



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr D Jackson

AND

Respondent

easyJet Airline Company Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol (by video) **ON** 16 January 2026

EMPLOYMENT JUDGE J Bax

Representation

For the Claimant: Mr D Jackson in person

For the Respondent: Mr R Wayman of Counsel

JUDGMENT

The judgment of the tribunal is that:

1. The claims of race discrimination are struck out on the basis that the Claimant has no reasonable prospects of success.
2. The application to strike out the allegations of age discrimination and breach of contract is dismissed.
3. The application for deposit orders in relation to allegations 3 and 4 of the allegations of direct age discrimination is dismissed.
4. For the reasons explained below, the Employment Judge considers that the Claimant's allegations in relation to breach of contract and allegations 1 and 2 of his claims of direct age discrimination have little reasonable prospect of success.

The Claimant is ORDERED to pay deposits on the following claims

The sum of £150 for each of the following allegations:

- (1) The claim that there was a breach of contract.
- (2) The allegation of age discrimination that the Respondent delayed in the provision of the Claimant's driving permit.
- (3) The allegation of age discrimination that the Respondent failed to provide the Claimant with an airside pass which functioned properly.

not later than **14 days from the date this Order** is sent as a condition of being permitted to continue to advance those allegations or arguments. The Judge has had regard to any information available as to the Claimant's ability to comply with the order in determining the amount of the deposit.

REASONS

1. This is the judgment following a preliminary hearing to determine whether the claimant's claims should be struck out on the grounds that they had no reasonable prospects of success. Alternatively deposit orders were sought on the basis that the claims had little reasonable prospects of success.

Procedural background

2. In this case the claimant brings claims of race and age discrimination and breach of contract.
3. The Claimant was employed by the Respondent between 29 January and 21 June 2024. The claim was presented on 23 September 2024.
4. The grounds of claim said that the Respondent had breached the Claimant's contract by not informing him of his right to appeal. He said there was age discrimination prejudice, racial prejudice regional and the accusation against him were lies or exaggerations. He referred to various incidents and said there were various incidents of racial or age prejudice. He believed that Elizabeth had a problem with him based on a racist or possibly ageist attitude
5. At a case management hearing on 28 July 2025, Employment Judge Livesey identified the issues to be determined. The Claimant identified himself as a Liverpoolian in his 70s and brought the following allegations of direct discrimination, relying on a hypothetical younger and non-Liverpudlian comparator:
 - a. Delayed in the provision of the Claimant's driving permit;

- b. Failed to provide the Claimant with an airside pass which functioned properly;
 - c. Leaving him in the office and not taking him aircraft where he could have worked autonomously. The Claimant complained that he had to be taken to aircraft in the absence of a driving permit and that engineers frequently left the office without him, leaving him stranded. Without a Company Authorisation which entitled him to work in his own name, he could only have assisted another engineer in their work;
 - d. Not being allocated any work on the work board.
6. The breach of contract allegation was identified as not providing him with a right of appeal.
 7. During the course of discussions on 28 July 2025, the Claimant clarified that he was not seeking to allege that any of the performance and uniform issues had arisen on the grounds of his age and/or ethnicity. He also made it clear that he did not seek to allege that the denial of a right of appeal occurred on the grounds of age and/or race.
 8. It was common ground that the Claimant was in his probationary period.
 9. The amendment application in relation to further allegations of breach of contract was determined and dismissed before considering the applications.

Documents in the hearing bundle

10. The following documents were of assistance:
11. The 'Core Contract Terms' included: [p61]
 - a. *"5. Probation and Termination of Employment
Your employment is subject to a Probationary Period outlined in the personal terms schedule. In order to successfully pass your probationary period:*
 - *Your performance must meet the required standards*
 - *You must have successfully completed all mandatory training*
 - *You must have successfully completed relevant referencing and pre-employment checks.*

The length of the probationary period may be extended by easyJet.

On successful completion of your probationary period the notice period for terminating this agreement is outlined in the personal

terms schedule. Your employment may be terminated without notice and without compensation for loss of office where summary termination is justified as a result of gross misconduct or gross negligence. During any notice period, you may be required to take any unused holiday entitlement.

