



EMPLOYMENT TRIBUNALS

Claimant: Mr Y Mfunda

Respondent: Oxfordshire County Council

Heard at: Bury St Edmunds (by video)

On: 3, 4, 5 and 6 March 2026
21 and 22 May 2026 (in chambers)

Before: Employment Judge Graham
Mrs Costley
Ms Durrant

Representation

Claimant: Self representing

Respondent: Ms J Duane, Counsel

RESERVED JUDGMENT

1. The complaints of direct race discrimination, and harassment related to race, fail and are dismissed.
2. The deposit paid by the Claimant is to be paid to the Respondent.

REASONS

Introduction

1. ACAS Early Conciliation took place between 29 September and 10 November 2023.
2. By a claim form dated 12 December 2023, the Claimant presented a claim for direct race discrimination, race related harassment and ordinary unfair dismissal. The list of issues was agreed with Employment Judge Manley on 8 August 2024 and the claim for ordinary unfair dismissal was dismissed on withdrawal.
3. The final hearing was originally listed for April 2025, but was subsequently converted to a Preliminary Hearing. The final hearing was then due to take place from 23 to 26 September 2025 but was subsequently postponed upon

the Claimant's application. The Claimant had applied to postpone the earlier hearing as well.

4. On 28 April 2025 at a Preliminary Hearing before Employment Judge Manley a number of the Claimant's complaints were struck out and/or subject to a deposit order. The Claimant only made payment for one of the allegations which had a deposit order against it, in the sum of £500, and therefore on 26 August 2025 those claims for which a deposit was not paid were struck out.
5. At the start of this final hearing we were provided with an electronic bundle of 671 pages and witness statements from Naomi Taviner and Pippa Corner for the Respondent. The Claimant had not provided his witness statement to the Respondent therefore it had not given the Claimant the password for its witness statements. The Respondent applied for a strike out of the claim under Rules 38(1)(b) and (c) of the Employment Tribunal Rules of Procedure 2024, namely that (i) that the manner in which the proceedings had been conducted by the Claimant had been scandalous, unreasonable or vexatious; and (ii) for non-compliance with an order of the Tribunal.
6. We heard the Respondent's application and the Claimant's explanation and objections to the strike out application on 3 March. There had been three separate directions for witness statements to be exchanged dated 8 August 2024, 28 April 2025, and 18 June 2025. The Claimant had not complied on the basis that he was seeking further disclosure from the Respondent, however as we noted, Employment Judge Manley had previously refused the Claimant's application and directed that there was nothing further to disclose as the bundle already contained the relevant documents for the hearing. The Claimant still did not provide his witness statement to the Respondent.
7. The Respondent had applied for an unless order in good time before the hearing to compel the Claimant to exchange statements, however it was not referred to a judge in time. On 23 February 2026 Employment Judge Anstis wrote to the parties to say there was insufficient time to deal with the unless order and it would be addressed at this hearing.
8. We found that the Claimant has been in repeated breach of tribunal orders to exchange his witness statement and his conduct in this regard has been unreasonable as he knew full well what he had to do, when he had to do it, and he was given numerous opportunities to comply but failed to do so.
9. It was clear that Judge Manley had considered and refused the Claimant's application for disclosure, and the Claimant was made aware of the decision.
10. We therefore found that the grounds for consideration of a strike out under Rules 38(1)(b) and (c) were met and that the Claimant's failure to exchange witness statements had been unreasonable, and he was in repeated breach of Tribunal orders.
11. A strike out is a draconian sanction, and there is a public interest in discrimination claims being heard and not struck out before hearing

evidence, save for exceptional cases. We considered the question of whether a fair hearing was still possible in this trial window on the basis of ***Emuemukoro v Croma Vigilant (Scotland) Ltd and others* [2022] ICR 327** [paragraphs 18 and 21]. We determined that the ability to do so was hanging by a thread. Had the Claimant not told us that he had a draft of the statement available that could be exchanged the same day, we would have found that a fair hearing in the trial window was not possible, and we would have struck out the claim given the considerable prejudice these failures to comply and delays have caused, and continued to cause the Respondent. We identified that the Respondent would not have been able to prepare much, if any, cross examination of the Claimant, and whilst it would generally know the case it had to meet, its ability to prepare its questions was severely hampered.

12. I informed the parties that the Tribunal was within a whisker of striking out the claim, however, a fair hearing in the trial window remained possible with robust case management and proper timetabling if the Claimant provided his witness statement that day.
13. Accordingly, at 2:30pm we issued the Claimant with an unless order to exchange his statement with the Respondent by 3.30pm on 3 March 2026, failing which the claim would be automatically struck out in full. I explained that this was the Claimant's last opportunity to comply. The unless order was delivered verbally and followed up in writing the same day.
14. The Claimant complied with the unless order and provided a five-page witness statement before the deadline. The claim was therefore not struck out.
15. The Claimant gave evidence on 4 March and the morning of 5 March. Ms Taviner gave evidence on the afternoon of 5 March, and Ms Corner's evidence was heard on 5 and 6 March 2026. Closing submissions were provided on 6 March 2026.
16. In determining that the grounds under Rule 38(1)(b) had been met, we informed the Claimant that we had found his conduct in repeatedly failing to exchange a witness statement had been unreasonable. We issued the Claimant with a warning that he would be at risk of an order for costs based upon this, and we warned him that he must conduct himself reasonably for the remainder of the hearing.

List of issues

1. Time limits

1.1 Were the discrimination and harassment complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.1.2 If not, was there conduct extending over a period?

1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Direct race discrimination (Equality Act 2010 section 13)

2.1 The claimant is black British.

2.2 Did the respondent do the following things as alleged by the claimant:

*2.2.1 For a period of six months from about summer of 2022 to early 2023 Naomi Taviner (the claimant's line manager) did not do anything about the concerns of bullying and harassment by Anne Coyle which the claimant shared with her, and she did not contact Kim Brown and Tina Cummings who the claimant said were witnesses to the treatment of him (*allegation is the subject of a deposit order*);*

2.2.2 ...

2.2.3 ...

2.2.4 Before 3 September 2023, the line manager of Tina Cummings denied Tina Cummings the opportunity to support the claimant at his disciplinary hearing on 3 September 2023;

2.2.5 Lorraine Amor and Pippa Corner did not consider the suitability of Pippa Corner to chair the disciplinary/capability hearing;

2.2.6 On 8 September 2023 Pippa Corner went ahead with a disciplinary/capability hearing without making a referral to occupational health, contrary to item 46 of the disciplinary and capability procedures,

2.2.7 On 8 September 2023 Lorraine Amor and Pippa Corner went ahead with the hearing without consideration of the claimant's health and advice from Michael Fletcher (head of HR);

2.2.8 On 8 September 2023, Pippa Corner dismissed the claimant;

2.2.9 ...

2.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

The claimant has identified two individuals who he says were treated better than him: Stuart Kelly and Matt Utley.

2.4 If so, was it because of race?

3. Harassment related to race (Equality Act 2010 section 26)

3.1 Did the respondent do the following things as alleged by the claimant:

*3.1.1 For a period of six months from about summer of 2022 to early 2023 Naomi Taviner (the claimant's line manager) did not do anything about the concerns of bullying and harassment by Anne Coyle which the claimant shared with her, and she did not contact Kim Brown and Tina Cummings who the claimant said were witnesses to the treatment of him (*allegation is the subject of a deposit order*);*

3.1.2 ...

3.1.3 ...

3.1.4 Before 3 September 2023, the line manager of Tina Cummings denied Tina Cummings the opportunity to support the claimant at his disciplinary hearing on 3 September 2023;

3.1.5 Lorraine Amor and Pippa Corner did not consider the suitability of Pippa Corner to chair the disciplinary/capability hearing;

3.1.6 On 8 September 2023 Pippa Corner went ahead with a disciplinary/capability hearing without making a referral to occupational health, contrary to item 46 of the disciplinary and capability procedures,

3.1.7 On 8 September 2023 Lorraine Amor and Pippa Corner went ahead with the hearing without consideration of the claimant's health and advice from Michael Fletcher (head of HR);

3.1.8 ...

3.2 If so, was that unwanted conduct?

3.3 Did it relate to race?

3.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Remedy for discrimination or harassment

4.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

4.2 What financial losses has the discrimination caused the claimant? 4.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job? If not, for what period of loss should the claimant be compensated?

4.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.5 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

4.6 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

4.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the respondent or the claimant unreasonably fail to comply with it? If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

4.8 Should interest be awarded? How much?

Findings of fact

17. From the information and evidence before the Tribunal it made the following findings of fact. We made our findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. We do not set out in this judgment all the evidence which we heard but only our principal findings of fact, those necessary to enable us to reach conclusions on the issues to be decided.
18. Where it was necessary to resolve conflicting factual accounts, we have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against any contemporaneous documents. We have not referred to every document we read or were directed or taken to in the findings below, but that does not mean they were not considered.
19. The Claimant was employed by the Respondent as Brokerage Manager – Start Well, within the Respondent's children's services from 3 January 2022 until his dismissal on 13 September 2023. This was a grade 13 role at a salary of just under £50,000, and it was a relatively senior role.
20. The Claimant's role was to find and arrange suitable care placements for children and young people by liaising with social work teams and external providers; to negotiate and record the agreed arrangements and costs; and to keep accurate case notes and management information so that senior decision makers had reliable updates when required. The Claimant was expected to prepare clear reports and regular progress updates for senior leaders, and to ensure that information about placements (including

approvals and financial details) was recorded correctly and shared promptly with those who needed it.

