfil the overriding objective;

5.2.3 It had been initially necessary for Mr Johnston to remind/correct me as to the precise wording of the above mentioned Presidential Guidance (at paragraphs 7-13 inclusive) in which the Presidents advise that factors relevant to panel composition will vary from case to case and are for the Judge to weigh in the balance when

deciding composition which furthers the interests of justice and accords with the overriding objective; These include, the non-determinative views of the parties, whether determination of issues requires an understanding of workplace norms to which members can contribute by their experience, and on a practical level the availability of members to sit on the case and the risk of delay to the case if it had to wait until a full panel could be empaneled;

5.2.4 Mr Johnston explained that two of his witnesses have medical conditions (one having cancer) which could impact on their future availability;

5.2.5 Following initial discussion about timetabling, it became apparent from the outset that the case duration would exceed the initially envisaged allocation of 4 days;

5.2.6 I was asked to ascertain, and had already done so at the start of the hearing, when the hearing might if adjourned, be relisted before a full panel for 6/7 days – I was advised by Listing that late Autumn or early Winter 2027 (some two years hence) was the earliest available time slot; I noted that in proportion to the duration of C's employment (just a few days more than 6 months), already a period 4 times longer had passed before final hearing now taking place could commence, and if put off to late autumn 2027 a further disproportionately long period would pass, making commencement fully over 8 times longer a period than the actual period of employment and 4 years since it ended; Inevitably this would exacerbate fading memories considerably, would add to parties' and witnesses' stress, and would be in no parties' best interests by any gauge of measurement.

5.2.7 Accordingly, I concluded it was appropriate for me to start hearing the case without a lay panel.

7. C had presented Grounds of Claim (comprising 35 pages and 168 paragraphs) attached to his ET1 and relied on a 96-page (672 paragraphs) witness Statement of his own and was cross-examined upon it. He also relied upon an 8-page (65 paragraphs) Statement of HJ who had recruited him as his future line manager but had not been his direct manager at the time of his dismissal. She was also cross-examined.

8. R relied on the evidence of three witnesses, IS (R's "Head of Central Government" and "Chief Commercial Officer"), NMP (R's "Head of People Partnering"), and TC (a "Senior People Partner" of R). They produced statements comprising 9, 6 and 4 pages respectively upon which they were extensively and searchingly cross-examined

9. Following witness testimony and cross examination, C applied for a transcription of the Tribunal's recording of the hearing ("the Transcript") so that Ms Brown, who is instructed on "Direct Access" basis, could prepare her Submissions more effectively. Inevitable delay in accessing such Transcript caused loss of a day (Friday 9 January) allocated for resumed hearing, but

together Counsel and I, with the Tribunal staff's inestimable assistance, were able to schedule the final day necessary to complete the hearing on Tuesday 27 January. Written Submissions were produced to me on that date which referred to the witness statements and the 287-page hearing Transcript. C's Submissions comprised 42 pages and 193 paragraphs. R's comprised 27 pages, 99 paragraphs and an annex quoting no fewer than 15 precedent Decisions. I was assisted greatly by the Submission documents which were expertly composed and helpfully elaborated by oral contributions by both Counsel. I was also helped greatly by written Chronology, Cast and Suggested Reading Lists.

10. Given the sheer volume of material to be considered, I reserved my Decision and noted that written Reasons would be requested. I set out my findings and Reasons below.

The Issues

11. The issues to be determined are those identified by EJ Sudra at the Preliminary Hearing on 20 February 2025 (Corrected Orders noted at PP96-98) in the List of Issues ("LoI") numbered 1.2 to 4.1 inclusive. The only amendment is the agreed excision of the name of Paul O'Looney, initially identified by C as a comparator. C's Submissions document repeats the Issues accurately.

The Law relevant to the Substantive Issues

12. In light of my subsequent findings of fact and application of law, I have emphasised by underlining what I take to be the key elements of the law relevant to this case. Other cases referred to in Submissions are added further below. I have also taken them on board.

13. Section 136 EqA, which <u>applies to all claims</u> brought before the Employment Tribunal under the EQA, reads (so far as material):

> "(1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the Court <u>could</u> decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court <u>must</u> hold that the contravention occurred.
>
> (3) But subsection (2) does not apply <u>if A shows that A did not contravene the provision</u>."

14. By Section.39(2) EqA an employer <u>must not discriminate</u> against an employee <u>by dismissing them or subjecting them</u> to any other detriment. The definition of dismissal includes constructive dismissal: s.39(7)(b) EqA.

15. Section 13 (1) of the EqA reads:

> "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."

16. C complains that he has suffered direct discrimination on grounds of the protected characteristic of race. Although the law anticipates a two- stage test of discrimination (i.e. whether C has shown facts from which discrimination might be inferred and, if so, whether R has disproved discrimination) it is not necessary artificially to separate the evidence adduced by the two parties when making findings of fact (**Madarassy v Nomura International Plc [2007] ICR 867 CA**). The Tribunal should consider the whole of the evidence when making its findings of fact and if the reason for the treatment is unclear following those findings, then it will need to apply the provisions of Section136 in order to reach a conclusion on that issue. Further guidance on the correct approach to the provisions of Section136 is set out below.

17. Although the structure of the EqA invites a Tribunal to consider whether there was less favourable treatment of C compared with another employee in materially identical circumstances, and also whether that treatment was because of the protected characteristic concerned, those two issues are often factually and evidentially linked (**Shamoon v Chief Constable of the RUC [2003] IRLR 285 HL**). This is particularly the case where C relies upon a hypothetical comparator. If I find that the reason for the treatment complained of was not that of race, but some other reason, then that is likely to be a strong indicator as to whether or not that treatment was less favourable than an appropriate comparator would have been subjected to.