After notice has been given by either you or the Company, easyJet is under no obligation to assign any work to you and reserves the right to exclude you from the premises of the Company. Should easyJet exclude you from work in this way, you will continue to receive your pay and be provided with any other agreed contractual benefits. You may be required to return to work or to carry out duties outside of the workplace during any such period of garden leave.”

b. 18. Positive Work Environment

The Company believes that meeting the needs of a diverse customer base requires a highly skilled, competent and flexible workforce. We aim to achieve this through the ethos of working for equality of opportunity. This aim is supported by policies and procedures that recognise individual contribution and performance develop individuals’ capability and gives everyone an equal opportunity to use their talent and release their potential.

We will treat individuals solely on their ability to meet job requirements without regard to their gender, race, ethnic origin, nationality, colour, religion, marital status, age, political beliefs or sexual orientation. We regard any form of discrimination, harassment, victimisation or bullying as totally unacceptable conduct; it will not be permitted or condoned in any form.

Please see the UK People Handbook on the Company intranet– all employees are required to comply with these policies – failure to do so may be treated as a disciplinary offence.

c. 20. Disciplinary and Grievance Procedures

You must keep to certain standards of performance and behaviour and carry out your duties according to our rules and regulations. The disciplinary procedure is designed to make sure that you keep to these standards and that you are dealt with fairly. We will not take any action until we have investigated the matter. You will not normally be dismissed unless you continue to fail to meet necessary standards (unless you have committed gross misconduct or gross negligence, in which case you may be summarily dismissed). You can state your case at each stage of the formal disciplinary

procedure and if you want you can be accompanied to actual hearings by a work colleague or a union representative. You also have the right to appeal against any disciplinary decision, normally to the Manager of the person who took the decision. If you have a grievance, you should normally refer the matter to your immediate line manager. The details of these policies can be found in the UK People Handbook on the company intranet.

12. The Disciplinary Policy Included:

- a. This policy doesn't form part your terms and conditions of employment and may be changed from time to time. This policy supersedes all previous and handbook versions. [p81]
- b. It included an appeal process against a disciplinary sanction.

13. The invitation to a probation meeting letter dated 8 May 2024 said that the following would be discussed: (1) performance issues, and (2) conduct issues (inappropriate behaviour in the workplace and inappropriate language towards colleagues in the workplace. It also included the following:

"It is very important that you attend the meeting. If you do not attend without good reason, we may have to hold the meeting and make a decision in your absence. If you are dissatisfied with any action taken by me as a result of the meeting, you will have a right of appeal which will be explained to you in the letter confirming the outcome of the meeting."

14. The dismissal letter dated 21 May 2025, seemed to conclude that there had been some conduct issues. He was dismissed with notice. It did not say he was dismissed due to misconduct. There was no mention of an appeal.

15. The Claimant had produced transcripts of the meetings on 13 and 21 May 2025. In those meetings there was not a mention of an appeal.

The applications

16. I have considered the written and oral submissions of the Respondent and the oral submissions on behalf of the Claimant. I have not heard any oral evidence, and I do not make findings of fact as such, but my conclusions based on my consideration of the above are as follows.

The Respondent's submissions

Breach of contract

17. The Respondent submitted that there is not a contractual right to an appeal. Although the disciplinary policy provided for an appeal against a sanction, the Claimant was dismissed for failing to meet the required standards in his probationary period. The Grounds of Resistance said that the decision to terminate the Claimant's employment in the probationary period was not a disciplinary sanction. Failing a probationary period is not disciplinary action. The Core Terms and Personal terms made no mention of a right to appeal against dismissal for failing to meet the required standards during a probationary period,
18. It was submitted that the reference to an appeal in the letter was a mistake and there was no contractual right. It did not and could not amount to a variation because Mr Gray did not have authority to enter into contractual obligations on behalf of the Respondent.
19. The letter itself said the right appeal would be provided in the outcome letter. There was not such a reference which showed there was a mistake in the invitation letter.

Direct race discrimination

20. There was no provision in the Equality Act for regional origins to form part of the concept of race.
21. Reliance was placed on the first instance Employment Tribunal decision in Ryan v R Robertson & Son Ltd 4108351/2021. In that case the Claimant claimed race discrimination for his Liverpoolian accent being mocked by reference to the Harry Enfield character of the 1990s. It was noted that being English and Scots are separate racial groups. I was referred to the following paragraphs:

71. Reference was made to the ACAS guidance on "Race Discrimination: Key Points for the Workplace" issued July 2016 which states under the heading "National and Regional Identity":-

"However, the law does not cover more local or regional distinctions. For example an employee working in the south of England who feels they are being treated unfairly solely because they are a "Geordie" or an employee treated unfairly solely because they are a "Southerner" with an Essex accent working in the north of England are unlikely to succeed in claims of race discrimination."