21. The Claimant was expected to prioritise unregistered placement cases, maintain accurate weekly updates for senior leadership, and work at pace with operational colleagues and providers to reduce risk and secure lawful, suitable placements.
22. An unregistered placement involves placing a child in a setting which provides 24 hour care but is not registered with Ofsted (which is a legal requirement). These sorts of placements are exceptional and are only used in emergencies or crisis situations and are therefore subject to close scrutiny and it is a priority to remove a child from an unregistered placement.
23. The Claimant's role would also involve attending placement panel meetings with managers and senior leaders from social work and operational teams to discuss unregistered placements, and the Claimant was required to take part in the discussions and to provide updates on the brokerage activities. It was part of the Claimant's role to get the number of young people in those unregistered placements down as far as possible. We understand that at the material time (2022-2023) the average number of children in unregistered placements in comparable local authorities was around 4, and the Respondent had in the region of about 16. Weekly reports were required on these placements given their priority status.
24. In addition to his own caseload responsibilities, the Claimant as a manager was required to manage a small brokerage team of around 6 members of staff, setting priorities, holding one to one meetings ("1:1s") and team meetings, and overseeing the quality and timeliness of their work.
25. The role was clearly an incredibly important one given that it was to meet the needs of children and young people who would inevitably be vulnerable, and accordingly their safeguarding was of paramount importance. If those within the role do not deliver in the role then ultimately this could negatively impact the child. It is therefore essential that data about their placements is kept up to date and is accurate. Two of the key behaviours for the role, as per the Respondent's job description, are to take accountability for personal performance, and to provide direct reports with structured objectives and robust performance management.
26. The role was also a pressured one given that the Respondent would be acting as a corporate parent for those children and it was legally accountable for them, and therefore those senior leaders would expect up to date, accurate, and regular updates on steps taken to find placements for children, particularly so those within unregistered placements which were a last resort.
27. The Claimant's line manager, Naomi Taviner, started one month after the Claimant in February 2022 and her then role was Brokerage Lead, and Ms Taviner in turn reported to Pippa Corner the then Deputy Director, Joint Commissioning. Ms Corner reported to Karen Fuller who was then the Interim Corporate Director of Adult Social Care.

28. At the time of recruiting the Claimant the division had recently gone through a restructure with a view to improving health, education and social care services for people at different tiers of need for example Start Well, Live Well and Age Well. Start Well, as the name implies, concerned children and young people.
29. It was clear that the Claimant's team was under considerable pressure from before the start of his employment. There were high demands upon the team to find placements; there had been previous budgetary cuts; this was a small team of about six members of staff; there had been a high turnover of staff and low morale; the Respondent at that time was reliant upon agency staff; there were a high number of staff in interim rather than permanent roles; and the reputation of the Brokerage Team was not good.
30. Some of the systems within the team had not been updated so that Word and Excel forms were being used to record updates, and it was not until the Summer of 2022 that the Respondent's case management system (LCS) received an update to allow for brokerage data to be included. Following that IT update the team did not routinely provide updates on cases into the system, which meant that social workers and senior leaders did not always have up to date information, however it was part of the Claimant's role to ensure that his team provided up to date and accurate data.
31. The Claimant joined the Respondent with relevant experience gained from the NHS which the Respondent wished to draw upon. The Claimant confirmed to us in his oral evidence that he had a comprehensive induction training in brokerage. The Claimant had been appointed by Ms Corner.
32. Ms Taviner held monthly 1:1 meetings with the Claimant from 15 March 2022 onwards. During the first half of 2022 Ms Taviner received concerns from operational managers about the Claimant's performance which included having his camera switched off during panel meetings which generated concerns he was doing something else; concerns he did not have up to date correct information at those meetings; and those comments suggested to Ms Taviner that managers had lost confidence in the Claimant. By arriving at panel meetings without up to date information this meant that decisions could not be made for placing vulnerable children.
33. During a 13 week review on 31 May 2022 Ms Taviner raised concerns with the Claimant about his performance, in particular his preparedness at panel meetings; accuracy and timelessness of updates on unregistered placements; and his case recording. There were also concerns about the Claimant's management of his own team including not conducting regular 1:1s with his staff. The Claimant told us the reason these had not happened was due to lack of time, prioritising other work, and being short staffed.
34. The Claimant appeared to accept that he had been unprepared at panel meetings which he attributed to the team members he managed not giving him updates, and it was recorded that he needed to manage his team to ensure that accurate updates were provided.
35. As regards updates on unregistered placements, the Claimant's evidence to us was that the Respondent did not have a case management system where this could be recorded and that staff were relying on MS Word.

Whereas this may have been the case initially, the unchallenged evidence of Ms Taviner, whom we found to be an honest and reliable witness, was that the software was updated in Summer 2022 to allow for the brokerage data to be added, however the Claimant and his team did not always do so.

36. The Claimant now disputes the record of that 31 May meeting and all other meetings and says that these were Ms Taviner's words and they are inaccurate or missed out details. This appeared unlikely to the Tribunal as the Claimant was provided with the opportunity to amend them, but only responded once with respect to the December 1:1 minutes, that the note was inaccurate, but he did not provide his own version. We therefore find that the meeting minutes, whilst not verbatim, were a generally accurate and reliable account of those meetings.
37. The performance issues were again discussed in a 1:1 on 8 June 2022 where the Claimant was made aware by Ms Taviner about concerns he was not providing up to date information on unregistered placements which he agreed to address. Ms Fuller, as a senior leader, also started to raise concerns with the Claimant and Ms Taviner about this on 23 June 2022 where she emailed and referenced insufficient and inadequate weekly updates on unregistered placements.
38. The Claimant replied to suggest the fault lay with a Mr Utley who had not been around before the Claimant went on leave and he asked that Mr Utley be allowed to attend the panel meeting with him to provide an update as he held some of the cases and the Claimant would normally get the update from him.
39. Mr Utley was an agency member of staff who worked part time, three days per week in the team, on four to five cases where the children were in unregistered placements and his task was to find them registered placements. Mr Utley did not find any placements for them, and his engagement only lasted from April to August 2022, however he also worked on a separate project directly with the social workers which involved reforming some processes, and this was more successful. In any event, Ms Fuller replied to the Claimant to say that Mr Utley could attend the meeting but the Claimant was the manager and her expectation was for him to be fully cited on high profile cases.
40. The Claimant told us in his oral evidence that the issue about inadequate information arose due to him not being provided information from his team or social workers, and that Ms Fuller did not understand the reports, and that other directors did not understand his team. The Claimant said that it was unfair for Ms Fuller to "blast" him as it was not his job, it was that of the Service Managers, and that he was only a "gatekeeper." This was a consistent theme in the Claimant's evidence that the fault lay elsewhere and not with him, and that others were failing to give him information he needed to pass on to senior leaders. Our conclusion is that it was the Claimant's role to ensure that he obtained that information from social workers and the staff he managed.
41. Whereas the Claimant told us in his evidence that another senior leader, Lara Patel, never had problems with his work, we noted an email of 9 June 2022 from Ms Patel to the Claimant where she challenged him for sending

something late after a panel meeting where it would have been helpful to have had it. The Claimant suggested to us that this was also the fault of Mr Utley who was ill at short notice.

42. Ms Taviner started to produce action points within the 1:1 meetings for the Claimant to focus on.
43. In the 18 July 2022 1:1 the performance issues were discussed again and Ms Taviner noted the Claimant was still not conducting frequent 1:1s with his staff nor holding regular team meetings. Whereas the Claimant suggested his reporting had improved, on 27 July 2022 Ms Fuller emailed the Claimant to say his reporting needed to be more robust. Ms Fuller expressed concern that within the report on unregistered placements the Claimant continually recorded "chasing the social worker" whereas she needed the data and that delays needed to be avoided as it was having a financial impact and was not good for the children concerned. It was recorded as that the average unregistered placement is 4 per authority, there needed to be targeted movement.
44. In his oral evidence to us the Claimant said he did not accept the criticisms and the fault did not lay with him (or his team) as he was the Brokerage Manager and was responsible for collecting information from the social workers, and he suggested again that Ms Fuller had mixed up the teams and was not aware of his work. We found this to be unlikely, it was clear to us that Ms Fuller understood the function of the team and her concern was to get reliable, accurate, and up to date information on placements given the Respondent was acting as corporate parent to those children. We find that Ms Fuller was pressing the Claimant to get information from social workers as that was part of his job.
45. Following this Ms Corner emailed the Claimant on 29 July 2022 to state the level of detail he was providing for weekly reports on unregistered placements was insufficient and explaining the importance of providing sufficient information on time.
46. On 4 August 2022 the Claimant emailed Ms Taviner to express concern about managing his workload, and he was clearly saying he was not coping in his role. The Claimant thanked Ms Taviner for stepping in to support him with day to day running of the team, however he said the cases were extremely demanding, he had been working long hours (including weekends) and he was feeling exasperated and that balancing the workload was becoming increasingly exhaustive and placing unbearable pressure on his role.
47. The Claimant said Ms Taviner had advised him to cancel all non-essential meetings but with his role almost everything was essential and that his colleagues did not understand this, and he felt sorry for them as he was not available to support them during the time they needed him.
48. The Claimant referred to Mr Utley who had left, and he said he had worked three days per week on four cases, and the Claimant said he was left to take over his functions as well, but both roles could not be performed by one person. The Claimant recorded that some children had been awaiting

appropriate placements for nearly 9 months with no sign of finding suitable placements any time soon, and he asked for the role to be split in two.

49. We were also referred to an exchange from Laura Baker (Senior Systems Officer) to the Claimant on 25 August 2022 which appeared to show she had been chasing the Claimant for two months to send a placement request for a young person which she had previously requested on 15 June 2022, the result of which meant that the young person's chronology had become out of date.
50. The earlier email of 15 June 2022 records that the Claimant had told Ms Baker he was awaiting the return of one of his team from leave, however this had still not been completed by 25 August 2022. The Claimant told us in his oral evidence "it was not for me, it was for the team" which he said was a range of six people who were incompetent and this was issue was not a priority as he was working on two reports a week for Ms Fuller, and that Ms Coyle (Interim Deputy Director (and subsequently Deputy Director) of Children's Services), could call him and ask him to meet four times a day. The Claimant said he passed the request to his team, but they did not action it.
51. We were also referred to correspondence from Lydia Gardner (Team Manager) where she had made five requests to the Claimant between August and October 2022 for information on a specific placement. In her first email Ms Gardner stated that "this poor girl is in need of a placement, so I do appreciate any support in being able to secure this for her." The Claimant was asked to provide a chronology of his efforts to find her a placement as it would be needed for court. The Claimant replied saying that there had been searches but he suggested Ms Gardner go back to an external company who he said it would be easier to work with rather than making further searches, and he said that he had personally made 3,000 referrals without success.
52. The Claimant asked when the chronology would be needed, to which Ms Gardner said 7 September. By 10 September this had not been completed and Ms Gardner chased the Claimant and said there had been a delay at court and it would now be needed for 16 September. The chronology was still not provided and Ms Gardner sent further chasers on 4, 7 and 10 October.
53. On 10 October Ms Taviner then became involved and directed the Claimant to provide the information, and in response the Claimant asked Ms Gardner if the information was required as a placement had been found for the young person.
54. In his oral evidence to us the Claimant told us that one of the dates he was chased was his birthday when he does not work; this case was not his case but was for another officer; he had several cases of his own and this was not a priority; and he had an agreement to provide the chronology before going to court. The Claimant said he was prioritising work for court hearings or he could get into trouble, and he said the Respondent's service was dysfunctional and relied upon manual recording, although we have noted that by Summer 2022 the Respondent made IT changes so that brokerage

activities would be recorded online. It was not explained to us in evidence if the Claimant ever provided the chronology.

