



EMPLOYMENT TRIBUNALS

Claimant: Amjad Mahmood

Respondent: Macmillan Cancer Support

Heard at: London South

On: 13th, 14th, 15th, 16th and
17th July 2026

Before: Employment Judge Tueje
Ms Bharadia
Mr Rogers

REPRESENTATION:

Claimant: In person

Respondent: Mr Searle (Counsel)

JUDGMENT having been sent to the parties on 24th July 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

1. This decision is unanimous.
2. Except for some editing and refining, these Written Reasons reproduce the decision and reasons that were announced orally at the hearing on 17th July 2026, which broadly follows the sequence of how the issues are set out in the list of issues.
3. We heard a considerable amount of written and oral evidence, including from six witnesses who gave oral evidence, we also heard detailed closing arguments from the parties. It would be neither necessary nor proportionate to address each and every matter raised, and so we have not done so. We have addressed those matters that are most relevant to the findings and decisions we have made. However, if reference is not made to an issue, some evidence or a document, that does not mean it was not considered.

The Law

Time Limits

4. The Tribunal has jurisdiction to consider only those claims that are presented within the prescribed statutory time limits, unless it is satisfied that it is just and equitable to extend time.
5. There are three aspects to time limits.
6. Firstly, section 123(1)(a) of the Equality Act 2010 provides that a claim must be brought within three months, starting with the date of the act to which the complaint relates.
7. The three-month time limit is paused during ACAS early conciliation: the period starting with the day after conciliation is initiated, and ending with the day of the ACAS certificate, does not count (section 140B(3) of the Equality Act). If the ordinary time limit would expire during the period beginning with the date on which the employee contacts ACAS, and ending one month after the day of the ACAS certificate, then the time limit is extended, so that it expires one month after the day of the ACAS certificate (section 140B(4) of the Equality Act).
8. Secondly, section 123(3)(a) of the Equality Act provides that conduct extending over a period is to be treated as done at the end of the period. In Hendricks v Commissioner of Police of the Metropolis [2003] ICR 530, the Court of Appeal held that Tribunals should not take too literal an approach: the focus should be on the substance of the complaint that the employer was responsible for an ongoing situation or a continuing state of affairs, in which an employee was treated in a discriminatory manner.
9. Thirdly, section 123(1)(b) of the Equality Act provides that the Tribunal may extend the three-month limitation period where it considers it just and equitable to do so. That is a very broad discretion. In exercising it, the Tribunal should have regard to all the relevant circumstances, which may include factors such as: the reason for the delay; whether the Claimant was aware of the right to claim and/or of the time limits; whether they acted promptly on becoming aware of their rights; the conduct of the employer; the length of the extension sought; the extent to which the cogency of the evidence has been affected by the delay; and the balance of prejudice (Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194).

Decision on Time Limits

10. Were the complaints made within the time limit in section 123 of the Equality Act 2010? Namely, within three months (plus early conciliation extension) of the act to which the complaint relates?
11. The complaints relied on in this claim cover the period from February 2022 to 5th January 2024. The claim form was presented on 4th April 2024. The respondent maintains that any acts relied on prior to 26th October 2023 are outside the time limit. Mr Mahmood does not dispute that 26th October 2023 is the relevant date, part of his response is that the complaints are part of the same continuing act extending over the relevant period. He also states that it would be just and equitable to extend the time limit.
12. Having regard to the date early conciliation began, and having heard no argument to the contrary, we find that, allowing for the early conciliation extension, isolated specific acts taking place prior to 26th October 2023 would be outside the statutory time limit at section 123(1)(a).
13. It means that unless the matters complained of are part of discriminatory conduct extending over a period of time that ended on or after 26th October 2023, isolated or specific acts which took place between February 2022 to 25th October 2023 would be out of time.
14. It means that the allegations from paragraph 13(e) to 13(h) of the list of issues, which cover the period 8th November 2023 to 5th January 2024 are within the first of the time limit at section 123(1)(a).
15. If not, was there conduct extending over a period?
16. To decide whether the earlier allegations amount to conduct extending over a period of time, we take into account that the February/ March 2022 allegation is made against Mr Wilson, and is in effect a performance related issue in that it relates to whether Mr Mahmood should pass his probation.
17. The complaint relating to June 2022 is regarding the alleged promotion of a colleague, so it is about the hierarchical structure within the organisation.
18. It is alleged in July 2023 the respondent refused to give the claimant a pay increase, so is an issue regarding remuneration.
19. Around the same time, Mr Mahmood complains, again about Mr Wilson, this time that he did not adequately support him in respect of discriminatory comments Mr Mahmood reported. That is in effect pastoral support a manager might offer.
20. We find each of these allegations deals with a distinct aspect of work, performance, hierarchy, pay and support. We do not consider that together, they amount to the same type of conduct extending over a period.

21. We have also considered whether these matters can properly be characterised as manifestations of a continuing discriminatory state of affairs. We are not satisfied that they can. The allegations concern separate management decisions taken at different times for different reasons and do not exhibit the necessary unity to amount to conduct extending over a period
22. We also consider it is not conduct that extends into any act committed on or after 26th October 2023. These are acts, beginning with Mr Mahmood's suspension, which effectively relate to the disciplinary process. That is unconnected with the earlier acts, so we do not consider the pre-26th October 2023 complaints amount to a continuing state of affairs that extended into the post 26th October 2023 complaints.
23. Therefore we find that the matters at paragraph 13(a) to 13(d) of the list of issues do not amount to conduct extending over a period of time such that they are in time under section 123(3).
24. As they are not, we need to consider whether it would be just and equitable to extend the time limit?
25. We will return to this after we have considered the substantive allegations themselves.