18. In this case racial harassment is also alleged The statutory provision relevant to the claims in this case is Section.26 EqA which provides: –

> "(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) …
>
> (3) …
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be considered –
>
> (a) the perception of B
>
> (b) the other circumstances of the case
>
> (c) whether it is reasonable for the conduct to have that effect"

For the purposes of the current case in relation to the harassment claims, I

bear in mind the guidance of the EAT decisions of Underhill J in **Richmond Pharmacology v Dhaliwaal [2009] IRLR 336** as further cited by Underhill J in the CA in **Pemberton v Inwood [2018] IRLR 542**. In the latter the following appears (paras 86-88):-

> *"In order to decide whether any conduct falling within sub paragraph 1(a) of section 26 EqA has either of the proscribed effects under sub paragraph 1(b) a Tribunal must consider (both by reason of subsection 4(a) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and by reason of subsection 4(c) whether it was reasonable for the conduct to be regarded as having that effect (the objective question) it must also take into account all the other circumstances subsection 4(b)."*

19. In 2001, the applicable provision of the then in force Race Relations Act 1976 was considered by the House of Lords in **The Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, HL.** The wording of the applicable definition has developed within the EqA. Nonetheless, **Khan** is still relevant in considering what is meant by the requirement that the act complained of be done "because of" a prohibited act. Lord Nicholls said this, at paragraph 29 of the Judgment: -

> "*The phrases 'on racial grounds' and 'by reason that' denote a different exercise: Why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact"*

20. In a sex discrimination case **Igen Ltd v Wong [2005] ICR 931 CA**, (though the principles are equally applicable in direct race discrimination under Section 13 EqA), the Court of Appeal provided guidance on application of the burden of proof. When deciding whether or not C has been the victim of direct race discrimination, the Tribunal must consider whether he has established, on a balance of probabilities, facts from which the Tribunal could decide, in the absence of any other explanation, that the incidents complained of occurred as alleged, that they amounted to less favourable treatment than an actual or hypothetical comparator did or would have received, and that **the reason for the treatment was race**. If the Tribunal is satisfied, it **must** find that discrimination has occurred **unless** R proves that the reason for their action was not that of race.

21. It is trite to say that there is rarely evidence of overt or deliberate discrimination – usually there is no "smoking gun"! Looking at the context of events is necessary to see whether there are appropriate inferences that can be made from the primary facts. I recognise from training that discrimination and harassment can be unconscious but that there needs to be an evidence base for concluding that a person's actions were subconsciously motivated by race so as to justify such inference – see **Bahl v The Law Society [2004] IRLR 810, CA**. The same principle applies when considering whether a discriminator's actions were motivated by stereotyping, which conclusion must also be evidence based so as to draw an adverse inference justifiably - see **B v A [2010] IRLR 400, EAT**.

22. Section.136 EqA has been considered by the Supreme Court **in Hewage v**

Grampian Health Board [2012] ICR 1054 UKSC – and more recently in **Efobi v Royal Mail Group Ltd [2021] ICR 1263 UKSC**. Where the Tribunal can make positive findings on the evidence (one way or the other), the burden of proof provisions is unlikely to have a bearing upon the outcome. However, it is recognized that the task of identifying the reason for the treatment and its cause requires the Tribunal to look into the mind of the alleged perpetrator. This is not to say it must seek to find the intention of the perpetrator, who may not have intended to discriminate, but still may have been materially affected by considerations of race as is alleged in the current case. The burden of proof provisions can be helpful when there are concerns about subconscious wrongdoing, but the Tribunal must remain vigilant to ensure that any findings of such wrongdoing are supported by evidence.

23. If the Tribunal finds evidence that could reasonably suggest discrimination or harassment, it should apply the burden of proof provision to support C, rather than simply weighing this evidence against other facts. In such cases, the Tribunal should presume that R must disprove discrimination. R can only meet this burden with clear evidence, judged on the balance of probabilities. If a decision-maker does not provide completely cogent testimony, R may still satisfy the burden through a reasoned analysis of all and including the documentary or other evidence.

24. For a Claimant to succeed in establishing a prima facie case susceptible to any need for rebuttal, if he shows a mere difference of status or treatment, he must show "something more" to enable a Tribunal to conclude that unlawful discrimination has occurred. As Sedley LJ said in **Deman v Commission for Equality and Human Rights [2010] EWCA Civ 33** at para.56,

> "*The 'more' which is needed to create a claim requiring an answer need not be a great deal. In some instances, it will be furnished by non-response, or an evasive or untruthful answer to a statutory questionnaire. In other instances, It may be furnished by the context in which the act has allegedly occurred.*
>
> *Unlawful motivation, such as race discrimination, does not need to be the only or main reason for an act; being more than a minor factor is sufficient. However, dismissal or another negative action is not victimisation under s.27 EQA if it results from a separable aspect of the discrimination complaint, not the complaint itself (see* ***Martin v Devonshires Solicitors* [2011] ICR 352, EAT****; and* ***Page v Lord Chancellor* [2021] ICR 912, CA).***

25. To determine if an act was detrimental to an employee, the Tribunal must find that a reasonable worker could view themselves as disadvantaged in their subsequent working conditions due to the act: See **De Souza v Automobile Association [1986] IRLR 103, CA**. **Shamoon** clarified that the test should consider the victim's perspective: if it was reasonable for them to feel that the treatment caused them detriment, this would be enough. However, simply feeling aggrieved for no justified reason does not mean C experienced an actionable detriment.

26. The EHRC Code of Practice on Employment (2011) advises in para 9.8 that a detriment is "anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage."

(my emphasis of an objectivity of approach)

Findings of Fact

27. The findings of fact are based on balance of probabilities, after considering all witness evidence, both documentary and oral. Only the principal findings relevant to the issues are recorded, as much evidence was agreed and perhaps remarkably few conflicts arose. Where there were factual disputes, judgements are made on witness credibility, consistency where relevant when properly judged across different accounts, and congruence with contemporaneous documents. I can readily record that I regarded the witnesses (including C himself) as candid and truthful even where any apparent admission and/or concession made by them might appear damaging to their respective cases.