55. The Claimant's six month probation meeting took place on 16 August 2022 with Ms Taviner and Ms Corner, and the thorough notes record that there were discussions about the Claimant's performance with Ms Taviner trying to provide the Claimant with guidance and support, so much so that the meeting was extended until the following day. The Claimant told Ms Taviner and Ms Corner that the role was not feasible and it was impossible to manage the pressure around the unregistered cases and the team as well as other placement work.
56. In response in August 2022 Ms Taviner split the Claimant's role in order to allow the Claimant to focus on case management and she took on a number of his functions, whilst combining this with her own functions as a more senior manager. Ms Taviner looked to bring in an agency member of staff to assist. Stuart Kelly was recruited in or around December 2022, some four months later, in order to take over some of the Claimant's duties. Mr Kelly did not perform all of the Claimant's Brokerage Manager functions, and he (like Mr Utley) was not subject to the Respondent's Disciplinary and Capability Policy as he was agency staff.
57. Further performance concerns were raised in September and October 2022 with respect to the Claimant not setting up placements correctly or seeking approvals from leaders. One concern related to the placement of under 16 year olds whom the Claimant knew should not be placed in CQC registered homes, rather the providers must be registered with Ofsted. Ms Patel also raised concerns on 6 October that a child had been moved before funding had been agreed. In his oral evidence the Claimant told us that this issue was not his fault as someone decided to send the child there on 3 October which was his birthday and he never works on his birthday, and he said that this was the fault of the social workers.
58. Concerns were also raised about payments not being actioned properly and that it had taken the Claimant two months between October and December 2022 to provide an address for a provider. The Claimant told us that human error can happen, and he attributed the blame to the provider not providing him with their address. It was put to the Claimant in his oral evidence that the knock on effect would be that the placement could not be added to the system meaning that the social worker would not get updates, to which the Claimant told us that this was not the fault of his team; he was the middle man and could not be held accountable; and that he had to decide what to prioritise.
59. During October 2022 the Claimant raised concerns with Ms Corner about his working relationship with Karen Palmer, another senior leader. Ms Corner had been approached as we understand Ms Taviner was on leave at the time, and she asked the Claimant to put his concerns in writing however he did not do so.
60. On 12 December 2022 Ms Coyle, the then Interim Deputy Director Children's Services, and the lead of unregulated or unregistered placements, raised concerns with Ms Taviner about the Claimant. Ms Coyle had complained that an offer from an inappropriate provider had been

passed on to a social worker who had started discussions with the provider about a placement for a child, and the first that Ms Coyle knew about it was in a meeting about the child.

61. On 14 December Ms Coyle included Ms Taviner in an email to the Claimant about inaccuracies in an unregistered placement report which he had circulated and she raised concerns that as she was the lead it ought to have been passed to her to review first.
62. Ms Taviner held a 1:1 meeting with the Claimant on 14 December 2022 where she again raised concerns about his performance. Ms Taviner specifically identified ten areas of concern which comprised of inappropriate placements being identified by the Claimant; delays in seeking funding approval and updating senior leaders on negotiations with providers; as well delays in replying to emails not providing correct information to senior leaders and lack of case recording; lack of supervision such as regular 1:1 and team meetings and case audits.
63. Ms Taviner said that she was proposing to have an informal performance improvement plan with the Claimant which would include providing him with a table of concerns which could be used towards agreeing targets for him to work to. The Claimant did not agree with the performance concerns and sought to attribute these to other people and other factors.
64. Ms Taviner also raised Ms Coyle's concerns with the Claimant. The Claimant then told Ms Taviner he was unhappy with the way in which Ms Coyle spoke to him at the meeting and that she had not shown him respect. The notes of the 1:1 record that the Claimant told Ms Taviner that Ms Coyle had been unhappy that an offer from an inappropriate provider had been passed to a social worker who had started discussions with them which Ms Coyle did not know about at the time. The notes record the Claimant saying that the social worker had almost accepted an offer from the provider and that this was a shock to Ms Coyle. The Claimant said that he was not happy with Ms Coyle's attitude towards him and he felt that there should have been more respect.
65. It is not disputed that Ms Coyle spoke to the Claimant in a very direct brusque manner and that she expressed a high degree of frustration towards the Claimant in front of other colleagues about his input. We have not been told specifically what was said, but it is not disputed that the Claimant was spoken to harshly and we find that he found the interaction to be upsetting and embarrassing to be spoken to in such a way in front of other colleagues. We know that the conversation was harsh and would have had such an effect on him as Kim Brown, a social worker and a team manager present at the meeting wrote to the Claimant shortly afterwards to offer him support and she said:

"Hi Yasini

I just wanted to message you and say how sorry I was that you were spoken to in that way in the meeting. I am sure I am not alone in thinking that it was unacceptable. I do hope that you are OK and that you are able to relax and have a nice weekend."

66. We accepted the evidence of Ms Taviner that Ms Coyle had a direct communication style which applied to everyone; that she had clear expectations and would express her concerns directly when she felt something was not being handled properly. The reason we accept this evidence is because it was consistent with a statement from Tina Cummings, provided on behalf of the Claimant at an earlier preliminary hearing in this matter, where Ms Cummings referred to a similar meeting where the Claimant was spoken to harshly, and she emailed him afterwards to offer him support.
67. The Claimant says that he gave Ms Taviner a copy of the email from Ms Brown and also one from Ms Cummings, another social worker and team leader, however Ms Taviner denies this and says that she was only given the email from Ms Brown.
68. The email from Ms Cummings is dated 10 March 2023 and in which she said:
- “Hi Yasini*
- That was a difficult meeting for you – I hope you are ok. Feel free to copy me in when you email them and if they don’t get back to you let me know and I will chase*
- Kindest Regards”*
69. Ms Taviner could not have been given this email at this time (December 2022) as Ms Cummings did not send it until 10 March 2023.
70. We note that Ms Taviner embedded Ms Brown’s email into the notes of the December 1:1 meeting, and we find that had she been given a copy of Ms Cummings’ email she would likely have done the same with that as well, irrespective of when it was given to her.
71. We do not find that the Claimant ever gave that email to Ms Taviner. Had the Claimant ever done so then we find Ms Taviner would have referred to it in the 1:1 notes as she did with the email from Ms Brown, and moreover the Claimant did not at any time write to her about this email asking for it to be included in the 1:1 notes.
72. We noted that in the subsequent 1:1 notes following the December meeting the Claimant said that he continues to get along well with his colleagues and that he was working very productively with Ms Coyle.
73. Whereas the Claimant now says that he told Ms Taviner that he was being discriminated against, we do not find that he did as Ms Taviner denies it; there is no contemporaneous written record containing such an allegation; the Claimant did not bring a formal grievance either at the time or subsequently; and even within the agreed list of issues the Claimant does not mention discrimination, rather he says that he told Ms Taviner he was being bullied and harassed.
74. In addition Judge Manley recorded the list of issues in the April 2025 case management summary (paragraph 14) where she records the Claimant as

saying he did not mention discrimination until after his employment had ended. The Claimant has never challenged the record of that hearing in the intervening period, and we find that he is now mistaken about this matter, which has had some impact upon his credibility.

75. It is not disputed that the Claimant raised concerns with Ms Taviner about the way he had been spoken to, and that she agreed to speak to Ms Coyle about it. There was a considerable delay in doing so. Ms Taviner did not discuss the matter with Ms Coyle until circa 23 March 2023 which the Tribunal found to be a considerable length of time. Ms Taviner says that the reason was due to being busy; she wanted to discuss this face to face; and their calendars were not aligned, and there was also the Christmas and New Year leave. Ms Taviner also told us that the Claimant did not chase her to deal with this matter, and in his 1:1s he told her that he was working very productively with Ms Coyle, and as such she assumed that this was not a priority.
76. We recognise that this was a team under a high pressure with a considerable workload; that Ms Taviner was balancing supervising a number of managers (and by extension their teams); she was attempting to deal with the Claimant's perceived performance issues and having to step in to support him and his team; and the priority was the welfare of the children, especially those in unregistered placements.
77. We also recognise that there was a high turnover of staff with many people in interim positions and agency workers which also impacted her time. We have not heard any evidence about Ms Coyle's workload and calendar, but as she was senior to Ms Taviner, we can assume it was equally busy and under a high degree of pressure as well.
78. Ms Coyle explained to Ms Taviner that she had been shocked by the Claimant's reaction as she considered they worked closely together and she put a formal written response in which she stated the placement should not have been put to the social worker as it had been unsuitable. Ms Taviner shared this with the Claimant and he did not pursue the matter further either with Ms Taviner or via a formal grievance.
79. As regards the December 1:1, Ms Taviner sent the Claimant the notes of the meeting after Christmas. These were discussed with the January 1:1 meeting at which time the Claimant said he did not agree them, and whereas he was asked to confirm what he disagreed with, he never did so. As no amendments were produced we find that the contents of the notes of the meeting were correct.
80. On 27 January 2023, Ms Coyle asked that the Claimant be removed from unregistered/high profile placement work, due to his alleged errors and missing information in a funding approval form which she had corrected. Ms Coyle said that the request was part of a long line of concerns. In this hearing the Claimant referred us to a copy of the form and asked Ms Taviner to tell us what errors appeared in there, however she was unable to do so. We did not draw any inferences from that as the form appeared to us to be the version corrected by Ms Coyle as it was attached to her email to Ms Taviner.