Direct Discrimination

26. *Section 13(1) of the Equality Act 2010 states:*

(1) 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.
27. Therefore, under section 13(1) of the Equality Act 2010 direct discrimination takes place where a person treats the claimant less favourably because of race than that person treats or would treat others. Under section 23 (1), when a comparison is made, there must be no material difference between the circumstances relating to each case.
28. Ordinarily, it is appropriate for a tribunal to consider whether the claimant received less favourable treatment than the appropriate comparator, then consider whether the less favourable treatment was because of race. However, in some cases, for example where a hypothetical character is used, the reason why the claimant was treated as she was would be considered first (see Shamoon v Chief Constable of Royal Ulster Constabulary [2003] IRLR 285).
29. Ultimately, the Tribunal's task is to determine the reason for the treatment.

The comparator exercise is evidential and assists in answering that question.

30. Decisions are frequently reached for more than one reason. Provided the protected characteristic or, in a victimisation claim, the protected act, had a significant influence on the outcome, discrimination is made out (see Nagarajan v London Regional Transport [1999] IRLR 572).
31. It is recognised that very little discrimination today is overt or even deliberate. Witnesses may even be unconsciously prejudiced.

Direct Race Discrimination

Allegation 13(a) In or about March or February 2022 His line manager reported to him that Mr Phil Wilson, his second line manager, was thinking of extending his probationary period.

32. It is common ground that Mr Wilson did consider whether to extend Mr Mahmood's probationary period.
33. It is also common ground that Mr Mahmood passed his probation following a probation review meeting on 10th May 2022.
34. As to whether Mr Wilson considering extending Mr Mahmood's probation amounted to less favourable treatment, probation is dealt with at clause 5 of Mr Mahmood's contract of employment, which reads:

Notice and Probation

5.1 The notice period required by either you or Macmillan to terminate your employment is 12 weeks or the statutory minimum, whichever is the greatest.

5.2 Your employment is subject to a 3-month probationary period during which your

performance, conduct and attendance will be monitored. During your probation, the length of notice required on either side to terminate your employment is 4 weeks' notice in writing.

5.3 Macmillan reserves the right to extend your probationary period should your performance, conduct or attendance not reach the standards expected of you by Macmillan, or to terminate your employment at any point during your probation period. Should an extension be deemed appropriate, the total probationary period will not normally exceed six months.

35. It is evident that under the terms of Mr Mahmood's contract probation could be extended to last a maximum of six months if performance and/or attendance warrant this. Most contracts of employment have a probationary period, and allow for the employer to reserve the right to extend the

probationary period. Therefore, on its own, the potential extension of the probationary period would seem to be more about standard industrial practice rather than the claimant's race.

36. In the present case, the respondent expressed some concerns regarding Mr Mahmood's performance. Therefore, when addressing Mr Wilson considering an extension, in the context of concerns raised regarding Mr Mahmood's performance, we are not satisfied that it amounts to less favourable treatment.
37. Even if it does amount to less favourable treatment, we are not satisfied that the treatment he received was because of race.
38. Mr Mahmood accepted that at the time he merely had suspicions and no evidence that this was race discrimination. He stated he was suspicious because Mr Wilson appeared cold and unfriendly towards him and because, drawing on his own life experiences as an Asian man who had previously experienced racism, he felt that something was wrong in his interactions with Mr Wilson. We do not consider Mr Mahmood's perception of Mr Wilson's demeanour is evidence from which we could infer that less favourable treatment was because of race.
39. However, Mr Mahmood also accepted that he did not discuss this particular issue, of extending his probation, with Mr Wilson. Therefore, any perceptions he may have had about Mr Wilson's attitude towards him would not have been in the specific context of extending his probation.
40. Mr Mahmood also relied upon information subsequently obtained following a DSAR, including references to "people like Amjad" within the documentation provided to him, which he says reinforced his suspicions.
41. Viewed in isolation, the phrase might be capable of giving rise to an inference of discrimination. However, the Tribunal does not assess comments in isolation. Having considered the context in which the phrase was used, we are not satisfied that it was used in a discriminatory manner.
42. Our reasons are that firstly, the context in which the comment "people like Amjad" was made, satisfy us that those remarks were not discriminatory.
43. These remarks are made at pages 143 and 144 between Mr Wilson and Mr Natt, they use this phrase with reference to whether the documentation they were discussing was suitable for "people like Amjad". There is no indication that the documentation had anything to do with race. Therefore, we consider it more likely that this was a work-related exchange rather a discriminatory comment.
44. A further exchange between Mr Wilson and Mr Natt states:

At the moment "eng leadership" is the heads plus Tom Newman as formerly my line report. Going forward we'll need to think about that as that defn would start to include people like Amjad and potentially others - we'll need to go one way or the other.

45. We were told by Ms Mahoney Smith that she was informed this was about including Mr Mahmood in higher level management discussions, and reading the exchange it is consistent with that explanation.
46. Page 171 is an exchange between Mr Wilson and Tim O'Neil, where the phrase is used in the context of "... it's as much to safeguard people like Amjad from potential fallout should something go wrong". That is inconsistent with discriminatory intent, and on the contrary is more consistent with seeking to protect him.
47. We are satisfied that the phrase "people like Amjad" has not been used in a discriminatory manner.
48. Secondly, we consider the contemporaneous documents show that there were some concerns regarding Mr Mahmood's performance. For instance, an email sent on 10 May 2022 by Michael Collins to Mr Wilson records performance concerns, including that Mr Mahmood could sometimes go down "blind alleys" when addressing technical issues, and he did not always have regard to the contribution of others.
49. It is relevant to note Mr Mahmood accepted in his oral evidence that he had no prior people-management experience, and that that Mr Collins considered it appropriate to implement a basic support plan for Mr Mahmood.
50. During cross examination Mr Mahmood accepted that Mr Collins' criticism was fair and represented constructive feedback. We also note Mr Mahmood stated that Mr Collins was a fair manager, who had worked with him for longer than Mr Wilson. We therefore conclude that Mr Collins was well-placed to assess Mr Mahmood's performance.
51. The purpose of a probationary period is, as clause 5 of Mr Mahmood's contract indicates, is to allow an employer to assess whether an employee's performance makes them suitable for the post, and that where an employee's performance warrants it, to extend the probationary period.
52. In this case, the allegation relates to Mr Wilson considering, rather than extending Mr Mahmood's probation. We do not consider that amounts to less favourable treatment, it is given consideration to whether to invoke a standard contractual clause.
53. Nonetheless, even if Mr Wilson considering extending Mr Mahmood's probation amounts to less favourable treatment, we are satisfied he gave that consideration because of issues relating to Mr Mahmood's performance. We

consider there is no evidence whatsoever that it was because of Mr Mahmood's race.