28. I list the findings thus: -

28.1 On or around 27 January 2023 (PP 172-179) C applied to R for the role of CP(Healthcare) pursuant to a Job Description (PP162-164). He provided a detailed CV (PP165-170) and in interview on 30 January 2023 he made a presentation (PP190-221) to support his candidacy to HJ and a Mr Lee Parker. He described his detailed recent employment history which is referred to in greater detail in his statement paras 6-22. It is clear that C and HJ got on well and began to develop a mutually respectful working relationship from this point (see P174). HJ was to be C's line manager if he were successful.

28.2 Following the initial interview, C was interviewed by different members of what HJ describes as "the Team" (HJ Statement para 5) and then by IS as her immediate line management and at the time Chief Commercial Officer ("CCO"). IS is now R's Head of "Central Government Team" leading a business unit accounting for 40% of R's business (IS statement paras 1-3 refer). IS had experience in undertaking formal interview and performance review discussions with candidates/employees, in which role he was supported by Rs' HR services described as the "People Team" (IS statement para 4 refers).

28.3 C acknowledges he was attracted to the role vacancy because R professes to rely heavily on its expression of commitment to diversity, and he cites many documents issued by its management to this effect – these include a YouTube interview (PP102-107) content of LinkedIn pages, his Job Description (PP162-164) and its ongoing Policy on "Equality, Diversity and Inclusion" (PP150-154). I recognise that in terms, in relation to himself, C argues in these claims that R "did not practice what they preached" though he does not use these words.

28.4 It is common ground that: -

28.4.1 C entered employment on 20 March 2023 (one week after the date originally contracted) pursuant to a Contract of Employment ("Contract") dated 20 February 2023 (PP208-221);

28.4.2 He joined a team of 15 people of which he was the only black person, all the others being white males or females;

28.4.3 Clause 22 of the Contract (P220) provides that -
"*The first 3 months of employment will be a probationary period, during which your performance and conduct will be monitored. The probationary period may be extended by us for up to a further 3 months. At the end of the probationary period you will be informed in writing whether you have successfully completed the probationary period. If you do not receive any written confirmation you should assume that your probationary period continues. During the probationary period, your employment may be terminated by either party by giving one week's notice to the other in writing*."

28.4.4 C's probation period ran from commencement of employment upto 7 June 2023, when despite what IS and HJ regarded as an unsuccessful performance in presentation by C and being given a second opportunity to improve his presentation, his probation was extended by three month; In the meantime his performance would be reviewed on an ongoing basis (email to C at P291 refers);

28.4.5 Another employee (IG – a white man relied upon by R as a comparator), was dismissed (P289-290) due to failure to achieve satisfactory performance during probation;

28.4.6 C relies on reference to CW (a white man) as a comparator. When C's employment started, CW was the then current CP Healthcare, but he was already in the process of leaving and had not been successful in his role performance. C asserts that a different performance metric was applied by IS to him, but I have not seen evidence of this; However, CW left R's' employ before C's employment commenced, and accordingly R asserts that he is not a genuinely apt comparator in that this fact amounts to a "material difference in circumstances" as provided for in Section 23(1) EqA in comparison with C;

28.4.7 C also relies on reference to AJ (also a white man) as a comparator, but R asserts that again he is not an apt comparator because he was not engaged by R during the periods covered by C's complaints and left in June 2023, had been engaged by R at a lower level than C, was not managed like C by HJ, and was in any event made redundant leaving C in post as the only CP Healthcare as at the time of the latter's termination; Again, in terms, R asserts that there were thus material differences in AJ's circumstances in comparison with C for the purposes of Section 23(1) EqA;

28.4.8 After he commenced employment, C had a one-to-one discussion with HJ on 17 April 2023 (P225) and this was followed by a "Demand Team" monthly call with her and IS; From this I can find that C was supported in his work; This is also borne out by unchallenged testimony as to his ability to access and use the digital Project Management ("Trello") system software records (PP222-223),

he could augment them, and also participate in a proprietary communications system called “Slack” (PP518-533). Access to this series of support and information systems continued into an extended probation period after 7 June 2023;

28.4.9 C attended a Probation Review meeting with HJ and IS on 7 June 2023 at which he was required to speak to a prepared presentation he had composed. Its purpose was to assist HJ and IS in determining whether C should pass probation and his appointment be confirmed, or whether he failed and would have to be considered for dismissal or extension in accordance with clause 22 of the Contract; IS is adamant that he was not satisfied (and he asserts for good cause) with the quality of the overall presentation and in particular the content of presentation slides prepared by C which was central to the review process; C firmly believe he is right and that IS should have been satisfied with C’s presentation. Unfortunately for C, HJ’s evidence is equivocal on this point, as in her statement (para 23) she says that the presentation was “upto my requirement”. Yet, contradictorily, in her email to C 7 June 2023 (P291) explaining the meeting outcome to C she says – “*There was lots of feedback from the session with the general consensus being that you hadn't put in sufficient effort to really understand Made Tech and what we do, so that you are well placed to describe us to potential clients. We agreed that you would take some time to redo the presentation … following the session today we will be extending your probation for a further three months but we will review this at intervals with you …*” The written record of HJ is not consistent with her statement. On balance, I prefer the account of IS whose testimony is consistent with HJ’s email, and yet shows that significantly he did not exercise the option of dismissal, even though potentially he could have done so per Contract;

28.4.10 Notwithanding IS’ concerns, it was he who allowed C to be given an opportunity to present again with improvements on 15 June 2023 (P294 refers); In the meantime, IG had been dismissed 1 June 2023 because of failing probation, and AJ left because of redundancy on 1 June 2023; This contrasts sharply with the way IS treated C.

