



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Mubin

**Respondent:** Jacksons Dairy Limited

**Heard at:** Manchester

**On:** 29, 30 and 31 October  
2025 and 16 December 2025

**Before:** Employment Judge Cookson

## REPRESENTATION:

**Claimant:** Mr Ward (counsel instructed in the direct access scheme)

**Respondent:** Mr Farooq (litigation consultant) during the October hearing dates and Ms Nankya (litigation consultant) on 16 December

**JUDGMENT** having been sent to the parties on **8 October 2025** and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

# REASONS

## Introduction

1. This is a claim about alleged discrimination during recruitment. The claimant is a British Pakistani. He has a stammer and alleges that has led to a perception of disability. He claims that he was discriminated against by the respondent when he applied for a role with them on grounds of his race and their perception that he was a disabled person.
2. Early conciliation started on 28 May 2024 and ended on 12 June 2024. The claim form was presented on 13 June 2024.
3. The legal issues in this case were identified at a preliminary hearing before Employment Judge Batten on 10 January 2025. The legal issues were confirmed by the representatives at the start of the hearing.

4. In reaching my judgment I have considered:
  - a. A final hearing bundle prepared by the respondent which runs to some 227 pages plus additional documents disclosed in the course of the hearing;
  - b. A bundle of additional documents prepared by the claimant which runs to some 119 pages
  - c. Written and oral evidence from
    - i. The claimant who had provided two statements
    - ii. Mr Craig Hughes (transport manager) for the respondent
    - iii. Mr Wayne Hughes (chief executive officer) for the respondent
  - d. Oral submission from the parties

#### **Initial matters**

5. The claimant had made a strike out application before this hearing based on the respondent's conduct and non-compliance with the tribunal orders. The respondent objected to the claimant's second witness statement because that had been sent after the respondent's statement..
6. In brief, Mr Ward told me that he had significant concerns about a fair trial in this case. There had been material noncompliance with tribunal orders in this case and despite belated disclosure it still appeared that not all relevant materials had been disclosed. Mr Ward pointed out that in recruitment cases it is relevant to know who the other candidates are and who was successful; the claimant had only discovered who had been appointed via LinkedIn. How many other candidates were considered remained a mystery. I was provided with a timeline of compliance with tribunal orders to illustrate the challenges the claimant had faced. Mr Farooq explained that non-compliance had arisen because of workload pressure on a colleague. Having drawn my attention to his concerns, Mr Ward decided not to pursue the claimant's strike out application.
7. The claimant also sought a witness order for Mr Camy the recruitment agent who had acted for the respondent. Regrettably it appears that an application for that order made some time ago had not been brought to a judge's attention. It is unfortunate that the witness order application was not considered by a judge on duty, but I declined to make a witness order. This hearing was only listed for 3 days, and I simply could not be satisfied that an order, if granted, could be properly served and Mr Camy given the time to attend, or explain why he could not attend, in the time available. Mr Ward acknowledged that.
8. Mr Farooq applied for the claim to be struck out because he argued there is evidence the claimant is a serial litigant acting vexatiously. My attention was drawn to judgments in the bundle. I refused the application. I would consider the merits of this case on its facts, I did not accept that simply because someone had brought other claims, perhaps even many claims, means that they have

not in fact been the subject of unlawful discrimination. From what I had read in preparation for the start of the case it seemed the claimant had at least an arguable case. Mr Farooq also objected to documents in the second bundle and the claimant's second witness statement. On the question of documents, I indicated that I would consider the relevance of the documents in question to the legal issues in the case. I will add when I came to read the claimant's statements it became apparent that these contain a mixture of evidence and submission. I only took account of evidence in reaching my findings.