72. I was also directed to the passage in "IDS: Discrimination at Work" (Volume 415 page 123) which referred to this guidance and stated:-

“It is interesting to note the contrary views taken by the Scottish High Court of Justiciary in the criminal case of Moscrop v McLintock [2011] SCCR 621. There it was held that insults and threats directed by a Scot at a person from Gateshead including use of the term “Geordie” could amount to racially aggravated harassment on the ground of the victim’s English national origin. The Court considered that to hold otherwise would allow the legislation to be circumvented by the simple device of referring to the town or region of origin of the victim, whereas if the offender had in identical circumstances referred to the victim’s country of origin there would be no doubt about his or her criminality. However as a Scottish criminal case the Moscrop case is not directly applicable in the employment law context and we consider it more likely that Employment Tribunals will follow the ACAS guidance on this point”.

73. The claim made by the claimant in this case is undoubtedly that he was being mocked as a “Scouser” on the portrayal of a Liverpudlian character by Harry Enfield. The description given by Mr Franklin of the character portrayed was accurate and not disputed. The “catchphrase” seemed to relate to use of the words “calm down, calm down” in a Liverpool accent. The discrimination claim is wholly reliant on the use of those words. The claimant is from Liverpool and it is because he hails from that city that he took offence. I agree that the alleged comment could mock the claimant as a Liverpudlian but not as an English person. I do not consider that simply because that city is based in England that the claimant was being mocked for being English and so mocked on account of his national origin. I agree with the ACAS guidance and the passage in IDS to which I was referred. The alleged words used could only refer to a very specific comic stereotype of a Liverpudlian and not directly or by reference a reference to national origin

22. It was submitted the current case is on all fours with Ryan and the claim cannot succeed irrespective of the findings of fact.

Age discrimination

23. The Claimant had made two references to age in the grounds of claim, however the part about locking wire was not an allegation of discrimination.

24. There was no reference to the age of people who did have driving permits and working airside passes. It was submitted there were not facts from which an inference could be drawn that the treatment was because of age and he was treated less favourably than a younger person would have been.

25. It was submitted that these claims were not properly particularised. In reply it was said that the Claimant was basing matters on an assumption and comments were not made by alleged discriminators.

The Claimant's submissions

Breach of contract

26. The Claimant relied upon speaking to ACAS and being told there should be a right of appeal.
27. Clause 20 included a right of appeal to a disciplinary decision and it did not exclude an appeal to a probationary dismissal. He submitted his contract did not differentiate between disciplinary and probation meetings.
28. The decision to dismiss was based on 4 conduct matters and he asserted the reason he was not given an appeal was because it would go to another manager.
29. He had been given a clear and unequivocal representation in the invitation letter that he would have an appeal. He clarified in oral submissions he had not appreciated this at the time.
30. The references to a lack of authority were not suitable for determination at the preliminary hearing and there would be factual issues.

Race discrimination

31. The Claimant's written submission said that the Respondent was oversimplifying the situation. He says he is stereotyped, prejudiced and had differential treatment with regional identity operating in context as a proxy for discriminatory attitude. The case of Ryan was not binding on the Tribunal and was decided on its own facts.
32. In oral submissions the Claimant said that when he returned his equipment at the end of his employment there was a derogatory remark about 'scousers'.
33. He was asked why he said being Liverpudlian would fall within the protected characteristic of race. He said, that as far as he could make out from what he had seen he could not.

Age discrimination

34. The Claimant said that there were comments made during his employment about, old fashioned ways of doing things and he was slow. Further that when he was dismissed he overheard his manager saying that they should consider retiring him.

35. In relation to the driving permit and airside pass he said that the person responsible was putting him to the test to see how far he could walk.

36. He also said he was questioned about why he was still working.

Means to pay a deposit order

37. The Claimant is in receipt of his state pension. He does not pay rent or for a mortgage. He has savings of about £40,000. He receives a small income from some shares he holds. Other than his savings, his monthly income and monthly outgoings are about the same.