81. Following the email from Ms Coyle, Ms Taviner removed this function from the Claimant, and the majority of his other duties, and he was assigned a project to identify suppliers of placements. Ms Taviner took on some of the Claimant's role, including some management, which she combined with her other functions, and Mr Kelly undertook the remainder of the Claimant's role. The Claimant continued to be paid his grade 13 salary even though the project was well below that level of responsibility and he was delivering a small amount of his role.
82. Ms Taviner held another 1:1 with the Claimant on 17 February 2023 where she again raised performance concerns with him, and she indicated that if an informal performance plan could not be agreed then a formal one would be considered. Ms Taviner sent the 1:1 notes to the Claimant on 22 February and included a copy of the Respondent's Disciplinary and Capability Procedure and an infographic documents entitled "Steps to Improving Performance." The Claimant still did not agree to the informal process, rather he sought more information from Ms Taviner.
83. Between 22 February and 6 April 2023 there were prolonged exchanges between the Claimant and Ms Taviner about his performance, with the Claimant seeking further detail from Ms Taviner and suggesting on 28 February 2023 that he would be taking some form of external advice. As the Claimant had not indicated whether he would agree to an informal plan during March 2023 HR provided advice to Ms Taviner to escalate the matter to a formal capability process due to the time taken.
84. On 20 March Ms Taviner asked the Claimant for a response to which he suggested he would be seeking advice from an HR consultant that Friday (24 March). On 27 March Ms Taviner again asked for an update from the Claimant to which he responded with eight further questions which Ms Taviner responded to on 6 April.
85. The Claimant did not engage on the informal process and therefore following guidance from HR, Ms Taviner commenced the formal process by determining that there should be a formal capability hearing. Ms Taviner produced a thorough eight page management report for use in the formal hearing. The report sets out in detail concerns with the Claimant's performance concerning the Claimant putting forward inappropriate placements; delays in seeking funding for children and young people's cases allocated to him; delays in responding to outcomes of negotiations with providers; inability to provide accurate information to senior leaders; lack of case recording; not responding to emails on time; lack of information to support social workers with court hearings; lack of 1:1s with his staff and lack of team meetings; and case notes of audits from his staff were incomplete.
86. The management report set out in detail the risks to vulnerable young people and the Respondent by the underperformance, and the report goes on in detail to set out the steps taken by Ms Taviner to support the Claimant, including splitting the role; adding additional staff; reallocating placement searches; taking on parts of the role herself as well as delivering her own work with other teams; and allocating the Claimant a targeted project where he was look to identify providers with capacity. Ms Taviner recorded that this was not sustainable as the Claimant was no longer performing the role he

was employed to do and that he was being paid as a grade 13 Brokerage Manager yet at least 50% of his role had been removed.

87. It was decided that Ms Corner would chair the capability hearing. The Respondent's Disciplinary and Capability policy at paragraph 34 provides that it should be chaired by someone at director level, which Ms Corner was. The Claimant argued before us that this was unfair as Ms Corner had been involved in his case before and that it should have been someone independent from another department. Ms Corner told us she had given consideration to whether she was suitable, and she concluded that she was as her involvement with the Claimant's case had been minimal; it was helpful for the chair to have knowledge of the Claimant's role and the challenges and pressures within that role and team; and this helped when forming views about whether performance was likely to improve or whether an impasse had been reached.
88. Ms Corner also told us this was important as the appeal stage would be heard by the councillors who are completely removed from the day-to-day operational considerations. Ms Corner also said that it was helpful for her to have been the chair, and may have been to the Claimant's advantage, as she had been responsible for appointing him and she was therefore more keen for him to be a success in that role. We found Ms Corner's explanation of why she considered herself to be suitable, to be thoughtful, honest, and compelling.
89. We noted that assistance on conducting this process was provided by Lorraine Amor in HR, however she did not advise against Ms Corner chairing the meeting. We noted that although Ms Corner was referred to in the Claimant's comprehensive response to the capability proceedings (referenced later in this judgment), there were no allegations against her.
90. A capability hearing was listed for 4 September 2023 but was postponed due to the Claimant's self certified sickness due to Achilles tendon pain. The Respondent attempted to reschedule the hearing and offered 8, 11 and 12 September, including offering the Claimant remote attendance, and he was warned that the hearing might proceed in his absence if he did not attend.
91. On 6 September the Claimant wrote to the Respondent to say that he had been rushed into the meeting taking place, he referred to his own health and that his wife was pregnant with a due date of 11 September.
92. On 7 September 2023, Michael Fletcher (Head of HR) responded to advise that the hearing should proceed without delay, and he said:
- "in my experience, delaying matters will not reduce levels of stress associated with a formal process like this. Therefore, it is important that we proceed without undo delay."*
93. The Claimant was warned that if he did not confirm his option for one of the dates offered, and chose not to attend without a good reason, the hearing may proceed in his absence. The Claimant was offered the opportunity to take part remotely by video.

94. At 00:53 on Friday 8 September 2023 the Claimant said he would consider attending a hearing after he had taken a period of time off in lieu ("TOIL") which would have been around the end of October once his expected paternity leave had been taken into account. We note that this was far later than any of the dates proposed by the Respondent.
95. The hearing proceeded on 8 September 2023 in the Claimant's absence and was chaired by Ms Corner, and this was the second hearing date he had not attended.
96. We accept Ms Corner's evidence that prior to proceeding with the hearing in the absence of the Claimant she took HR advice from Ms Amor, and further she gave consideration to whether to refer him to Occupational Health. Ms Corner did not make a referral, and there was no requirement under the Respondent's Disciplinary and Capability for her to do so, as paragraph 46 makes it clear this only applied to sickness for which there was a GP certificate and situations of long term sickness absence. In the Claimant's case all that was known was that prior to the first attempt to hold the meeting on 4 September he had been to hospital due to his Achilles tendon pain. Ms Corner's evidence, which we again accept, is that she considered that the offer of a remote hearing would have enabled the Claimant to take part, and that she would have postponed the hearing if the Claimant's wife had gone into labour.
97. The Respondent's Capability Policy at paragraph 46 provided that GP certified sickness would normally justify postponement; however the Claimant did not provide a GP certificate. The Claimant was not referred to Occupational Health for advice. It did not appear to the Tribunal that there was anything which would have warranted a referral to Occupational Health as his absence was due to Achilles tendon pain and the Claimant had been offered the options of later dates and also remote attendance.
98. We also accepted Ms Corner's evidence that she took into consideration the fact the financial implications of continuing to pay the Claimant for a role he was no longer carrying out, alongside the cost of the additional member of staff who had been brought in to cover the rest of those duties, and that it would not be sustainable to continue paying someone who was not carrying out their role.
99. The Claimant submitted a considerable amount of evidence in his response to the management case for the capability hearing which comprised of 73 pages including a statement and 24 appendices. The entire capability pack amounted to some 340 pages which was a considerable document. The Claimant referred to the incident with Ms Coyle from December 2022 which he said was ill treatment by her, and he included a copy of Ms Brown's email. The Claimant also included the email from Ms Cummings where she had stated *"that was a difficult meeting for you. I hope you are okay. Feel free to copy me in when you email them and if they don't get back to you, let me know and I will chase."* The email didn't indicate specifically what had happened in the meeting.
100. Ms Corner engaged with Ms Taviner about the issue, and whereas she had not been aware of Ms Cumming's email or what it was about, she explained the background to Ms Brown's email from December 2022. We

note that Ms Corner read the notes of the December 2022 1:1 meeting and interpreted the Claimant's comments that he had been spoken to inappropriately, rather than a complaint of bullying and harassment as those words were not used and no grievance had been brought even though the Respondent has policies with respect to Bullying, Harassment and Discrimination which were available on its intranet and the Claimant confirmed to us that he was aware of them.

101. Ms Corner sought to explore the Claimant's concerns, and whereas she attempted to contact Ms Brown she could not reach her. Ms Corner engaged with Ms Cummings who informed her that Ms Coyle was harsh or strict and didn't suffer fools gladly; but she enjoyed working with her as she always knew where she stood, and that everyone was treated the same way. The view of Ms Cummings was that the Claimant was not singled out, and whereas the treatment was unpleasant, the Claimant was not treated differently by her questioning him directly and in the way that she did. Ms Corner informed us that after Ms Coyle had left, she had heard from others that she had been quite assertive in meetings, and she was like it all the time with everybody.
102. Ms Corner decided to dismiss the Claimant and explained that she found no evidence that he demonstrated the competencies and skills required for the role; nor the motivation to deliver the service to the standards required; he had not fulfilled the role in totality since August 2022 over a year earlier; and despite splitting the role and allowing him to focus on case management, there still continued to be complaints about his performance.
103. Further Ms Corner explained that her view was the Claimant had not demonstrated he would do things differently nor seek to learn, and she formed the view the Claimant had not acted on any feedback and had not taken personal responsibility for shortcomings in his work. Ms Corner said that following the decision to remove the Claimant from searching for placements for children following the complaint from Ms Coyle, he was given the project work however there was no evidence of what he had achieved.
104. Ms Corner's evidence to us was that the Claimant's response to the capability process appeared to be aimed at delaying and deferring matters and questioning the process rather than seeking to improve. Whereas the Claimant had asserted in his response that he had saved the council £800,000, Ms Corner tells us that this was a saving across the service and she had been made aware that the social workers had done much of that work. As the Claimant had not attended the capability hearing it was not possible for Miss Corner to question him on his contribution to that amount.
105. The decision to dismiss the Claimant on capability grounds was confirmed to the Claimant by way of letter dated 13 September 2023, following which the Claimant submitted an appeal which was heard by the Respondent's Councillors. Within the appeal the Claimant alleged for the first time that the treatment by Ms Coyle related to his race as he said *"bullying and embarrassing staff became an acceptable culture, which meant that their behaviour of bullying and harassing a black member of staff was acceptable."*