### **Findings of Fact**

9. I have made my findings of fact in this case on the basis of the evidence before me, taking into account contemporaneous documents where they exist. I have resolved such conflicts of evidence as arose on the balance of probabilities and my assessment of the credibility of witnesses and the consistency of their evidence with the surrounding facts.
10. I have not made findings of fact about every matter referred to in evidence before us but only those matters which I concluded were relevant to the legal issues to be determined
11. On 15 April 2024, the claimant applied for a job with the respondent as a Quality Control Manager, sending his CV through an online agency, Serply Recruitment ("Serply") dealing with a recruitment consultant, Ed Camy. At the time of his application the claimant did not know the identity of the company that was recruiting. He referred to his stammer in his cv and says his racial and ethnic heritage is clear from his name. The question of whether the claimant was perceived as disabled was one of the issues to be determined. I accept, and it did not appear to be in dispute, that the claimant's name suggests that he does not have a white British racial or ethnic background.
12. Serply had been notified of the vacancy on 4 April noting that the job requirements included HACCP training, SALSA audits, with laboratory technician and testing experience essential. The £30,000 salary was "to be reviewed after 16 weeks training".
13. Details of potential candidates were sent to the respondent on 15 April. The accompanying email noted that one candidate (not the claimant) had salary expectations which were "above the top end of salary banding".
14. On 2 May details of a further candidate, Robyn Arthur, were sent to the respondent. The covering email noted that she was happy to accept the £30,000 starting salary. There is no express reference in her cv to HACPP and SALSA experience, although her CV refers to auditing and food safety experience.
15. On the same date, the claimant was informed by Serply that his application was unsuccessful. The claimant was initially told simply that his application was not being progressed, and then in a further email he was told that he did not have the experience the then still unnamed prospective employer was looking for. The claimant asked for more information about the reason and pushed for details of the company. Later that day, after the claimant had again pressed for

information and raised concerns about possible discrimination, Mr Camy told the claimant that the feedback he had been given was that the claimant “was not relevant to the job and the application has been rejected”. It was suggested that he could contact Mr Wayne Hughes at the respondent directly.

16. In its first response to the tribunal claim, filed in I understand by Mr Craig Hughes, the respondent pleaded that Mr Craig Hughes had told Mr Camy that the reason for rejection was that the claimant “lived too far away and seemingly being too upfront in asking for the top end salary”. It was also pleaded that Serply “by their own admission apparently sent out a generic text to the claimant giving reasons not in line with the conversation with CH”. At this hearing I have not been referred to any admission by Serply that the feedback given to the claimant was incorrect nor shown any texts sent to other applicants suggesting the claimant was sent a generic or non-specific rejection also sent to others.
17. In an amended response the respondent pleaded that after returning from leave in early May, Mr Craig Hughes told Serply to reject applicants because the chief executive officer, Mr Wayne Hughes (Mr Craig Hughes’ father) had recently suffered a close family bereavement. Mr Wayne Hughes was to be in charge of selection for the role. It was pleaded that “Serply then gave the reason that the claimant lived too far away and seeming being too upfront in asking for salary which was not in line with Mr Hughes instructions”. At the preliminary hearing Employment Judge Batten considered an application by the respondent to amend its response. She observed that the amended response sought to change significantly the chronology of facts pleaded and redefine responsibility for rejection of the application and the reason given, and granted leave to amend but only on the basis the amended response was in addition to the original response and that both documents were to be included in the bundle for this Tribunal.
18. At this hearing Mr Craig Hughes told me that in fact it is the first response that is correct. I have no explanation of why an incorrect amended response was submitted.
19. In his witness statement Mr Waynes Hughes does not explain the reason for the claimant’s rejection for the role at all. He does explain that, sadly, his father had died and he had been away from the business supporting his mother. He says that “in May I became aware of Ms Robyn Arthur “. He refers to her being interviewed by the departing quality manager on 7 May and that he had conducted a second interview in late May although when cross-examined about that interview, he reported it as being more of an introduction than a selection interview.
20. In his statement Mr Craig Hughes says he noted that the job had been advertised by Serply at a higher salary than he had instructed them – the advert had referred to a salary of £35-40,000, whereas his instructions had been for a salary of £30,000 and that after reviewing the cvs, he had told Mr Camy to reject “all candidates” and that the claimant was rejected in the basis that his requested salary exceeded the budget for the position. Mr Camy also said that in his opinion the claimant lived too far away to make the role realistic. It was pointed out by the claimant in his evidence, and to Mr Craig Hughes in cross-examination, that Ms Arthur who was appointed had given a correspondence