28.4.11 Unfortunately, then HJ became ill and was absent from work and unable to manage C from 26 June 2023; This left IS to hold down his own more senior duties and take on those of HJ including line management of C; It is indeed unfortunate HJ became absent since there was an unchallenged sharp contrast of attitudes between IS and C and the way they worked; Their views about what to do and how to do it differed sharply, as did focus and emphasis; A character clash existed as is apparent common ground;

28.4.12 I set out below a list of the dates of discussion and communication between C and IS which by their content I conclude are agreed and that what is at issue is the interpretation of them which I have also dealt with below;

28.5 A number of specific assertions by C underpin how he says he understood his role would be developed and what was expected of him - set out in para 141 of his statement. He also asserts in this respect that he was treated less favourably than CW. I have considered these and conclude inter alia: -

28.5.1 I have been unable to find evidence upon which C might rely to establish soundness of his reliance on the case of CW as a comparator, or anything sufficient to contradict IS's assertion that the comparison is not apt; I have noted IS's testimony and a number of areas where he exposes himself to criticism (about which I make findings below where necessary to the issues) but overall, I find that his candour about imperfections of process bespeak probity of his steadfast assertion under searching cross-examination that race was NOT a factor in his decision making and that no valid comparison is to be made between C and CW. Therefore, I do not accept C's assertion;

28.5.2 C asserts that a strategy was agreed between HJ and himself, becoming a formal "Agreed Strategy" thereby appearing to imply it was quasi-contractual, when he commenced employment; C asserts IS deviated from this when he had to take over direct management of C on HJ commencing ill health absence; In the documentary evidence, I cannot find any articulation of such Agreed Strategy at the time employment started, but I can find post-commencement development of various probation performance expectations of C, and actions as noted in Trello records (PP222-225); Again, I do not accept the effect of C's assertion about an Agreed Strategy;

28.5.3 C asserts that he was not aware of the document described as "Client Partner Core Competencies" dated 24 April 2023 (PP229-233) during the recruitment process or at commencement of his employment, against which his performance was measured by IS when his probation was first extended and then later his employment was terminated; I understand this assertion because I note that the document itself post-dates commencement of employment and cannot therefore per se be relied upon by R as being part of C's Contract terms; However, I can find that on his own testimony IS did have the content of this document in mind and that by virtue of there being reference in the Trello records to the qualities it prescribes, insofar as C was encouraged to and had access to those records, I conclude that he was aware of the substance of the competencies required in principle;

28.5.4 In support of this conclusion, I note by way of non-exhaustive example, P222 (Trello record) which refers to having understanding "of competitors and strengths and weaknesses" and P230 (Core Competencies) under the heading of "Being Expert in Clients' Business", where there is reference to "understand our competitors, their profile with the Client and their relationships"; I find that the congruence of the tone and content of the Trello records with the Core Competencies document shows C did not lack awareness of forms and level of performance expected of him whilst his probation

period was progressing;

28.5.5 C asserts that after HJ commenced sick leave he had no communication with IS let alone any clear clarification from IS of what was expected of him by way of Client Care Competencies; This contrasts with his own manuscript notes of discussions he had with IS (PP295-305) which show the opposite: In particular I note there is reference to discussion about "Strategy" (P296) and evidence of discussions on 14 and 15 June 2023, 10, 20 and 27 July 2023, 2, 3, 7 and 31 August 2023 and lastly 4 September 2023; C's notes are comprehensive and wide ranging, and they are coupled with a number of emails between him and IS (PP317, 350-353, 428-429, and 501-515) so I can find that they show no lack of ongoing support for C from IS despite IS admitting under cross examination that he didn't start communications with C until several days after HJ became absent;

28.5.6 In simple terms, and at the heart of submissions by his Counsel, C asserts that the goal posts were being moved to his detriment by IS; I recognise this was his subjective point of view to the extent of being conviction; Rather, I see a difference of emphasis and approach to C's tasks as between the views of HJ and later IS; HJ was very accepting of C's performance but IS less so, and yet IS exerted on very many occasions efforts to guide C despite C not agreeing that he had not met the standards expected by IS;

28.5.7 I have searched for and found it difficult to locate any reference in the evidence to C challenging IS on the basis that he felt he was entitled to expect to work only to the standards expected by HJ or that he was entitled to work to a Strategy allegedly agreed with her to the extent that he could not be expected to deviate from it; In any event I recognise that C was the subordinate in this working relationship and it is within the prerogative of IS as a senior in the relationship to have and to articulate his views as to how he wanted C to work;

25.5.8 Before C's Probation Review Meeting on 7 June 2023, C had been actively included in planning and executing planned works to advance healthcare opportunities (PP236-237 refer); He had also taken part in a Healthcare Team Planning workshop during this period of time;

25.5.9 On 1 June 2023, IG was dismissed because he failed probation; In contrast, C attended his Probation Review meeting (7 June 2023) with IS who was accompanied by HJ and a Mr Tom Taylor and though he was deemed by IS AND HJ not to have made a satisfactory presentation, he was not dismissed; Instead, his probation was extended; C was given an opportunity to re-present, which was a course not offered to IG or AJ who was dismissed because of redundancy on 14 June 2023. C's re-presentation was much more well received by IS, but his performance in probation remained under review to the extent that during HJ's sickness absence, C had a number of one-to-one meetings with IS on 20 July 2023 and 3-10 August 2023 (P297 and PP660-686 refer as mentioned

in para 25.5.4 above); IS admits under cross examination and criticism that he did not explicitly make clear that these discussions were part of an ongoing performance review process; However, given it followed what for C was a poor presentation which could have but did not lead to his dismissal, for C to regard himself as not being under ongoing review seems far-fetched to the extent of it being likely that he was aware;

25.5.10 C describes (P297) that the one-to-one discussion with IS on 3 August was largely "negative and accusatorial" including IS asking a question like "how C was using his time"; IS categorically denies he was "accusatorial" and says he accepts his reaction may have been beset with frustration but that in balancing contrast he was positive about expecting C to be able to deliver performance in accordance with the revised presentation; IS says and I can accept that this was an approach borne of IS's awareness that C had come to R on the strength of and with a CV showing 20 years plus experience of Business Development work (T para 141F and Mr Johnston's corrective note thereof refers); IS says he still regarded C as a probationer within R, but with 20 years' experience requiring to get to know R's approach and strengths better before being confirmed in post; I find there was an atmosphere of vehement disagreement and frustration as often betokens marked difference of approach and personality clash, but I do not find that IS was "negative and accusatorial" as C alleges.

