



EMPLOYMENT TRIBUNALS

Claimant
Mr C Filipoiu

Respondent
Lifeways Community Care Ltd

Heard at: Bury St Edmunds (CVP)

16-19 June 2025

Before: Employment Judge S Moore
Mr D Bean
Ms B Handley-Howorth

Appearances

For the Claimant: In person
For the Respondent: Mr D Comb, counsel

JUDGMENT

The claim of race discrimination (direct and indirect discrimination is dismissed).

Introduction

1. This is a claim for race discrimination brought by way of a Claim Form lodged on 24 October 2023.
2. The Claimant is of Romanian nationality, and describes himself of white, non-British ethnicity. He worked for the Respondent as a Scheme Manager from 9 March 2020 until he resigned sometime after the lodging of this claim. He complains about the fact that he failed to achieve promotion to the level of Area Manager and believes he was treated less favourably than his British white colleagues.
3. At a Preliminary Hearing on 18 April 2024 before EJ Hutchings this hearing was set down for 16-20 June 2025.
4. At that hearing it was agreed the acts of direct race discrimination were alleged to be:

- (i) In July 2023, not offering the Claimant the role of Area Manager, following a recruitment process and interview with Jemma Carley and Catherine Bircumshaw;
 - (ii) Failing to follow point 13.12 of the Respondent's recruitment policy; and
 - (iii) Failing to provide the Claimant with written feedback.
5. It was agreed the act of indirect race discrimination were based on an alleged practice of not following point 13.12 of the Respondent's recruitment policy which provides:
- "After the interviews, interviewers must locate a quiet venue to reflect upon candidates' performances. Interviewers should score the candidates' answers individually before coming together to discuss scores and coming to an agreement within 24 hours of the interview. These will then be added together and averaged to determine an overall score. All documents must be fully completed, signed, dated and saved on the candidate management system."
6. At the hearing we heard evidence from the Claimant, and for the Respondent from Ms Jemma Carley (JC), Ms Catherine Bircumshaw (CB), and Ms B Okenla (BO). The Claimant also relied on a statement from Ms K East, although she did not attend to give evidence. We were also referred to a bundle of documents.
7. Based on that evidence, we make the following findings of facts.

The facts

8. The Respondent is a provider of residential, supported living and mental health services to service users with a range of needs such as learning disabilities, autism, physical disabilities, acquired brain injuries and mental health needs.
9. The Claimant was employed by the Respondent as a Scheme Manager from 9 March 2020. He is a qualified General Nurse, a care manager with a QCF Level 5 Diploma in Leadership for Health and Social Care (Adults Management) and holds a commercial pilot's licence obtained in the US. He also completed four years of theological studies at the University of Bucharest.
10. On three occasions during his employment, in 2021, 2022 and 2023, the Claimant applied, unsuccessfully, for promotion to the role of Area Manager. This case has arisen out of his application in 2023.
11. In June 2023, JC, previously an Area Manager, was promoted to Regional Director. On review of business need, the Respondent decided that in addition to JC's vacant Area Manager role, a second Area Manager role should be created, with one to cover the northwest region and one to cover the central region. Five candidates applied for the northwest role, and four for the central region, including the Claimant. One of the applicants for the central region withdrew and one applicant applied for both positions.
12. All the applicants were invited for interview. There was no shortlisting process as the Respondent determined that all the applicants were suitable candidates.

13. Together with JC, an Area Manager, CB, was appointed to conduct the interviews.
14. By email dated 3 July 2023, the Claimant was invited to attend for interview on 12 July 2023. The interview was scheduled to last ninety minutes.
15. The candidates were all asked to prepare a 15-minute presentation covering two questions:
 - (1) What improvement actions have you taken where service delivery is below the expected quality threshold? What legal, practice and theoretical frameworks informed your actions?
 - (2) Please give us an example of how you have reached a solution to a problem with reference to the reflective and proactive leadership styles set out below.
16. Candidates were provided with information in relation to the qualities and pitfalls of reflective and proactive leadership styles and informed that their presentation would be loaded onto a lap-top for their use on the day of interview. They were required to email their presentation to the interview panel prior to their interview.
17. The candidates were also told to prepare two further questions ahead of the interview:
 - (3) Tell us what strategies you have used or experiences you have of supporting staff in their personal development. We are looking to understand how you can spot and grow talent. What theories of leadership and management underpin your practice and approach?
 - (4) Please share with us three images or objects that say something about: your past leadership role; your current leadership role and your desired future leadership role.
18. The format of the interview and the questions were the same for each candidate: the presentation answering questions 1 and 2, the candidates' answers to questions 3 and 4, finally a few additional questions the candidates had not prepared for.
19. Prior to the interview JC and CB agreed that they would base their recruitment decision solely on the candidates' performance in their interviews and that the presentation would be weighted as 50% of the overall assessment. The rationale for this was that they would then both have the same frame of reference and that their previous knowledge of some of the candidates would not impact the result (in this respect JC had worked with four of the candidates and CB with one of them). That recruitment decision (to base the appointment purely on interview performance and weight the presentation as 50%) was plainly one that the Respondent was entitled to take.
20. It transpired that in the room in which the interviews were conducted no designated laptop was available. JC and CB, who each had their own laptops, therefore agreed that if any candidate didn't bring their own laptop they would be offered the use of JC's laptop.
21. In the event the Claimant was the only candidate who didn't bring his own laptop and/or bring a printed hand out and asked if he could use his mobile