address in Kent, but I was told that in fact the respondent had been told that she would be commuting from Salford. However as the claimant highlighted in his evidence, a disclosed respondent email suggested that she would be travelling by public transport which the respondent had noted was not always reliable for staff and which would inevitably involve a long trip.

21. No evidence of communications with other candidates has been disclosed by the respondent. There is no email suggesting the respondent told Serply that the advertised salary was wrong.
22. In preparation for this hearing the claimant had asked the respondent's representative for confirmation of who had been interviewed. I note it seems the claimant had pushed for information because there is an email from Mr Hughes where he refers to other interviews taking place after the interview with Ms Arthur sent on 8 May (and referred to by the claimant in his evidence). In reply to his enquiries about others being interviewed, the claimant had been told in categorical terms that, in the end, only Ms Arthur was interviewed. That however was directly contradicted by how the respondent's case has been put to the claimant in cross-examination when it was suggested that there was no evidence of race discrimination because a number of candidates were interviewed, including a man who is black African and a woman who is Indian. I understand she was the candidate expressly noted as seeking higher than the advertised salary.
23. In cross-examination Mr Craig Hughes insisted that this version of events is correct, that there had been other interviews although he had not interviewed the individuals in question. The only explanation I have for the respondent's legal representative providing the claimant with fundamentally misleading information during the litigation process was that the wrong information had been provided to the legal representative by a person with no knowledge of the interviews. That is even though the issues had been raised by the claimant on several occasions and is difficult to reconcile with the fact it seems it was Mr Craig Hughes who had filled in the response form and despite the obvious importance of this evidence to the legal issues in the case.
24. I was told that Mr Craig Hughes had told Serply to reject all of the candidates because of their salary expectations, but when they were told this a number had said they would accept a lower salary and so were considered and interviews arranged. Ms Arthur's details had been provided slightly later and she had indicated a salary expectation of £30,000. There are no documents evidencing communications with the other candidates and this version of events seems somewhat inconsistent with the suggestion that a generic rejection had been sent to all candidates at the start because in what is suggested is the generic rejection the claimant was simply told that his application was not being progressed and then in a further email he was told that he did not have the experience the prospective employer was looking for.
25. There is a further curiosity in that the respondent says it interviewed other candidates put forward by Serply, but the email highlighted by the claimant where there is a reference to other interviews is sent to Mr Camy. In that Mr Hughes informs him there are to be other interviews to explain a slight delay after Ms Arthur's interview. That is perhaps odd if, as suggested, the

respondent was interviewing other candidates put forward by Mr Camy. Mr Camy would not need to have been told about those other interviews.