106. As regards Ms Cummings allegedly being denied the opportunity to support the Claimant at the capability hearing, this is something that the Claimant raised within his appeal. The Claimant was questioned about this during his oral evidence, and he told us that by that stage Ms Cummings did not wish to engage with him. We noted that the appeal outcome records that the Claimant had been asked about this and whether he intended Ms Cummings to appear as a witness or as a companion, however the Claimant did not understand the difference between the two, and it was recorded that her email had been included in the hearing evidence and had been considered. It was further recorded that Ms Taviner had explored this with Ms Cummings, and she confirmed that she had not been denied the opportunity to attend, rather she had been informed it was not appropriate to be both witness and companion which is why she did not attend.
107. We have been provided with a copy of witness statement in the bundle from Ms Cummings dated 8 August 2024 for an earlier preliminary hearing in this matter. Within her statement Ms Cummings confirms that during a meeting to discuss an unregistered placement with numerous professionals from Children's Services and there had been a verbal attack on the Claimant's work standard which Ms Cummings felt was inappropriate to discuss in front of others rather than in private. Although it was not stated, we understand this was about Ms Coyle, and Ms Cummings said that she had always been direct and can be rude sometimes. Ms Cummings said she had called the Claimant afterwards to see if he was ok and it was clear that he was emotionally affected by this and felt belittled and treated poorly.
108. The Claimant's appeal was dismissed on 12 December 2023.
109. During his oral evidence the Claimant suggested that the performance concerns had been fabricated, however this was a new allegation, and it was not developed further nor put specifically to the Respondent's witnesses. We are not persuaded that any of the concerns were fabricated as alleged.
110. During the hearing the Claimant argued that he was the only black manager and that all of the senior leaders were predominantly white. Ms Corner disagreed and noted that whereas the Claimant may have been the only black manager within that team, he was not the only black manager, and the Respondent has a number of senior leaders in the organisation who are not white.
111. The Claimant was asked in his oral evidence why he did not bring his claim any earlier, particularly with respect to the complaint concerning the response to Ms Coyle in December 2022. The Claimant confirmed in his answer that he was aware of ACAS and the ability to go to the Tribunal, but he said that there was no need to have done so at that time.

Submissions

112. Within its 17 pages of closing submissions, the Respondent argues that the Claimant persistently underperformed over a 21-month period and failed to meet essential safeguarding, managerial, and administrative

standards in a high-risk environment involving vulnerable children, and that this created legal, financial and safeguarding risks. The Respondent argues that despite providing the Claimant with support, including reduced duties, informal interventions, and the appointment of an interim manager, his performance remained inadequate.

113. The Respondent argues that the Claimant repeatedly refused to engage in an informal Performance Improvement Plan from December 2022 through April 2023, despite being given five months to seek advice and provide input, and a formal process was commenced as the Claimant failed to engage. The Respondent reminds us that when a hearing was arranged for 4 September 2023, the Claimant was provided with documents, informed of his rights, and notified that dismissal was a possible outcome. The Respondent highlights that the Claimant did not object to the appointed chair, Ms Corner, until after his dismissal. We are further reminded that when the hearing was rescheduled due to the Claimant's last minute health issue, it offered multiple options (in person, virtual, alternative dates), but the Claimant declined all options, and the hearing proceeded in his absence and resulted in dismissal.
114. In relation to the discrimination allegations, the Respondent contends that the Claimant has failed to show any less favourable treatment because of race. The Respondent refers us to ***Nagarajan v London Regional Transport and others* [1999] IRLR 572**; ***Madarassy v Nomura International Plc* [2007] IRR 246**; ***Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285**; ***Verifone UK Ltd v Kena* [2024] EAT 54**; and ***Virgin Active Ltd v Hughes* [2023] EAT 130** regarding the need for evidence from which a tribunal could infer discrimination before the burden shifts. The Respondent says that the Claimant has advanced "bare assertions" without evidential foundation, failed to show appropriate comparators, and has not linked any alleged treatment to his protected characteristic.
115. With respect to the harassment complaints, the Respondent says that a tribunal must take into account the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have had the proscribed effect. We have been referred to ***Pemberton v Inwood* [2018] IRLR 542** to the effect that if the Claimant's subjective view is not established on the facts, then the Tribunal need go no further. Where a tribunal determines that it was not reasonable for the conduct to have had the claimed effect then that will also end the necessary inquiry – ***Ahmed v The Cardinal Hume Academies* UKEAT/0196/18**.
116. We are further referred to ***Richmond Pharmacology v Dhaliwal* [2009] IRLR 336** where it was held that whereas it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct, it is important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.
117. Regarding the claim that Ms Taviner ignored the Claimant's concerns of bullying by Ms Coyle, the Respondent says there was only a single incident in December 2022 where Ms Coyle criticised the Claimant for

passing information to social workers without proper process. The Respondent argues there was no allegation of racial discrimination at the time; and the Claimant continued working productively with Ms Coyle thereafter; and no grievance was raised. The Respondent says the Claimant's account is inconsistent with contemporaneous documents and that his claim is significantly out of time.

118. On the allegation that Ms Cummings was prevented from supporting the Claimant at the capability hearing, the Respondent argues there was a misunderstanding between being a *companion* and being a *witness*, and the Claimant accepted that Ms Cummings did not wish to act as his companion, and the Respondent notes that her written evidence was nevertheless considered at the hearing. The Respondent therefore disputes that any unfavourable treatment occurred, or that it could be linked to race.

119. The Respondent argues that the appointment of Ms Corner as chair of the capability process was appropriate given her seniority and operational knowledge and pointing out that the Claimant raised no objection until after dismissal. The Respondent tells us that capability hearings routinely require a senior manager and that there is no evidence of bias or different treatment. Similarly, regarding the claim that the Respondent failed to refer the Claimant to Occupational Health prior to the hearing, the Respondent notes that the Claimant was absent for less than seven days; he provided no fit note; and was not eligible for referral under the policy. The Respondent contends that it acted consistently and that no comparable employee would have been treated differently.

120. The Respondent also rejects the allegation that the hearing proceeded without regard to the Claimant's health or HR advice, citing correspondence showing that Mr Fletcher, the Head of HR, advised against delay and that the Respondent offered various adjustments to enable his attendance, including remote participation and alternative dates. The Respondent argues that the Claimant unreasonably refused all options and instead proposed delay until after paternity leave, therefore proceeding in Claimant's absence was justified, particularly as this was already a second failure to attend.

121. The Respondent summarises that the Claimant was dismissed solely for capability, following a "mountainous" catalogue of persistent performance failings, and it lists numerous examples — (i) failure to provide key information at panel meetings; (ii) poor case updates; (iii) delayed payment requests; (iv) incorrect funding processes; (v) missing chronologies for court; (vi) and widespread gaps in team supervision. The Respondent asserts that the Claimant routinely avoided accountability, blaming team members or alleging fabrication. The Respondent further argues that alleged comparators (Mr Kelly and Mr Utley) are inappropriate because contractors are excluded from the capability policy and neither held equivalent roles to that of the Claimant.

122. The Respondent also argues that many of the Claimant's claims are out of time under s.123 Equality Act 2010, as the alleged discriminatory acts were single, isolated events occurring well outside the three-month limit. The Respondent stresses the principle that extensions are exceptional, not routine, and it refers us to ***Robertson v Bexley Community Centre t/a***

***Leisure Link* [2003] IRLR 434.** The Respondent says that the Claimant is an intelligent individual who could have acted sooner but did not provide any justification for delay.

123. With respect to credibility, the Respondent submits that its own witnesses were consistent, candid and evidence-based, while the Claimant's account was "evasive", "evolving" and contained serious but unsupported allegations such as fabrication of evidence. The Respondent argues the Tribunal should prefer its own witnesses wherever disputes arise.
124. The Respondent concludes by asserting that race played no role in any aspect of the Claimant's treatment; it asks us to dismiss the claims in their entirety; and that it reserves its position on costs, particularly for those allegations subject to deposit orders.
125. In his closing submissions the Claimant says the central question is not whether he was a perfect employee, but why he was treated in the manner he was.
126. The Claimant submits that the evidence establishes facts from which the Tribunal could reasonably infer that race materially influenced his treatment. The Claimant emphasises that tribunals may draw reasonable inferences from circumstances and behaviour.
127. The Claimant highlights significant organisational pressures within the brokerage service: staff shortages, restructuring, operational instability and high workloads. The Claimant argues that these systemic challenges were acknowledged by several witnesses. Despite this, the Claimant says responsibility for operational difficulties became focused unfairly on him alone, with management using him as the cause of problems that were embedded in the wider service.
128. An example relied upon is the incident involving Ms Coyle. The Claimant notes that two colleagues independently described Ms Coyle's manner towards him during a meeting as "inappropriate" and "unacceptable," and expressed concern for his wellbeing afterwards.
129. The Claimant further argues that when he raised concerns about this incident, the Respondent failed to conduct even a basic investigation, but in contrast, concerns raised about the Claimant were promptly escalated into a formal capability process culminating in dismissal. The Claimant submits that this disparity permits an inference of discrimination when no plausible non-discriminatory explanation has been offered.
130. The Claimant also says that discrimination can coexist with performance issues; the existence of capability concerns does not prevent discrimination from influencing how those concerns are interpreted or acted upon. The Claimant argues that the Respondent's approach exhibited selective accountability: others were involved in the same operational processes and the service was in structural difficulty, yet the Respondent directed capability scrutiny exclusively at him. The Claimant asks the Tribunal to consider whether he was singled out.

131. The handling of the capability process itself is said to demonstrate unfairness. The Claimant contends that the hearing proceeded despite legitimate health concerns and practical difficulties around attendance. By going ahead in the Claimant's absence, the Respondent significantly undermined his ability to respond to allegations. The Claimant argues that the Tribunal must consider whether the Respondent's actions were reasonable or whether the process was fair and proportionate.
132. The Claimant invites the Tribunal to consider the broader workplace context, including that senior management within the service was predominantly white. While the Claimant accepts that workforce composition is not determinative, he submits that it forms part of the overall picture when evaluating whether discriminatory inferences can be drawn from his treatment.
133. The Claimant submits that the cumulative effect of (i) the hostile public criticism by a senior leader; (ii) the Respondent's failure to investigate his concerns; (iii) the one-sided disciplinary focus; (iv) systemic operational pressures; (v) and contemporaneous support from colleagues recognising inappropriate treatment, establishes a *prima facie* case of discrimination. The Claimant argues that the burden has shifted to the Respondent to prove that race played no part whatsoever in its actions, and the Respondent has failed to discharge that burden.
134. On harassment, the Claimant states that the conduct he experienced created a hostile, humiliating and professionally damaging environment, supported by independent witness accounts. The Claimant submits that this satisfies the statutory definition under section 26 Equality Act 2010.