25.5.11 IS accepts that he made it clear at the 3 August one-to one, by way of non-exhaustive example, that he expected C to achieve a level of 4-5 meetings with prospective clients per week which he was not achieving; C says this was at odds with what HJ had expected of him as his line manager, but this point was not in my finding definitively established in testimony or on the basis of documentary evidence;

28.5.12 C asserts that in a one-to -one with IS on 10 August 2023 (PP660-686) that IS made comments that were "hostile and demeaning" to him; I have examined every single page of this record and note a number of comments such as (P661) "Can we add target dates?" and "Do not develop now unless there are some very quick wins", (P663) "Explain this section", (P670) "what is the significance of the different colours?", (P671) "Is there a table we should add – top suppliers in each target client?", (P679) "Replace …" and "Delete …", (P682) "At the end of this doc or in a separate doc, we will need a weekly plan …"; Having examined each page I find that these are but a few non-exhaustive samples typical of the overall and specific tone used by IS which I do not find to be hostile or demeaning despite C's assertion;

28.6 On 23 August 2023 C attended a Teams meeting (PP320-322) with representatives of the UKHSA, a prospective major client/partner being developed by R, directly involving C as a lead member of R's Healthcare team. C produced a report (PP320-322) by way of briefing update for R's management. In it C envisages engagement of R's Bid Team to proceed with

preparation and presentation of R's services. C's involvement was no small engagement by R and showed high expectations of C to which he does not appear to have objected.

28.7 Following taking annual leave at the end of August, C then attended his second Probation Review Meeting on 29 September 2023. There were a number of factors/circumstances for which IS was ultimately responsible which C asserts are indicative of predetermination to terminate his employment and at least betoken a foregone conclusion in IS mind and overall thinking; -

28.7.1 IS had discussed with the People Partner team the possibility of dismissal, albeit he says he had in mind further extension of probation which he was advised by People Partner officers was not contractually possible; I accept this happened as IS testimony is corroborated by NMP;

28.7.2 C was not explicitly warned before the meeting that his employment was at risk; I can accept this point; Equally, I can accept the point made by IS that he wanted to but was advised against renewal/extension of probation.

28.7.3 C submits that IS cannot recall precisely what words he used in the meeting and that he was indifferent to C's explanations as to why his performance would be regarded as lacking even to the extent as characterising IS's actions before the meeting as "undermining and gaslighting of C"; I can find that IS was not as precise about his recollection of such an important meeting as might be expected of him, but I can find no evidence of IS undermining or gaslighting C;

28.7.4 C asserts vigorously that IS's attitude towards him was characteristic of unconscious bias which therefore tainted his decision making; He is said to have had expectations of C which were unrealistic and unclear; I find that IS and C had significantly differing views about expectations of performance but that in any event there was no lack of ongoing guidance as to IS expectations to the extent that there was no lack of clarity on this subject; The evidence described at paragraph 25.5.4 above (inter alia) refers;

28.8 The outcome of the second Probation Review meeting was dismissal of C on 29 September 2023 followed by written confirmation (PP616-618) – this is common ground; C's submissions list a large number of asserted inconsistencies (within themselves) in the testimonies of IS, NMP and TC and he seeks to rely on these as compelling evidence of "ulterior motive" (my words) for dismissal of C which can only be because it was caused by his race, or was in some way tainted by his race;

28.9 I can readily see why he lays great weight on such asserted inconsistencies; Some are not so much inconsistencies but are for example conflicts of testimony as between IS and HJ, or are admission by IS of vocal frustration with C in discussions with him which he regrets, or are examples of difference of interpretation between IS and HJ as to whether C was aware of

expectations;

28.10 The number of asserted inconsistencies is large, but each is not in my finding, when seen overall and from hearing the witnesses, any more than difference of interpretation of witness testimony as opposed to something upon which I can make a finding other than there were wide differences of opinion between R's witnesses and C, but not as to what happened as opposed to difference of view to what C's work entailed and what could be expected of him as a person with the experience he presented on taking the job;

28.11 C appears to believe that IS was mistaken or just plain wrong in his views as to how C should do his job; IS was frustrated that a person with C's experience and ability did not seem to agree with him and often thought he knew better than IS;

28.12 On 5 October, C sought to appeal the decision to dismiss him and emailed NMP to that effect (P631); His grounds were very specific – unfairness and unreasonableness; He did not cite any impression let alone belief that race was the cause of his dismissal; NMP advised same day that appeal was not possible as it is not provided for in R's Probation Process; Nonetheless, C had a meeting 23 October 2023 with NMP to discuss his termination for which purpose he prepared notes (PP635-638); There followed disagreement between C and NMP as to whether NMP had addressed C's concerns;

Submissions Consideration

29 The competing Submissions were many, detailed, erudite and extremely helpful to me in my deliberations. Many overlap and tend to repeat. I have listed the key points below but do not list them all, save those I regard as key matters relevant to the identified issues.