26. I note here that I have no evidence from the person who conducted interviews and there is no reference to other interviews in the pleaded responses or either of the respondent's statements.
27. In consequence of this fundamental change of position the claimant sought orders for specific disclosure of relevant documents to be produced in the course of the hearing, in particular to include evidence of correspondence with other candidates about interviews, correspondence with the agency about feedback, the visitors' book to show when interview took place as I was told the candidates had attended for the site for interviews. The respondent objected to the application given the stage of the proceedings, but I decided that it was in accordance with the overriding objective to grant it. It was an unusual order for me to have made during the hearing, but I did so because I accepted that the claimant's preparation of his case had been severely prejudiced by the respondent having provided misleading information and that their case had radically changed in the course of the hearing. At best this would seem to suggest a senior manager at the respondent had wholly failed to take any proper care in dealing with the litigation by making no attempt to check information provided to the legal representative before providing clarification on more than one occasion, but at worst it suggested a deliberate attempt to avoid disclosure and mislead the claimant.
28. I declined to order disclosure of the respondent representatives' attendance note related to the assurances given to the claimant in August and September which was also sought because it appeared to me that it was inevitable that those documents would be covered by litigation privilege which had not been waived.
29. Mr Farooq sought to suggest that I should only make the disclosure order by entertaining the possibility of cost award against the claimant if no discoverable documents were identified. I refused to attach that condition to my order above. Taking the respondent's position at its highest it had provided misleading and incorrect information on several occasions. Further if there had been interviews as suggested then clearly any documents relating to those interviews would be disclosable as relevant to a case about discrimination in recruitment, especially given that the respondent's case as put to the claimant in cross-examination was that the fact that non-white candidates had been interviewed was evidence which showed he had not been subject to race discrimination. That cost application was misconceived.
30. The order for disclosure was made so the respondent could undertake a search for relevant documents overnight. In response to my order the respondent disclosed no documents suggesting interviews with other candidates had taken place. No record of the candidates signing-in to the site were produced – there were sign in sheets for the relevant days but no sign of the candidates in question. The respondent appeared to accept that visitors to the site would be required to sign a visiting sheet or book for health and safety reasons because it is a food production site. There are no emails between the respondent and Serply about the interview arrangements, and no evidence of outcomes for

unsuccessful candidates was disclosed. There was no evidence of interviews appointments in diaries and there are no interview notes or similar. There were no internal emails between the person who supposedly conducted these interviews (who had not been called to give evidence) and Mr Wayne Hughes, who it had been pleaded was the person who decided who was to be appointed despite his absence from the daily life of the business at the time.

31. I concluded that it was implausible that five candidates could be interviewed via an external recruitment business, and four of those candidates rejected by a manager acting in a director's stead, without any documents existing on the respondent's systems to show such interviews taking place including no trace of the candidates attending the site for interview and no zoom or teams or similar video appointments. Based on the evidence available to me, I concluded on the balance of probabilities that there were no such interviews, or at least no interviews with the non-white British candidates put forward by Serply who were raised by the respondent in cross-examination. I noted there is no reference to these interviews in the witness statements prepared by the respondent and the curiosity in relation to the email to Mr Camy that I have already noted. I concluded that the respondent's cross-examination of the claimant on that basis, that there is no evidence of any racial bias in the recruitment process because a Nigerian male and an Indian female were interviewed, albeit they were ultimately unsuccessful, was therefore misleading. I drew an adverse inference from this as I will explain.
32. I had also made an order for disclosure for emails about the job advert between the respondent and Serply because the claimant's counsel had raised legitimate grounds of concern about whether complete disclosure had been made of an email about the job advert and whether that email was genuine in light of how the document appears in the bundle.
33. In response to that order a further email was disclosed showing Mr Camy querying what the salary would increase to after 16 weeks in reply to the initial instructions. No reply to that email is disclosed. It has been the respondent's case put to the claimant in cross-examination (this email came to light during the respondent's evidence) that the maximum salary for the role and the claimant's salary expectations was the reason for him not being considered. Mr Camy's query about salary and his other references to salary banding in the email, whilst not entirely clear, suggested that the respondent was intending to increase the salary to within the claimant's stated expectations after a probationary period. The email which was disclosed in the course of this hearing was clearly relevant to the legal issues in light of the respondent's case and the fact that it was not disclosed earlier could be an indication of an attempt to withhold a document which could damage the credibility of the respondent's witnesses. I also drew an adverse inference from the late disclosure of that email when I came to consider if the claimant had shown facts which could suggest discrimination shifting the burden of proof..
34. Further given the salary the job was advertised at, the fact that there is no evidence of discussions between the respondent and Mr Camy about an incorrect advert having being placed, coupled with the reference to salary banding in an email between them, I conclude that it is more likely than not that there had been discussions between the respondent and Mr Camy about the

salary for the job being in the range advertised, if not initially for that to be the salary shortly thereafter. That contradicted the respondent's defence and the case as put to the claimant in cross-examination.

