



EMPLOYMENT TRIBUNALS

Claimant: Mr M. Tint

Respondent: UK Research and Innovation

Heard at: Reading **On:** 16,17,18,19,20 February 2026
24 and 25 March 2026 (in chambers)
26 March 2026

Before: Employment Judge S. Matthews
Mrs. J. Buck
Mr. L. Hoey

Representation

Claimant: Ms. T. Mustafa and Mr. N. Anozie (law students)
Respondent: Mr. A. Tinnion (counsel)

JUDGMENT having been sent to the parties on 8 May 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1 The tribunal had two bundles of documents; a core bundle of 743 pages and a supplemental bundle of 961 pages.

2 We heard evidence from witnesses:

- the claimant

For the respondent:

- Alexander Dibbo, the claimant's line manager.
- Robert Andrew Sansum, the claimant's senior line manager.
- Jacob Ward, a comparator, and
- Nicola Newall, from HR.

The issues

3 The issues to be decided by the tribunal were discussed and confirmed at the

beginning of the hearing as follows:

1. Preliminary Point and Jurisdiction

- 1.1 Is the entire claim out of time and or should the claim be rejected pursuant to rule 12 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013?
- 1.2 Has the claimant's complaint of unfair dismissal been brought within 3 months starting with the Effective Date of Termination?
 - 1.2.1 If not, was it "not reasonably practicable for the complaint to be presented before the end of that period?
- 1.3 Have the claimant's complaints of Race and Age Discrimination been brought within 3 months, starting with the dates of the acts to which the complaint relate,
 - 1.3.1 In considering the above, has there been conduct extended over a period within the meaning of section 123(3) of the Equality Act 2010?
 - 1.3.2 If the claim, or any element of it, is out of time, would it be just and equitable to extend time?

2. Unfair dismissal

- 2.1 Was the claimant dismissed?
 - 2.1.1 Did the respondent do the following things:

Lack of training and development

- 2.1.1.1 did the respondent fail to provide the claimant with training or a formal certification path for OpenStack ? (PoC paragraph 10 &11 & PoC Further Elaborations section 1) (see also 3.3.1 -Direct Age Discrimination below)
 - 2.1.1.2 did the respondent hold three appraisal meetings with the claimant during his employment, in April 2021 and at six monthly intervals thereafter, and fail to discuss training opportunities for career development at any of them? (PoC paragraph 12)
 - 2.1.1.3 During the Claimant's third appraisal meeting held on or around 13 May 2022 did Alex Dimmo ask the Claimant what the claimant wanted to know about Openstack and to make a list? (PoC paragraph 17 & PoC Further Elaborations section 1)
 - 2.1.1.4 During the Claimant's third appraisal meeting held on or around 13 May 2022 did Alex Dimmo say to the claimant that, in respect of one of the Openstack training courses identified by the Claimant "some of us been on it" and claimed that he was not good at arranging training? (PoC paragraph 19 & PoC Further Elaborations section 1)

Exclusion from decision making

2.1.1.5 Did Alex Dibbo, Andrew Sansum, John Good and Jacob Ward exclude the claimant on a weekly or daily basis over period from 01 January 2022 until 04 September 2023 from participating in meetings for a project concerning networking and network updates affecting the Openstack platform? (PoC paragraph 14 and PoC Further Elaborations section 4) (see also 3.3.4 Direct Age Discrimination below and 4.3.10 Direct Race Discrimination below)

Change in reporting lines and unfair promotion

2.1.1.6 Did the respondent offer Jacob Ward the post left vacant by Andrew Prosser? (PoC paragraph 20)

2.1.1.7 Did the respondent promote Jacob Ward to a higher band than the claimant? (PoC paragraph 21 & PoC further Elaborations section 1) (see also 3.3.2 Direct Age Discrimination below)

2.1.1.8 Did the respondent tell the Claimant he had to report to Jacob Ward? (PoC paragraph 21 & PoC Further Elaborations section 1) (see also 3.3.3 Direct Age Discrimination below)

Appraisal / Retrospective Performance Criticisms

2.1.1.9 On 09 June 2022 did Andrew Sansum send the Claimant an email expressing concerns about the Claimant's work performance? (PoC paragraph 24)

2.1.1.10 On or after 18 May 2022 did Andrew Sansum and Alex Dibbo add adverse criticisms of the claimant for substandard performance to the claimant's appraisal document and without previously mentioning them to the claimant? (PoC paragraphs 25 & 27)

2.1.1.11 On 18 May 2022 did Alex Dibbo ask the claimant to add additional content to the claimant's APR document? (PoC Further Elaborations section 3.2) (See also 4.3.1 Direct Race Discrimination below)

2.1.1.12 On 12 April 2022 did Alex Dibbo make edits to the claimant's APR document? (PoC Further Elaborations section 3.2) (See also 4.3.2 Direct Race Discrimination below)

2.1.1.13 On 18 April 2022 did Alex Dibbo make edits to the claimant's APR document? (PoC Further Elaborations section 3.2) (See also 4.3.3 Direct Race Discrimination below)

2.1.1.14 On 31 May 2022 did Alex Dibbo make further modifications to the claimant's APR document? (PoC Further Elaborations section 3.2) (See also 4.3.4 Direct Race Discrimination below)

2.1.1.15 On 31 May 2022 did Amanda Chapman make further modifications edits to the claimant's APR document? (PoC Further Elaborations section 3.2) (See also 4.3.5 Direct Race Discrimination below)

Openinfra Conference

2.1.1.20 During dinner with the claimant and Jacob Ward on 9 June 2022 did Alex Dibbo state, with regard to the Openinfra Conference in 2023 that “only a few of us are going”? (PoC paragraph 29 & PoC Further Elaborations section 2) (See also 5.1.1 Harassment related to race below)

2.1.1.21 During dinner with the Claimant on 9 June 2022 did Jacob Ward and Alex Dibbo ignore or exclude the Claimant from conversation? (PoC paragraph 29 & PoC Further Elaborations section 2) (See also 5.1.2 Harassment related to race below)

2.1.2 Did that breach the implied term of trust and confidence?

2.1.2.1 Did the respondent behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.1.2.2 did it have reasonable and proper cause for doing so.

