



EMPLOYMENT TRIBUNALS

Claimant: Kenneth Chima
Respondent: Sustainable Energy First Limited
Heard at: Manchester Employment Tribunal
On: 18, 19 & (in chambers) 20 March 2026
Before: Employment Judge Rhodes

Representation
Claimant: In person
Respondent: Ms G Rezaie (counsel)

JUDGMENT

- (1) The complaints of direct race discrimination are not well-founded and are dismissed.
- (2) The complaints of race-related harassment are not well-founded and are dismissed.
- (3) The complaint of victimisation is not well-founded and is dismissed.
- (4) The complaint of automatic unfair dismissal is not well-founded and is dismissed.
- (5) The complaint of breach of contract is not well-founded and is dismissed.

REASONS

Introduction and issues

1. This was a complaint of direct race discrimination, harassment related to race, victimisation, automatic unfair dismissal and breach of contract.
2. The issues had been identified at a preliminary hearing before EJ Allen on 30 January 2025 and are set out in the list of issues at pages 80-83 of the

bundle. For ease of reference, they are also contained within the Annex to this judgment.

3. At the same preliminary hearing, EJ Allen made deposit orders in relation to three factual allegations (which were pleaded as direct discrimination or harassment in the alternative), namely:

Did the Respondent install an “illegally installed activity monitoring app” on the Claimant’s work machine?

Was £1,600 withheld from the Claimant’s salary because of his race or because he had failed to return the Respondent’s computer equipment? If the latter, did the Respondent treat the Claimant differently in this regard to the Hypothetical Comparator?

In a Teams call on 15 March 2024, did Stephen Higgins belittle the Claimant, threaten the Claimant’s job security and/or make racist remarks to the Claimant?

4. EJ Allen gave reasons for making these orders and explained the effect of Rule 40(7), namely that, if the Claimant paid the deposits and the Tribunal subsequently found against him for substantially the reasons for making the deposit orders, he will be treated as having acted unreasonably in pursuing those allegations (unless the contrary is shown) (pages 85-86). The Claimant paid all the deposits.

Evidence and conduct of the proceedings

5. I heard evidence from the Claimant, and from Mr Higgins and Ms Crofts-Aherne on behalf of the Respondent.
6. The Claimant’s witness statement did not address all the issues in the case and was framed as a response to the Respondent’s grounds of resistance. To ensure that the parties were on a level footing, I allowed the Claimant to rely upon the contents of his particulars of claim in addition to his witness statement. The former document contained a much fuller account of the allegations in the claim. There was no prejudice to the Respondent in taking this approach as their statements had been prepared by specific reference to the allegations in the particulars of claim and the Respondent’s counsel had prepared cross-examination of the Claimant on all the issues in the claim. There would have been prejudice to the Claimant to restrict his evidence only to that contained within his witness statement and I was prepared to give the Claimant leeway as a litigant to ensure a level playing field.
7. It is appropriate to make some comments here about the Claimant’s behaviour during the hearing. The Claimant was frequently rude, obstructive, defensive, argumentative and often evasive during the giving of his evidence. EJ Allen had warned the Claimant about his conduct of the proceedings at the preliminary hearing on 30 January 2025, including a warning that a future repetition could cause the Respondent to apply to strike out the claim because of unreasonable conduct of the proceedings. I also had to remind him on several occasions to behave courteously and

respectfully to everyone in the room (including me).

8. The Claimant frequently sought to belittle the other participants in the hearing, claiming to have more litigation experience than anyone else present including the Respondent's counsel (15 years' call) and me (with more than 30 years' experience). The Claimant called the Respondent's counsel a 'nobody' and 'racist'. These were wholly unacceptable slurs on the Respondent's counsel who displayed commendable composure and deserves great credit for the professional way she conducted the proceedings in the face of the Claimant's behaviour.
9. At the start of the second day, before the Claimant began his cross-examination of the Respondent's witnesses, I set out my expectations for how the day would unfold. I reminded the Claimant that he had given his evidence yesterday and that today was the turn of the Respondent's witnesses. I asked him to ask one question at a time and to let the witness answer it before moving on to the next question. I explained to everyone in the room that I understood that there were fundamental disagreements between the Claimant and the Respondent's witnesses and that the case was emotive but that I expected there to be no arguing about the evidence.
10. During the Claimant's questioning of the Respondent's witnesses, I had to intervene numerous times when he asked the same question multiple times, interrupted the witness, asked questions that were not relevant to the issues or put questions about matters that the Claimant had not previously put into evidence, or contradicted the evidence he had given. At one point, I warned him that, if he continued in the same vein, I may have to conclude that a fair trial was no longer possible.
11. I was at pains to ensure both that the Claimant made the best use of his questioning time and that the Respondent's witnesses had a fair opportunity to give their evidence, whilst also ensuring that the evidence could be completed by the end of the second day, giving me sufficient time to deliberate and come to a decision on the third and final day. I considered it preferable to complete then evidence and submissions rather than to consider striking out the claim.
12. I was referred to a hearing bundle of 397 pages and references in this judgment to page numbers are to pages in that bundle.

The law

13. Section 13(1) Equality Act 2010 ("EqA") ("direct discrimination") provides:

"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."

14. Section 26 EqA 2010 ("harassment") 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.

...

(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—

...

race”

15. Section 27 EqA (“victimisation”) provides:

(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—

...;

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

16. Section 136(2) and (3) EqA (“burden of proof”) provide:

(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.

17. In **Barton v Investec Henderson Crossthwaite Securities Ltd [2003] IRLR 332** (a case decided under the old Sex Discrimination Act 1975), the

EAT set out, in summary, a two-stage approach to the burden of proof in discrimination complaints:

- Stage 1 – Can the Claimant prove, on the balance of probabilities, facts from which the Tribunal could conclude, in the absence of an adequate explanation, that discrimination occurred?
- Stage 2 - If yes, the burden of proof shifts to the Respondent and it must provide an explanation which is sufficient to show that discrimination did not occur.

18. The ‘Barton guidelines’ have been approved, with only minor revisions, by both the Court of Appeal (**Igen Ltd and others v Wong and other cases [2005] IRLR 258**) and the Supreme Court (**Hewage and Grampian Health Board [2012] IRLR 870**). In the latter case, the Supreme Court commented that the ‘Barton guidelines’ are not a substitute for the wording of the statute.

19. The Supreme Court has also affirmed that the above two-stage approach is applicable to cases under EqA, albeit that the Tribunal should not apply the approach too rigidly (**Royal Mail Group Limited v Efobi [2021] UKSC 33**).

20. Section 43B Employment Rights Act 1996 (“ERA”) (“disclosures qualifying for protection”) provides:

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

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

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

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

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

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

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

21. A qualifying disclosure made by a worker to his/her employer is a protected disclosure (s43C(a) ERA).

22. Section 103A ERA provides:

“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”

23. It is for the employee to prove, on the balance of probabilities, that he/she made a protected disclosure and, if the employee had less than two years' continuous service, s/he must also show that the making of a protected disclosure was the reason for dismissal (**Smith v Hayle [1978] IRLR 413** , as endorsed by the EAT and Court of Appeal in **Kuzel v Roche Products Limited [2008] IRLR 530**).