35. After the claimant was informed by Serply that he had been rejected for the role he had pressed for more information and was told that "you were not relevant for the job and the application was rejected", but the claimant was then told by the agency he could apply directly to the respondent. He was given Mr Wayne Hughes' email address apparently on the instruction of Mr Craig Hughes. On 2 May 2024, the claimant submitted a second job application directly to Mr Wayne Hughes but heard nothing in response. Mr Wayne Hughes says the reason for that was that he was not working very much in the business at the time due to the family bereavement although he says he was made aware of the details of the successful candidate Ms Arthur.
36. It was not explained to me why Mr Craig Hughes provided his father's email address when he knew his father was substantially away from the business instead of say the person who was to interview Ms Arthur, nor was it explained how, on the respondent's case, Mr Wayne Hughes was able to see emails about Ms Arthur which enabled him to assess her suitability for appointment and make arrangements to interview her, but not see any of the claimant's emails. I found the respondent's evidence to be inconsistent and concluded it was unreliable.
37. The respondent's case is that the person who made the final decision to appoint the successful candidate was Mr Wayne Hughes although even that somewhat contradicted what Mr Wayne Hughes told me. His evidence in cross examination suggested that by the time he met Ms Arthur had already been chosen as the successful candidate but his position on this was somewhat hard to follow. It seems the meeting with him was perhaps something of a formality.
38. What is clear is that Ms Arthur was offered the job, and she accepted the offer of a starting salary of £30,000.
39. In the meantime, the claimant had continued to email and telephone about his application. He heard nothing. On the respondent's case Mr Hughes had not looked at the application and he did not look at the claimant's cv, even after he had been told by a receptionist that the claimant had been in contact with the office about his cv. Mr Hughes told me that this was because Ms Arthur had already been appointed by that stage but that does not seem to explain why there was no response to the claimant.
40. I will note here that the respondent was critical of the claimant contacting the company directly, but on 2 May the claimant had been told by Mr Camy, apparently acting as the respondent's agent and at its suggestion, to send an application to the company directly. It is unreasonable of the respondent to criticise him for following that up. It was also suggested to the claimant that the fact he was told to send the application to the company directly should have reassured him that they were not discriminating against him. In light of the way he was treated and given the respondent's subsequent actions I see no reason to reason to draw that inference. Indeed, in light of what happened I concluded

the respondent had provided contact details without any intention of considering a direct application.

41. In his witness statement Mr Wayne Hughes makes a number of serious allegations of misconduct against the claimant. Those allegations were made without supporting evidence and under cross-examination it became apparent that the allegations, which could clearly seriously damage the claimant's reputation, were unsustainable on the facts and made on spurious grounds. That was unreasonable and arguably scandalous conduct by the respondent, and the exaggerated nature of the allegations is damaging to the credibility of the respondent's case in general.
42. The claimant contends that the real reason his applications were not progressed by the respondent because of his race and/or because of the respondent's perception that his stammer was a disability.
43. The claimant had referred to having a stammer in his cv. He says this "I have a stammer, but I have very good communication skills and have worked effectively at a high level". I was played a recording of the claimant speaking to Mr Camy after his cv had been rejected in which he stammers on occasion, but in what is a somewhat confrontational conversation, he was still able to forcefully express his dissatisfaction with the situation. His conversation with Mr Camy did not seem to be significantly impaired. However, in any event the claimant did not speak to either Mr Hughes. The only knowledge they would have had about stammer was from the cv so I did not find the evidence of the phone call to be relevant to the legal issues.