2.1.3 Did the claimant resign in response to the breach?

2.1.4 Did the claimant affirm the contract before resigning?

2.1.4.1 Did the claimant’s words or actions show that he chose to keep the contract alive even after the breach?

3. Direct Age Discrimination

3.1 The claimant’s age is 53.

3.2 The claimant compares himself with people in the age group under 30 years old

3.3 Did the respondent do the following things:

Lack of training and development

3.3.1 fail to provide the claimant with training or a formal certification path for OpenStack.? (PoC paragraph 10 & 11 & PoC Further Elaborations section 1) (see also 2.1.1.1 – Unfair Dismissal above)

Change in reporting lines and unfair promotion

3.3.2 promote Mr Ward to a higher band than the Claimant? (PoC paragraph 21 & PoC Further Elaborations section 1) (see also 2.1.1.7 - Unfair Dismissal above)

3.3.3 tell the Claimant he had to report to Jacob Ward? (PoC paragraph 21 & PoC Further Elaborations section 1) (see also 2.1.1.8 - Unfair Dismissal above)

Exclusion from decision making

3.3.4 Did Alex Dibbo, Andrew Sansum, John Good and Jacob Ward exclude the Claimant on a weekly or daily basis over period from 01 January 2022 until 04 September 2023 from

participating in meetings for a project concerning networking and network updates affecting the Openstack platform? (PoC paragraph 14 and PoC Further Elaborations section 4) (see also 2.1.1.5 Unfair Dismissal above and 4.3.10 Direct Race Discrimination below)

3.4 Was that less favourable treatment as compared with a comparator. The claimant relies on Mr Ward as a comparator.

3.5 If so, was it because of age?

3.6 Did the respondent's treatment amount to a detriment?

3.7 Was the treatment a proportionate means of achieving a legitimate aim?

4. Direct Race Discrimination

4.1 The claimant relies on his Burmese national origins as his racial characteristic. (PoC paragraph 1)

4.2 The claimant relies on Jacob Ward as a comparator or in the alternative a hypothetical comparator of non-Burmese national origin

4.3 Did the respondent do the following things:

Appraisal

4.3.1 On 18 May 2022 did Alex Dibbo ask the claimant to add additional content to the claimant's APR document? (PoC Further Elaborations section 3.2) (see also 2.1.1.11- Unfair Dismissal above)

4.3.2 On 12 April 2022 did Alex Dibbo make edits to the claimant's APR document? (PoC Further Elaborations section 3.2) (see also 2.1.1.12 - Unfair Dismissal above)

4.3.3 On 18 April 2022 did Alex Dibbo make edits to the claimant's APR document? (PoC Further Elaborations section 3.2) (see also 2.1.1.13 - Unfair Dismissal above)

4.3.4 On 31 May 2022 did Alex Dibbo make further modifications to the claimant's APR document? (PoC Further Elaborations section 3.2) (see also 2.1.1.14 - Unfair Dismissal above)

4.3.5 On 31 May 2022 did Amanda Chapman make further modifications edits to the claimant's APR document? (PoC Further Elaborations section 3.2) (see also 2.1.1.15 - Unfair Dismissal above)

4.3.6 On 9 June 2022 did Andrew Sansum edit the claimant's APR document three times (see also 2.1.1.16 - Unfair Dismissal above)

4.3.7 On 25 July 2022 Did Andrew Sansum and Sally Prydderch upload claimant's APR document to MS SharePoint? (PoC Further Elaborations section 3.2) (see also 2.1.1.17 - Unfair Dismissal above)

4.3.8 Did Sally Prydderch fail to respond to the Claimant's request made on 25 July 2022 to provide a detailed audit of the appraisal process. (PoC Further Elaborations section 3.3) (see also 2.1.1.18 - Unfair Dismissal above)

4.3.9 Did Andrew Sansum fail to send a follow up email to, or reply to the Claimant's email of 09 June 2022 (PoC paragraph 26 & PoC Further Elaborations section 1) (see also 2.1.1.19 - Unfair Dismissal above)

Exclusion from decision making

4.3.10 Did Alex Dibbo, Andrew Sansum, John Good and Jacob Ward exclude the Claimant, on a weekly and daily basis over period from 01 January 2022 until 04 September 2023, from participating in meetings for a project concerning networking and network updates affecting the Openstack platform? (PoC paragraph 14 and PoC Further Elaborations section 4) (see also 2.1.1.5 Unfair Dismissal above and 3.3.4 Direct Age Discrimination above)

4.4 In respect of each of the above alleged acts or omissions was that less favourable treatment?

4.5 If so, was it because of race?

4.6 Did the respondent's treatment amount to a detriment?

5. Harassment related to race

Openinfra Conference

5.1 During dinner with the claimant and Jacob Ward on 9 June 2022 did Alex Dibbo state, with regard to the Openinfra Conference in 2023 that "only a few of us are going"? (PoC paragraph 29 & PoC Further Elaborations section 2) (see also 2.1.1.20 Unfair Dismissal above)

5.1.2 During dinner with the Claimant on 9 June 2022 did Jacob Ward and Alex Dibbo ignore or exclude the Claimant from conversation? (PoC paragraph 29 & PoC Further Elaborations section 2) (see also 2.1.1.21 Unfair Dismissal above)

5.2 If so, was that unwanted conduct?

5.3 Did it relate to race?

5.4 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?

5.5 If not, did it have that effect?

5.6 Did the respondent treat the claimant less favourably because the claimant rejected or submitted to the conduct?

6. Acas Code Breach

- 6.1 Did the Claimant unreasonably fail to follow the ACAS Code of Practice on Disciplinary and Grievance by not raising a grievance in respect of the alleged treatment?
- 6.2 Would it be just and equitable to reduce any compensation awarded by up to 25% in accordance with s.207A(3) of the Trade Union and Labour Relations (Consolidation) Act 1992?

The facts

- 4 The tribunal have not made decisions about every fact about which there was a disagreement but only those facts relevant to the issues we needed to decide.
- 5 We decided at the beginning of the hearing that we would not initially hear evidence on remedy. We would only proceed to do that if the claimant was successful on liability. We would also not hear evidence on the Acas adjustment in the first part of the hearing because that was relevant to remedy.
- 6 The claimant started employment on 1 June 2020 as a Senior Systems Administrator (Band E) for the respondent. The respondent is a government body employing approximately 7,500 staff, responsible for the management of government investment in research and innovation. The claimant's employment ended on 4 September 2022 following his resignation on 8 August 2022.
- 7 The claimant's claim form was received by the tribunal on 13 December 2022 and he brought claims of constructive unfair dismissal, direct race and age discrimination, and harassment related to race.
- 8 He was 52 to 53 at the relevant time and he compares himself to people in the age group under 30. His named comparator is Jacob Ward who was under 30. The claimant is of Burmese national origin, and he compares himself to someone of non-Burmese national origin such as Jacob Ward or a hypothetical comparator.

Lack of training and development

Issue 2.1.1.1

- 9 This allegation specially refers to training on OpenStack which is a cloud computing platform. The claimant did have training on this. A five day training course was approved by his line manager, Mr Dibbo, on 11 May 2022 [document 400]. He went on the course from 23 to 27 May 2022.
- 10 The claimant's complaint is that the respondent failed to provide such training until a couple of months before he left; he said that was after two years of asking for training. The tribunal was not taken to any evidence prior to 2022 of the claimant asking to go on the course. The respondent had a practice of training on OpenStack without using external course providers. Mr Dibbo said in his witness statement at paragraph 11, and in oral evidence, that he only recalled one person from the respondent going on an external course and they gave negative feedback. He agreed almost instantaneously to the claimant going on the course when he asked because the claimant had found a different trainer.