54. In our judgment, this allegation is not well founded.

Allegation 13(b) In or about June 2022 a restructure took place in which his colleague was promoted so as to report directly to the Head of Engineering, whereas Mr Mahmood did not.

55. It is common ground that the respondent underwent restructuring in 2022.

56. Mr Mahmood complains that around this time his role was diminished. He states that when he was recruited, he had been promised a larger role with the respondent involving responsibility for both Cloud and DevOps functions. Mr Mahmood referred to diagrams showing an organisational structure in which DevOps and Cloud would report to him.

57. Mr Mahmood's allegation regarding this issue is set out in his grievance (see page 241) which reads:

Job Role was diminished without me being aware (removal of Environmental and Database ownership and management) when I was moved to Engineering.

My fellow manager in Michael Collins' leadership team, Tinus Schalkwyk, was pushed up the Engineering hierarchy, head of Cloud, whereby he reported directly to Tom Natt, and I was pushed one level down and reported to head of Engineering, Philip Wilson.

This was unfair to me as we were on the same hierarchy level and both of us reported to Michael. Michael had already told me verbally before the formation of Engineering that DevOps and Cloud team, Tinus Schalkwyk and Yaswant, would become one team and I would be the head of the team. Yaswant Madi is a witness and was already told I would be his manager.

58. However, we do not consider that this amounted to promotion for Tinus. Mr Mahmood accepts that Tinus was grade 3, which is a grade above Mr Mahmood who was grade 4. Therefore, the fact that Tinus reported directly to the Head of Engineering whereas Mr Mahmood did not, is not less favourable treatment.

59. Even if it was less favourable treatment, and we accept Mr Mahmood's evidence that the June 2023 Listening Report identified wider concerns within the organisation affecting minority and Asian employees, and this caused him to reassess the restructuring as part of a broader pattern of systemic racism such that the burden of proof shifts to the respondent, we consider the respondent has discharged the burden of proof.

60. During her oral evidence, Ms Mahoney Smith pointed out that the organisational structure diagrams Mr Mahmood referred to were proposals. That is evident from the documents (for instance see page 123).
61. It was also her unchallenged oral evidence that Mr Collins did not have the authority to promise Mr Mahmood that he would take on this role.
62. Additionally, the respondent's reasons for Tinus taking up this role, as stated by Mr Natt at pages 431 and 432, were as follows:

Tinus is a Level 3, Cloud is coming to Engineering so we look at who is the most senior person we have? I need Level 3, the answer was Tinus is a Level 3, he currently sits under Michael's direct report (pre-me), he was competent had good attitude, at the right level so- synergy.

There was no creating of a new role and him moving into it, we had a Level 3 role and he was Level 3. We did it all with HR, I didn't magic it out of nowhere.

Infrastructure remained where it was

63. This does not indicate Tinus was promoted: he was already grade 3 and was moving to a grade 3 post.
64. Thirdly, in his oral evidence Mr Mahmood stated that as a result of the restructuring when DevOps moved into Engineering, Mr Collins's vision of Mr Mahmood managing DevOps and Cloud was scrapped. The Tribunal explored this further with questions put to Mr Mahmood, during which he confirmed his belief that it was as a result of the restructuring that he was not given responsibility for the Cloud function. Therefore, on Mr Mahmood's evidence, we consider that restructuring was the reason for him not being made responsible for the Cloud function, and not his race. On the balance of probabilities, we consider it is unlikely that Mr Mahmood's race played any part in the restructuring. From which it would follow that Tinus being allocated responsibility as a result of the restructuring was in no way whatsoever because of Mr Mahmood's race.
65. Accordingly, we do not consider this issue is made out, and we dismiss this allegation.

Allegation 13 (c) - In or about July 2023 he was told that he would not be receiving an annual pay increase.

66. We consider the factual basis of this allegation is incorrect.
67. By a letter dated 18th July 2023 the respondent wrote to Mr Mahmood informing him that he would receive a non-consolidated pay award of £3,402.00.

68. In addition to the underlying factual inaccuracy of this allegation, we do not consider that Mr Mahmood has been treated less favourably in respect of his pay.
69. Mr Mahmood contends that he took a pay cut when he transferred from being a contractor to an employee. That is not less favourable treatment, but is standard industrial practice that a contractor who is not entitled to holiday or sick pay is compensated by being paid at a higher daily rate. Ms Mahoney Smith gave that explanation in her oral evidence.
70. In any event, Mr Mahmood accepts that when he was recruited as a grade 4 employee, his salary was above the range for grade 4 employees because of his skillset.
71. We do not consider that someone recruited above the usual pay band can properly describe themselves as being treated less favourably in respect of pay, particularly when it was put to him in cross examination that he was the highest paid grade 4 employee, and he stated he did not know. We consider it is more likely than not that his pay would be higher than the typical grade 4 employee because otherwise the pay scale would be meaningless. We consider this is inconsistent with Mr Mahmood being treated less favourably.
72. One factor that impacted the level of Mr Mahmood's (non-consolidated) pay award in July 2023, was the respondent's wish to bring his pay in line with the grade 4 pay scale range. Again, we do not consider that is less favourable treatment. On the contrary, we consider the respondent was seeking to bring Mr Mahmood's pay in line with others of the same grade.
73. Mr Mahmood also stated the reason why he raised a grievance regarding his pay was because no one explained to him why he did not receive a pay increase in 2023 when he had received one in 2022. That on its own is not sufficient to establish that the treatment, even if unexplained, is direct race discrimination.
74. It is unfortunate that this situation regarding his pay was not made clear to Mr Mahmood during his recruitment, and the respondent accepted there should have been better communication with him about this. However, poor communication does not mean that the treatment itself as regards pay was less favourable, when it seems he was likely to be paid more than a typical grade 4 employee.
75. It is also relevant that, admittedly in the background, the respondent expressed the view that in light of the issues regarding Mr Mahmood's performance, it was not the appropriate time to be discussing any further pay increase.