phone to present his presentation. He told the Tribunal that he did so because his work laptop had technical problems. At the beginning of the interview JC asked the Claimant if he wanted to use her laptop but he declined. He said he declined the offer because he didn't want to inconvenience JC and because he had written notes on his mobile phone which he wanted to use.

22. JC and CB made notes of the interviews of each candidate. CB's notes were more extensive than those of JC. This was partly because CB and JC watched the presentations on JC's laptop which meant that CB had her laptop available to take notes while JC made some notes in a notebook which she then transcribed onto her laptop afterwards. Although the Claimant challenged when the notes were made, the metadata from the relevant word documents showed they were made during or shortly after the interviews.
23. CB's notes of the Claimant's presentation (questions 1 and 2) summarize the content of his presentation and then state by way of comment "Seemed unprepared in terms of presentation as got lost on more than one occasion in terms of where he was on the slides. This led to the presentation being disjointed. Q2 – not really clear about what actions were actually taken and answer was vague."
24. JC didn't make any notes of the Claimant's presentation. Her evidence to the Tribunal was that it was extremely disjointed, that he lost his place on many occasions and that on one occasion he lost the point he was trying to get across. She said it got to the point where she interjected and asked again whether he would like to use her laptop, but he declined the offer. Her evidence was that the Claimant did not seem well-versed in the contents of his slides and that he did not answer either question 1 or 2 well. She was surprised because she knew the Claimant had been supporting a struggling service and supporting a team with staffing issues which she expected him to draw upon.
25. In cross-examination the Claimant denied that he got lost in his presentation but accepted that he appeared to lose track because of the difficulty of using slides on a small screen. While he said he couldn't remember if JC offered him the use of her laptop for a second time (during his presentation), we accept she did make that offer and that he declined it.
26. As regards question 3, (directed at supporting staff in their personal development), the notes of both JC and CB summarize the Claimant's answer. CB's notes then comment "Not actually clear what CF did to identify and develop SM [the member of staff whom the Claimant relied on by way of example]. Example was vague and not fully explained. Did not mention any theories of leadership and management at all."
27. As regards question 4, and the supplementary questions that the candidates did not prepare for, the notes of both JC and CB summarize the Claimant's answers without comment.
28. In her evidence to the Tribunal JC stated that the Claimant's answers to questions 3 and 4 were better than his presentation but were still objectively poor as he failed to provide relevant or sufficient details, despite JC knowing that he had the relevant experience to draw upon. Her evidence to the Tribunal,

was that her impression was that the Claimant came to the interview as if expecting to be successful, so he did not need to prepare.

29. After the interviews JC and CB discussed the candidates, but there are no notes of those discussions. CB also provided her feedback to JC by way of email.

30. Her feedback in relation to the Claimant was as follows:

“Presentation and prepared questions not totally coherent. Lost way at times during both of these. Clearly has been doing extra work to prepare for AOM role however the examples of this were not always present in his answers. Unprepared questions better answered for the most part but again lacking the examples he would have provided considering his recent experience.”

31. The successful candidate for the central region (the region for which the Claimant had applied was JK).

32. Notably, CB’s feedback in relation to JK was as follows:

“Professional and organized candidate. Was able to use experience from both current and previous roles in order to demonstrate competence in answering the questions. Has been keen to undertake additional responsibilities in current role including training around substance misuse which JK has formulated and delivered. Demonstrated he has the skills to be able to work at a more senior level.”