- 11 The issue as drafted says that the respondent failed to provide training or a formal certification pass. Whether the course the claimant went on gave the claimant the certification he wanted was unclear from the claimant's evidence and was not pursued in submissions.
- 12 The issue forms part of the claimant's allegation of age discrimination. The tribunal found that his named comparator, Mr Ward, did not go on an external course.

Issue 2.1.1.4

- 13 The claimant alleges that when he asked to go on the course Mr Dibbo said, "some of us have been on it" and Mr Dibbo mentioned he was not good at arranging training. Mr Dibbo denies that [paragraph 14 in his statement]. The tribunal heard his oral evidence and accepted his evidence that he did not say that. Not being good at arranging training seems an unlikely comment for a manager to make. It is possible that some sort of comment was made that might have been misinterpreted by the claimant. But even Mr Dibbo did make such a comment, the tribunal do not understand how that comment was significant or relevant to the claimant's claims in any way.

Issue 2.1.1.2

- 14 The claimant had three appraisals in which he said the respondent failed to discuss training and development opportunities with him. These consisted of 2 annual appraisals and a mid-year review.
- 15 The appraisal for 2020-2021 is at 277 to 288 of the bundle. It was signed by Mr Dibbo on 14 May 2021. It contains a learning and development log and a reflection on how learning has impacted the employee's role.
- 16 The 2022 appraisal is at 319-323 of the bundle. There is a section which has been completed headed "Development and Training Course/Activity". The tribunal find that those documents are evidence that training and development was discussed at appraisals and the claimant had the opportunity to raise training and development.

Issue 2.1.1.3

- 17 In the third appraisal meeting, which was on or around 13 May 2022, Mr Dibbo asked the claimant what he wanted to know about the OpenStack platform and to make a list. Mr Dibbo, at his statement paragraph 14, confirmed that he asked the claimant to identify what he wanted to know and he put emphasis on the claimant himself identifying where he thought the gaps in his knowledge were. The tribunal find that was a reasonable approach to take in the context of a senior employee who can be expected to identify his own gaps in knowledge and share responsibility for his own development.

Exclusion from decision making

Issue 2.1.1.5, 3.3.4 and 4.3.10

- 18 The claimant alleges that Mr Dibbo, Mr Sansum, Mr Good and Mr Ward excluded him on a weekly or daily basis over the period 1 January 2022 to 4 September 2023 (that should be 2022, when his employment terminated) from participating in meetings for a project concerning networking and network updates affecting the OpenStack platform. He makes that allegation in relation to unfair dismissal, direct age discrimination and direct race discrimination
- 19 Mr Good and Mr Ward did not attend those meetings. They were not invited to attend them and therefore they cannot have excluded the claimant from them. Further it cannot be the case that the claimant was treated less favourably than them.
- 20 Mr Dibbo and Mr Sansum did attend the meetings but they were not responsible for scheduling or organising the meetings (Mr Sansum's statement paragraph 10).
- 21 Mr Dibbo disseminated information to Mr Ward and Mr Good. In evidence Mr Sansum said there were very few changes to the platform and the project finished in June 2022.
- 22 The tribunal did not hear how frequent the meetings were but they find it is unlikely that they were daily meetings as suggested in the list of issues.
- 23 The meetings are further explained at Mr Dibbo's statement at paragraph 15 (tribunal emphasis).

“... a site wide network project to improve the security of networking. There was one person from each of the large computing facilities on site represented in that meeting, and for the most part that was the team leader or group leader. **This meant that Andrew was there as he manages people who manage multiple large computer platforms. Mr Ward, Senior Systems Administrator, and John Good, Cloud Delivery Manager, did not attend these meetings, although they were my points of contact for disseminating information amongst the group. Specifically, Mr was responsible for day-to-day operation of the platform and John was responsible for day-to-day management of the service, dealing with servers, users and project management. Michael was not a manager of a large platform or owner of a large platform which is why he wasn't in the networking planning meetings.** There were other reportees of mine who were not invited to these meetings as they too had not yet grown into their role sufficiently to take leading responsibilities in any one area. Michael's presence at the meetings described simply wasn't required. I add that Michael was actively invited to other meetings during his employment which were relevant to him, including, for example, those relating to security”

- 24 It is further explained by Mr Sansum at paragraph 11 of his statement (tribunal emphasis) :

“A key part of the macro-segmentation project was to carry out a coordinated set of changes across the whole of STFC's network on the Rutherford Appleton Laboratory campus including the Openstack platform Michael's team had responsibility for. These changes were to be carried out by the implementation team, which consisted of the network architects and network administrators (who had elevated privileges on the network to make configuration changes). The architect/admin for the Openstack platform was Alex, who had designed and implemented the network, was the router admin, and was therefore the appropriate person to attend the meetings. Michael was not invited to these meetings because he was not a router admin for his team's

infrastructure. **It certainly was not the case of specifically excluding Michael from this project – rather, he was only excluded to the extent that it was not his role.** The project was extremely technical, and a complicated change was planned – it would not have been possible to invite everybody from the group.”

- 25 We found that Mr Sansum and Mr Dibbo corroborated each other in their evidence and we found their explanations credible as to why the claimant was not invited to the meetings and why the information was not directly disseminated to him. The meetings were not directly relevant to his role.

Change in reporting line and unfair promotion issues

Issue 2.1.16, Issue 2.1.17 Issue 2.1.18

- 26 The claimant alleges that the respondent offered Mr Ward a post which had been left vacant by Andrew Prosser, promoted Mr Ward to a higher band and told the claimant he had to report to Mr Ward. Those issues are brought as unfair dismissal and age discrimination claims.
- 27 The tribunal heard credible evidence in which Mr Dibbo and Mr Ward corroborated each other about how Mr Ward came to move on to Band E around November 2021. Mr Ward successfully applied to a rolling advert. He did not apply for Andrew Prosser’s role, and it was only after he was successful that deployment was discussed. Andrew Prosser had left by then and Mr Ward did not step directly into his role.
- 28 Mr Dibbo’s new role was not on a higher band than the claimant. The claimant was already on Band E. Mr Ward started the band on a lower salary than the claimant. The claimant’s role was intended to be split 50/50 between operations and project work, although he ended up doing mainly operations work. Mr Ward’s role was slightly different; he had slightly less project work.
- 29 The tribunal noted that the respondent has referred in evidence to Mr Ward both as the Senior Systems Administrator, that is the same as the claimant’s job title, but also as an Operations Manager. Mr Ward in his statement at paragraph 4 said:
- “On a day to day basis I act as Operations Manager for the Cloud which encompasses the running of the infrastructure.”
- 30 The tribunal established that the title of Operations Manager did not mean that Mr Ward was the claimant’s line manager or was, indeed, a line manager. Mr Ward did not manage any staff at all. He managed the platform on a day to day basis making sure that it ran smoothly and that any issues were patched up. The claimant would consequently have to interact with Mr Ward on a day-to-day basis on operational issues.
- 31 The statement of Mr Dibbo [paragraph 17] explains the situation as follows:

‘It is also incorrect to say that Michael had to report to Mr. Ward. Michael reported to me at all times during his employment with the Respondent. Once in post, Mr Ward took responsibility for the day-to-day operation of the platform and as part of that, he was responsible for some or

most of the operations work that Michael was doing and may therefore have needed to be involved. However, Michael did not report to Mr Ward and Michael was not required to meet with him directly.'