Findings of fact

Background to the Claimant's recruitment

24. The Respondent is an energy and sustainability consultancy company. It employs 176 people.
25. The Respondent has a business improvement function, which identifies inefficiencies and issues with processes within its business, and implements improvements and solutions for them. The team is split into two areas: transformation (led by Samantha Crofts-Aherne, Head of Transformation) and development (led by Darren Pickering, Head of Development). The two areas work closely together and regularly collaborate.
26. Once an issue is identified, the transformation team scope the requirement with the relevant stakeholders, create a full specification and then create an IT ticket with acceptance criteria. Once the ticket is raised, it moves to the development team who estimate how complex a piece of work is and when it should be scheduled in the development pipeline. Once the development work is complete, it comes back to the transformation team for testing and, once that is complete, introduced into the wider business. If any bugs are found, then these are resolved before the change is released to the wider business.
27. As a result of increasing organisational requirements and an increase in the number of developers, the testing demands increased for the transformation team, and the Respondent therefore identified a need for a Lead Tester. The Respondent advertised for an experienced software tester who could help structure the testing process. The Respondent also intended for the successful candidate to take responsibility for user communication and collateral activity before releasing new developments into the wider business.
28. Several months earlier, the Respondent had identified a need for a more junior role focussed on first- and second-line support (Transformation Manager). This role did not envisage any involvement in the new development testing activity and was on a lower grade/rate of pay than the Lead Tester. The role involved monitoring communications, tickets and updates and supporting the transformation team. Users of the Respondent's Fusion system would report an issue via a helpdesk email and the Transformation Manager role would be to pick up these issues, attempt to

fix them, point the user in the right direction if possible, or log a bug ticket and report it to the development team for them to investigate further. These requirements were generally more minor than the development requirements that the Lead Tester would deal with, and the role was more focused on managing helpdesk activity.

29. The Respondent offered the Transformation Manager role to Thomas Jeff (an internal candidate). Mr Jeff had joined the Respondent on 1 March 2023 in what was his first office job. Mr Jeff moved to the transformation team on 6 November 2023 with no previous experience within an IT transformation team. Mr Jeff was not involved in any new development testing activity while the Claimant was employed by the Respondent. In contrast, the Claimant was a highly experienced software tester.
30. Following a job interview on 22 November 2023 at which the Claimant performed very well, the Respondent emailed him an offer of a job as Transformation Manager/Lead Tester on 30 November 2023. To avoid any confusion with the more junior Transformation Manager role carried out by Mr Jeff, I will refer to the Claimant's role as Lead Tester.

The disputed probation period clause in the Claimant's contract

31. Upon receipt of his offer, the Claimant responded by email on 1 December 2023 (page 293) to say that "*the offer does not meet my expectations and what was discussed at interview in relation to*" two clauses, namely his place of work and salary which he expected to be £40,000 (as opposed to the £35,000 on offer). He said that, if those two clauses could be amended to his satisfaction, he "*will be very happy to join your exciting organisation.*"
32. Later the same day (at 2.50pm), the Respondent sent the Claimant a revised offer (pages 118 and 289) confirming that his would be a home-based role but with the requirement to attend the Respondent's offices one day per week and that his salary would be £40,000.
33. Most importantly, as far as the issues in the case are concerned, that offer letter contained a clause which specified a six-month probation period.
34. At 2.58pm on 1 December 2023, the Claimant emailed the Respondent to confirm that the amended "*offer of employment is accepted*". The Claimant had therefore agreed to the six-month probation period contained within that offer.
35. Despite this clear and unambiguous acceptance of the offer, the Claimant alleged that there were then further negotiations "*behind the scenes*" between Ms Crofts-Aherne and him which had led to the agreement of further terms of his contract to the effect that his probation period would be 30 days and that, if his employment was terminated after the expiry of that period, the Respondent "*would be required to pay the remainder of [his] annual salary.*"
36. In his evidence in chief, the Claimant gave no details of when or how these "*behind the scenes*" negotiations took place and what was said by whom during them. When pressed, he said that he could not be expected to recall

the details of discussions which had taken place more than two years previously. This alleged agreement was not recorded anywhere in writing. There is no contemporaneous written mention of the alleged negotiations. There is no correspondence from Ms Crofts-Aherne to human resources asking for the Claimant's offer to be amended to include such a term. The Claimant did not chase for written confirmation of that agreement. He did not mention the term in his three-page complaint dated 21 March 2024 (page 200).

37. Ms Crofts-Aherne, on the other hand, gave a clear account of a conversation, by video call, with the Claimant on 11 December 2023. This call was set up at Ms Crofts-Aherne's instigation. It came about after the Claimant had accepted his offer of employment but before he was due to start work (4 January 2024). Ms Crofts-Aherne thought that it would be a good idea to catch up with the Claimant before he started work to make him feel welcome and supported. This was an entirely reasonable purpose for such a call, and exactly the sort of call one would expect a manager to have with a new recruit.
38. Ms Crofts-Aherne recalled wishing the Claimant a happy Christmas and discussing his holiday plans, which included a visit to Bowness-in-Windermere with his daughters, which is somewhere that Ms Crofts-Aherne had visited several times. The call lasted approximately 10 minutes. Ms Crofts-Aherne said that there were no discussions with the Claimant, during either that call or on any other occasion. This is hardly surprising given the Claimant's prior acceptance of the amended offer on 1 December 2023.
39. I accept Ms Crofts-Aherne's account of this conversation and her evidence that there were no contractual negotiations between her and the Claimant during this call, or at any other time.
40. It is unfortunate that, because of an administrative backlog, the Respondent did not send the Claimant a contract of employment until 8 March 2024 after it had come to light during an internal audit that he had not been sent it timeously. The Claimant was not the only one of the Respondent's employees to be affected in this way.
41. When the contract was sent to the Claimant, he replied (to a "do not reply" email address) to the effect that his address in it was incorrect and he therefore would not sign it in that form. That was, however, the only objection to it that he raised. Specifically, he did not raise the absence of the term that he had supposedly agreed with Ms Crofts-Aherne.
42. The Claimant's explanation for this under cross-examination was that, when he saw that his address was incorrect, he did not read the rest of the contract and therefore did not spot that it contained a six-month probation clause. However, the clause containing his address (clause 3) comes after the probation period clause (clause 2) so he would have had to read beyond the probation clause before noticing his incorrect address. The far more plausible explanation for why the Claimant did not raise the issue of his six-month probation period was that it was consistent with the terms of the offer he had accepted on 1 December 2023 and that he had not reached any agreement with Ms Crofts-Aherne to the contrary.

43. In short, therefore, the only issue relating to the Claimant's contract of employment was the address in it. Although he never signed his contract, he continued to work without raising any objections to the terms that it contained.
44. The agreed length of the Claimant's probation period was six months, as per the terms of the written offer which he had accepted in writing on 1 December 2023.