33. The successful candidate for the northwest region was AC.

34. CB’s feedback in relation to AC was as follows:

“Very natural and personable candidate. AC has been undertaking additional responsibilities more whilst completing her own role which has demonstrated an ability to work across services and prioritise. AC has travelled long distances for periods of time and has increased her knowledge and skills in terms of managing, including coaching and mentoring other managers. Throughout the interview AC was calm and the answers she gave were focused and relevant to experience she has gained. It was clear that examples used were genuine and have equipped AC with a number of skills to enable her to successfully undertake a more senior role.”

35. We also note, by way of example, CB’s feedback for KMc, whose application, like that of the Claimant, was also unsuccessful:

“Clearly had put a lot of thought into her presentation and was able to give information in terms of quality improvement. Ran over in terms of presentation and needed to be stopped during second question. No real experience demonstrated in terms of additional responsibilities which would be relevant in showing experience to step into AOM role. Able to show reflection in terms of development and the process she has been through however use of language during interview would be a concern in terms of demonstrating professionalism in a more senior role.”

36. On 17 July 2023 JC telephoned the Claimant to tell him he had not been successful. She told him that his presentation had been very poor and lacked

focus and seemed rushed and ill-prepared. Also, that while his responses to the two supplementary questions had been better, he did not answer them to the required standard and his experience did not come through in his answers. We accept JC's evidence that she did not tell the Claimant, as he alleged, that his answers to the two supplementary questions were "brilliant" and that it was only his presentation which let him down.

37. On 20 July 2023 the Claimant raised a grievance, stating that he had now applied three times for the role of Area Manager and suggesting that the fact he had been unsuccessful was due to discrimination or unconscious bias.
38. On 27 July 2023 the Claimant had a grievance meeting with BO, the Regional HR Manager.
39. On 4 August 2023 BO informed CB and JC that the Claimant had raised a grievance about the appointment process and met with them on 10 August 2023.
40. Following the meetings, BO was confident that the Claimant's Romanian nationality had not been a part of the decision-making process. Although JC's notes were not as detailed as CB's notes and did not contain an evaluation of the candidates' answers, both JC and CB clearly articulated that the Claimant's interview performance had been poor, and this was consistent with CB's interview notes and the written feedback she had provided afterwards.
41. On 24 August 2023 BO wrote to the Claimant stating that his grievance had not been upheld. She stated "During the meeting, you shared your perceptions about the lack of diversity at various levels of the organization and outside of our sector, which I acknowledged. However, what I have not found evidence of is how the panel treated you less favourably than others, whether this is directly or indirectly. Upon review of the process and documentation, I can find no evidence of discrimination against you because of your ethnicity or race. Further, there were four other colleagues apart from yourself, who were equally unsuccessful."
42. Nevertheless, BO also stated that the investigation had raised some areas of improvement for the business to consider improving their recruitment practices, including reviewing and updating their interview templates.
43. On 24 August 2023 BO sent an email to James Westwood-Beere, attaching her conclusion in respect of the grievance and making some observations about the recruitment process. She noted that:

"...there is no scoring mechanism that would introduce a level of objectivity in determining the successful candidate during the selection process. Scoring is also mentioned in the recruitment policy under 13.12 however this was absent from the document used.

"Although on this occasion one of the panel members prepared contemporaneous feedback, had they not done so, it would be difficult to determine how they reached their conclusion on who was successful. The RD (JC) was able to articulate the reasons why the candidates were unsuccessful; however, this was not consistently written down in the interview notes. Further,

there is no sense that the Recruiter is checking the quality of the notes received to enable these to be written properly before accepting them. This is a risk for us in recruitment, given the indirect discrimination that could occur...”

Conclusions

44. In a complaint of race discrimination, the burden of proof is on the Claimant.
45. However, s.136 of the Equality Act 2010 (EqA) provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision in question (in this case ss.13 and/or 19 EqA) the burden of proof is reversed. The court must hold a respondent discriminated against a claimant unless the respondent shows otherwise.
46. Nevertheless, the first step in the analysis falls to the Claimant, namely, to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of discrimination against him.
47. In this respect the Claimant alleged there were clear discrepancies and omissions between the interview notes and his presentation and answers he gave in the interview.
48. We are not satisfied this is the case.
49. As regards the summaries of the Claimant's answers, the assertion that these did not adequately reflect his answers was made in his closing submissions and was not something he put to either JC or CB in cross-examination.
50. In any event CM's summary of the Claimant's presentation appears to reflect the contents of the Claimant's presentation slides (which are contained in the bundle) and is of similar length and style to her summary of the other candidates' presentations. Similarly we note that both CM and JC's summaries of the contents of the Claimant's answers to the other questions are of similar length and style to their summaries of the other candidate's answers.
51. As regards CB's comments on the quality of the Claimant's presentation, we consider that the comment about the Claimant appearing to be unprepared reflected the fact that, unlike the other candidates, the Claimant did not bring a laptop or any print outs with him and instead chose to conduct his presentation using his mobile phone. As regards the comment that he got lost on more than one occasion, the Claimant accepted himself that it may have appeared he got lost during his presentation and the comment that the presentation was disjointed flows logically from that problem. Further, as regards his answer to question two being vague and it not being clear what actions were actually taken, there is nothing in the printout of the Claimant's slides or the evidence we have heard to suggest this comment was unjustified.
52. As regards CB's comments on the quality of the Claimant's answer to question three, when it was put to the Claimant in cross-examination that he had not mentioned any theories of leadership and management at all, the Claimant could only say that as far as he could remember he thought that he had done so and that in any event JC and CB were aware of what he had achieved and that he would have talked about the servant theory of leadership if he had been