## **The law**

### **Burden of Proof provisions**

44. Section 136 of the Equality Act 2010 states:
  - (1) This Section applies to any proceedings relating to a contravention of this Act.
  - (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 sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.
  - (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.
  - (5) This Section does not apply to proceedings for an offence under this Act.
  - (6) A reference to the court includes a reference to – (a) An Employment Tribunal.
45. Pre- Equality Act 2010, the House of Lords' decision in Igen v Wong [2005] IRLR 258 identified a two-stage test that tribunals must apply when deciding

discrimination claims. This two-stage approach was discussed in the Court of Appeal decision of *Madarassy v Normura International plc* [2007] EWCA 33, with guidance being provided by Mummery LJ. Since the Equality Act 2010 and although the burden of proof provisions differs in wording to the test set out in *Igen*, the Appellant Courts and EAT have repeatedly approved the application of the guidance set out by Mummery LJ in *Madarassy*. In summary the first stage is where the burden of proof first lies with the claimant who must prove, on a balance of probabilities, facts from which a tribunal could conclude, in the absence of any other (non-discriminatory) explanation, that the respondent had discriminated against him. If the claimant meets the burden and establishes a prima facie case, which will require the tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn, then the burden shifts, and the respondent must prove that it did not commit the alleged discriminatory act. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment.

46. Tribunals must be careful, and the burden of proof provisions should not be applied in an overly mechanistic manner: see *Khan v The Home Office* [2008] EWCA Civ 578 (per Maurice Kay LJ at paragraph 12).
47. The approach laid down by section 136 EqA requires careful attention where there is room for doubt as to the facts necessary to establish discrimination, but where the tribunal is able to make positive findings on the evidence one way or another, the provisions of section 136 does not come into the equation: see *Martin v Devonshire Solicitors* [2011] ICR 352 (per Underhill J at paragraph 39), approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054 (per Lord Hope at paragraph 32).
48. It is not necessary in every case for the Tribunal to specifically identify a two-stage process. There is nothing wrong in principle in the Tribunal focusing on the issue of the reason why. As the Employment Appeal Tribunal (“EAT”) pointed out in *Laing v Manchester City Council* [2006] IRLR 748, “If the tribunal acts on the principle that the burden of proof may have shifted and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever”.

### **Direct discrimination**

49. s13 Equality Act 2010 provides

*(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.*
50. There are two elements to direct discrimination: (a) the less favourable treatment and (b) the reason for that treatment. Sometimes however it is difficult to separate these two issues neatly. The Tribunal can decide what the reason for any treatment was first: if the reason is the protected characteristic, then it is likely that the claim will succeed – *Shamoon v Constable of the Royal Ulster Constabulary* [2003] UKHL 11.

*“Because of”*: reason for less favourable treatment

51. In terms of the required link between the claimant's protected characteristic and the less favourable treatment he alleges, the two must be linked. However, the test is not the "but for" test, in other words it is not sufficient that, but for the protected characteristic, the treatment would not have occurred – James v Eastleigh Borough Council [1990] IRLR 288.
52. The correct approach is to determine whether the protected characteristic, here sex and or disability, had a "significant influence" on the treatment – Nagarajan v London Regional Transport [1999] IRLR 572. The ultimate question to ask is "what was the reason why the alleged perpetrator acted as they did? What, consciously or unconsciously, was the reason?" - Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48. This is a question of fact for the Tribunal to determine and is a different question to the question of motivation, which is irrelevant. The Tribunal can draw inferences from the behaviour of the alleged perpetrator as well as taking surrounding circumstances into account.
53. If there is more than one reason for the treatment complained of, the question is whether the protected characteristic relied upon was an effective cause of the treatment – O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372.
54. To understand if there has been less favourable treatment it can be helpful to look at how a comparator has been treated or how a hypothetical comparator without the protected characteristic would be treated.
55. This is explained in s23 Equality Act 2010

*Comparison by reference to circumstances*

*(1) On a comparison of cases for the purposes of section 13, 14, [F119 or 19A] there must be no material difference between the circumstances relating to each case.*