Concerns about the Claimant's performance

45. The Claimant began work on 4 January 2024. The Claimant made a positive start to his employment and Ms Crofts-Aherne's initial assessment of his performance was that it was good, whilst also noting that most of his activity in January involved inductions, training, meeting the rest of the team and generally settling in. At that stage, he had only carried out testing on a limited number of basic IT tickets.
46. Ms Crofts-Aherne noted in the Claimant's January review (as recorded in the Respondent's Clear Review performance management system) that the Claimant had *"made a good attempt at the tickets tested so far, and over the coming months we will increase the volume and complexity as he also starts to gain more knowledge of Fusion and [the Respondent's] processes"* (page 144). These comments were in relation to the Claimant's performance objective relating to sprint tickets. She made a similar observation in relation to his objective relating to second-line support tasks (page 148).
47. In relation to the objective relating to the creation of best practice testing guidelines/plans/documentation, whilst the Claimant had made some positive suggestions in January as to ongoing processes and governance, his work in February on finalising a testing template was not at the standard that Ms Crofts-Aherne expected. As a result, Ms Crofts-Aherne had to step in and produce a final draft for review (page 138). This was not something that she would have expected to have do for someone with the Claimant's experience.
48. Ms Crofts-Aherne postponed further work towards the completion of the Claimant's communications and release objective in February. This was because a significant proportion of the communication received from him on tasks that had been given to him relating to other performance objectives was unclear and contained inconsistent language and incorrect terminology.
49. Ms Crofts-Aherne recorded in Clear Review on 26 February 2024 that the Claimant *"needs to start considering the language/terminology used in communications, so that when communicating release notes to stakeholders, it is familiar, meaningful and not open to ambiguity"* (page 139). In evidence, Ms Crofts-Aherne referred to the language of some of the Claimant's communications being "muddled".
50. Ms Crofts-Aherne did not have confidence in the Claimant's ability to be

clear and concise when explaining new functionalities to stakeholders and users, so she decided that this aspect of the Claimant's role would be retained by her and Sophie Willis (Senior Transformation Manager) for the time being. Again, this was not something that Ms Crofts-Aherne would have expected to have do for someone with the Claimant's experience.

51. The Claimant's Fusion engagement objective required making contributions to meetings regarding the Fusion system and championing the use of Fusion across the organisation. By the end of January, the Claimant had been contributing well to meetings and Ms Crofts-Aherne noted this in Clear Review (page 141).
52. However, although the Claimant continued to make useful contributions to meetings during February, his general understanding of navigating the Fusion system was not up to the standard that Ms Crofts-Aherne expected. Even allowing for the fact that Ms Crofts-Aherne did not expect him to completely know his way around the system by this point, he was, in her view, still struggling with the basic elements of navigation to key parts of the system. Ms Crofts-Aherne noted in Clear Review that the Claimant's "*navigation to core information needs to become cleaner, more concise and more deliberate/confident*" (page 141).
53. The Claimant's Fusion user guides objective concerned creating new user guides for newly developed features or updating existing guides in relation to any changes to features. Again, this required the use of clear, concise, consistent language and terminology but, despite being shown examples of the communication required, the Claimant's written communication on the tasks that had been given to him relating to other performance objectives was unclear, inconsistent and used incorrect terminology. As with the objective relating to the creation of best practice documentation, Ms Crofts-Aherne and Sophie Willis had to retain this aspect of the Claimant's role for the time being (page 142).
54. In relation to the rate export objective, Ms Crofts-Aherne noted in Clear Review that, although this was a relatively straightforward ticket, the Claimant struggled with understanding some definitions which meant that he could not reproduce the bugs without additional support (page 144).
55. On 5 February, the Claimant informed Ms Crofts-Aherne via Teams message that he was having issues recreating the bugs they had discussed on 2 February (page 155). Ms Crofts-Aherne was surprised that the Claimant was unable to recreate the bugs, as this should have been a relatively basic task, especially as they had already been through it together on 2 February.
56. Ms Crofts-Aherne tried to call the Claimant via Teams on 5 February to discuss this, but he informed her that calls were not coming through, so she sent him a series of comments via Teams message (page 156-157). Again, this is not something that Ms Crofts-Aherne would have expected to have to do for someone with the Claimant's experience.
57. Whilst Ms Crofts-Aherne accepted that the contract additions ticket was a more complex task, it was something that she would have expected an

experienced tester to be able to navigate through. Ms Crofts-Aherne noted in Clear Review on 26 February 2024 (page 144) that the Claimant “*made a reasonable attempt at the testing in this area but required ongoing support in terms of the navigation to and around the feature. As result the example test run-though was a bit muddled and needed to be clearer and more deliberate in order to give the confidence that is required.*”

58. To meet his testing feedback objective, the Claimant was required, after testing, to log any additional requirement/bug tickets and communicate them to the development team in a timely manner, prioritising them accordingly. Ms Crofts-Aherne noted in Clear Review on 26 February 2024 that tickets that the Claimant had “*created so far have been reasonable but have needed some clarifications before being able to be passed to the dev team*” which meant that Ms Crofts-Aherne had to step in and add the clarifications herself. Ms Crofts-Aherne also noted that the Claimant was not proactively highlighting clarifications to the required developer as a priority. It was important to do this as quick turnarounds are often required, for example where there are retest deadlines (page 145).
59. The Claimant’s final objective related to second-line support tasks (page 147). This involved assisting Mr Jeff if he needed support with a first- or second-line support task, which was something Ms Willis and Ms Crofts-Aherne would often support him with. However, at the end of February, it was agreed to postpone this objective because Ms Crofts-Aherne had no confidence that he would be able to retain the information required to provide this support.
60. It is clear that, by the end of February 2024, the Claimant was not making satisfactory progress towards achieving most of his objectives. Ms Crofts-Aherne and Sophie Willis were having to retain some aspects of the Claimant’s role themselves because of a lack of confidence in the Claimant’s ability to perform them which Ms Crofts-Aherne found surprising for someone with the Claimant’s experience. All the evidence from Clear Review shows that Ms Crofts-Aherne’s feedback was measured and balanced.
61. This is in complete contrast to the Claimant’s allegation that Ms Crofts-Aherne subjected him to “*very aggressive and humiliating feedback*” in a forum that was accessible to others. Not only was the Claimant unable to provide a single example of such feedback, either in oral evidence or by reference to any document in the bundle, he refused to accept that any of the comments in Clear Review amounted to concerns about his performance at all, categorising them instead as the “normal” feedback any employee would get in a performance review.
62. In other words, when taken to actual examples of performance concerns, he dismissed them as not being concerns at all but, when pressed to give an example of any “*very aggressive or humiliating feedback*”, he was unable to do so. This is not surprising because all the available evidence demonstrated that Ms Crofts-Aherne delivered clear, balanced and measured feedback. She is clearly a thoughtful and supportive manager, not one who is prone to giving “*very aggressive and humiliating feedback*”.