76. It means having found Mr Mahmood received a non-consolidated pay award in July 2023, had a starting salary higher than a typical grade 4 employee, we do not consider he was treated less favourably, so this allegation fails.

Allegation 13(d) - At about the same time, his line manager (by then Mr Phil Wilson) was unsupportive when he reported comments made by two subordinates of Mr Mahmood, Alex and Luke, To the effect that Mr Mahmood was from a different culture.

77. Mr Mahmood alleges that, in or about July 2023, his line manager, Mr Wilson, was unsupportive when he reported comments made by two subordinates, Alex and Luke, to the effect that he was from a different culture, and that this amounted to direct race discrimination.
78. It is now accepted by Mr Mahmood that Mr Giannotti did not make comments to the effect that Mr Mahmood was from a different culture; that it was only Mr Lucas who did so. Mr Lucas's position was that when he referred to them being from different cultures, he was speaking about their work culture, which we take to mean their professional backgrounds.
79. When Mr Mahmood disclosed these comments to Mr Wilson and Ms Fisher, an employee relations adviser, at a meeting on 19th September 2023, Mr Mahmood perceived and described Mr Lucas's comments as discriminatory. Shortly after the meeting he wrote to Ms Fisher and Mr Wilson stating he didn't wish to pursue a complaint against Mr Lucas on the basis that everyone deserves a second chance. Ms Fisher responded two days later stating that due to the serious nature of the comment, the respondent had a duty to investigate the matter. In other words, even if Mr Mahmood did not wish to formally complain.
80. In the list of issues Mr Mahmood's allegation is not about the comment itself, but that when he reported the comment Mr Wilson was unsupportive. However, Mr Mahmood has not specified how Mr Wilson was unsupportive or in what way he could have been more supportive.
81. During cross examination, Mr Mahmood stated that he was prepared to give Mr Lucas the benefit of the doubt, accept his explanation that he was referring to workplace culture, and so he no longer regarded the comment as discriminatory.
82. But at the time, while prepared to give Mr Lucas a second chance, to all intents and purposes, he considered the comment was discriminatory, and that Mr Wilson had not provided adequate support when he reported this.
83. We note that Mr Wilson was then his line manager. But as Mr Mahmood has not specified what support Mr Wilson failed to provide, it is difficult for us to make a finding that he was unsupportive. We note that Ms Fisher made clear

that despite Mr Mahmood not wishing to take the matter further, the respondent intended to investigate. As far as we are aware, the respondent followed its procedures in investigating this matter, and Mr Mahmood has not argued otherwise.

84. Absent any clarification from Mr Mahmood as to what support Mr Wilson should have provided, but did not provide, and given that the respondent was investigating the matter, despite Mr Mahmood's apparent reluctance, we do not consider Mr Wilson was unsupportive. Accordingly, we do not consider this allegation is made out.
85. It follows this does not amount to an act of discrimination where the underlying factual basis is not made.

Allegation 13(e) - On 8 November 2023 he was suspended, despite being unwell and recovering from the shock of his wife's serious car accident.

86. It is common ground that Mr Mahmood was suspended on 8th November 2023.
87. According to the list of issues, he complained about being suspended despite being unwell and despite his wife having been in a serious road traffic accident (we learned that regrettably her injuries were sufficiently serious for her to be admitted to intensive care). However, Mr Mahmood's statement and closing submissions clarified that his wife's accident was relevant during the respondent's investigation, but not when he was placed on suspension, because his wife's accident was on 12th November 2023, thus postdating his suspension.
88. As to him being unwell, medical evidence from around this time is in the bundle. There is a GP print out of an entry on 8th November 2023 (printed 10th June 2025) referring to a GP consultation that morning when Mr Mahmood reported discharge from his right ear during the preceding 3 days, associated fevers, headaches, nausea and dizziness. He also had an ENT assessment at Birmingham City Hospital on the same day which reported discharge from his ear, headaches, no dizziness, but otherwise broadly similar to the GP assessment.
89. According to the record of the meeting on 8th November 2023 Ms Michelle began the meeting by acknowledging Mr Mahmood had been unwell, and enquiring whether he was alright to deal with the meeting. He confirmed he was ok to talk. She asked him again shortly afterwards whether he was well enough to have the conversation; he confirmed he was.
90. As the meeting progressed, Ms Michelle asked him whether he had attended inclusive recruitment training and whether he was familiar with the respondent's recruitment policy. It was at this point, Mr Mahmood objected to the questions and asked to stop the interview, noting that he found it

suspicious that the meeting was being held when he had a grievance meeting the following day.

91. Ms Michelle's recorded response was:

If you aren't able to answer these questions now then I have no choice but to suspend you pending further investigation and outcome of other conversations. I don't know anything about the grievance that you are referring to. It isn't anything to do with my investigation and I have no knowledge of it.