30 Though I do not confuse number with quality or argument, I note C's submissions stretch to 42 pages and comprise 192 paragraphs, so I condense them by reference to type and express them non-exhaustively summarised as follows:-

30.1 C had extensive experience in Healthcare/NHS business development over 20 years when he joined R; This is common ground;

30.2 IS can be inferred as applying a discriminatory process throughout because he allegedly introduced performance measures that were not previously discussed or agreed with C; I do not agree – see the findings of fact above;

30.3 IS admits he did not follow probation process in accordance with R's established policies; I can agree with this submission;

30.4 C was offered a lower-than-expected salary on commencement; This is common ground;

30.5 The "Onboarding" process lacked tailored training and support; I make no finding on this specifically but have found there was no lack of support provided to c throughout, albeit I recognise he will not agree;

30.6 The Probation Performance review meeting 7 June 2023 was conducted unfairly in that IS was critical of C which C and HJ perceived as harsh and unwarranted; I do not agree, though I can recognise that criticism was robust, firm and vehement;

30.7 Extension of probation without follow up reviews calls into question R's decision making process; I do not agree as it was a lesser outcome than provided for in the Contract; IS could have dismissed c but both extended probation and gave C a second bite at the cherry of making a detailed presentation; I have already found there were numerous discussion which though not labeled as "Reviews" had that substance;

30.8 C was allegedly not told outcome of First Probation Review after re-submitting his initially criticized presentation – not agreed as HJ told C the outcome as found above;

30.9 C was treated throughout his employment as an existing CP not a probationer; C faced change in Strategy during HJ's absence; I can find that strategy changed but deal with the effect of that in law below;

30.10 IS feedback and criticism of C was disproportionate and hostile – amounting to being "offensive"; It is alleged to be personally directed; I find as above in para 27.6;

30.11 During HJ's sickness absence R failed to provide sufficient support to C; I do not agree as can be seen in my findings above;

30.12 IS overlooked C's pro-active efforts in performing his function, whereas this contrasts with the way other white CP's were treated; I conclude that C's comparison is with the outcomes of how R treated the alleged comparators not with the way they worked in comparison with him, and thus as their circumstances were different in any event, they are not valid comparators;

30.13 C faced challenge from R's Bid Team when leading preparation for a bid to UKHSA – he was replaced on this project by an unidentified white person; I can find no evidence to support this and note C has not been able to identify this alleged comparator;

30.14 The outcome of Review Meeting 29 September 2023 was prejudged:

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- It lacked genuine review process;
- The Meeting was scripted by R's HR team;
- It was preceded by 2 months onboarding, 3 months executing strategy, and 2 months formulating a response to allegedly arbitrary targets;

- The outcome was premeditated;
- IS did not refer back to second revised presentation on 15 June 2023;
- IS allegedly presented skewed view of C's performance;
- R's witnesses accepted that IS and TP planned termination of C;
- Process differed from that applied in case of IG;
- C was not given fair chance to improve performance;
- 2-month period of extended probation was not sufficiently long;

I will deal with my findings below in my final analysis;

30.15 C was denied an opportunity to appeal; I accept this but note that despite there being no appeal procedure available for probationers, NMP responded to C's detailed critique of his dismissal albeit C didn't agree with her conclusions;

30.16 Inference of racial bias may be drawn from treatment of C by IS as denial of bias is inconsistent with the way C was treated; I deal with this below;

30.17 There are serial (mostly internal but also among themselves) inconsistencies in the testimonies of R's witnesses: Again, I deal with this below;

30.18 Conscious racial bias is established by all the above or at least unconscious bias; Again, I deal with this below;

31 Subject to the same caveat as above, I noted R's submissions which stretch to 27 pages and 99 paragraphs, and I summarise them as follows:-

31.1 Before the Second Probation Review Meeting (29 September 2023) IS originally had in mind a further extension of probation not dismissal, but was advised this was not possible; I can accept this on the above findings;

31.2 Claims may be pursued in the alternative, being in this case either discrimination or harassment, but they cannot be both – applying Section 212 EqA; I conclude this is right;

31.3 On the subject of harassment, the guidance of Underhill J in **Dhaliwal** and in **Pemberton** is to be followed to the extent that I must apply first a subjective and then an objective test to the evidence; I conclude I am so bound;

31.4 Generally, in applying Section 136(2) and (3) EqA the words used are as underlined by me above, thus emphasising the need to recognise what is important is what a Court on the facts "could" decide in the absence of explanation, before concluding it "must" hold that a contravention has taken

place, but not where subsection (2) applies i.e. that the facts do not show that A contravened the provision; Again, I conclude I am so bound;

31.5 I am bound by the CA's decision in **Igen v Wong** and by the SC's decision in **Efobi v Royal Mail** (referred to above) in determining where the burden of proving discrimination (in all its forms) occurred before a burden shift to R to disprove. The Tribunal is to ascertain primary facts and determine from them whether inferences of secondary facts can be drawn from them; Again, I conclude I am so bound;

31.6 If there is no adequate explanation for what R did, then a Tribunal must infer discrimination; This is application of the guidance offered by Elias J in the EAT decision in **Laing v Manchester CC [2006] IRLR 748;** I recognise I am bound by this, but note qualification by Elias J in his use of the words "adequate explanation" the former word not being defined; I infer that what matters is what I can find the primary facts to be and then from that what I could decide as to the satisfaction or otherwise of C's initial burden of proof;

31.7 Great weight is placed on Mummery LJ's finding in **Madarassy** that: -

"*The bare facts of a difference in status and difference in treatment only indicate a possibility of discrimination. They are not without more sufficient material from which a tribunal could conclude that on the balance of probabilities the respondent has committed an unlawful act of discrimination*."