63. Accordingly, I find that there was no “*very aggressive and humiliating feedback*” either in a forum accessible to others, or at all.
64. Similarly, Ms Crofts-Aherne did not repeatedly insult or belittle the Claimant. The only alleged example of this relied upon by the Claimant was his claim that Ms Crofts-Aherne “shut down” the Claimant “in a humiliating manner” during a ‘stand up session’ when he spoke about his daughter’s attendance at university. He claimed that she did so because she “*is childless and not a graduate herself so would rather discuss her dog*”. This claim was both baseless (Ms Crofts-Aherne is a graduate) and hurtful (Ms Crofts-Aherne and her husband have been unable to have children). I accepted Ms Crofts-Aherne's evidence that the purpose of ‘stand up sessions’ was for team members to raise work-related issues or ask for any support and that, if discussions dwelt on personal matters for too long, she would politely steer the conversation back to work-related matters.
65. Despite the performance concerns which had arisen in February, Ms Crofts-Aherne wanted to see how the Claimant would perform on a pre-contract opportunities project to give him a chance to show what he could do and demonstrate his experience. The project involved testing a new development feature within the Fusion system which was a workflow to log potential cost saving opportunities for customers. The Claimant was responsible for leading the testing of this new feature, as befits someone in the role of Lead Tester.
66. Ms Crofts-Aherne explained to the Claimant the background and importance of this project at the end of February and, on 1 March, asked him to focus on gaining an understanding of the tickets involved in the project before they were added to the test server (pages 330 – 331).
67. The Claimant’s case was that this was an unreasonable demand and that he could not be expected to have taken on what he described as a 16-ticket testing project. However, Ms Crofts-Aherne explained that this was, in reality, a one-ticket test, broken down into 16 constituent parts (each with a separate ticket). This is consistent with the information which Ms Crofts-Aherne provided to the Claimant in her Teams message of 1 March 2024, which records the 16 broken down constituents (page 331). I accept Ms Crofts-Aherne’s account. This was not an unreasonable demand; it was an opportunity for the Claimant to demonstrate his expertise.
68. Ms Crofts-Aherne’s expectation was that the Claimant would put in place a structure for the testing of the tickets so that they could be tested in the correct order of the workflow. She did not expect him to complete the actual testing unsupported.
69. Before considering what happened next in relation to this task and thereafter the termination of the Claimant’s employment, it is necessary to address the Claimant’s allegations relating to his call with Stephen Higgins on 15 March 2024.

The call with Mr Higgins on 15 March 2024

70. Mr Higgins is a Software Developer who works in the Respondent’s

development team. Before their conversation on 15 March 2024, he and the Claimant had interacted with each other as colleagues at daily 'stand up' meetings but had had little or no one-to-one interaction. For reasons, which I address in detail below, I fully accepted Mr Higgins's account of the conversation on 15 March 2024 and the purpose of it, as follows.

71. Mr Higgins thought it would be helpful to arrange this call with the Claimant to understand his testing approach for an upcoming piece of work. Mr Higgins could not recall what the specific task was. As the Claimant had not been with the Respondent for long and was unfamiliar with its system, Mr Higgins thought it would be helpful to both of them to have this informal discussion. This was something he tended to do with new people who have recently joined from another company where the systems might be different. Consistent with this was an occasion on which Mr Higgins sent the Claimant a list of commonly-used acronyms which he thought might be of use to him and for which the Claimant thanked him (page 360).
72. Mr Higgins intended this to be a positive discussion that would help the Claimant and him to work together better, and he meant no malice nor to undermine the Claimant in any way. It was not a "strange" or "bizarre" reason for a call as the Claimant sought to characterise it. It was a perfectly reasonable one for two colleagues who work in teams which closely collaborate to have. Mr Higgins was not instructed by Ms Crofts-Aherne, or anyone else, to call the Claimant. It was Mr Higgins's own idea.
73. The allegation that Ms Crofts-Aherne had put Mr Higgins up to this as a way of humiliating the Claimant and conducting a further "job interview" was entirely baseless. It was not supported by any contemporaneous evidence; it was a mere assertion by the Claimant. Both Mr Higgins and Ms Crofts-Aherne were clear that no instruction had been given to Mr Higgins to make this call.
74. Mr Higgins sent the Claimant a Teams message at 14:45 on 15 March asking if he had a few minutes for a call (page 361). The Claimant rang him shortly afterwards. On the call, Mr Higgins intended to ask him some questions about the task so that he could understand his testing approach and maybe provide some guidance which might help him in developing his understanding of the system. However, before Mr Higgins could start asking him any questions, it became apparent through the tone of the Claimant's voice that he was annoyed, although Mr Higgins was not sure of the reason for this. The Claimant said that he was too busy and had things to do. His voice was not friendly, and he came across as a bit aggressive. He asked Mr Higgins why he was asking him these things and who had put him up to it. Mr Higgins sensed it would not be helpful to continue the call and so he backed out of any further discussion by acknowledging that he was perhaps too busy to discuss the issue at that moment and said that he would catch him another time. They then ended the call after only a few minutes.
75. The Claimant's own account of the call at paragraph 23 of his particulars of claim (pages 17-18) is untrue and I reject it entirely for the following reasons.
76. According to the Claimant, the call ended with Mr Higgins telling the Claimant "*Fuck off! This is the problem with employing black people...*

incompetent fools!” If true, this would have been a disgusting racial slur. The Claimant would justifiably have been angry and upset. However, the Claimant did not make any complaint about this, despite sending Ms Crofts-Aherne the following message about the call immediately afterwards (page 161):

Hi Samantha, Stephen Higgins just requested a very strange call with me just now during which he basically put me under test to explain my work approach on Fusion-3277. I am trying to complete my testing for Sprint 179 in view of the weekend release but I did ask Stephen if he was directed to make that call and interrogate me by Samantha as he was mandating me to answer questions that he would not normally have the authority to mandate me to answer! But I will address this brief teams video call with Stephen in full next week. Thanks

77. When cross-examined about the lack of reference in this message to the racial slur, the Claimant said that that is what he was alluding to when he said he would address the call in full next week. That explanation is implausible. The much more likely explanation is that the Claimant was raising with the Ms Crofts-Aherne the thing that he was most concerned about following that “*very strange*” call, namely the Claimant’s perception that Ms Crofts-Aherne had put Mr Higgins up to making that call.
78. In any event, when the Claimant did make a formal complaint the following week (21 March 2024), he did not allege that Mr Higgins had made the racial slur or sworn at him. That formal complaint merely repeated what the Claimant had put in his message to Ms Crofts-Aherne on 15 March 2024, saying that “*my line manager enlisted the help of Stephen Higgins to bully me and mandate me to explain my work approach to him. Mr Higgins does not have the authority to bully me and grill me regarding my role.*” The only allegations of race discrimination in that complaint were directed at Ms Crofts-Aherne. No such allegation was made in respect of Mr Higgins or even hinted at. It is utterly inconceivable that a three-page document entitled “*Formal Complaint of Racial Prejudice*” would contain no complaint about a disgusting racial slur alleged to have been directed at the Claimant just six days earlier.
79. Furthermore, at 16:59 on 15 March 2024 (little more than two hours after the conversation) the Claimant put a message on group Teams chat “*Enjoy your weekend Everyone*” following by a grinning emoji. Mr Higgins responded directly to that message a few minutes later “*Have a good one Kenn!!*” to which the Claimant responded with a ‘thumbs up’ and “*Thanks Stephen. Enjoy yours too.*”
80. On 18 March 2024, the Claimant sent Mr Higgins a Teams message with an attached spreadsheet. The message read “*Hi Steve, Pls find attached. You wanted to understand my testing Approach, so it here it is*”. This message was accompanied by a grinning face emoji.
81. The Claimant said under cross-examination that his messages were intended to be sarcastic. He said that he really wanted to tell Mr Higgins to go to hell and that the underlying meaning behind his 18 March message was “*you fool, here it is. You can have it [the plan], you can chew it!*” He

said that did not feel that he could speak out as he was in a difficult position as he was still on probation.