92. It was in these circumstances that Mr Mahmood was suspended.
93. In light of the medical evidence above, we find that he was also unwell at the time, and Ms Michelle evidently knew that was the case from the comments made at the start of the meeting.
94. However, we consider it is not entirely accurate to state that the meeting proceeded despite Mr Mahmood being unwell. Ms Michelle expressly asked at the start, and during the meeting, whether Mr Mahmood was well enough to deal with the meeting, and he initially confirmed that he was. However, when he asked to discontinue the interview, Ms Michelle did so.
95. It is correct to state that as a result, she informed Mr Mahmood that he was being suspended, stating this was in order to obtain information required to carry out an investigation.
96. As to whether this amounts to less favourable treatment, in our judgment, we consider it is likely that irrespective of their race, any employee facing allegations of making racist and sexist comments would be suspended pending investigation. We also take into account that generally, suspension is a neutral act. Additionally, the letter informing Mr Mahmood of his suspension sent the same day, stated the suspension was not any indication of guilt; Ms Michelle had also informed him of this during the hearing on 8th November 2023.
97. That said, we cannot ignore that, from the information we have seen, even prior to the suspension Ms Michelle was corresponding with others expressing a clear wish that Mr Mahmood should be suspended. We do not consider necessarily that discussing suspension with others is problematic or less favourable treatment: we consider it is not unusual for there to be some level of consultation before an employee is suspended. But there are repeated instances of Ms Michelle using language when discussing Mr Mahmood that is intemperate and unprofessional, as the respondent's witnesses acknowledged during their oral evidence.
98. Nonetheless, even if it could be argued that the views expressed by Ms Michelle in these exchanges meant that in this particular case Mr Mahmood's

suspension was not neutral, we remind ourselves that a difference in status and treatment is insufficient to amount to discrimination.

99. Therefore, it is not enough that Ms Michelle suspended Mr Mahmood, even if that were less favourable treatment, and even though he is Asian: something more is required. We also need some evidence that the suspension was because of Mr Mahmood's race. Mr Mahmood has not advanced any evidence of this.
100. Despite the various communications, and the candidness with which she expressed herself, there is no indication in any of Ms Michelle's exchanges that race was a factor in her views of Mr Mahmood or her treatment of him during the investigation.
101. Therefore, we find he has failed to discharge the evidential burden of adducing some evidence from which it could be inferred that his suspension was because of race. Accordingly, this allegation of direct race discrimination is not made out.

Allegation 13(f) - a disciplinary officer was appointed and his objections to the choice were ignored.

102. As part of his appeal against dismissal, Mr Mahmood objected to Zoe Kabir having acted as the disciplinary manager/chair. We were not referred to any objections being raised prior to him being dismissed.
103. In his appeal he expressed these objections as follows:
 4. *Conflict of Interest: I requested a change in the disciplinary chair, Zoe Kabir, due to a clear conflict of interest as being ch-chair of the BAME network and head of EDI and potential bias evidenced by the listening report which has 60+ testimonials and is mentioned in Macmillan cancer charity workplace culture 'systemically racist', report says | The Independent and Macmillan listening exercise response | Macmillan Cancer Support. I did not receive a response to this request, further raising concerns about the impartiality of the process.*
104. During his oral evidence he added that he had been informed by a former Head of EDI that Zoe Kabir was allegedly a "yes" person.
105. He also cross examined Zoe Kabir closely about whether they were friends with Ms Michelle, whether they would simply accept without scrutiny the results of Ms Michelle's investigation, to which Zoe Kabir explained the two of them had worked on ED&I matters together, in those dealings they found Ms Michelle to be a trusted colleague whom they found to be honourable in the dealings they had with her. But they clarified the two of them were not friends outside work.

106. As to whether their association might taint their objectivity, Zoe Kabir explained because the two of them had worked on projects together, they were especially conscious to guard against any bias, so as a result they conducted the interviews again to ensure impartiality.
107. This allegation relates to whether Mr Mahmood's objections regarding Zoe Kabir were ignored.
108. Mr Morey's evidence was that the objections were not ignored.
109. He stated that he asked Zoe Kabir about this allegation; that e-mail exchange is at pages 691 and 692, during which Zoe Kabir's response reflected their oral evidence regarding Ms Michelle being a trusted colleague. Mr Morey stated that as a result of these enquiries, he satisfied himself that there was no issue of impartiality on their part, although he accepted he did not reinterview any witnesses himself.
110. We do not consider that to be a deficiency. It would be unusual for a disciplinary appeal manager to conduct interviews themselves with the witnesses prior to an appeal hearing.
111. Although it is evident that Mr Mahmood objected to Zoe Kabir's appointment as the disciplinary manager, we do not consider those objections were ignored. We accept Mr Morey's evidence, which was not challenged, that he asked Zoe Kabir about this, and as a result was satisfied that there was no impartiality. We consider it was reasonable of him to be reassured. Having heard Zoe Kabir's evidence during the final hearing, it was evident that they were concerned that Mr Mahmood felt that his complaints had not been heard during the original investigation, and they gave him an opportunity to have his say, to be listened to, to ensure he understood he was being heard.
112. Zoe Kabir's awareness of the risk of bias, and taking steps to mitigate that risk, we consider were sufficient to satisfy Mr Morey that they conducted the disciplinary process impartially. Therefore, while Mr Morey did not accept Mr Mahmood's objections, those objections were not ignored.
113. Accordingly, we do not consider the factual allegation is made out. It follows we do not consider this amounts to an act of direct race discrimination.

Allegation 13(g) - The hearing on 5 January 2024 went ahead despite his requests for an adjournment on health grounds.

114. We understand that there was not a disciplinary hearing on 5th January 2024.
115. We proceed on the basis that the disciplinary hearing was on 12th December 2023, that is the date given in Mr Mahmood's witness statement. Furthermore, at pages 493 to 494 is a letter dated 8th December 2023

confirming that due to Mr Mahmood's health, the disciplinary hearing is being postponed to 12th December 2023.