I recognise the weight of this guidance and its binding effect;

31.8 Great weight is also attached to R's assertion that C's comparators are not in circumstances the same or are not materially different to those of C: On the above findings, I agree with this submission and conclude that C is not relying on comparators whose circumstances are the same or not materially different to his;

31.9 On the authorities I have mentioned above (para 21) C showing that R's conduct was unfair or unreasonable is not of itself, and absent more, enough to initiate transfer of the burden of proof to R (my emphases);

31.10 Mr Johnston drew to my attention the very recent finding in the EAT by HHJ Tayler in **London Ambulance Service NHS Trust v Sodola [2026] EAT 6**, a case which is not commented upon by Ms Brown as it may be so new as to be as yet unreported – HHJ Tayler says as follows when a summarising the law both pre and post **Efobi:** -

"*The authorities suggest that where an employer has given inconsistent or demonstrably false reasons for treatment, this might be relevant at the first stage of a section 136 analysis. I would analyse the situation as follows. If at the time the employer has given an employee inconsistent reasons for the treatment, reasons which are manifestly untrue or has not provided any reasons to C when they have been given to others of a different race, those are facts that could be relevant to the first stage in determining whether an inference of discrimination could be drawn, absent of any other explanation…"* (my emphases)

From this I draw guidance that a key element in making an inference against R, I may look to see if different reasons for treatment have been expressed to comparators and in this case no such evidence is before me, so according to R I do not get as far as determining if I could make such inferences;

31.11 Again per HHJ Tayler, quoting Lord Hope in **Hewage**,

"*The prima facie case must be proved and it is for C to discharge this burden*."

Implicitly in this case R submits it is not proved (and the "something more" than C's assertion of racial cause is not established) and thus the burden of proving otherwise does not shift;

31.12 It was not beneficial to R to lose C at a time when he was left being the only CP in their health Team, so it is illogical IS would choose to dismiss him for anything other than cause and certainly not because of his race;

31.13 IS approached the People Partner team before the second Review Meeting with further extension of probation in mind, not dismissal; Mr Johnston says this is unchallenged, so I have checked that argument as thoroughly as I can and conclude that I can agree with him;

31.14 It is common ground that C was recruited because of his valued past and long experience; There was an apparent mismatch between HJ's and IS's expectations of C; IS was the senior person and entitled to his views as was HJ. There resulted a mismatch of expectations as between IS and C when HJ went on sickness absence; IS' reaction ("taken aback" and "flabbergasted") to C's quality of presentation at first Review meeting not matching what he wanted and expected, is not challenged, only its reasonableness as if to say that if unreasonable it bespeaks discriminatory bias. This does not always follow and the authorities bear that out; I agree;

31.15 IS's thinking is well articulated in his oral; evidence (T37E 388); I do not reproduce all of it here verbatim but I note in particular that his view about C's presentation in Probation Meeting and all aspects of it "… *shows a massive misunderstanding of all things around R's ways of working and the Government standards we have to work to …*; Is completely disagreed with HJ and viewed her personal judgment of C's presentation as "… *completely wrong and misguided* …" this is typical of how IS says he reacted to what C was doing, how he was doing it, and of his own personal frustration given C's professed unchallenged past experience;

31.16 Not all exchanges between C and IS were hostile or harsh as alleged; By way of example the message (PP502-503) from IS to C refers and says "*A winning proposal with some good articulation of our delivery and key messages. A why R for a specific proposal";* Further, R submits that the content of the Client Partner Core Competencies document (which c asserts were not shared by IS with him) are unremarkable (admitted by C) and when promulgated internally were available for all CPs to see, so IS feels entitled to expect that C would become aware of it in the ordinary course of accessing internal management and communications systems such as Trello and Slack;

31.17 Even if IS's expectations were unreasonable, this does not of itself go

far enough to raise a presumption of or validate an inference of race as the cause; In any event, R submits that IS expectations were not inherently unreasonable since they were expressed as goals, ideals or aspirations, not absolute necessities;

31.18 IS's actions and/or imperfections of attitude and procedure are not so criticisable as to demonstrate racial reason for his dealings with C – he was fulfilling the duties of CCO and also at the critical time the role previously fulfilled by HJ against which background his frustration with C may be seen in proper context; IS was aware that C was not apparently delivering to the standard of performance upto which he believed C should be capable; In terms, R submits this is not a good reason for inferring that race was the cause of IS's dealings and manner with C;

31.19 Pre-determination of the second review meeting should not sound against R as C's probation had already once been extended, no scope for further extension was possible, and IS was still not satisfied with C's performance, so there ws no alternative to dismissal which was thus dictated by circumstance rather than ulterior motive on IS's part or cause such as C's race; On the evidence, I agree;

31.20 Though C steadfastly rebuffs R's submission that there existed material differences of circumstance as between c and the comparators, this is not borne out by evidence that C was recruited because of his experience which that of the comparators did not match, C's probation was extended unlike the comparators, and C was line managed at the critical time by IS whereas the comparators were not; Thus they are evidential rather than real comparators; On the evidence, I agree;

31.21 R's submissions also address the List of Issues identified as those to which I must address my decision making; I deal with answers I derive to those questions based on consideration of all the evidence;

Application of Law to Facts

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32. By way conclusions beyond the issues specifically identified, and addressed below I refer to the following: -

32.1 I do not find that there are facts from which a Court (in this case this Tribunal) could decide, in the absence of any other explanation, that R (and specifically IS as dismissing officer) contravened Section 13 or 26 EqA to the extent that I must hold under Section 136(2) EqA that the contravention occurred; I find that the specific areas of criticism levelled at IS by C, though IS is candid about admitting he could have managed interaction better, this does not amount in my judgment to facts from which can be inferred that in the absence of explanation to the contrary, what IS did or said was caused by C's race;

32.2 Following **Madarassy**, I have considered the whole of the evidence

when making my findings of fact as may be seen above and not found IS's reasons for what he did unclear even though I may regard his manner and frustration in some of his interaction with C as inappropriate. Significantly, I cannot find what he did was caused by nor related to C's race, nor was it hostile, nor accusatorial as alleged; Therefore, I conclude that the requirements of Section136(2) are not met;

32.3 Taking account of the guidance in **Khan** when seeking to ascertain whether IS's acts were 'on racial grounds' or 'by reason of race' I had to ascertain why IS acted as he did? What, consciously or unconsciously, was his reason? As Lord Nicholls in **Khan** says, this is a subjective test, whereas causation is a legal conclusion. The reason why a person acted as he did is a question of fact. I have found that IS acted in the way he did as he was frustrated by what he perceived to be C's failure to perform as he had expected despite his extensive experience and seemed put out by C's apparent unwillingness to accept his criticism or displayed an attitude of believing only he C, was right, and IS was wrong;

32.4 Considering **Shamoon**, I recognise that if I find that the reason for the treatment complained of was not that of race, but some other reason, then that is likely to be a strong indicator as to whether or not that treatment was less favourable than an appropriate comparator would have been subjected to; As already found, I do not consider the comparators to be apt in the required legal sense, so I conclude it is hard for me to find that race was the reason C was treated less favourably than them. Accordingly, I do not find race was the cause of his treatment or that C gets past the first hurdle of establishing unlawful discrimination because of race to the extent that the burden of proving something not tainted by race shifts to R. I decided to look further in case I could find that the initial burden pf proof had been discharged by C.