82. These explanations are implausible. The far more likely explanation is that the Claimant harboured no ill feelings towards Mr Higgins in the immediate aftermath of the call, which is also consistent with his formal complaint of 21 March 2024 in which the Claimant's ill-feeling was primarily directed at Ms Crofts-Aherne. Incidentally, it should also be noted that the Claimant's answer to these questions that he was still on probation inadvertently revealed that he knew that he did not have only a 30-day probation period.
83. To be clear, the Claimant's account of this call is untrue and his allegations against Mr Higgins are false. Mr Higgins's account is the true account. Mr Higgins was not put up to making the call by anyone. He did not bully the Claimant. He did not belittle the Claimant. He did not threaten the Claimant with the sack. He did not swear at the Claimant. He did not make any racial slur.

The Claimant's alleged protected act/disclosure

84. Upon receipt of the Claimant's Teams message on 15 March 2024 regarding the "very strange call", Ms Crofts-Aherne contacted Darren Pickering (Mr Higgins's line manager) and asked if he knew anything about it. Mr Pickering said that he had not asked Mr Higgins to have this discussion with the Claimant either.
85. After speaking with Mr Higgins, Mr Pickering told Ms Crofts-Aherne that Mr Higgins had had wanted to help the Claimant, and to understand more about the testing process. Therefore, he had contacted the Claimant to check if the information he had included on the ticket had been sufficient.
86. Later that afternoon, Ms Crofts-Aherne called the Claimant and asked him to relay what had happened. The Claimant's case is that, during this conversation, he told Ms Crofts-Aherne that he had been humiliated and racially abused by Stephen Higgins and that this amounted to a protected act and/or a protected disclosure. I reject this for the following reasons.
87. First, and most obviously, the Claimant was not racially abused by Stephen Higgins for the reasons set out above.
88. In any event, the Claimant was unable to give any account of what he had said to Ms Crofts-Aherne during that call. When pressed, he said (as with several other contested conversations) that he could not recall what was said during a conversation that took place two years earlier.
89. Ms Crofts-Aherne, on the other hand, gave an account of that conversation six days later in an email to Ms Zolotarczuk (page 211). In her email, Ms Crofts-Aherne said that the Claimant's Teams message of 15 March 2024 was the only communication she had received from the Claimant that could be regarded as a complaint. She went on to describe the subsequent call with the Claimant as follows:

"I called Kenneth to understand more about the situation and the main point

that seemed to annoy him was that Steve was asking him to show him how he was testing the ticket, Kenneth referred to some guidance that Sophie had previously given him and then Steve went on to say something like “I want to know how you are testing it not Sophie”. In my opinion I would say that it was another occasion where Kenneth didn’t truly understand the area he was working on and when asked questions about it, he couldn’t give clear & concise answers resulting in a defensive/aggressive attitude. I closed the conversation with Kenneth by trying to diffuse [sic] the situation and explaining that it is perfectly reasonable [sic] for developers to want to understand more about a new area they are working on and to discuss the details/more information with us to give them clarification. I also stated that a line should be drawn under the situation and that I did not expect any follow up with Steve the following week.”

90. Given that this was a near-contemporaneous account of the call and given the Claimant’s inability to recall the detail of it, this account is accepted as a true reflection of what Ms Crofts-Aherne and the Claimant discussed. He did not complain about racial abuse. His complaint to Ms Crofts-Aherne was that Mr Higgins had asked him about his approach to testing, which had annoyed him.
91. I do not find that Ms Crofts-Aherne told the Claimant that he was “defensive/aggressive”. This was an opinion that Ms Crofts-Aherne shared only with Ms Zolotarczuk. It was an opinion based on her observations of the Claimant’s behaviour, not one based on a racial stereotype.

Pre-contract opportunities project

92. I now resume the narrative which was paused at paragraph 69 above.
93. On 18 March 2024, the development team notified Ms Crofts-Aherne that the tickets for the pre-contract opportunities project had been released for testing. She therefore sent the Claimant a Teams message suggesting that they schedule a meeting with Darren Pickering for that day to catch up on the project, so that they could see what he (the Claimant) had gleaned from his review of the tickets over the last few weeks and so that he (the Claimant) could give “*an overview of his intended approach plan*” to testing the tickets (page 315). The Claimant gave a ‘thumbs up’ to this message and the meeting happened later that day.
94. At the meeting, Ms Crofts-Aherne asked the Claimant for his overview to which he responded that he had not been asked to do this and that he was expecting Mr Pickering to provide him with further details during the meeting. Ms Crofts-Aherne was disappointed in the Claimant’s obvious lack of preparation and made it known to him that his performance at that meeting was not in line with her expectations. It was agreed that the meeting would be postponed and rearranged for the following day so that the Claimant could properly prepare for it.
95. Ms Crofts-Aherne then sent the Claimant a Teams message outlining her expectations for the reconvened meeting (page 364):

“We expect you to be able to communicate to Darren & I, a concise overview

of the key requirements of this project using the end-to-end requirements noted on the original ticket FUS 3362.

We then expect to be able to see a plan (not a line-by-line test plan) but an approach plan for the testing of this project – noting the key areas that need to be tested in a logical sequence (based on the understanding you have gleaned from your review of FUS 3362) and the corresponding ticket(s) from the list of broken down tickets that relate to each area.

We do not expect you to complete all of the detailed testing on this project without support but we do need the confidence that you have the required high-level understanding of the requirements of this project, can communicate these and have clear plan of how you will be approaching/structuring the testing activity.”