116. The hearing had initially been due to take place on 30th November 2023, but it was postponed at Mr Mahmood's request on health grounds.
117. Despite the postponement, it is correct to say that Mr Mahmood did not want the hearing to go ahead on 12th December 2023, he had requested a longer postponement. It is also correct that, despite his request for a longer adjournment, the hearing went ahead on 12th December 2023.
118. The medical evidence covering this period comprises a letter from Sandwell and West Birmingham Hospitals NHS Trust. The letter states the hospital appointment date was 22nd November 2023, it was transcribed on 8th December 2023 and electronically signed on 14th December 2023. From that timeline, we take it that the respondent did not have a copy of that letter on 8th December 2023 when it nonetheless agreed to postpone the disciplinary meeting.
119. The contents of the hospital letter state:

Thank you for coming to our clinic Mr. Mahmoud, you came today for follow up due to recurrent right ear discharge. The last attack was two weeks previously, not much improved after the oral ciprofloxacin. Your ear is still discharging. You did not use the ear drops which was prescribed in the last visit. You had an on- and- off dizziness. You had a history of bilateral mastoidectomy and chronically discharging right ear.

Otoscopy, left side shows a Baja hearing aid with intact external auditory canal on the right side shows no mastoid or tagral tenderness. A small amount of pass deep inside with anteinferior perforation.

My plan is to start using ciprofloxacin ear drops, CT temporal bone and follow up.

120. Based on the above medical evidence, which does not state Mr Mahmood was too unwell to attend a disciplinary hearing, and bearing in mind that the original hearing had been postponed, we do not consider the respondent's refusal to postpone the final hearing for longer amounts to less favourable treatment.
121. We consider it is more likely than not that a hypothetical comparator would be required to attend a disciplinary hearing where, despite these health issues, where the hearing has already been postponed, and there is no medical evidence stating that the employee was too unwell to attend. It follows we do not consider this amounts to less favourable treatment.
122. In the absence of any less favourable treatment, this allegation of direct race discrimination is not made out, and fails.

Allegation 13(h) – He was dismissed

123. It is common ground that Mr Mahmood was summarily dismissed on 5th January 2024. Mr Mahmood states this was because of his race. According to the dismissal letter, the respondent states that he was dismissed for the following reasons:

The allegations of gross misconduct that you have been found guilty of are those that were discussed in detail during your disciplinary hearing, which are summarised below:

1. *Sexual Harassment: Referring to the attractiveness of a female when considering her employability during a recent recruitment campaign.*
2. *Racial Harassment: Referring to a person's race when considering their employability during a recent recruitment campaign.*
3. *Sex Discrimination: Referring to childcare responsibilities when considering an applicant's employability during a recent recruitment campaign.*

You admitted to the first allegation at the disciplinary hearing.

Based on the evidence available, I conclude you also commented on your reluctance to employ Asian applicants due to their race. There are 3 witnesses who corroborate this allegation.

On the balance of probability, I also find that you referred to a person having a child as hindering that person's ability to conduct their job properly, when screening applicants for a live vacancy. Again, there was a witness who corroborated this.

When considering what the appropriate sanction was, I have taken into account the mitigation you provided, namely that your comment(s) could be a form of 'banter' to bond with your team.

Macmillan has recently worked at length and at significant cost to educate on and eradicate acts of prejudice in its organisation. Irrespective of whether your comments may have been intended as banter, we cannot ignore the fact that your conduct has been offensive and has created a hostile environment for others within your team. Your actions not only constitute gross misconduct in accordance with Macmillan's disciplinary policy but fall significantly short of the expectations we have outlined via this recent extensive D&I investment.

We cannot tolerate such behaviours at Macmillan.

124. As to whether this amounts to less favourable treatment, we have considered Mr Mahmood's submission at the final hearing that Mr Giannotti is an actual comparator.
125. We note that Mr Giannotti was not previously named as a comparator; the list of issues refers to a hypothetical comparator. It means this case was not prepared with Mr Gannotti in mind as a comparator, and there is no documentary evidence regarding what steps, if any, were taken, as a consequence of the recordings he made, nor has there been an opportunity to deal with this with any of the witnesses.
126. In any event Mr Giannotti's circumstances do not make him a suitable comparator because he is less senior when compared to Mr Mahmood, and irrespective of what he has done, he has not been found by the respondent to have acted in a discriminatory manner.
127. We consider it is appropriate to use a hypothetical comparator as set out in the list of issues.
128. We consider that if someone (i.e. the hypothetical comparator), employed by the respondent as a manager, who was not Asian, who stated they shouldn't recruit anyone from Asia, they are not good workers, they are unreliable and/or difficult to manage, we consider it is likely that the respondent would have dismissed that person. We consider because this would be an act of overt race discrimination, the respondent would be likely to treat such conduct as gross misconduct irrespective of the wrongdoer's race.
129. We also consider that it would have dismissed a manager who is not Asian who had made comments regarding a woman being unsuitable for a role due to childcare commitments or that a woman should be recruited based on appearance.
130. The respondent's EDI policy states:

We take a strict approach to breaches of this policy, which will be dealt with in accordance with our Disciplinary Policy. Serious cases of deliberate discrimination may amount to gross misconduct resulting in dismissal.

131. The Disciplinary Policy gives 19 examples of gross misconduct, 4 of which relate to discrimination. These are:

Use of discriminatory language whether aimed directly at a colleague or in general conversation

Actively not recruiting or promoting an individual because of real or perceived protected characteristics

Actively excluding colleagues because of their protected characteristics including meetings, workload, social events

Treating or behaving differently towards a colleague because of a real or perceived protected characteristic

132. The fact that discriminatory conduct is treated as gross misconduct, and that it occupies over 25% of the examples of gross misconduct, leads us to conclude that someone else in a similar position to Mr Mahmood, but who does not share his protected characteristic of race is likely to also have been dismissed in these circumstances.
133. However, additionally combined with the fact that Mr Mahmood was employed as a manager with direct reports, that he participated in recruitment and was said to have made discriminatory comments in the context of a recruitment campaign, in our mind, this reinforces our conclusion that a hypothetical comparator would also have been dismissed.
134. Having found that Mr Mahmood's dismissal does not amount to less favourable treatment, it follows that this allegation of direct race discrimination fails.
135. In light of the above, the claim for direct race discrimination fails.