Law

Direct discrimination

135. Section 13(1) Equality Act 2010, together with section 9 of that Act, provide that direct discrimination takes place where an employer treats an employee less favourably because of race than it treats (or would treat) others. Under s. 23(1), when a comparison is made there must be no material difference between the circumstances relating to each case. A comparison may be made with an actual comparator, or with how a hypothetical comparator would have been treated.
136. Given that a tribunal may take into account a wide range of factors including circumstantial evidence, there may be cases where there is someone who, whilst materially different to a claimant, may be of assistance as an evidential comparator. They may, depending upon the circumstances and in conjunction with other material, justify a tribunal drawing an inference that a claimant was treated less favourably than he or she would have been treated.
137. Section 39 of that Act provides that an employer must not discriminate against its employee by dismissing them or subjecting them to any other detriment.

138. It is often appropriate to first consider whether a claimant has in fact received less favourable treatment than an appropriate comparator, and then consider whether this less favourable treatment was because of the protected characteristic. In some cases, particularly if there is only a hypothetical comparator relied upon, it may be appropriate to first consider the reason why the claimant was treated as they were – ***Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285** [8].
139. The reason for decisions or treatment can often be for more than one reason. Provided that the protected characteristic had a significant influence on the outcome, then discrimination will be made out – per Lord Nicholls in ***Nagarajan v London Regional Transport* [1999] IRLR 572**. The Tribunal may need to consider the mental processes of the alleged discriminator, and whereas this is often referred to as motivation, it is not to be confused with motive as this is not a relevant consideration. It is possible for an employer to discriminate unlawfully even with a benign motive – ***Amnesty International v Ahmed* UKEAT/0447/08**.
140. Very little discrimination today is overt or deliberate, and those accused of discrimination are usually unlikely to accept that they have done so, and possibly will be unlikely to recognise it in themselves. In cases of direct discrimination (or victimisation), an examination of the “reason why” someone was treated as they were should not be reduced to a simple “but for” question. It is therefore not appropriate to ask but for the protected characteristic would the Claimant have been treated better? Rather we must conduct a more rigorous inquiry into the mental processes of the Respondent to establish the underlying core reason for the treatment. This might be easier in cases where there is an overt or obvious reason for the treatment, however in other cases are more detailed analysis of the facts will be necessary. As per Sedley LJ in ***Anya v University of Oxford and another* [2001] ICR 847**:
- “Very little direct discrimination is today overt or even deliberate. What King and Qureshi tell tribunals and courts to look for, in order to give effect to the legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias.”* [11].
141. In ***Earl Shilton Town Council v Miller* [2023] IRLR 532** the court provided guidance on the approach to the reason why analysis in discrimination claims. Here HHJ Tayler noted that when considering whether treatment was due to a protected characteristic the tribunal spends much of its time considering the mental processes of the alleged discriminator in order to ascertain the reason why someone was treated as they were. However, the court held that there are at least two types of cases where it is unnecessary to consider the mental processes of the alleged discriminator, the first is where the reason was obvious, and the second is where a criterion is used which corresponds exactly with the protected characteristic. The court also concluded that a “good” motive will not prevent discrimination from having occurred, and this is of course consistent in ***Ahmed*** to which we have already referred.

142. In **Chattopadhyay v Headmaster of Holloway School [1981] IRLR 487** the court noted the special nature of discrimination proceedings and that the person complaining of discrimination may face great difficulties when it comes to proof. The court held that where it may be appropriate to take into account evidence of hostility before and after the event (or act complained of) where it is logically probative of a relevant fact.
143. The tribunal must ensure that it looks at allegations of discrimination as a whole and it should not therefore adopt a fragmented approach – **Qureshi v London Borough of Newham [1991] IRLR 264**;
144. The term “detriment” should be given its broad ordinary meaning, and a detriment will exist if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment – per Brightman LJ in **Ministry of Defence v Jeremiah [1980] QB 87**.

Harassment

145. Section 40 provides that an employer must not harass an employee. Section 26 provides that a person (A) harasses another (B) if it engages in unwanted conduct related to a relevant protected characteristic, and 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. The protected characteristic in this case is race. In deciding whether conduct has the effect referred to into account must be taken of the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect. This analysis is not required where the conduct had the purpose of violating B's dignity or creating the proscribed environment.
146. As regards whether unwanted conduct is related to the protected characteristic (in this case race), it is appropriate for the tribunal to take into account the wider context and this is clear from **Warby v Wunda Group Plc [2012] UKEAT 0434/11**. The EHRC Code at paragraph 7.9 makes it clear that unwanted conduct related to a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic. The recent case of **Carozzi v University of Hertfordshire and another [2024] EAT 169** provides that:

“The requirement that the conduct be related to a protected characteristic is different to the requirement in a claim of direct discrimination that the treatment is because of a protected characteristic. The term “related to” is designed to cover all forms of conduct that, properly viewed, has a relationship to the protected characteristic.” [15]

And

“There is no requirement for a mental element equivalent to that in a claim of direct discrimination for conduct to be related to a protected characteristic. Treatment may be related to a protected characteristic where it is “because of” the protected characteristic, but that is not the only way conduct can be related to a protected characteristic, and there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser.” [24]

147. In **Tees Esk Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495** the court held that there must be some feature of the factual matrix identified by the tribunal which properly leads to the conclusion that the conduct in question was related to the protected characteristic and further the tribunal therefore needs to articulate distinctly and with sufficient clarity what feature of the evidence or facts found led to the conclusion that the conduct was related to that characteristic. It was further held that:

“Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be.” [25]

148. As to whether the conduct had the requisite effect, there are both subjective considerations – the Claimant’s perception of the impact on them – but also objective considerations including whether it was reasonable for it to have the effect on the particular claimant, the purpose of the remark, and all the surrounding context . The tribunal should specifically consider: what is the unwanted conduct? What was its purpose or effect? And was that conduct related to the claimant’s protected characteristic? - **Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336**. Here it was also held that purpose is to be equated with intent.

149. Conduct which is trivial or transitory is unlikely to be sufficient.

150. In **HM Land Registry v Grant [2011] EWCA Civ 769** it was held:

“Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.” [47]

151. When considering the matter of the effect on a claimant, the court in **Pemberton v Inwood [2018] EWCA Civ 564** held:

“In order to decide whether any conduct falling within sub-paragraph (1) (a) has either of the proscribed effects under sub-paragraph (1) (b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant’s dignity or creating an adverse environment for him or her, then (even if the claimant did feel that her dignity was violated or an adverse environment created) it should not be found to have done so.” [88]

152. Section 212 of the Act provides that a detriment does not include harassment. Accordingly, it is not possible for impugned treatment to amount to both direct discrimination (or victimisation) and harassment at the same time.

Burden of proof

153. Section 136 of the Equality Act 2010 provides that 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. However this does not apply if A shows that A did not contravene the provision.

154. The burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another - **Hewage v Grampian Health Board [2012] IRLR 870**.

155. Guidance on the application of the burden of proof in discrimination complaints was provided in **Igen Ltd v Wong [2005] IRLR 258**:

“(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of [the protected characteristic], since no discrimination whatsoever is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof....”

156. It is not sufficient for a claimant to merely to prove facts from which the tribunal could conclude that the Respondent “could have” committed an unlawful act of discrimination. Rather a claimant must establish a prima facie case of discrimination. As was held in **Madarassy v Nomura International Plc [2007] ICR 867**:

“The bare facts of a difference in status and a 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 had committed an unlawful act of discrimination.” [56]

157. The court in **Madarassy** indicated that at the first stage the tribunal would need to consider all the evidence relevant to the discrimination complaint such as evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons

being made by the complainant were of like with like; and available evidence of the reasons for the differential treatment. The absence of an adequate explanation for differential treatment of the complainant is not relevant to whether there is a prima facie case of discrimination by the Respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant.

158. At the first stage the tribunal should take into account all of the relevant evidence from both sides and usually disregard any explanation provided the Respondent. The consideration of the tribunal then moves to the second stage whereby the burden is on the Respondent to prove that it has not committed an act of unlawful discrimination. The Respondent may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If it does not, the tribunal must uphold the discrimination claim.

159. As regards the “something more” needed to shift the burden of proof onto a Respondent, this will depend upon the facts of each case but it may include evidence of stereotyping, statistical evidence, lack of transparency or inadequate disclosure, or inconsistent explanations. However, mere unreasonable treatment by an employer “casts no light whatsoever” as to the question of whether an employee has been treated unfavourably - ***Strathclyde Regional Council v Zafar* [1998] IRLR 36**. This has also been followed by the Employment Appeal Tribunal in ***Law Society and others v Bahl* [2003] IRLR 640** where it was held that mere unreasonableness is not enough as it tells us nothing about the grounds for acting in that way.

160. In ***Laing v Manchester City Council and others* [2006] IRLR 748** the EAT provided helpful guidance on the application of the burden of proof, and in particular the potential for a tribunal to move direct to the second stage where the evidence suggests that the employer had discriminated against the claimant:

“75. The focus of the tribunal’s analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, “there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race”.

76. Whilst, as we have emphasised, it will usually be desirable for a tribunal to go through the two stages suggested in Igen, it is not necessarily an error of law to fail to do so. There is no purpose in compelling tribunals in every case to go through each stage. They are not answering an examination question, and nor should the purpose of the law be to set hurdles designed to trip them up. The reason for the two-stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the employer. But where the tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered

the explanation put forward by the employer, then there is no prejudice to the employee whatsoever.

77. Indeed, it is important to emphasise that it is not the employee who will be disadvantaged if the tribunal focuses only on the second stage. Rather the risk is to an employer who may be found not to have discharged a burden which the tribunal ought not to have placed on him in the first place. That is something which tribunals will have to bear in mind if they miss out the first stage. Moreover, if the employer's evidence strongly suggests that he was in fact discriminating on grounds of race, that evidence could surely be relied on by the tribunal to reach a finding of discrimination even if the prima facie case had not been established. The tribunal cannot ignore damning evidence from the employer as to the explanation for his conduct simply because the employee has not raised a sufficiently strong case at the first stage. That would be to let form rule over substance."