96. These instructions are clear and the task at hand appears to be a perfectly reasonable one to give to a Lead Tester with significant experience.
97. The Claimant responded with a ‘thumbs up’ and a message that read “*Thanks, Samantha, I note the points you make.*” There was no objection to or request for clarification of what he was being asked to do.
98. On 19 March 2024, before the rescheduled meeting, given her concerns about the Claimant’s performance to date and in the meeting the day before, Ms Crofts-Aherne sent Ms Zolotarczuk (HR Officer) a Teams message to ask her if she had time to discuss the Claimant’s performance and to let her know that she was feeling that he was unsuitable for the role. Ms Crofts-Aherne wanted to agree an approach to the Claimant’s three-month review that was scheduled for 21 March 2024. They agreed to speak at 15:30 that day (page 365).
99. During the meeting on 19 March, Ms Crofts-Aherne again asked the Claimant to provide an overview of the tickets and what he intended to do. His attempt was again poor. He was mostly reading information straight from the tickets, which Ms Crofts-Aherne already knew as she had created most of them. She asked him to explain at a higher level what the intention of the feature development was and not to just read straight from the individual tickets. He was unable to do this.
100. When asked about his approach to testing, Ms Crofts-Aherne expected him to provide a document or at least share his thought process but once again the Claimant said that he had not created anything to review because he had not been asked to do this. He said that he would not be able to provide more detail until he began the testing. Ms Crofts-Aherne expressed her disappointment and said that this was not in line with expectations or what he had been asked to do in the meeting the day before and in the Teams message following that meeting.
101. Ms Crofts-Aherne had no confidence that the Claimant understood the purpose of the task or that he would approach the testing in the correct way to ensure that key parts of the workflow were not missed and would then have to be subsequently retested.

102. I have accepted in full Ms Crofts-Aherne's accounts of the meetings of 18 and 19 March 2024 because, as noted earlier, I found her to be an entirely credible witness and the Claimant not to be. Furthermore, her account of these meetings was effectively unchallenged by the Claimant who, again, said that he could not recall the detail of discussions that took place two years ago. All the Claimant could say about these meetings in cross-examination is that he *would have* prepared for them. He could not however explain what preparation he had *actually* done.

The termination of the Claimant's employment

103. The Claimant's performance during the meeting of 19 March served to exacerbate the performance concerns that had been growing throughout February and March. Ms Crofts-Aherne was also disappointed by the Claimant's stance that he was being expected to do things that he had not previously been asked to do, despite the clear and reasonable instructions that Ms Crofts-Aherne had given him to assist his preparation for the meeting.

104. It was therefore immediately after the meeting on 19 March 2024 that Ms Crofts-Aherne decided that the Claimant's performance did not meet expectations, that he was not capable of performing in the role and that he should be dismissed. She informed Ms Zolotarczuk of her decision and the reasons for it in their call at 15.30 that afternoon.

105. Having taken that decision, Ms Crofts-Aherne saw no need to prolong the Claimant's continued employment until the scheduled three-month review meeting on 25 March 2024. She therefore brought that meeting forward until 21 March 2024.

106. Upon receipt of the new invitation, the Claimant sent Ms Crofts-Aherne a message asking for the review to be adjourned until he had a signed contract of employment in place. He told Ms Crofts-Aherne that his address was incorrect in the version he had been sent on 8 March 2024 (page 163). This was the first time that Ms Crofts-Aherne was aware of this issue. She told the Claimant that she had asked HR to look into the point but that the meeting would still go ahead as planned. However, the Claimant continued to refuse to agree to the meeting on 21 March 2024 even after Ms Crofts-Aherne had told him that it was a reasonable management request.

107. The Claimant did however say that Ms Crofts-Aherne could call him as he was expecting some assignments from her. She then called him but, when she added Ms Zolotarczuk to the call, the Claimant shouted that he did not want to have the meeting. Ms Crofts-Aherne began to explain to the Claimant that she was terminating his employment because of poor performance, at which point the Claimant ended the call.

108. Ms Crofts-Aherne then sent a Teams message to the Claimant straight after the call (at 11.45am) (page 317) in which she said:

"Hi Kenn, just to complete the dialogue from our prior call as you left the call and would not pick up when we attempted to dial you back in. We will be terminating your employment with immediate effect. Your accounts will be

disabled immediately so HR will be in touch with you via your personal contact details to arrange kit collection and final pay. Wishing you all the best for the future.”

109. The message has a read receipt icon next to it which indicates that the Claimant read it.
110. At 2.07pm the same day, the Claimant submitted to Ms Zolotarczuk by email a formal complaint entitled “Formal Complaint of Racial Prejudice: OFFER OF EMPLOYMENT – TRANSFORMATION MANAGER – LEAD TESTER (SE FIRST)” (page 199). This is the same complaint which is referred to at paragraph 78 above.
111. Ms Zolotarczuk informed Ms Crofts-Aherne of the complaint later that evening and also that the Claimant was refusing to return his company IT equipment.
112. On 25 March 2024, the Respondent’s Chief Operating Officer emailed Ms Crofts-Aherne and Ms Zolotarczuk to state the importance of securing the return of the Claimant’s company laptop for reasons of security and telling them “to pull out all the stops to get it back asap” (page 369).
113. Ms Zolotarczuk wrote to the Claimant the same day (page 207) to confirm that, if he failed to return all company property by 2pm, the Respondent would withhold £1,600 from his final salary payment, being an amount equal to the valuation of the IT equipment.
114. The Claimant did not challenge Ms Crofts-Aherne’s evidence that the Respondent had deducted money from the final salary payment of a white employee who failed to return his company iphone after termination (page 371).

Alleged differential treatment

115. The Claimant complained that he was treated differently compared with Mr Jeff in relation to a Fusion navigation task. Ms Crofts-Aherne gave the same task to both Mr Jeff and the Claimant. It was a task which she expects all members of the transformation team to undertake. A copy of the task given to Mr Jeff is page 185, which also confirms that it is a task which is expected of all the team. Mr Jeff was not given an ‘easy ride’ as alleged by the Claimant.

Illegally installed activity monitoring app

116. The Claimant gave no detail about this allegation save for asserting that it was something he claimed to have seen. He accepted at the outset of the hearing, when I asked if he was pursuing it, that this allegation was pure “conjecture”. He claimed that it would require a forensic examination of his company laptop and that he did not have this evidence. He did not need forensic evidence. The Claimant is an experienced computer software tester. He could have given his own evidence about what he claimed to have seen and when but did not provide any account of it. It was a baseless allegation and I accepted Ms Crofts-Aherne’s evidence that she had looked

into the claim and been told that no such application had been installed on the Claimant's laptop (or anyone else's).

Conclusions on each of the issues

117. Applying this set of facts to the issues, my conclusions are set out below.

Direct discrimination and harassment

a. Did the Respondent install an "illegally installed activity monitoring app" on the Claimant's work machine?

118. No. For the reasons set out above, this was a baseless allegation. The Respondent did not install such an app on the Claimant's work computer. The Respondent did not treat the Claimant any differently with regard to the installation of software than any other employee. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

119. This was one of the allegations that was the subject of a deposit order. I have found against the Claimant for substantially the same reasons for which the deposit order was made.

b. Did Samantha Crofts-Aherne subject the Claimant to "very aggressive and humiliating feedback" in a forum accessible to others?

120. No. Even when pressed, the Claimant could not give a single example of such feedback. When the Claimant was taken to the feedback that Ms Crofts-Aherne had given to him in Clear Review, he characterised such feedback as "normal". The Claimant could not explain what "forum accessible to others" he was referring to. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

c. Did the Respondent constantly insult the Claimant's work, belittle him and/or did the Claimant receive rigorous public criticism?