- 32 The amended grounds of response at paragraph 23 deny that the claimant was told to report to Mr Ward but state that he "was told that his work in respect of Operations would be directed by Mr Ward". The tribunal found that to mean that the claimant would be required to discuss matters with Mr Ward regarding his platform to mitigate risk and advise service users, but there was no change to the claimant's line manager.
- 33 The tribunal find that the phrase "directed by" in this context is different to the concept of reporting to someone. An employee can have some of their work directed by someone as opposed to reporting to them. The tribunal understand that the use of the title "Operations Manager" might have affected the claimant's perception of the situation, but that was not an accurate perception.

Appraisal / Retrospective Performance Criticisms

- 34 The respondent's appraisal process is for the employee to have a meeting with his line manager and subsequently his senior line manager. The appraisal document is on SharePoint. It is visible to the employee throughout the year and can be updated throughout the year (Mr Sansum's statement paragraph 20).
- 35 Around the time of the appraisal the employee fills in their section and subsequently updates are made after meetings with the line manager and senior line manager. Mr Sansum became the claimant's senior line manager from April 2021 when he began managing Mr Dibbo.
- 36 The tribunal noted that there is no criticism in the appraisals of the claimant's work until around May/June 2022. An appraisal took place in May 2022. The exact date is not clear. It can be seen from mid-May there were some comments made on the claimant's appraisal about his performance which reflected Mr Sansum becoming concerned that the claimant was not performing or doing work at the right level for his band. That had unfortunately not previously been discussed with the claimant. Perhaps that can be explained, to an extent, by the fact that the claimant had been working at home a lot during the covid pandemic and he now had a new senior line manager who was reviewing performance afresh.
- 37 Mr Sansum had a face to face meeting with the claimant on 16 May 2022. This is only the second time he had met him, the first had been on 1 February 2022. The claimant covertly recorded both those meetings.
- 38 The meeting on 16 May 2022 was a routine meeting to discuss the previous year and took place as part of the appraisal process. At that meeting the claimant and Mr Sansum discussed training and personal welfare. Mr Sansum's summary is at page 512 in the documents. The covertly recorded transcript is at 709 to 727.
- 39 Following that meeting, Mr Sansum had a meeting with John Good on 26 May 2022 who mentioned in passing that he had concerns about how the claimant

was dealing with tickets [581]. This rang some alarm bells for Mr Sansum because he did not think that dealing with tickets represented the level of work that the claimant should be doing.

- 40 John Good did not give evidence and the claimant invited the tribunal to make inferences from that but did not identify what those inferences should be. He may have been suggesting that Mr Sansum was not genuinely or reasonably concerned with his performance? The tribunal found Mr Sansum credible. We accepted that Mr Sansum was concerned that the work that the claimant was doing was not at the right level for his band. Moreover a later email from John Good to the claimant dated 29 June 2022 shows John Good intervening and explaining to the claimant how the claimant can improve his responses to the customer with regard to tickets [452 of the bundle], suggesting that John Good did have concerns, which he had mentioned to Mr Sansum.
- 41 The bundle contains an email that Mr Sansum sent to HR on 19 July 2022 [521 in the bundle] in which he refers to the content of the meeting on 16 May 2022. There is a transcript of his meeting notes in the bundle, not his original written notes. Mr Sansum explained in oral evidence that the transcript is a transcript of his written notes which he prepared for HR when the claimant indicated that he was going to raise a grievance, his handwriting being particularly bad.
- 42 The email sending the transcription to HR refers to the meeting on 16 May 2022 and the meeting with John Good [490]. It refers to setting up a meeting with Mr Dibbo. Mr Sansum explains in his statement at paragraph 21 how he moved from meeting with the claimant on 16 May to the meeting with Mr Good to having some concerns. He also says that he was under the impression that Mr Dibbo had discussed the concerns with him already in more detail than might have been the case and decided that he wanted to consider performance management of the claimant.

“Accordingly, following Michael’s appraisal review with me on 16 May 2022 (covertly recorded) [709 – 714 CB], I met with Alex informally on or around 26 May 2022 as Michael’s LM. Alex and I discussed general points around Michael’s performance and I stressed that Michael needed to be monitored by Alex and provided with further opportunities to develop. I was under the impression that Alex had discussed Michael’s performance concerns with him already in more detail than may have been the case. That day (26 May 2022), I asked my Personal Assistant, Amanda (Mandy) Chapman, to schedule a 1 hour meeting to discuss performance management of Michael [411 CB]”

Edits to the appraisal

Issues 2.1.1.11 to 2.1.1.16 and 4.3.1 to 4.3.8

- 43 The claimant complains of edits which were made to his appraisal during May to June 2022 by Mr Dibbo, by Mr Sansum and Amanda Chapman (Mr Sansum’s PA). The allegations are raised in his complaints of constructive dismissal and race discrimination.
- 44 Document 594 records the date when edits were made but not the content of them. The claimant asked for detailed tracked changes but, as explained by Sally Prydderch at the time of the request [514 in the bundle] the tracked changes

had not been recorded because the appropriate function was not switched on in the system.

- 45 The tribunal went through each of the edits the claimant alleges were made in the list of issues and compared them with the document on page 594 of the bundle. There is no edit shown by Mr Dibbo on 12 April 2022. There is one made by him on 18 April 2022. There is an indication that Mr Dibbo asked the claimant to add more content on 18 May. There is an email referring to that [617 in the bundle]. He asked him to expand his development plan and add in the meetings he had attended. Mr Dibbo said he might have edited it on 31 May in his witness statement but the document at 594 indicates that he did not make an edit on that day. Amanda Chapman did. The claimant has not explained why that might be significant.
- 46 The tribunal find all the edits are explainable as part of the appraisal process because the record was a live document. There is no reason to think that a hypothetical comparator or Mr Ward would have been treated any differently and, indeed, in the previous year, the claimant's appraisal document had been edited and he had not complained or thought there was anything unusual about that.

Issue 2.1.1.17

- 47 The claimant alleges that his appraisal record was uploaded to SharePoint on 25 July 2022 by Mr Sansum and by Sally Prydderch. The reason for making that assertion and the relevance of it is unclear to the tribunal. The appraisal would have been on SharePoint all the time. The claimant was suspicious about green and red dots which appear on the record. The tribunal heard evidence from Mr Dibbo that the dots show the availability of the people referred to on that particular day.

Issue 2.1.1.17

- 48 On 25 July 2022 Sally Prydderch edited the record. She is an administrator. The claimant has not explained how that is significant or relevant to his claim.