32.5 **Hewage** and **Efobi** both require me to look into the mind of the alleged perpetrator IS, which I have duly done to the best of my ability based on the evidence before me; Nothing persuades me that race was the basis of any consideration in IS's mind as to how to interact with C nor whether he should or should not dismiss him; Indeed, I find quite the opposite; IS looked at all times to avoid dismissal by extending probation and he only relented on advice from People Partners to the extent that in an indirect way, the decision to dismiss was not influenced by him but by others; There is absolutely no evidence I can find that the People partners had C's race in mind when advising IS as to what he should or had to do at the second probation Review meeting;

32.6 **Shamoon** and **DeSousa** both lead me to conclude that C simply feeling aggrieved (albeit grievously) for no justified reason does not mean he experienced an actionable detriment. I find this to be the case here;

32.7 I looked especially carefully to find evidence of unconscious bias against C (or negative stereotyping as no language appears to have been uttered pointing in such direction) and I could find no evidence sufficient to satisfy the first stage burden of proof which rested on him; I

became more and more persuaded to find that IS may not have been as patient as he could have been but not that he lost patience with C (at all) nor that he did so when he might not have lost patience with comparators; I am satisfied that the evidence IS gave, though seemingly damaging in places as to initial impression, was such that the damage bespoke candour about his reasons, and that by seeking to avoid dismissal anyway, which I find as a fact, it cannot logically be said that he sought to dismiss C for any reason let alone C's race;

32.8 On the subject of harassment, again I followed the authorities' guidance; Ass indicted above I followed **Dhaliwal** and **Pemberton**; Accordingly, I recognised I must consider both by reason of subsection 4(a) whether C perceives himself to have suffered the effect in question (the subjective question) and by reason of subsection 4(c) whether it was reasonable for the conduct to be regarded as having that effect (the objective question) and I must also take into account all the other circumstances; I have no difficulty in accepting C's subjective view that his dignity was affronted by the matters about which he complains, but that on the evidence seen and considered, I cannot find that the necessary objective test of whether it was reasonable for him to be so has been satisfied. In my judgment, the test has plainly not been satisfied. It was IS prerogative to be clear and indeed firm about what he saw as C's failings in performance and there is no suggestion that his view was dishonest or tainted by awareness of C's race or moved by it.

Addressing the Issues - Conclusions

33 In tabular form I address the agreed identified issues - see paragraphs 1.2 – 1.3, 3.1 – 3.5 (PP96-97) of the Issues identified by EJ Sudra at a PHR 20 February 2025 and clarified by amendment dated 22 September 2025). Alongside, I set out my conclusions based on analysis, above and below, of the application of the law to the facts as found: -

PHR para number	Issue	My Conclusions – Issues proved or not proved
1.2.1	3 August 2023 – Did IS present hostility and aggression toward C at a 1-2-1 meeting with him that day?	No
1.2.2	10 August 2023 – Did IS present internally published hostile and demeaning written comments within the "New territory Plan" document drafted by C prior to a 1-2-1 meeting with c that day?	He issued such comments, but they were not in their context hostile, or demeaning seen objectively in context
1.2.3	Did IS require a metric/measure specifically of C, him being the only black/ethnic minority CP?	No – the comparisons are not with parties whose circumstances were not

		materially different to C
1.2.4	26 September 2023 – Did IS present hostility and aggression towards C on a team healthcare call/meeting?	No - Whereas R accepts IS responded to C inappropriately, this was not hostility and/or aggression as such, and cannot be seen in isolation from the circumstances referred to below of IS's frustration
1.2.5	29 September 2023 – Did IS fail to carry out a fair probation review meeting properly, as no review was carried out and IS was allowed to make up his own probation policy?	No
1.2.6	29 September 2023 – Did IS terminate C's employment?	Yes
1.2.7	6 October 2023 – Did R refuse C's request to appeal against termination?	Yes
1.3	Were these (acts) less favourable treatment?	No – no comparison is evidenced in this specific area of facts
	Were there comparators?	Yes
	Were those comparators' circumstances of no material difference to those of C?	No
	Were those differences of treatment because of race?	No – though there was racial difference between comparators and C, I do not find that the reason for C's treatment was less favourable because of race
	Did R's treatment amount to detriment?	Yes – he was dismissed
3.1.1	Did R do the things listed in paras 1.2.1 to 1.2.7 of the Issues (listed above in this table)	Some but not all – see above
3.2	Was such unwanted conduct?	Yes
3.3	Did such treatment relate to C's race?	No
3.4	Did the conduct have the purpose of violating C's dignity, or create an intimidating, hostile, degrading, humiliating or offensive environment for C?	Not the purpose but it had the subjective effect of violating etc.
3.5	If not, did such conduct have that effect taking account of C's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?	No but in any event, it was not objectively reasonable in the circumstances for C's treatment to violate his dignity etc.

34 I have now set out my conclusions on the issues, applying the law as set out above to the facts which I have found. In conclusion it must follow I cannot find that C has faced direct discrimination because of race, nor that he has been subjected to actionable harassment related to his race.

Employment Judge
Ronald S Drake

Signed 10 February 2026

Note
Reasons for the judgment having not been given orally at the hearing, written reasons are as set out above.

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