The law

38. Rule 38 of the Employment Tribunal Procedure Rules 2024 provides that:

- (1) The Tribunal may, on its own initiative or on the application of a party, may strike out all or part of a claim, response or reply on any of the following grounds—
 - (a) that it is scandalous or vexatious or has no reasonable prospect of success;

39. Rule 40 provides that:

Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order"). Under Rule 40(2) the Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

Strike out

40. Under rule 38 of the Employment Tribunal Procedure Rules 2024, a tribunal can strike a claim out if it appears to have no reasonable prospect of success. It is a two stage process; even if the test under the rules is met, a judge also has to be satisfied that their discretion ought to be exercised in favour of applying such a sanction. Striking out a claim is a

draconian step and numerous cases have reiterated the need to reserve such a step for the most clear and exceptional of cases (for example, Mbuisa-v-Cygnnet Healthcare Ltd UKEAT/0119/18).

41. The importance of not striking out discrimination cases save in only the clearest situations has been reinforced in a number of cases, particularly Anyanwu-v-South Bank Students Union [2001] UKHL 14 and, more recently, in Balls-v-Downham Market School [2011] IRLR, Lady Justice Smith made it clear that “no” in rule 37 (now rule 38) means “no”. It is a high test.
42. In Ezias-v-North Glamorgan NHS Trust [2007] EWCA Civ 330 the Court of Appeal stated that it would only be in exceptional cases that a claim might be struck out on this ground where there was a dispute between the parties on the central facts.
43. In Cox v Adecco & Others UKEAT/0339/10/AT, HHJ Taylor after a review of the authorities summarised the general propositions for a strike out application at paragraph 28 as:
 - (1) No-one gains by truly hopeless cases being pursued to a hearing;
 - (2) ...
 - (3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;
 - (4) The Claimant’s case must ordinarily be taken at its highest;
 - (5) It is necessary to consider, in reasonable detail, what the claims and issues are.

Deposit Orders

44. Where a tribunal considers that any specific allegation, argument or claim has little reasonable prospect of success it may make a deposit order (rule 40). If there is a serious conflict on the facts disclosed on the face of the claim and response forms, it may be difficult to judge what the prospects of success truly are (Sharma-v-New College Nottingham [2011] UKEAT/0287/11/LA). Nevertheless the tribunal can take into account the likely credibility of the facts asserted and the likelihood that they might be established at a hearing (Spring-v-First Capital East Ltd [2011] UKEAT/0567/11/LA).
45. There must be a proper basis for doubting the ability to establish the claim. Van Rensburg v Royal Borough of Kingston-Upon-Thames UKEAT/009607.
46. In Sharma v New College Nottingham [2011] UKEAT/0287/11 When deciding whether a Claimant had proved facts from which a Tribunal could

conclude, in the absence of an adequate explanation, that the respondent had committed an act of unlawful discrimination, it was important to bear in mind that it was unusual to find direct evidence of discrimination. In deciding whether a claimant had proved such facts, the tribunal would usually consider what inferences it was proper to draw from the primary facts, and had to assume that there was no adequate explanation for those facts, Wong v Igen Ltd (formerly Leeds Careers Guidance) [2005] EWCA Civ 142, [2005] 3 All E.R. 812, [2005] 2 WLUK 455 applied. Given that approach, the issue in the instant case was to what extent it was within the powers of the tribunal at the pre-hearing review, without hearing any oral evidence or coming to any determination on what might be disputed facts, to strike out a claim as having no reasonable prospect of success or to make a deposit order. The EAT referred to the House of Lords' decision in Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL, where Lord Hope said that 'discrimination issues... should, as a general rule, be decided only after hearing the evidence'. It held that it would be illogical to require an employment judge to take different approaches depending on whether he or she was considering striking out or making an order for a deposit as either order was, on any view, a serious, and potentially fatal, course of action. Accordingly, it upheld the claimant's appeal and quashed the deposit order.