Issue 2.1.1.16 and 4.3.6

- 49 The tribunal paid particular attention to the edits on 9 June 2022 which the claimant raises in respect of unfair dismissal and direct race discrimination. Mr Sansum made three edits on 9 June 2022, in a period of about 18 minutes, immediately before sending the claimant an email expressing his concerns about his performance (issue 2.1.1.9). This is explained by Mr Sansum at paragraphs 23 to 25 of his witness statement as follows (tribunal emphasis):

“23. Between 10:44AM –11:02AM BST on 9 June 2024, I updated the APR document which already contained Michael's and Alex's comments, adding in turn my own comments [594 – 595 and 415 CB]. I also considered Michael's performance as tracked against the Band descriptors [206 – 220 CB]. I noted in my comments in the APR that Michael and Alex needed to work together to create a performance plan to ensure that Michael was brought up to band standard he was required to work at (E). I also emphasised that I did not intend to recommend marking Michael's performance as below expectations for the reporting year completed 21/22.

24 As per pages 594 – 595 of the bundle, it is evident that the modifications to the document were recorded as ‘edits’ with three timestamps. It was usual for me to edit the document and then review the wording before updating further for clarity or to fix typos and spelling. It was normal for me to work in this way. The edits took place over a period of 18 minutes. I cannot agree with any suggestion that these ‘edits’ amounted to a repudiatory breach of Michael’s employment contract or that the reason that I ‘edited’ the document across this timeframe was because of Michael’s race. **The reason that I ‘edited’ or viewed the document was because this formed part of my role. I similarly would do this on other reportee’s documents.**

25. At 11:02AM BST (note that these emails are timestamped in 2 different time zones) on 9 June 2022, I emailed Michael to provide him with my comments by email and express my concerns about his work performance [418 – 420 CB]. I wanted to warn Michael before he had the opportunity to review my comments and confirm that I proposed to include this in the SLM section of the APR document being finalised [553 CB]. I checked Michael’s diary which showed that he was free in the afternoon of 9 June 2022 and so requested a Zoom meeting to run through these with him [622 CB]. It is true that this was done before I had the opportunity to speak to Alex about my intention with respect to my exact comments, for ease, efficiency and considering both of our busy schedules. However, this would have been standard practice for an SLM who was concerned about a reportee’s performance. It is reasonable for an SLM who has concerns about a reportees performance to request a meeting to discuss those concerns”

- 50 The comments that he put on the appraisal record were made immediately before he sent an email to the claimant. The comments were mildly adverse, but he set up a meeting with the claimant to take place immediately after lunch, about two hours later. He sent an email to the claimant immediately after making the edits because he wanted to speak to the claimant before he saw the comments and explain why he had made them.
- 51 The comments reflected concerns that the claimant was not working or doing the type of work that was appropriate for his role. Mr Sansum decided that it was only fair to mark the claimant’s previous year as commensurate because he had not been given feedback at the time. He wanted to draw a line under that. It was something he wanted to address going forward.
- 52 Mr Sansum proceeded to discuss with HR the way forward in the light of the views that he had formed. Nicola Newall advised him that if a meeting was going to be set up to discuss the claimant’s performance it would be helpful to have something drafted for a potential discussion. They went on to draw up an informal Performance Improvement Plan (PIP) for a meeting that was meant to take place on 30 June 2022 [465 in the bundle]. In fact, the PIP plan was never issued to the claimant because the claimant did not attend the meeting on 30 June 2022. He declined to attend. He did not see the informal PIP plan until disclosure of documents in these proceedings.
- 53 Mr Sansum’s evidence was that he would expect the performance process to take some time, perhaps up to a year, but he was open to changing his views and open to discussion.

Email on 9 June 2022

- 54 At around midday on 9 June 2022 Mr Sansum sent the email to the claimant

[419] referred to at paragraph 50 above. He wrote (tribunal emphasis):

“Hi Michael,

After we met at SLM review **I reviewed again what you had said and also the content your APR and became concerned that your current objectives and work in the last year didn't reflect what I'd expect from a Band E member of staff.** Having spoken to Alex I know he has already had a discussion with you about expectations for the different job bands. **I realise its been a difficult year for you from the POV of home working and I appreciate that you probably only recently received feedback from Alex around our expectations for what people working at Band E should be taking on in terms of responsibilities. Given the lack of feedback until recently its clearly not appropriate to formally mark your APR performance issue box,** however your line manager and you need to put in place an informal performance improvement plan and we need to see significant improvement by the mid term APR review.
I've put a meeting in our diary after lunch in order to discuss.”

- 55 The tribunal note Mr Sansum acknowledged that it had been a difficult year but the tribunal also appreciate that that email would have landed heavily for the claimant. He received it when he was away in Berlin. Mr Dibbo had not given him any previous feedback and receiving it was a shock to the claimant.
- 56 The tribunal are satisfied that Mr Sansum genuinely thought that Mr Dibbo had given feedback. He refers to it twice in the email. Mr Sansum wanted to see the claimant immediately after lunch and he wanted to see the claimant before he saw the comments on the appraisal record because he thought that would be less of a shock for him. He reasonably thought that the claimant would be available to meet him more or less straightaway after lunch. He did not realise that the claimant was in Berlin because the claimant had not updated his diary. He would not have sent the email if he had realised that the claimant would not be available for a meeting that afternoon.
- 57 The claimant asked for an explanation in writing as soon as he received the email on 9 June 2022 and said he was going to speak to his adviser. At that point Mr Sansum, thinking it was not fair to leave him hanging, told him what he had put on the appraisal record [418] (see below).

Issue 2.1.1.19 and 4.3.9

- 58 The claimant alleges that Mr Sansum did not follow up or reply to his request for an explanation in writing but he clearly did follow up. The email is in the bundle [418]. It says (tribunal emphasis):

“Hi Michael,

I'm sorry I hadn't realised you were busy at the Openstack conference as your diary was marked as free. **I wanted to chat ASAP as I'd updated your APR with my comments and wanted to be able to give you the opportunity to discuss them quickly and not have them hanging over you.** I appreciate now that I realise you are at conference that having a remote call about this isn't ideal so appreciate you want to wait.
I'd also like to emphasise that I have not formally marked your performance as a “performance issue “ through ticking the performance box on your APR but rather am

concerned that your work and responsibilities at present does not appear to be consistent with a Band E role as described in STFC's Band descriptions.

Given you are not available now I think the best next step will be for you Alex and I to meet together so that you understand what is needed at the band E role and what needs to change. Its obviously important that you have a clear understanding of what is needed and a clear path for how to get there.

In terms of providing you written feedback:

- My email below to which you replied.

My text as provided as SLM comments in your APR

“Michael has had a personally difficult year however I am concerned that his role and specific items of work described in this APR do not appear to be commensurate with the responsibility, quality and technical challenge expected of a band E member of staff. I appreciate that while this may not have been made clear to Michael until recently and consequently needs time to address it is vital that a plan (and timescale) is put in place to ensure that Michael is working at the appropriate level. Michael's team are under enormous pressure and while Michael's BAU work to support them is appreciated many important developments needed by the cloud team are stalled and Michael needs to play a role.”