121. No. This allegation fails for the same reasons as b above. The Claimant failed to provide any evidence of such insults or criticism and dismissed any actual criticism of his performance as "normal" feedback. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

d. Did Samantha Crofts-Aherne "shut the Claimant down in a humiliating manner" when he spoke about his daughter?

122. No. For the reasons stated above, this was both a baseless and hurtful allegation. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

e. Did the Respondent have unreal expectations of the Claimant and ask

him to perform tasks which were too difficult or impossible?

123. No. The Claimant is an experienced software tester. The tasks that he had been sent were ones which Ms Crofts-Aherne reasonably expected him to be able to perform. The specific tasks about which the Claimant complained were the overview of the plan for testing the contracts opportunities project and the Fusion navigation task. The former was a one-ticket task broken down into 16 components. Ms Crofts-Aherne clearly explained what was required and then gave the Claimant a second opportunity after he was unprepared for the initial meeting with Ms Crofts-Aherne and Mr Pickering. Ms Crofts-Aherne was clear that she was not expecting a line-by-line plan; rather, she was expecting to see an overview of how he would approach the task. This was a reasonable expectation. As for the Fusion navigation task, this was the same task which was set for Mr Jeff (a less experienced tester) and one which is expected of all the transformation team. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

f. Was £1,600 withheld from the Claimant's salary because of his race or because he had failed to return the Respondent's computer equipment? If the latter, did the Respondent treat the Claimant differently in this regard to the Hypothetical Comparator?

124. The money was withheld from the Claimant's salary because he had failed to return the Respondent's IT equipment, not because of his race. In this respect, he was treated the same as a white ex-employee who had money deducted from his salary after he had failed to return his company mobile telephone. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

125. This was one of the allegations that was the subject of a deposit order. I have found against the Claimant for substantially the same reasons for which the deposit order was made.

g. Was Thomas Jeff treated differently from the Claimant and given "an easy ride" due to his race, in particular that he was not set similar tasks to the Claimant?

126. No. See paragraph 122 above. Further, Mr Jeff was a more junior, less experienced software tester and he is not an appropriate comparator as his circumstances are not materially the same as the Claimant's. Insofar as it could be said that the Respondent had greater expectations of the Claimant, this was because of his greater experience, not because of his race. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

h. In a Teams call on 15 March 2024, did Stephen Higgins belittle the Claimant, threaten the Claimant's job security and/or make racist remarks to the Claimant?

127. No. I reject entirely the Claimant's account of that conversation for the reasons set out above. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

128. This was one of the allegations that was the subject of a deposit order. I have found against the Claimant for substantially the same reasons for which the deposit order was made.

i. In relation to the allegation described above at (h), was there an attempt to "sweep the matter under the carpet by pretending that it was trivial"? Did Samantha Crofts-Aherne, brand the Claimant as aggressive and take sides with Stephen Higgins because Stephen Higgins was a white man?

129. No. When he spoke to Ms Crofts-Aherne, the Claimant did not allege that Mr Higgins had belittled him, threatened his job security or made racist remarks. There was therefore no such allegation for Ms Crofts-Aherne to 'sweep under the carpet' or to take sides with Mr Higgins about. Ms Crofts-Aherne did not tell the Claimant that he was aggressive. The opinion that Ms Crofts-Aherne later shared with Ms Zolotarczuk was not one that she shared with the Claimant and, in any event, was based on her observations of the Claimant's behaviour not because of his race. The Claimant has failed to discharge the burden of proof. The allegations of both direct discrimination and harassment are not well-founded and are dismissed.

Did the Respondent dismiss the Claimant on 21 March 2024 because of the Claimant's race?

130. No. The Respondent dismissed the Claimant because of his performance. The Clear Review records and Ms Crofts-Aherne's evidence provide a clear account of how the Claimant was failing to meet the Respondent's expectations and how, after three months' employment, he was still not carrying out all the functions of his role, leaving Ms Crofts-Aherne and Ms Willis to retain aspects of the role which the Claimant should have been performing. The Claimant's lack of preparedness for the two calls with Mr Pickering on 18 and 19 March 2024, in spite of clear instructions, was the final straw that led Ms Crofts-Aherne to terminate the Claimant's employment. The Claimant has failed to discharge the burden of proof. The allegation direct discrimination is not well-founded and is dismissed.

Victimisation

Did the Claimant do a protected act verbally when he spoke to Samantha Crofts-Aherne by Teams in the afternoon of 15 March 2024 about 2pm?

131. No. For the reasons previously stated, the Claimant did not make a complaint of race discrimination during that call. The Claimant therefore did not do a protected act.

Was the Claimant dismissed because he had done that protected act?

132. Even if the Claimant had done a protected act (which he had not), the

reason for his dismissal was poor performance, not the doing of a protected act.

133. The victimisation complaint is not well-founded and is dismissed.

Automatic unfair dismissal

Did the Claimant make a qualifying disclosure to the Respondent? The Claimant relies upon what he said when he spoke to Samantha Crofts-Aherne by Teams in the afternoon of 15 March 2024 about 2pm.

134. No. The Claimant did not make a qualifying disclosure. For the reasons previously stated, the Claimant did not allege that Mr Higgins had belittled him, threatened his job security or made racist remarks. The complaint that the Claimant made in that call was being asked by Mr Higgins about his approach to testing. That does not amount to a disclosure of information tending to show that a criminal offence had been committed or a failure of legal obligation.

If the Claimant made a protected disclosure, was the principal reason for the dismissal of the Claimant because of the protected disclosure?

135. Even if the Claimant had made a protected disclosure (which he had not), the reason for his dismissal was poor performance, not the making of a protected disclosure.

136. The automatic unfair dismissal complaint is not well-founded and is dismissed.

Breach of contract

Was there a verbal agreement between the Claimant and the Respondent that if the Respondent terminated the Claimant's employment following a thirty-day probationary period, the Respondent would pay the remainder of the Claimant's annual salary on the termination of his employment as alleged by the Claimant? If so, when was that verbal agreement made?

137. No. There was no such agreement. I rejected the Claimant's evidence about this. Having renegotiated his place of work and salary, the Claimant accepted in writing the offer of 1 December 2023 which included a six-month probation period. There were no subsequent contractual negotiations between Ms Crofts-Aherne and the Claimant.

138. Even if there had been any such negotiations (which I reject), the term asserted by the Claimant is too vague and uncertain to be apt for incorporation in a contract. To illustrate the point, if the Respondent had terminated the Claimant's employment after 51 weeks, "the remainder of his annual salary" would have amounted to one week's pay, which would have been a lower amount than the Claimant received. It is inconceivable that, in

such circumstances, the Claimant would have asserted the existence of the alleged term.

Was there a written contract of employment in place? The Claimant denies that there was, he alleges that he received a written contract on 8 March 2024 which he rejected because it did not have the correct address.

i) Did the offer letter dated 1 December 2023 which contained a six-month probation period amount to a contractual term which was accepted by the Claimant?