Victimisation

136. In summary, by section 27, victimisation is where an employer subjects an employee to a detriment because the employee has done a 'protected act' or because the employer believes that the employee has done or might do a protected act in the future.
137. A protected act can include bringing a grievance as part of which it is alleged the employer has breached the provisions of the Equality Act 2010.
138. According to the statutory code of practice (paragraph 9.8):

'Detriment' in the context of victimisation is not defined by the Act and could take many forms. Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards.

139. It is agreed between the parties that Mr Mahmood's grievance submitted on 23rd October 2023 was a protected act.

Allegation 13(e) - On 8 November 2023 he was suspended, despite being unwell and recovering from the shock of his wife's serious car accident.

140. We have already found that Mr Mahmood was suspended. We considered suspension was a neutral act from which it would follow that it does not amount to a detriment.
141. We also considered the alternative position, namely if the suspension was not a neutral act. In that situation it could amount to a detriment.
142. Following through on the alternative position, if the suspension was a detriment, we would need to consider whether Mr Mahmood was subjected to that detriment because he committed a protected act, in other words that the grievance played a material part in the decision to suspend him.
143. We note that it was Ms Michelle who informed Mr Mahmood that he was to be suspended. Although she did so less than a fortnight after Mr Mahmood submitted his grievance, and he relies on that timing as evidence to support his contention that the suspension was because of the grievance, Ms Michelle's account from the contemporaneous records is that she did not know about the grievance. However, that is a hearsay account.
144. That said Zoe Kabir's direct evidence was that the grievance and disciplinary process are kept separate, which supports Ms Michelle's claim that she was unaware of the grievance.
145. Despite the numerous messages and e-mails from Ms Michelle previously referred to, in which she displays an evident dislike of Mr Mahmood, and in which she communicates with marked candour, she makes no reference to the grievance playing any part in her decision making, or of even being aware of the grievance, which lends support to her claim that she was unaware of it.
146. Mr Mahmood has not provided any evidence that Ms Michelle was aware of the grievance, and in light of the above evidence tending to show that she was not, we find she was not aware of Mr Mahmood's protected act.
147. It means that a grievance she was unaware of, could not be the reason why she suspended Mr Mahmood, so it follows her suspending Mr Mahmood was not an act of victimisation.

Allegation 13(f) - a disciplinary officer was appointed and his objections to the choice were ignored.

148. This allegation is that the respondent allegedly ignored Mr Mahmood's objections to the appointment of Zoe Kabir as disciplinary manager. We have not found that allegation is made out. We consider that when conducting the appeal, Mr Morey did have regard to Mr Mahmood's objections and made enquiries of Zoe Kabir about this. He was satisfied that Mr Mahmood's

objections were not well-founded. It follows if the detriment is not made out, victimisation cannot be made out, accordingly, this allegation fails.

Allegation 13(g) - The hearing on 5 January 2024 went ahead despite his requests for an adjournment on health grounds.

149. The claimant might reasonably consider he was put at a disadvantage when the respondent refused to postpone the 12th December 2023 disciplinary hearing, in which case we consider it amounted to a detriment.
150. However, considering the respondent's refusal in context, we do not consider he was subjected to this detriment because he did a protected act. That is because firstly, according to Zoe Kabir's direct evidence, those involved in the disciplinary process would not be aware of the grievance. It follows they would be unaware of his protected act. Mr Mahmood has not adduce any evidence from which it could be inferred that the refusal to postpone the disciplinary hearing for a longer period was because of his protected act. The medical evidence he relies on does not provide any clinical reason why it may be detrimental for Mr Mahmood to attend a disciplinary hearing, and he did in fact attend it. Therefore, we consider it was more likely, as Zoe Kabir stated, that a longer postponement was refused because the respondent wanted to progress the disciplinary. This is consistent with the absence of any supporting medical evidence providing a reason why the disciplinary hearing could not proceed.

Allegation 13(h) – He was dismissed

151. Mr Mahmood was dismissed, and we consider this was evidently a detriment. However, we are not satisfied that he was dismissed because of his grievance.
152. When dealing with dismissal as an act of direct race discrimination, we found that in accordance with the respondent's EDI and disciplinary policy, the discriminatory conduct which the respondent found Mr Mahmood was guilty of would provide grounds to dismiss an employee. We also considered Mr Mahmood's position as a manager and involvement in recruitment reinforced that conclusion.
153. We find that is the reason that he was dismissed, and we are not satisfied that Mr Mahmood's grievance played any part whatsoever in the decision to dismiss him.
154. In light of the respondent's direct evidence that the disciplinary process and the grievance are kept separate, and in the absence of any evidence that the decision maker, Zoe Kabir, was aware of the grievance, this is a further reason why we do not consider the dismissal was because of the protected act.
155. It means we do not consider that the dismissal was an act of victimisation, and the claim for victimisation as a whole fails.

Wrongful Dismissal

156. Mr Mahmood was summarily dismissed and so was not paid the 3 months contractual notice pay, which he now claims.

157. To address the claim for wrongful dismissal, we need to determine whether the allegations that Mr Mahmood made discriminatory comments are made out, and if so, whether they amount to gross misconduct, in order to determine whether he was entitled to notice pay.

158. The allegations were that Mr Mahmood made comments that were discriminatory on the grounds of race and on the grounds of sex.

159. Mr Osborn, one of Mr Mahmood's direct reports, gave oral evidence at the hearing, which was consistent with his written evidence. At paragraph 7 of his witness statement, Mr Osborn states that he heard Mr Mahmood make comments about Asian candidates while reviewing CVs for potential recruits. At paragraph 11 of his statement, Mr Osborn continues that while shortlisting candidates Mr Mahmood commented that Asian candidates may be technically capable but difficult to manage. Paragraph 11 continues that Mr Mahmood:

"... at a work event ... commented that the suitability of a female candidate would depend on her appearance."