The next step needs to be a written plan for improvement so you have a clear and well documented understanding of what you need to do. Which I hope would then provide what you are asking for “in writing”. This would be an informal improvement plan and an appropriate formal review point (assuming this proceeds well) would be at the department mid-term review which I expect would be in November.

Training and development would form a key part to this and it seems that that aspect looks to be in hand from your APR (and attendance at the openstack conference).

Sorry that this is a distraction while you are away but as I said it was only on reviewing your APR after we met that I became concerned.”

- 59 When it was put to the claimant that he clearly did receive a response to his request for an explanation the claimant said that he wanted a “better” response but the tribunal found that it was a detailed and sensitively written response in the circumstances. Mr Sansum wanted to meet with the claimant but the claimant refused to engage in the process of meeting with him. There was no chance to discuss the matter any further, to agree any further targets or proceed to consider performance management because the claimant refused to engage from then on.
- 60 The tribunal considered how else Mr Sansum could have handled the situation. We decided he could not have done anything differently. He had tried to speak to the claimant. In the further email that he sent he was trying to reassure him. The claimant was upset but the email was not sent with any malice. If the claimant had been able to meet with Mr Sansum in the afternoon he may have felt reassured.

Openinfra Conference in Berlin

Issues 2.1.1.20 and 5.1.1

- 61 The claimant, Mr Dibbo and Mr Ward attended the Openinfra conference in Berlin between 6 June 2022 and 10 June 2022. The claimant raises allegations of constructive dismissal and harassment related to race in respect of alleged conduct at a dinner on the last night of the conference.
- 62 His complaints are that, during dinner on 9 June 2022, Mr Dibbo stated that “only

a few of us are going” to next year’s conference. He also says that during dinner Mr Dibbo and Mr Ward ignored or excluded him from the conversation.

- 63 Mr Dibbo’s evidence was that he was aware that the claimant had received the email earlier in the day. He noticed the claimant did not look happy. He tried to involve him in conversation. He did not tell Mr Ward. Mr Ward was unaware of what had happened. Mr Ward said that he did not notice anything amiss during the dinner.
- 64 The comment about “only a few of us going to the conference next year” was made in the context of the conference next year being in Canada. Clearly, attendance would be more time consuming and expensive, and it was a reasonable point for Mr Dibbo to flag up at that stage. The claimant took offence. It is not clear why. It is not clear why he thought the phrase “only a few of us are going” automatically meant that he would be excluded. There were about eight people in the team, some of which were apprentices and transitional employees. But the claimant said, “The comment was intended to make me feel bad and he could have picked another time to talk about it.”
- 65 The tribunal found that the comment itself “only a few of us” does not suggest that the claimant was not going to be one of the employees that was not going. It was not pointed at the claimant. It was not reasonable for the claimant to think that he was being excluded.
- 66 In terms of not being included in conversations the tribunal felt that the claimant was understandably feeling upset at having received Mr Sansum’s email and that may have affected his perception. His evidence was that he had not felt excluded when he had been out for dinner the night before.
- 67 After the conference the claimant was absent from work for two weeks on sickness leave returning to work on 27 June 2022 when he had a return to work interview [439 to 444 and 715 in the bundle].
- 68 The claimant was offered a new job on 8 July 2022 which he said he had applied for two or three weeks before. That suggests that he started applying for new jobs after receiving the email on 9 June 2022. He accepted the new job a few days after the offer on 8 July.
- 69 Although he had accepted the job, he said in evidence that he was still keeping his options open and wondered if matters could still work out with the respondent. The job that he accepted did have a much higher salary, £65,000 versus £41,000, but the claimant maintained that he wanted to stay with the respondent for job security and the pension. We did not accept his evidence on that. We find that it was the email of 9 June 2022 that upset the claimant, strained his relationship with the respondent to the extent that he did not engage with the respondent’s attempts to meet with him from then on. We find he did not resign in relation to the conduct before 9 June 2022.
- 70 The claimant resigned a month later on 8 August 2022. He gave notice with his last day being 4 September 2022. In his resignation letter to Mr Dibbo, which he copied to Mr Sansum [530 in the bundle], he says, it is with deep regret that he

is writing to inform him of his resignation “due to personal reasons” and that he is providing short notice “but please understand that due to unforeseen circumstances I am not able to stay longer.” He then thanked Mr Dibbo for the opportunity.

- 71 The claimant went to Acas on 14 November 2022 but named the wrong respondent. On 7 December 2022 he contacted Acas naming the correct respondent. The claim form was issued on 13 December 2022.
- 72 The claimant said, in his email of 9 June 2022 that he was going to take advice and had consulted his union representative by 4 July 2022 (his representative meeting with Mr Sansum on 4 July 2022). On 27 July 2022 the claimant emailed the respondent to say that he had taken legal advice [645 in the bundle] and he sent a link to the Equality Act. He has issued two previous ET1 claim forms against former employers indicating that he was aware of the procedure.

The law

Constructive unfair dismissal

- 73 Section 95 Employment Rights Act 1996 provides, so far as is relevant to the facts of this case:

“(1)For the purposes of this Part an employee is dismissed by his employer if ...

(a).....

(b).....

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

- 74 Accordingly, dismissal includes constructive dismissal, which occurs where, owing to the repudiatory conduct of the employer, the employee is entitled to resign and regard himself as dismissed.
- 75 In Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27 CA Lord Denning set out the basic principles in order to succeed in a claim of constructive dismissal. A claimant must prove: (1) that the employer acted in breach of his contract of employment; (2) that the breach of contract was sufficiently serious to justify resignation or that the breach was the last in a series of events which taken as a whole are sufficiently serious to justify resignation; (3) that he resigned as a direct result of the employer's breach and not for some other reason; and (4) that the Claimant did not waive the breach or affirm the contract; the employee ‘must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged’.
- 76 In Wright v North Ayrshire Council [2014] IRLR 347 it was recognised that an

employee may have mixed motives when deciding to resign and the employer's conduct need not be sole cause. In such a situation a tribunal must determine whether the employer's repudiatory breach was an effective cause of the resignation.

- 77 Terms of an employment contract can be express or implied. Not every breach of contract entitles the employee to terminate the contract. The breach must be sufficiently serious to amount to a repudiation of the whole contract. A contractual test is applied; whether as a result of the employer's conduct the contract has been repudiated, It is not a range or reasonable responses test, Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908, CA.
- 78 Implied terms include a mutual term of trust and confidence. A breach of the implied term of trust and confidence will always amount to a repudiatory breach (Morrow v Safeway Stores plc 2002 IRLR 9). Per Malik v Bank of Credit and Commerce International SA 1997 ICR 606, to establish a breach of the implied term it must be found that the respondent's conduct was calculated or likely to destroy or seriously damage trust and confidence and the respondent did not have 'reasonable and proper cause' for the conduct.
- 79 In Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666, EAT, Mr Justice Browne-Wilkinson stated: 'To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.'
- 80 A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though the last straw by itself does not amount to a breach of contract, Lewis v Motorworld Garages Ltd 1986 ICR 157 CA.
- 81 The burden of proving absence of reasonable and proper cause, falls on the party seeking to assert the absence, RDF Media Group plc and anor v Clements 2008 IRLR 207, QBD.