Time Limits

161. Section 123 Equality Act 2010 provides that proceedings on a complaint may not be brought after the end of (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.
162. The normal time limit must be adjusted to take into account the early conciliation process and any extensions provided for in section 140B.
163. In ***Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686***, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. In ***Hale v Brighton and Sussex University Hospitals NHS Trust UKEAT/0342/17*** it was found that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.
164. When determining if there was a continuing state of affairs the tribunal will consider what the acts were, the context and who was involved. A tribunal may decide that some acts form part of a continuing act, while others remain unconnected - ***Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548***.
165. It is for the claimant to show that it would be just and equitable to extend time - ***Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576***.
166. The court in ***British Coal Corporation v Keeble [1997] IRLR 36*** provided guidance to tribunals when considering whether to exercise its discretion to extend time on this just and equitable basis. This will include consideration of the length of and reasons for the delay, but might include the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued had co-operated with any

requests for information; the promptness with which the claimant acted once they knew of the possibility of taking action; and the steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

167. The court in ***Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23** has confirmed that the correct approach is for the tribunal to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. The court advised against using a mechanistic approach and using the examples in ***Keeble*** as some sort of checklist.

168. As was observed in ***Jones v Secretary of State for Health and Social Care* [2024] EWCA Civ 1568**

“As the EAT observed, strictly speaking, section 123 EQA does not set out a primary time limit that may be extended but a time limit of three months or “such other period as the employment tribunal thinks just and equitable”. Where the Employment Tribunal decides that a period other than three months is just and equitable that is the time limit. Nonetheless, the use of the term “primary time limit” for the three months period (with an extension for ACAS early conciliation where appropriate) is a useful shorthand.” [26]

Conclusions and decision

169. We will deal with each of the factual allegations in turn.

2.2.1 & 3.1.1 For a period of six months from about summer of 2022 to early 2023 Naomi Taviner (the claimant’s line manager) did not do anything about the concerns of bullying and harassment by Anne Coyle which the claimant shared with her, and she did not contact Kim Brown and Tina Cummings who the claimant said were witnesses to the treatment of him.

170. The factual premise of this allegation has not been made out as the Claimant did not make Ms Taviner aware of the email from Tina Cummings, the first time he made reference to it was to Ms Corner prior to the capability hearing.

171. The first time the Claimant made Ms Taviner aware of the email from Ms Brown was during the 1:1 meeting on 14/15 December 2022 after Ms Taviner had first raised with him Ms Coyle’s concerns about his performance.

172. The Claimant did not raise concerns about anything back in Summer 2022 as is alleged.

173. In addition the Claimant did not state he had been bullied or harassed, rather we found he said he had been spoken to inappropriately and without respect by Ms Coyle.

174. During the hearing the Claimant departed from the list of issues and told us he told Ms Taviner that he had been discriminated against by Ms

Coyle. We did not accept that because it was brand new evidence, it had never been alleged before, and the case management summary of Judge Manley of April 2025 records the Claimant as saying that he did not raise discrimination until after his dismissal – the Claimant has not sought to challenge the record of that hearing at any point. In addition, the Claimant never raised this allegation of discrimination formally, or at least in writing with the Respondent at the material time, and whereas the absence of a grievance is not determinative, it is a relevant factor which we take into account in conjunction with the other relevant matters. In addition in his later 1:1s the Claimant suggested that relations were good, and he did not pursue Ms Taviner to deal with the concern he raised. The most we found he told Ms Taviner was that he had been spoken to inappropriately and without respect by Ms Coyle and he supplied Ms Taviner with a copy of the email from Ms Brown.

175. The email from Ms Brown did not suggest that there was any racial element to the manner in which the Claimant had been spoken to by Ms Coyle. The evidence before us was clear that this was how Ms Coyle conducted herself at work, she could be harsh or firm, but this was the way that she treated everyone and the Claimant was not singled out, rather he was spoken to equally harshly as his colleagues were.

176. Nevertheless it would have been difficult and unpleasant for the Claimant to have been spoken to in a harsh way in front of his colleagues, and he clearly felt upset by it and he also considered that it was unfair, but he was treated in a similar way to others. We also noted that the Claimant explained during his December 1:1 that Ms Coyle would have been shocked to discover that a social worker had undertaken discussions with an unsuitable provider about a placement of a vulnerable child – clearly even at the material time the Claimant understood that to be the reason for the way he was spoken to.

177. It took Ms Taviner from mid December to around 23 March 2023 to discuss this issue with Ms Coyle. The Tribunal considered that to be a particularly long period of time, although it was three months rather than six as alleged.

178. We could have dismissed the complaint on the basis that the factual premise had not been made out, however it is clear that the Claimant was complaining about the length of time it took his concerns to be addressed, notwithstanding he is wrong about what he said, and he is wrong about how long it took to deal with it.

179. As regards direct discrimination, the Claimant has not established a *prima facie* case of discrimination as the Claimant has not established facts from which the Tribunal could have concluded that the length of time taken had something to do with the Claimant's race. There is a lack of evidence to suggest that a hypothetical non-black employee in the Claimant's position would have been treated any more favourably than the Claimant was. The something more to shift the burden onto the Respondent to provide an explanation has not been established, even taking into account conduct before and after this period – there was no evidence of hostility towards the Claimant at any point, let alone on grounds of his race.

180. We would therefore have dismissed the direct discrimination complaint on that basis, however in order to satisfy ourselves that we have fully explored this matter we have gone further on the basis of the cases of **Laing** and **Hewage** and asked the question what was the reason for the length of time taken by Ms Taviner to raise this matter with Ms Coyle?
181. The length of time, three months, was considerable. Ideally the Tribunal would have expected the matter to have been raised with Ms Coyle earlier than it was as the Claimant was alleging that a senior leader had spoken to him inappropriately in front of other colleagues. This should have alerted Ms Taviner to the possibility that the Claimant was alleging bullying even if he did not use those precise words himself.
182. However, this was an incredibly busy team performing a vital function for vulnerable children and young people. It was a high pressure environment which faced staffing challenges to which we have already referred, and we noted that much of the Claimant's role had been removed from him and allocated to a colleague and that Ms Taviner was having to undertake some of his tasks, as well as her own management role across various teams. We accepted that this would have caused a delay to her dealing with the matter raised by the Claimant, and further Ms Coyle was likely to have been at least as busy as Ms Taviner given the seniority of her position and the fact her focus was on unregistered placements which both parties agreed before us were a priority to reduce. We also accepted that some of the delay was attributable to the Christmas and New Year leave periods.
183. We also accepted the explanation from Ms Taviner that the Claimant did not pursue this further with her, and had explained the following month in their 1:1 that relations were good and he was working well with the senior leaders, including Ms Coyle. As such we accept that Ms Taviner felt that the matter was not a priority at that time.
184. Whereas there was a delay in raising the matter with Ms Coyle, we are not persuaded that the Claimant's race was a factor in the manner in which he was treated, and we dismiss the complaint of direct race discrimination.
185. As regards harassment related to race, the claim fails at the first hurdle as there was no evidence of any unwanted conduct related to race. Whereas the delay was, in our view long, and this can amount to unwanted conduct, there was no relationship whatsoever to the Claimant's race. It is the conduct itself which must relate to race before we then go on to look at the purpose or the effect of that conduct.
186. The Claimant has not established a *prima facie* case of harassment related to race due to the absence of anything related to his race. We would add for completeness that we were also not persuaded that Ms Taviner's purpose was to violate the Claimant's dignity, nor to create the proscribed environment for the Claimant.

187. As regards whether it reasonably violated the Claimant's dignity, or had the proscribed effect upon the Claimant, we find that it did not as the Claimant never pursued the matter again and even reported in January 2023 that things were going well in his work relationships. Had the Claimant felt harassed, as he now alleges, he would surely have raised the matter at that time, but he did not do so.

188. In any event, there was no unwanted conduct related to race, and we therefore also dismiss the complaint of harassment related to race.

2.2.4 & 3.1.4 Before 3 September 2023, the line manager of Tina Cummings denied Tina Cummings the opportunity to support the claimant at his disciplinary hearing on 3 September 2023;

189. The factual premise of this complaint has not been made out as there was no evidence at all that Ms Cummings was prevented by anyone from attending as the Claimant's witness. It was identified that the Claimant did not understand at the material time the difference between a companion and a witness, but there was no more to it than that.

190. We noted that Ms Cummings in her statement did not suggest that she had been prevented from supporting the Claimant, and the Claimant told us in his own oral evidence that she did not wish to engage with him.

191. We therefore dismiss both the complaints of direct race discrimination and harassment related to race, as the factual premise of the allegation has not been made out, and as such there was no unwanted conduct related to race.

2.2.5 & 3.1.5 Lorraine Amor and Pippa Corner did not consider the suitability of Pippa Corner to chair the disciplinary/capability hearing;

192. The factual premise of these complaints have also not been made out as we have found that Ms Corner did give consideration to whether she was suitable to act as the chair of the capability hearing; she noted that she was suitably senior as the policy requires; and there were no allegations against her. We could therefore have dismissed the complaints on that basis alone, however we have gone further and examined whether Ms Corner acting as the chair was an act of direct race discrimination or harassment related to race.

193. With respect to direct discrimination, the Claimant has not established a *prima facie* case of direct discrimination so as to shift the burden of proof onto the Respondent to provide an explanation. There was no evidence to suggest that a hypothetical comparator not of the Claimant's race would have been treated any differently to him, and no evidence of any hostility before or after this matter which could have caused us to have considered drawing an inference.

194. Moreover, we were not satisfied that the Claimant even suffered a detriment by Ms Corner acting as a chair. Rather it was helpful for Ms Corner as a senior leader and deputy director in that division to have chaired that hearing as she understood the work of the team and the pressures it

was under and the challenges it faced. In addition, Ms Corner was the person who had appointed the Claimant and as such she was to some degree more likely to want him to succeed in that role, and that by dismissing him it might be seen to be a failure on her part.

195. Even if the burden of proof had shifted on to the Respondent, we would have accepted Ms Corner's explanation that the purpose of her in chairing that meeting was, as we have described, was because she was familiar with the work; she was not compromised as she had little direct involvement and was not subject to any allegations from the Claimant in his response to the management case; and further she had an interest in the Claimant succeeding in that role as she was the person who had appointed him in the first place.