47. I was assisted by paragraphs 12, 13 and 15 in Hemdan v Ishmail [2017] IRLR 228. The test is less rigorous than the test for a strike out, but "nevertheless there must be a proper basis for doubting the likelihood of a party being able to establish facts essential to the claim or defence. "The assessment of the likelihood of a party being able to establish facts essential to his or her case is a summary assessment intended to avoid cost and delay. Having regard to the purpose of a deposit order, namely to avoid the opposing party incurring cost, time and anxiety in dealing with a point on its merits that has little reasonable prospect of success, a mini-trial on the facts is to be avoided, just as it is to be avoided on a strike out application, because it defeats the object of the exercise... If there is a core factual conflict it should be properly resolved at a full merits hearing where evidence is heard and tested." "Once a tribunal concludes that a claim or allegation has little reasonable prospects of success, the making of a deposit order is a matter of discretion and does not follow automatically. It is a power to be exercised in accordance with the overriding objective, having regard to all of the circumstances of the particular case.
48. Under rule 40(2) When considering an application for a deposit order it is also necessary to make reasonable enquiries into the paying party's ability to pay the deposit and to have regard to such information when deciding the amount of the deposit.

Discrimination claims

49. S. 9 of the Equality Act 2010 (“EqA”) provides:

9Race

(1) Race includes—

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

(2) In relation to the protected characteristic of race—

- (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.

(3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.

(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

(5)...

50. The current edition of the IDS Handbook referred to the following at paragraph 10.38, before going on to refer to the Ryan case and the Scottish High Court of Justiciary decision in Moscrop:

“While the peoples of the constituent countries of the UK are considered to have different national origins for the purposes of race discrimination law, Acas guidance on race discrimination explains that the law does not cover ‘local or regional distinctions’. The guidance indicates that an employee working in the south of England complaining of being treated unfairly solely because of being a ‘Geordie’, or an employee treated unfairly solely because of being a ‘Southerner’ with an Essex accent working in the north of England, is unlikely to succeed in claims of race discrimination. However, the guidance leaves open the possibility that ‘there could be circumstances where such behaviour might be argued to be because of national identity’ and therefore discriminatory on the ground of race (see paras 11 and 12 of the Acas guidance, ‘Equality and discrimination: understand the basics’ (July 2019))”

51. It was not possible to locate a copy of the July 2019 guidance.

52. The decision in *Moscrop v McClintock* 2011 SCCR 621 Lord Hardie, referred to in the case of Ryan, held at paragraphs 13 and 14:

13. ... A “racial group” means “a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins”. Thus there are various different criteria, the satisfaction of any of which will establish that a person is a member of a racial group. In the present case the complainer was a member of a racial group because of his national origins as an English man. It is well established that it is legitimate for a complainer to establish national origins based upon his assertion that he is English. ([Ealing London Borough Council v Race Relations Board \[1972\] AC 342](#) ; [Northern Joint Police Board v Power \[1997\] IRLR 610](#) ; *BBC Scotland v Souster* 2002 SLT 265). Moreover, as we have observed Mr Mason accepted that “national origins” included being English.

14. Whether a course of conduct or an action is racially aggravated will depend upon the facts and circumstances of each case as determined by the evidence. In the present case there was undisputed evidence that the complainer originated from the north east of England and that the appellant related his abuse of the complainer to the complainer being from that area. In light of that evidence it was open to the sheriff to infer that the appellant's action was motivated in whole or in part by malice and ill-will towards persons of English national origin based upon the complainer's membership of that group by reason of his association with it and identified by his place of origin, namely the north east of England. If it were not possible for the sheriff to draw such an inference, the effect would be that the legislation would be circumvented even where a course of conduct or action were motivated by malice and ill-will towards a member of a racial group based upon his or her membership of that group by the simple device of referring to the town or region of origin of the complainer whereas if the offender in identical circumstances referred to the country of origin there would be no doubt about his criminality. That cannot have been the intention of Parliament and would not address the mischief which the legislation was intended to criminalise. In view of the fact that the sheriff was entitled to draw the inference to which we have referred, there is no doubt that he was entitled to repel the submission of no case to answer.

53. No other authorities could be found or were brought to my attention.

54. The ECHR Code of Practice on Employment 2015 at paragraphs 2.36 to 2.49 says in relation to the protected characteristic of race:

“2.36

The Act defines 'race' as including colour, nationality and ethnic or national origins.

s 9(1)(a)–(c)

2.37

A person has the protected characteristic of race if they fall within a particular racial group. A racial group can also be made up of two or more distinct racial groups. See paragraph 2.46 for the meaning of 'racial group'.

s 9(2)

Nationality

2.38

Nationality (or citizenship) is the specific legal relationship between a person and a state through birth or naturalisation. It is distinct from national origins (see paragraph 2.43 below).