Direct Discrimination

- 82 Direct discrimination is defined in section 13(1) as follows:
- “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”
- 83 The concept of treatment being less favourable inherently suggests some form of comparison and in such cases section 23(1) applies.

- 84 The effect of section 23 is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a hypothetical comparator. Further, as the Employment Appeal Tribunal and appellate courts have emphasised in a number of cases, including Amnesty International v Ahmed [2009] IRLR 884, in most cases the real question is the “reason why” the decision maker acted as he or she did. Answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator, and it may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator.
- 85 The Equality Act 2010 provides for a shifting burden of proof. Section 136 provides as follows:
- “(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.”
- 86 Consequently, it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.
- 87 In Shamoon v Chief Constable of the Royal Ulster Constabulary (2003) ICR 337, Lord Nicholls in the House of Lords (NI) said that the Tribunal should focus on the primary question which was why the complainant was treated as he or she was? The issue essentially boiled down to a single question: did the complainant, because of a protected characteristic, receive less favourable treatment than others?
- 88 Section 5 Equality Act 2010 defines the protected characteristic of age as a particular age group, whether by reference to a particular age or to a range of ages. Section 13 (2) Equality Act 2010 provides that if the protected characteristic is age “A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim”.
- 89 Section 9 of the Equality Act 2010 defines race as follows:
- “(1) Race includes—
- (a) colour;

- (b)nationality;
- (c)ethnic or national origins.”

Harassment

90 Section 26 Equality Act 2010 provides:

“(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.”

91 The EAT in Richmond Pharmacology v Dhaliwal 2009 ICR 724, EAT, gave some guidance as to how the ‘effect’ test should be applied. It noted that the claimant must actually have felt, or perceived, his or her dignity to have been violated or an adverse environment to have been created. If the claimant has experienced those feelings or perceptions, the tribunal should then consider whether it was reasonable for the claimant to feel that way. If the tribunal finds that there was no such effect, then that will be an end to the matter.

Submissions

92 We received submissions in writing from both parties which we have fully considered and incorporated into our decision making where relevant.

Conclusions

Time limit

93 Complaints relating to conduct before 15 August 2022 are outside the primary time limit for bringing a claim. On the basis of the later Acas certificate conduct before 8 September 2022 is outside the time limit. The respondent accepts that the claim of unfair dismissal was made in time.

- 94 The discrimination complaints are outside the primary time limit. The tribunal considered whether it would be just and equitable to extend time. We decided it would not be just and equitable to extend time. The claimant had consulted his union; he said he had taken legal advice; he had made previous claims; he was clearly aware of the Equality Act 2010 and could have researched the relevant time limits. He could not explain in evidence why he did not bring a claim in time.
- 95 There would be prejudice to the respondent in permitting a claim out of time because some of the conduct that the claimant relies on involves recollection of verbal conversations, for example the dinner at the Openinfra conference.
- 96 The claimant is not alleging that the dismissal was an act of discrimination and therefore earlier alleged acts of discrimination are not brought in time by a continuing course of conduct.
- 97 Despite our findings on the time limit we have considered each allegation of discrimination. We have not upheld the allegations.

Constructive unfair dismissal

- 98 The factual allegations relating to the claimant's complaints of constructive unfair dismissal consist of allegations of lack of training and development, exclusion from decision making (not being invited to meetings relating to the OpenStack platform), a change in reporting lines and unfair promotion of Mr Ward, appraisal/retrospective performance criticisms and conduct during a dinner at the Openinfra conference.
- 99 The claimant relies on breach of the implied term of trust and confidence which he says caused him to resign. He sets out a series of events which we have considered both cumulatively and separately. We considered whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent, and if it did, did the respondent have reasonable and proper cause for acting as it did. We considered whether the claimant resigned in response to the conduct and whether the claimant affirmed the contract before resigning.
- 100 We have noted the timing of the alleged events. Some of the alleged breaches were a long time before the claimant's resignation, The claimant resigned on 8 August 2022. Mr Ward was appointed in November 2021 and the allegation of not being included in the meetings dates from January 2022. If those were breaches, and we found they were not, we would find that the claimant affirmed the contract in any event because the time that passed before he resigned would be persuasive evidence that he did not resign in response to them.
- 101 Having heard the claimant's evidence, we decided that the claimant resigned in response to the email dated 9 June 2022 from Mr Sansum which he received when he was in Berlin. The claimant was clearly very upset when he received that email and his relationship with the respondent became very strained after that.
- 102 The claimant says he was not offered training or certification on the Open Stack

platform but he went on the training he requested in May 2022 and his resignation was 3 months later. That is not consistent with his complaint that he resigned because he was not offered training.

- 103 The respondent discussed training and development in appraisal meetings. Mr Dibbo may have asked the claimant what he wanted to know and why he needed training but it is not unreasonable for an employee of that seniority to be asked what the gaps in his knowledge are and for an employee to take responsibility for his training and development. Mr Dibbo denied that he said he was not good at arranging training and the tribunal found it unlikely that he would have said that. But even if he did say it, a statement in those terms by a manager about his own shortcomings is not calculated or likely to destroy or seriously damage trust and confidence.
- 104 We found there was a reasonable reason for the claimant not being invited to the OpenStack meetings, which was that the meetings were not directly related to his role.
- 105 We found that Mr Ward applied for a job which was on the same band as the band the claimant was already on. The claimant did not apply for the job and it would have made no sense for him to do so because he was already on that band. Mr Ward commenced on the band on a lower salary than the claimant.
- 106 The claimant's line manager did not change. The claimant was still line managed by Mr Dibbo and still reported to him.
- 107 The tribunal considered the meaning of the term in the grounds of response "directed by Mr Ward" and they decided that was distinct from "reporting to". An employee may be directed by someone on the same band in certain matters or even a lower band if that employee has responsibility for an area that their role impinges on. It is a necessary feature of teamwork when employees have different areas of specialism and overlapping roles. Being told to report to someone or be directed by someone in respect of certain areas of specialism is not calculated or likely to destroy or seriously damage trust and confidence.
- 108 The claimant complains that his performance was retrospectively criticised, and he had not been informed of any concerns until 9 June 2022. Mr Sansum amended the claimant's appraisal record on 9 June to make some mildly adverse criticism, albeit he tried to warn the claimant before he saw it. The tribunal appreciate that the content of the email on 9 June 2022 came as a shock to the claimant. Unfortunately, Mr Dibbo had not said anything previously that gave the claimant cause for concern.
- 109 The tribunal found there was reasonable and proper cause for Mr Sansum's conduct. Conversations about performance concerns are never going to be easy conversations to have, but a manager is obliged to manage performance. Mr Sansum had tried to be fair by not marking the previous year as unsatisfactory, he genuinely thought he was going to speak to the claimant on the day he sent the email and he had already put the meeting in the calendar, the claimant having not updated his calendar. When he realised the claimant was away, he put further information in writing in a sympathetic and sensitive way. It was the claimant that

refused to engage from then on and insisted on all communications being in writing.