Yes, it did. The Claimant successfully negotiated the terms of that offer but made no objection the six-month probation clause. He then accepted that offer in writing.

ii) Was the written contract of employment sent to the Claimant on 8 March 2024, albeit with the Claimant's wrong address, impliedly accepted by the Claimant?

Yes, it was. The only objection to that contract was an incorrect address. The Claimant raised no other objection. Tellingly, he did not raise the omission of the alleged term on which he now seeks to rely.

c. If there was a verbal agreement in place, was this overridden by the offer letter dated 1 December 2023 and/or the written contract of employment sent to the Claimant on 8 March 2024.

139. There was no verbal agreement in place.

The Respondent paid the Claimant £1,600 less statutory deductions on 20 May 2024. Does the Respondent owe the Claimant any other wages/damages for breach of contract?

140. No. The Claimant was paid a net sum of £2,774 in lieu of notice (including the previously withheld £1,600) on 10 April 2024. The Claimant's only challenge to the amount received relied upon the assertion of the 'remainder of his annual salary' clause, which I have rejected.

141. The complaint of breach of contract is not well-founded and is dismissed.

Approved by:

Employment Judge Rhodes

1 April 2026

JUDGMENT SENT TO THE PARTIES
ON

7 April 2026

FOR THE TRIBUNAL OFFICE

Notes

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

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

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

Annex

List of Issues

Race Discrimination

1. The Claimant is Black African and of Nigerian nationality.

Direct race discrimination

2. Did the Respondent treat the Claimant less favourably than his comparator was or would have been treated? The Claimant relies on:

a. a real person, Thomas Jeff, who was a white colleague of the Claimant ("Actual Comparator"); and

b. a hypothetical person whose circumstances were not materially different to the Claimant's save that the comparator was not black African or Nigerian, i.e. an employee in a senior unique role within the Respondent who was not black African or Nigerian ("Hypothetical Comparator").

3. Is the Hypothetical Comparator the correct hypothetical comparator to rely upon? Was the Actual Comparator in materially the same circumstances as the Claimant?

4. In deciding (2) above, did the following alleged acts happen (the Tribunal will need to determine what occurred):

a. Did the Respondent install an “illegally installed activity monitoring app” on the Claimant’s work machine?

b. Did Samantha Crofts-Aherne subject the Claimant to “very aggressive and humiliating feedback” in a forum accessible to others?

c. Did the Respondent constantly insult the Claimant’s work, belittle him and/or did the Claimant receive rigorous public criticism?

d. Did Samantha Crofts-Aherne “shut the Claimant down in a humiliating manner” when he spoke about his daughter?

e. Did the Respondent have unreal expectations of the Claimant and ask him to perform tasks which were too difficult or impossible?

f. Was £1,600 withheld from the Claimant’s salary because of his race or because he had failed to return the Respondent’s computer equipment? If the latter, did the Respondent treat the Claimant differently in this regard to the Hypothetical Comparator?

g. Was Thomas Jeff treated differently from the Claimant and given “an easy ride” due to his race, in particular that he was not set similar tasks to the Claimant?

h. In a Teams call on 15 March 2024, did Stephen Higgins belittle the Claimant, threaten the Claimant’s job security and/or make racist remarks to the Claimant?

h. In a Teams call on 15 March 2024, did Stephen Higgins belittle the Claimant, threaten the Claimant’s job security and/or make racist remarks to the Claimant?

i. In relation to the allegation described above at (h), was there an attempt to “sweep the matter under the carpet by pretending that it was trivial”? Did Samantha Crofts-Aherne, brand the Claimant as aggressive and take sides with Stephen Higgins because Stephen Higgins was a white man?

5. If so, in each case where the treatment happened: a. was this less favourable treatment? b. If so, was this because of the Claimant’s race when compared to the Actual Comparator or a Hypothetical Comparator?

6. Did the Respondent dismiss the Claimant on 21 March 2024 because of the Claimant’s race?

Harassment

7. The Claimant relies on the allegations set out in issue (4) above as amounting to acts of harassment relating to race. In addition to the claim for direct discrimination, and to the extent they are found as fact by the Tribunal:

a. Did they amount to unwanted conduct?

b. If so, were they related to the Claimant’s race?

c. If so, did such conduct have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

d. Was it reasonable for that conduct to have that effect?

Victimisation

8. Did the Claimant do a protected act verbally when he spoke to Samantha Crofts-Aherne by Teams in the afternoon of 15 March 2024 about 2pm?

9. The Claimant relies upon his dismissal by the Respondent as a detriment.

10. The Respondent accepts that dismissal is a detriment.

11. Was the Claimant dismissed because he had done that protected act?

Protected disclosure and automatic unfair dismissal under section 103A of the Employment Rights Act 1996

12. Did the Claimant make a qualifying disclosure to the Respondent? The Claimant relies upon what he said when he spoke to Samantha Crofts-Aherne by Teams in the afternoon of 15 March 2024 about 2pm.

- a. Was there a disclosure of information?
 - b. If so, did the Claimant have a belief that the disclosure of information showed that:
 - i) a criminal offence had been committed, was being committed or was likely to be committed; and/or
 - ii) a person had failed, was failing or was likely to fail to comply with a legal obligation to which it was subject – the legal obligation relied upon is the obligation not to discriminate.
 - c. Was that belief reasonable?
 - d. Did the Claimant believe that the disclosure was made in the public interest?
 - e. Was that belief reasonable?
13. If a qualifying disclosure was made, the Respondent accepts that it was a protected disclosure because it was made to the Claimant's employer.
14. If the Claimant made a protected disclosure, was the principal reason for the dismissal of the Claimant because of the protected disclosure?

Breach of Contract

15. Has the Respondent breached the Claimant's contract of employment by not paying him the sum which he was due as notice pay or in lieu of notice?
- a. Was there a verbal agreement between the Claimant and the Respondent that if the Respondent terminated the Claimant's employment following a thirty-day probationary period, the Respondent would pay the remainder of the Claimant's annual salary on the termination of his employment as alleged by the Claimant? If so, when was that verbal agreement made?
 - b. Was there a written contract of employment in place? The Claimant denies that there was, he alleges that he received a written contract on 8 March 2024 which he rejected because it did not have the correct address.
 - i) Did the offer letter dated 1 December 2023 which contained a six-month probation period amount to a contractual term which was accepted by the Claimant?
 - ii) Was the written contract of employment sent to the Claimant on 8 March 2024, albeit with the Claimant's wrong address, impliedly accepted by the Claimant?
 - c. If there was a verbal agreement in place, was this overridden by the offer letter dated 1 December 2023 and/or the written contract of employment sent to the Claimant on 8 March 2024.

16. The Respondent paid the Claimant £1,600 less statutory deductions on 20 May 2024. Does the Respondent owe the Claimant any other wages/damages for breach of contract?

Remedy

17. Has the Claimant taken steps to mitigate his losses?
18. Has the Claimant secured alternative employment?
19. Has the Claimant provided proof of earnings/benefits?
20. What, if any, compensation is owed to the Claimant?