*(2) The circumstances relating to a case include a person's abilities if—*

*(a) on a comparison for the purposes of section 13, the protected characteristic is disability;*

*(b) on a comparison for the purposes of section 14, one of the protected characteristics in the combination is disability.*

**Perception of disability**

56. The claimant does not say that he was directly discriminated against because he has a disability, but because the respondent perceived that he has a disability. The correct test in those circumstances is as approved in Chief Constable of Norfolk v Coffey CA 2019 EWCA Civ 1061. The question is whether the putative discriminator, A, perceives the claimant to be disabled as a matter of law. It will not depend on A's knowledge of disability law but on whether A perceived the claimant to have an impairment with the features which are set out in the legislation at section 6 and schedule 1 of the Equality Act 2010. It is for the claimant to prove the respondent had those perceptions.

## Submissions

57. I heard brief submissions from both parties. There was no dispute on the relevant law but, not surprisingly, there was about how I should apply the law to the facts in the case. In brief terms, for the claimant was argued that there can be no doubt that the burden of proof had shifted in this case and that the respondent had failed to discharge that. I was invited to draw adverse inferences not only from what had happened at the time but also the conduct of the litigation and disclosure in particular. For the respondent it was argued there had been no discrimination in this case. It was argued that the respondent had made a recruitment decision based on salary expectations. Mr Farooq made much of the fact the claimant has brought claims against other companies concerning unsuccessful recruitment and the fact that he has been described by another judge as a serial litigant.

## Discussion and Conclusions

58. The first issue I had to determine was about who the putative discriminator is in this case. The respondent had suggested that the key decision maker was Mr Wayne Hughes, but on its case the person who decided to reject the claimant was Mr Craig Hughes who says he rejected the claimant at an initial stage because of his salary expectations, along with the other candidates. I found Mr Craig Hughes to be an unreliable witness. Relevant documents about salary discussions with Mr Camy had not been disclosed, his evidence about the reasons given to candidates for initial rejection (salary expectations) is inconsistent with the evidence of what was said to the claimant in emails because the claimant had been told the reason for his rejection was related to experience. That was despite the fact the claimant had obviously relevant background qualifications and experience and met the role specifications in a way Ms Arthur did not. Mr Craig Hughes gave an account about candidates being initially rejected but then being interviewed which inexplicably is not referred to in his witness statement and for which there is no contemporaneous corroboration.
59. I found myself in the somewhat unusual position of facing such unreliable evidence from the respondent that there is doubt about who took the potentially discriminatory decision, but it seems more likely than not that the decision to exclude the claimant from consideration for the role was taken by Mr Craig Hughes.

*Had the claimant shown facts from which I could conclude that the reason for his rejection could be a protected characteristic*

60. In relation to direct discrimination because of a perception of disability, I concluded that the claimant has not met the initial burden of proof to show that the respondent did perceive him as disabled. I accept the respondent's submissions on this point. There was no evidence from which I can draw any inference that the claimant was perceived as disabled. Neither Mr Hughes spoke to the claimant at any point, there is nothing in any of the documents which refers to disability except the reference to a stammer in the claimant's cv. The information contained in the cv does not in my assessment obviously suggest someone who is disabled. It simply refers to someone with a stammer

who is nevertheless able to perform well in a role which involves communication skills.. I have not been pointed to any other evidence which could even suggest a perception of disability. The claimant's case on this was not well founded