Ethnic origins

2.39

Everyone has an ethnic origin but the provisions of the Act only apply where a person belongs to an 'ethnic group' as defined by the courts. This means that the person must belong to an ethnic group which regards itself and is regarded by others as a distinct and separate community because of certain characteristics. These characteristics usually distinguish the group from the surrounding community.

2.40

There are two essential characteristics which an ethnic group must have: a long shared history and a cultural tradition of its own. In addition, an ethnic group may have one or more of the following characteristics: a common language; a common literature; a common religion; a common geographical origin; or being a minority; or an oppressed group.

2.41

An ethnic group or national group could include members new to the

group, for example, a person who marries into the group. It is also possible for a person to leave an ethnic group.

2.42

The courts have confirmed that the following are protected ethnic groups: Sikhs, Jews, Romany Gypsies, Irish Travellers, Scottish Gypsies, and Scottish Travellers.

National origins

2.43

National origins must have identifiable elements, both historic and geographic, which at least at some point in time indicate the existence or previous existence of a nation. For example, as England and Scotland were once separate nations, the English and the Scots have separate national origins. National origins may include origins in a nation that no longer exists (for example, Czechoslovakia) or in a 'nation' that was never a nation state in the modern sense.

2.44

National origin is distinct from nationality. For example, people of Chinese national origin may be citizens of China but many are citizens of other countries.

2.45

A person's own national origin is not something that can be changed, though national origin can change through the generations.

Meaning of 'racial group'

2.46

A racial group is a group of people who have or share a colour, nationality or ethnic or national origins. For example, a racial group could be 'British' people. All racial groups are protected from unlawful discrimination under the Act.

s 9(3)

2.47

A person may fall into more than one racial group. For example, a 'Nigerian' may be defined by colour, nationality or ethnic or national origin.

2.48

A racial group can be made up of two or more distinct racial groups. For example, a racial group could be 'black Britons' which would encompass those people who are both black and who are British citizens. Another racial group could be 'South Asian' which may include Indians, Pakistanis, Bangladeshis and Sri Lankans.

s 9(4)

2.49

Racial groups can also be defined by exclusion, for example, those of 'non-British' nationality could form a single racial group."

55. The burden of proof for discrimination claims is contained in s. 136 EqA:

136 Burden of proof

(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 subsection (2) does not apply if A shows that A did not contravene the provision.

56. In Madarassy v Nomura International Plc [2007] EWCA Civ 33 Mummery LJ stated: "The Court in Igen v Wong expressly rejected the argument that it was sufficient for the claimant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an act of discrimination". The Supreme Court in Royal Mail Group Ltd v Efoji [2021] UKSC 33 confirmed that Igen Ltd and Ors v Wong and Madarassy v Nomura International Plc remained binding authority.

57. In Denman v Commission for Equality and Human Rights and ors [2010] EWCA Civ 1279, CA, Lord Justice Sedley made the important point that

the “more” which is needed to create a claim requiring an answer need not be a great deal.

58. Unreasonable treatment could not, of itself, found an inference of discrimination, but the worse the treatment, particularly if unexplained, the more possible it may have been for such an inference to have been drawn (Law Society-v-Bah [2004] EWCA Civ 1070).

Conclusions

Application in relation to the breach of contract claim.

59. The Claimant’s case must be taken at its highest. The fundamental issue for the Tribunal to determine, at the final hearing, is whether there was a contractual right to an appeal against the probation decision.
60. The Core Terms and Conditions do not refer to what happens in respect of probation decisions. I was not referred to a document which dealt with the processes to be followed at a probation review.
61. Clause 20 is a clause which concerns disciplinary and grievance procedures and includes that there is a right to appeal. There is not a reference within in it to including probation decisions.
62. The dismissal letter made reference to what had been said to members of the team were degrading and did not fit with the Respondent’s standards. There was also reference to his performance in his role not meeting the required standards, even after issues he had encountered were taken into account. It was concluded he had failed to meet the required standards and his employment was terminated. The letter did not say he was dismissed due to misconduct, but there was reference to it.
63. It appears that conduct and performance issues were being considered at the meeting. An issue to be determined at final hearing will be what the reason for dismissal was.
64. The reference to an appeal in the invitation letter is a curious feature. The Respondent asserts that it was a mistake and the contractual terms are clear. There is a question as to how it appeared and whether it is the true position. The absence of a probation policy in the hearing bundle made this more difficult.
65. There is an issue as to the reason for the dismissal. There is a very weak argument that the dismissal was for misconduct. The letter dismissing the Claimant does not state it was for conduct. It does cite conduct issues as reasons as to why he failed his probation period, however they are part of

general concerns about his performance. The letter did not say the reason for dismissal was misconduct. If the reason was misconduct, clause 20 may well apply.