- 110 With regard to the edits to the appraisal the tribunal find the respondent was following their normal process on appraisal. The edits added by Mr Sansum on 9 June 2022 stated that he was concerned the work the claimant was carrying out did not appear commensurate with a Band E role. That is not particularly harsh, in that it is not criticism of the claimant's personal ability, and it is potentially rectifiable. Mr Sansum acknowledged that the claimant had had a difficult year. He refers to an informal plan.
- 111 Mr Sansum responded to the claimant's email on 9 June 2022 with further information in some detail explaining what he had put on the appraisal record and identifying that the next step would be for them to meet.
- 112 Sally Prydderch responded to the claimant's request. The claimant did not think she had given enough detail, but she gave him all the information she had.
- 113 In respect of the dinner at the Berlin conference and the claim for constructive dismissal, the tribunal found that nothing adverse happened. We found Mr Dibbo tried to include the claimant in conversation.
- 114 In summary we found none of the respondent's conduct was likely or calculated to damage the trust and confidence between the claimant and the respondent. We found the reason for the claimant's resignation was the 9 June 2022 email and not the preceding matters (which in any event we found were not breaches of the term of trust and confidence).
- 115 Although the comments on the claimant's performance in the email of 9 June 2022 came as a shock to the claimant Mr Sansum made very reasonable attempts to mitigate the shock. He had reasonable and proper cause to open up a discussion about performance management and whether the claimant was doing work appropriate to his role.
- 116 Accordingly we do not find the complaint of constructive dismissal is made out.

Discrimination complaints

Direct race discrimination

- 117 The factual allegations relating to the claimant's complaints of direct race discrimination consist of editing of his appraisal document, Mr. Sansum's failure to reply to his email dated 9 June 2022, and exclusion from decision making (not being invited to OpenStack meetings).
- 118 The claimant identifies as Burmese origin and compares his treatment to those who are not of Burmese origin. The Equality Act definition of race includes skin colour and at times during evidence the claimant referred to skin colour. In his submissions the claimant put emphasis on Mr Ward and Mr Dibbo being white. He did not explain how being Burmese may be significant. The conclusions that we reached would also apply to skin colour because we found that the claimant

did not prove facts from which the tribunal may find discrimination.

- 119 Our findings on the facts are set out in relation to constructive dismissal above. We have considered whether the claimant has established facts from which we can reasonably conclude that discrimination has occurred. We have concluded he has not.
- 120 We found that editing the live appraisal document was part of the normal appraisal process and does not shift the burden of proof. Mr Sansum made some mildly adverse comments reflecting his concern that the claimant was not performing at the level required for his role. The manner in which he did this and his clear intention to address the issue commencing with a conversation with the claimant and informal performance management is not conduct which shifts the burden of proof. In any event the tribunal found there was a non-discriminatory reason, he wanted to open up a discussion about performance management, which he was entitled to do.
- 121 We also found that the failure to invite the claimant to the OpenStack meetings does not shift the burden of proof. The claimant's comparator, Mr Ward, was not invited and the claimant has not put forward any evidence to suggest that the failure to invite him was on the grounds of race or that it was less favourable treatment. In any event we found there was a non-discriminatory reason why the claimant was not invited, which was that the meetings were not directly relevant to his role.
- 122 The other allegations the claimant relies on were not made out. We found the appraisal document was available on SharePoint throughout the year. The claimant has not explained why he said it was uploaded on 25 July 2022 or why, even if that was the case, that would constitute less favourable treatment. We found that the respondent did not fail to follow up on emails. We found that Mr Sansum did reply to the claimant's email of 9 June 2022 and Sally Prydderch did respond to the claimant's request on 25 July 2022.

Direct Age discrimination

- 123 The factual allegations relating to the claimant's complaints of direct age discrimination were allegations of lack of training and development, a change in reporting lines, unfair promotion of Mr Ward and exclusion from the OpenStack meetings.
- 124 Our findings on the facts are set out in relation to constructive dismissal above. We have considered whether the claimant has established facts from which we can reasonably conclude that discrimination has occurred. We have concluded he has not.
- 125 The respondent did not fail to provide OpenStack training. The claimant went on external training and his younger comparator, Mr Ward, did not. The claimant was, in that regard, treated more favourably, not less favourably than his comparator.
- 126 The tribunal found Mr Ward was not promoted to a higher band, he moved on to

the same band as the claimant. The claimant was not told he had to report to Mr Ward, he continued to be line managed by Mr Dibbo. Mr Ward had particular responsibilities in managing the platform and because of the way their roles interacted the claimant was required to discuss with him and/or accept direction from him where his work may have affected the platform Mr Ward managed.

- 127 The same conclusions we reached relating to the OpenStack meetings referred to under Direct Race Discrimination above apply; he was not treated less favourably than his comparator because Mr Ward was not invited either and there was a non-discriminatory reason for not inviting him.
- 128 The claimant has not discharged the initial burden of proving facts from which the tribunal may find discrimination, but even if he had the tribunal find the allegations were either not made out (, training, reporting to Mr Ward) and there was a non-discriminatory reason for the conduct (OpenStack meetings).

Harassment

- 129 The claimant's allegations of harassment related to race arose from alleged conduct during the dinner at the Openinfra conference in Berlin.
- 130 We found that the claimant was not excluded from the conversation at the Openinfra conference. There was no intent to exclude him, the opposite was the case in that we found Mr Dibbo actively tried to include him. The claimant was feeling very sensitive that evening having received the email from Mr Sansum. He accepted in evidence that he had not felt excluded on previous evenings and this confirmed to the tribunal that feeling excluded that evening was a perception but not a reasonable perception.
- 131 Similarly the claimant demonstrated heightened (and unreasonable) sensitivity to Mr Dibbo's comment, "Only some of us will be going to the conference next year". The tribunal did not consider that phrase would ordinarily have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. There was no reason for the claimant to assume he was not included in the "some of us" that were going. It was not reasonable for the claimant to take offence and underlines again how his sensitivity was heightened. It reflected the way he felt at the time because of the email he had received. It was a reasonable comment to make given that next year's conference was in Canada. Accordingly, the claim for harassment does not succeed.

Summary

- 132 Accordingly, none of the claimant's claims succeed.

Approved by:

Employment Judge S. Matthews
22 May 2026

JUDGMENT SENT TO THE PARTIES ON
2 June 2026

FOR THE TRIBUNAL OFFICE