160. Mr Giannotti, another of Mr Mahmood's direct reports, did not give oral evidence at the hearing. Mr Mahmood alleged that paragraphs 28 and 29 of his witness statement were inconsistent with paragraph 32.

161. At paragraph 28 of his witness statement, Mr Giannotti states:

"... I observed the Claimant make comments about a candidate suggesting she was unsuitable because she had children and that would affect her ability to deliver."

162. His witness statement continues (at paragraph 29):

On a separate occasion, colleagues informed me that the Claimant had commented that a female team member should be hired only depending on her appearance. I also described a further incident in which my manager stated that "we shouldn't get anyone from Asia" because people from Asia were "not reliable" or "not good workers."

163. The final relevant extract from Mr Giannotti's witness statement is paragraph 33, which reads:

I also gave accounts of comments I personally heard, including remarks that a candidate returning from parental leave would be unsuitable because

childcare would impact her work, and separate comments relating to the appearance of female candidates and the reliability of candidates from Asia.

164. A number of Mr Mahmood's criticisms regarding the disciplinary proceedings and his dismissal relate to the fairness of the respondent's process. As we explained at the outset of the hearing and on subsequent occasions, this is not an unfair dismissal claim. In respect of the claim for wrongful dismissal, our task is not to assess the fairness of the investigation or disciplinary process, but primarily it is to determine whether Mr Mahmood was guilty of gross misconduct which could justify his summary dismissal without notice pay.
165. Accordingly, the issues for us are whether Mr Mahmood made any or all of the comments alleged and, if so, whether those comments amounted to gross misconduct.
166. We do not accept that any difference between the evidence of Mr Osborn and Mr Giannotti amount to material inconsistencies. Witnesses recounting the same events may describe them in different terms. We have not identified any conflict between their accounts. Indeed, we consider identical wording could be more suggestive of collaboration than reliability. We also note the accepted evidence that there was some tension in the working relationship between Mr Osborn and Mr Giannotti, which in our judgment makes collusion between them less likely. In turn, it means that the overall consistency in their statements regarding what Mr Mahmood said about Asian employees and women lends credibility to their statements.
167. Nor do we consider it significant that Mr Osborn's evidence is narrower in scope than Mr Giannotti's. Each witness can only give evidence of what they witnessed directly or indirectly by way of hearsay accounts. We also reject the submission that Mr Giannotti's evidence contains material internal inconsistencies. Although paragraph 33 of his statement could have been expressed more clearly, we do not regard it as inconsistent with paragraphs 28 and 29.
168. We are not persuaded that Mr Giannotti fabricated allegations against Mr Mahmood because he wanted a different manager. The core features of his account are broadly corroborated by Mr Osborn, who is said to have had no such motive.
169. As to whether Mr Mahmood admitted making comments concerning the appearance of a female candidate, we find it more likely than not that he did. That is what the contemporaneous note of the meeting records. Ms Bradley's evidence that Mr Mahmood denied making discriminatory comments is not necessarily inconsistent with that record. A person may acknowledge making a comment while denying that it was discriminatory.

170. Indeed, that conclusion is consistent with Mr Mahmood's evidence that he engaged in what he regarded as workplace banter with colleagues. We consider it more likely than not that he made the comments alleged but did not himself view them as discriminatory.
171. We place little weight on the fact that Mr Mahmood did not sign the meeting notes in which his admissions were recorded. They were contemporaneous records, and no convincing reason has been advanced to doubt their accuracy. Although the notes record him admitting to some conduct, they also record Mr Mahmood denying other allegations, which tends to support their accuracy, and therefore, their reliability. If, as Mr Mahmood alleged, the disciplinary proceedings were biased against him, a record showing he had admitted all, or a greater number of the allegations would be more consistent with his account.
172. We accept that some of Ms Michelle's communications demonstrate hostility towards Mr Mahmood. However, she was not the decision-maker. The decision to dismiss was taken by Zoe Kabir after re-interviewing the witnesses. We therefore attach limited significance to criticisms of Ms Michelle's role when deciding whether the conduct occurred.
173. For the above reasons, and having regard in particular to the consistency between the evidence of Mr Osborn and Mr Giannotti concerning the nature of the comments attributed to Mr Mahmood, we find on the balance of probabilities that Mr Mahmood made the comments alleged. In some respects it is about assessing the competing evidence to determine which account is more likely to be accurate. In this case, where we have heard direct evidence from Mr Osborn, which reflects the hearsay evidence of Mr Giannotti, and Mr Mahmood's own evidence before us is that the only comments he made were banter, and that is the same term he used during the disciplinary meeting when, as we have found, he admitted commenting that whether to recruit a female candidate depended on their appearance. In our judgment, Mr Mahmood made the comments as alleged, he considered them to be workplace banter, however, in our judgment, they are discriminatory.
174. We find that these comments amount to a repudiatory breach of Mr Mahmood's employment contract. Making these comments goes against the respondent's ethos. He was in a position of responsibility, and was participating in recruitment – his comments were regarding reasons why individuals with certain protected characteristics should not be recruited. That was a fundamental breach of the responsibility placed on him, and it also exposed the respondent not only to reputational damage but to litigation risk. The seriousness with which the respondent regards such conduct is indicated by its EDI and Disciplinary policies.
175. We consider the case for Mr Mahmood having breached a fundamental term of his employment contract is made out, and the respondent was entitled to

summarily dismiss him without notice pay. Accordingly, the claim for wrongful dismissal fails.

Whether it is just and equitable to extend the time limits

176. In light of our decision that all claims fail, including the claim for race discrimination, in respect of which the first four, which we have found are out of time, we find that all claims lack merit.

177. We do not consider it can be just and equitable to extend the time limit for bringing a claim that lacks merit, accordingly we do not do so.

Conclusion

178. In the circumstances, the claims for direct race discrimination and victimisation both fail.

Approved by:

**Employment Judge Tueje
12 August 2026**

Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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 at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislationpractice-directions/