61. Turning to the question of race discrimination however I concluded that the burden of proof had shifted to the respondent under s136.
62. It is plain that the claimant had relevant experience for the role, but he was initially told by the respondent's agent that the reason for rejection was that he did not have the experience the employer was looking for. The claimant's career experience was more relevant to the role than Ms Arthur's and, on the face of his cv, he met the respondent's essential role requirements when the person eventually appointed did not, or at least not in all respects and not obviously so.
63. The respondent gave conflicting evidence about the reason for rejection and whose responsibility that was.
64. The respondent has belatedly sought to rely on a suggestion that other candidates of colour had been interviewed as evidence there was no race discrimination despite telling the claimant during the litigation process that no candidates other than Ms Arthur had been interviewed. There is in fact no corroborating evidence of any interview with any non-white applicants taking place. The evidence I have received from the respondents has been so unreliable and their disclosure so poor, that I find myself unable to be sure just what did happen with other candidates for the role. As the claimant points out in his statement, the emails between Mr Craig Hughes and Mr Camy referring to the outcome of Ms Arthur's interview does suggest there may have been other interviews. However, I conclude from the facts that if anyone else was interviewed, those individuals did not include the non-white candidates put forward by Serply and relied upon to evidence that there was no discrimination. The respondent's conduct in this regard is sufficient to raise the suspicion that they have sought to disguise from the Tribunal what really happened. This is enough in itself to shift the burden of proof.
65. The unreliability of the respondent's evidence is further underlined by the late disclosure of the email about what the salary for the role would be after 16 weeks when salary expectations was the reason given for rejection.
66. The claimant does not have to prove race was the reason for his rejection, only evidence from which I can conclude that it could be. I am satisfied that the claimant has shown facts from which I could conclude that he was less favourably treated than another applicant for the role, Ms Arthur. She was treated more favourably by being interviewed and in the circumstances the claimant has shown that facts which I can conclude that race might be the reason for this difference in treatment.

*Has the respondent shown a non-discriminatory reason for the claimant's treatment?*

67. The non-discriminatory reasons put forward by the respondent were that the claimant's salary expectations were too high and he lived too far away.

68. It is true that the claimant faced a long commute from his home to the respondent's site but as the claimant pointed out in his evidence there is evidence in the bundle that Ms Arthur would be relying on public transport from Salford and public transport was known to be issue for staff in light of the dairy's location. It is not credible that travel and commuting time would be a reason for rejecting the claimant without an interview when he would be commuting by car when the respondent was aware Ms Arthur would have faced a significant and perhaps difficult trip on public transport but interviewed her anyway.
69. I also concluded that the evidence about salary expectations was unreliable. I was told that the respondent made a decision based on salary, but it had withheld relevant documents showing in fact salary was likely to increase to meet the claimant's expectations after probation, and the respondent had somewhat undermined its own case by suggesting to me that candidates who had initially indicated they had higher salary expectations than the claimant had been interviewing and providing somewhat unclear evidence about how that came about. For the reasons explained, I found that evidence unconvincing. In short I simply do not believe that the respondent has been honest in its evidence. In those circumstances I cannot be satisfied that the respondent has discharged the burden of proof that it bears to show that it had a non-discriminatory reason for the treatment of the claimant.
70. It was argued to me that I should take into account the fact that the claimant has brought tribunal claims against other companies and has had other complaints of discrimination dismissed. As noted, my attention was drawn to the fact the claimant has been described as a serial litigant by one judge. However, I declined to take that into account as being evidence that the claimant was not discriminated against by this respondent. The fact that the claimant has suspected discrimination in recruitment by other employers and either has not shown that the burden of proof has shifted to them to disprove that or some of those employers have shown non-discriminatory reasons for their decisions, does not mean that this respondent did not discriminate against the claimant.
71. This claim has been decided on the basis of the evidence before me about this respondent's reasons for rejecting the claimant without interview and by applying the statutory burden of proof. The respondent's conduct towards the claimant both at the time of the events leading to the claimant and indeed subsequently in the information it provided to him in the course of this litigation strongly indicated it may have discriminated on grounds of race and it has failed to discharge the burden of proof it faced as a result to show a non-discriminatory reason for the claimant's rejection. Judges' conclusions about the recruitment practices of other employers did not assist me in determining that issue.
72. The claim of race discrimination succeeded and was upheld.

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Employment Judge Cookson

29 January 2026

JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

5 February 2026

FOR THE TRIBUNAL OFFICE

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