asked about it. We are therefore not satisfied that the Claimant did refer to theories of leadership and management in his answer and that CB's comments were inaccurate or unjustified.

53. The Claimant also relied on the fact that JC and CB had not used a scoring matrix as part of the interview process, a fact which the Respondent accepts. The evidence was that the interview form for Area Managers (unlike the interview forms for less senior positions), which had been provided to JC and CB by the recruitment team, did not contain a scoring matrix and that JC and CB had not noticed this fact or drawn attention to it prior to the interviews.
54. While it is true that a scoring matrix is a valuable tool in ensuring that an interview process is conducted as fairly, objectively and transparently as possible, the fact that one was not used does not of itself suggest the interviews were not conducted fairly and objectively, still less that the process was discriminatory. We note that the candidates were all required to present the same presentation and answer the same questions and that there is a record – albeit an imperfect one – of the answers given, together with contemporaneous feedback from CB in respect of each candidate which is of similar length and written in a consistent, informative and dispassionate tone.
55. The Claimant also relied on the fact that JK, who was the successful candidate for the central role, had been recruited by JC and that she had previously been his mentor and line manager. In evidence JC stated that, if anything, this fact counted against JK because she had been surprised by his application as she did not think he was ready for such a senior appointment, however in fact he had performed extremely well at interview. We found JC a credible and honest witness and accept her evidence on this point. However, the blunt fact of the matter is that even if JK had been appointed because of favouritism on the part of JC, this would not avail the Claimant because any such advantage to JK would have been unrelated to the Claimant's nationality. We are concerned with a complaint of race discrimination, not procedural unfairness.
56. The Claimant also relies on the lack of diversity within the Respondent organization and the fact that both JC and CB have a track record of appointing managers of white British ethnicity. According to statistics provided in the bundle, as of 15 September 2023, out of a total of 51 Area Managers, 75% were described as "White (UK and Ireland)", 4% described as "White (Other)"; 12% described as "Non-White", and there was no data in respect of 8%." Further, JC accepted in evidence that she had never appointed to Area Manager level somebody who was not of white-British ethnicity and could only give one example of someone she had appointed to Scheme Manager level who was not of white-British ethnicity. Similarly, CB accepted she had not appointed anyone to Scheme Manager level who was not of white-British ethnicity; (CB had not been involved in any recruitment exercise for an Area Manager role other than the one at issue in this case).
57. We can understand why the Claimant considers this data raises questions, however, of itself it does not advance the Claimant's case as we have no information regarding the ethnic breakdown of the pool of candidates from which those appointments were made, still less any information to suggest that

any of the appointments in question were not made on merit. More notably, although the Claimant worked for the Respondent from 9 March 2020, it is apparent from his grievance letter that he did not believe himself to have experienced any discrimination until his unsuccessful application in July 2023. Indeed, in that letter he speaks in glowing terms of the support he has received.

58. The truth of the matter is that the Claimant finds it hard to understand, still less accept, that he did not get the job of Area Manager, despite his level of experience and qualifications and has assumed that the reason must be an unconscious bias based on his nationality. However, the assessment was not made on the basis of what was known about the candidates' experience or qualifications prior to interview but solely on the basis of their performance at the interviews themselves. Furthermore, the presentation aspect of the interview was weighted heavily at 50%. This was an approach which the Claimant might regard as unfair or shortsighted but was one the Respondent was entitled to take, and the facts we have found in relation to the recruitment process are not ones from which we could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination against the Claimant. To the contrary the facts suggest that the Claimant was simply not the strongest candidate on the day.
59. It follows that the complaint of race discrimination is dismissed.

Approved By:

Employment Judge S Moore

Date:

19 June 2025

Sent to the parties on:

21 July 2025

For the Tribunal:

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