196. We therefore dismiss the allegation of direct race discrimination.

197. As regards harassment related to race, the complaint fails again at the first hurdle as there is no evidence of any unwanted conduct, less still that it was related to race.

198. The Claimant did not object to Ms Corner chairing the capability hearing at the time although he had every opportunity to do so and provided his own detailed response to the management case.

199. As we have already noted, it is the unwanted conduct itself which must relate to race, however there is absolutely no evidence of any connection to the Claimant's race at all by having Ms Corner act as the chair in that capability hearing.

200. Going further, we do not find that this either had the purpose, or the effect, of either violating the Claimant's dignity, nor of causing the proscribed environment, and it was not reasonable for it to have that effect in any event.

201. In any event, there was no unwanted conduct related to race, and we therefore dismiss the complaint of harassment related to race.

2.2.6 & 3.1.6 On 8 September 2023 Pippa Corner went ahead with a disciplinary/capability hearing without making a referral to occupational health, contrary to item 46 of the disciplinary and capability procedures

202. The factual premise of this allegation has not been made out as the Respondent's policy does not require there to be a referral to Occupational Health where the sickness absence is self certified and not covered by a GP's fit note. We therefore dismiss the complaint on that basis.

203. We would add for completeness that in any event there was nothing which would have required the Claimant to be referred to Occupational Health to assess his fitness to take part in the capability hearing. The Claimant was suffering from Achilles tendon pain and there was nothing to suggest that this would prevent his participation in this process. Moreover,

we noted that the Respondent had offered a number of dates and also offered remote attendance, however the Claimant chose not to engage.

204. The decision to proceed in the way the Respondent did, was compliant with the Respondent's own policy and it had absolutely nothing whatsoever to do with the Claimant's race. We were not persuaded that anyone not of the Claimant's race would have been treated any more favourably than he was in these circumstances.

205. With respect to harassment, we find that there was no unwanted conduct which related to race. The manner in which the Respondent proceeded was in compliance with its policy and it had no relationship at all to the Claimant's race.

206. The Claimant has not established a *prima facie* case of either direct discrimination, nor harassment related to race, and therefore the burden of proof did not shift to the Respondent to provide an explanation, and the complaints fail and are dismissed.

2.2.7 & 3.1.7 On 8 September 2023 Lorraine Amor and Pippa Corner went ahead with the hearing without consideration of the claimant's health and advice from Michael Fletcher (head of HR)

207. The factual premise of this allegation has also not been made out. The advice from Mr Fletcher in HR on 7 September 2023 was that further delay would not assist with the Claimant's levels of stress, therefore he advised that the matter should proceed. It is not the case therefore that Ms Amor or Ms Corner went ahead with the hearing without consideration of the advice from Mr Fletcher as the hearing proceeded precisely as he had advised.

208. As regards proceeding without considering the Claimant's health, this had been considered as the first scheduled date had been postponed on that basis and three alternative dates had been offered, as well as the option of attending remotely. The Claimant did not accept any of these offers. As we have already determined, there was no requirement for the Respondent to have referred the Claimant to Occupational Health in these precise circumstances as the absence was due to Achilles tendon pain, which was covered by self certification.

209. The Claimant had been made aware that the hearing may proceed in his absence if he failed to attend.

210. There was no evidence to suggest that a hypothetical comparator not of the Claimant's race would have been treated more favourably than the Claimant. Likewise, there was no unwanted conduct which related to race. Whereas proceeding to a hearing could of course amount to unwanted conduct, it had no relationship at all to the Claimant's race.

211. We would add for completeness that part of the decision to proceed as the Respondent did, was as Ms Corner indicated in her witness evidence, which was because the Respondent was paying the Claimant for a role he was not performing whilst then having to recruit and pay a second member

of staff to undertake the Claimant's role. Ms Corner genuinely did not consider that situation to be sustainable indefinitely, and this had nothing whatsoever to do with race.

212. The Claimant has not established a *prima facie* case of direct discrimination, nor of harassment related to race, and as such the burden of proof does not pass to the Respondent to provide an explanation, and we dismiss this complaint.

2.2.8 On 8 September 2023, Pippa Corner dismissed the claimant

213. The Claimant was dismissed and this is obviously a detriment.
214. There were a considerable number of performance concerns raised about the Claimant's work from a large number of the Respondent's staff, including senior leaders.
215. There was also a consistency in what the concerns were about – this included the Claimant's delays in responding; attending meetings unprepared or without up to date information; failing to provide information; failing to make payment requests; failing to provide a chronology needed for court; failing to follow processes for funding; failing to record information on LCS; having his camera off in meetings; and lack of management of his team.
216. The Claimant's response, as it remains now, was that the fault lay with other people – either they had not provided him the information he needed about placements, or the cases were not his but belonged to other people. The Claimant appeared not able to appreciate that it was his role to obtain the information from other people, and it was his role to manage the team whom he was blaming for not doing their jobs.
217. The Claimant was routinely made aware of where the Respondent considered that his performance was falling short and it was discussed with him in his 1:1 meetings and also during his 12 week meeting and his six month meeting.
218. A considerable amount of support was provided to the Claimant by the Respondent in order to get his performance to the required standard. Ms Taviner recorded which areas the Claimant needed to focus on; duties were removed from the Claimant; an additional member of staff was recruited to take on some of the Claimant's work; and then the Claimant was assigned a project for him to focus his time on. The Respondent sought to provide further support by way of an informal performance management process, however the Claimant failed to engage, instead seeking to delay and to defer this process.
219. After 21 months in post the Claimant's performance had not improved, rather the performance concerns increased with Ms Coyle as a senior leader asking in January 2023 for the Claimant to be removed from the high profile work due to concerns as to his practice. None of the steps taken by Ms Taviner succeeded in addressing the Claimant's performance,

and it remained the Claimant's position that the fault lay with others and not him, and he would not engage in informal performance management.

220. Whereas the Claimant has relied upon two named comparators, Mr Utley and Mr Kelly, this was not developed by the Claimant before us, and the Claimant did not put to the Respondent's witnesses any specific disparity in treatment. Neither of these two people were appropriate comparators as both were not in the same position as the Claimant – they were agency staff who were not covered by the Respondent's capability policy; neither were employed as Brokerage Manager; and there was no evidence of underperformance on either of their parts. If anything, the Claimant's treatment was more favourable as an employee he had the benefit of being subject to a formal Disciplinary and Capability policy whereas Mr Utley and Mr Kelly did not, and they could have been dismissed without any process.

221. Pursuant to s. 23 of the Act, when comparing the treatment of a claimant and a comparator, there must be no material difference in their circumstances, save for the protected characteristic. Whereas we note that Mr Utley held 4 cases for three months and did not arrange placements for any of these, we further noted he was then given a project working closely with social workers which was deemed to be a success before he subsequently left of his own volition. There is no useful comparison to be made with the treatment of either Mr Utley, nor of Mr Kelly of whom we heard nothing about his performance. Neither are of use even as evidential comparators given the volume of the Claimant's performance concerns.

222. There was no evidence of any less favourable treatment of the Claimant, let alone anything due to his race. The Claimant has not established facts from which a Tribunal could conclude (in the absence of an explanation by the Respondent) that his race was a factor in his treatment. At the most this is a bare assertion from the Claimant without any supporting evidence. The Claimant therefore failed to establish a *prima facie* case of discrimination so as to shift the burden of proof onto the Respondent to provide an explanation and we would dismiss the complaint of direct discrimination on that basis alone.

223. We have nevertheless gone further and examined the Respondent's explanation for dismissing the Claimant. We accept that explanation that the reason for dismissal was due to his perceived substandard performance and that despite the steps taken by the Respondent, the Claimant failed to achieve the necessary standards due to lack of competence. The Tribunal further finds that a fair and a reasonable process was conducted, and that anyone not of the Claimant's race, with the same performance standards in that Brokerage Manager role, would also have been dismissed.

224. As required in the cases of **Chattopadhyay** and **Qureshi**, we have tried to avoid undertaking a fragmented approach, and we have again looked at all of the facts in this case to establish if there was any evidence of hostility towards the Claimant. Had there been such evidence then this may have assisted in drawing any inferences which may flow from that. However, there was no evidence of any hostility at all. This was clearly a situation where the Respondent had genuine and serious performance

concerns about the Claimant over a considerable period of time. These concerns were not influenced by race nor by any evidence of any hostility towards the Claimant.

225. Contrary to the Claimant's arguments in his submissions, we do not find that the Claimant was blamed for systemic failings. Whereas this was a very busy team under considerable pressure, the Claimant was being held accountable for his own perceived under-performance, and nothing beyond that.

226. The Tribunal is fully satisfied that the Claimant's race was not a factor in any way in the decision of Ms Corner to dismiss the Claimant. We therefore dismiss the complaint of direct race discrimination.

Time

227. As all of the complaints have failed it is not necessary for the Tribunal to address the time issues to any significant degree, however we record for completeness that there was no continuing course of conduct on the part of the Respondent nor an overarching discriminatory state of affairs, not least because the factual premise of most of the allegations were not even made out.

228. Anything occurring earlier than 29 July 2023 (taking into account the time spent undertaking ACAS Early Conciliation) was therefore brought out of time.

229. Accordingly, complaints 2.2.1 and 3.1.1 were brought out of time. It would not be just and equitable to have extended time for them had they succeeded as the Claimant was clearly well aware of Tribunal time limits and told us that he decided not to bring his claim any earlier as he said that there was no point.

230. The complaints concerning the decision to dismiss the Claimant, and the process followed, were brought within time but failed in any event. These complaints comprise issues 2.2.5, 3.1.5, 2.2.6, 3.1.6, 2.2.7, 3.1.7, and 2.2.8.

Deposit Order

231. The Claimant was required to pay a deposit of £500 as a condition of continuing to pursue issues 2.2.1 and 3.1.1. The Claimant paid that deposit. Those complaints failed and have been dismissed, noting that the burden of proof did not shift to the Respondent to provide an explanation, and moreover the factual premise of the allegation was only made out in part in any event. That deposit must now be paid to the Respondent by the Tribunal.

Approved by:

Employment Judge Graham
22 May 2026

JUDGMENT SENT TO THE PARTIES
ON 2 June 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/