66. The Claimant's argument that the probation decision and disciplinary decision are both covered under clause 20 is poor. There is no reference to probation periods. The clause only refers to disciplinary and grievance matters.
67. The curious feature is the invitation letter, which says he did have the right to an appeal. Evidence has not been heard on this issue. A probation policy did not feature in the bundle and it has not been suggested there was one. There is an argument that there was a right of appeal against a probation decision, based upon the letter. The difficulty for the Claimant is that the documentation appears to strongly point the other way, in that there is no express mention. The Respondent's case is that it was a mistake and there is some support for that argument by the way it was not referred to during the meetings and in the outcome letter. There is a question as to why it was included and the way in which probation reviews are carried out generally. The Claimant has an argument based on the invitation letter that he did have a right of appeal against the probation decision. However that argument is weak and appears to be contradicted by the documentation.
68. On a summary basis I was not able to say that the Claimant had no reasonable prospects of success, however he has little reasonable prospects of proving, at a final hearing, that the reason for dismissal was misconduct and that it was a contractual term that there was a right of appeal against the probation decision.
69. It was therefore appropriate for a deposit order to be issued.
70. Taking into account the Claimant's means and that he has fairly significant savings the appropriate amount is £150 for the breach of contract claim.

Application in relation race discrimination

71. The decision in Ryan is not binding on the Tribunal. There is no appellate authority on the issue.
72. Some assistance can be taken from the case of Moscrop. The references to 'Geordies' were in the context of being used by a Scot towards someone from Newcastle. The complainer in that case had a national origin of being English. It was found that the appellant had been abused by reference to being from the North-East of England and it had been open to the Sheriff to conclude that it was motivated by ill will towards

persons of an English national origin. This was not a finding that it was ill-will towards people from Newcastle.

73. This is not a question of deciding what happened and whether the burden is likely to be shifted. It involves a fundamental question as to whether regional identity is covered by s. 9 of the Equality Act 2010. Earlier iterations of the ACAS guidance have considered it is not the case and the academic commentary continues to reach the same conclusions.
74. The Claimant's submissions referred to regional identity. That is not the same thing as ethnic identity. S. 9 does not include regional identity within a country as being protected. The previous ACAS guidance did not consider that someone from a region of England being something to come within s. 9. The decision in Moscrop was founded on the motivation being English nationality rather than being a Geordie.
75. S. 9 EqA is of assistance. Being from Liverpool is not based on colour, it is also not a nationality. There was nothing submitted to the Tribunal that being from Liverpool was an ethnicity. Nothing was submitted about Liverpudlians and others regarding Liverpudlians as a distinct and separate community because of certain characteristics. Coming from a particular city does not mean someone is in a distinct and separate community due to certain characteristics. It is a place where someone lives and people can move in and out of that city. There are no particular characteristics which mean it is a distinct and separate community.
76. The Claimant appeared to accept that he was not able to show why being Liverpudlian fell within s. 9 EqA.
77. I was satisfied that the Claimant had no reasonable prospects of success in persuading the Tribunal that being Liverpudlian fell within s. 9 and the race discrimination claims were struck out.

Age discrimination

78. The Claimant will need to adduce primary facts tending to show that the matters alleged happened because of his age or were motivated by his age. The Claimant relies on comments made by his manager when he was dismissed and comments made during his employment about why he was still working, an old fashioned way of doing things and being slow.
79. It needs to be remembered that unreasonable treatment of itself does not amount to discrimination. However at a strike out and deposit stage the Claimant's case need to be take at its highest.

80. It is not appropriate to conduct a mini-trial. The Claimant raised a number of new things during the hearing, which had not been previously referred to. They can form part of the background and be instructive in relation to the allegations. The Respondent made the strong point that the alleged discriminators did not appear to have made the comments. The Claimant said that the manager had made reference to retiring him, however the context of it and exactly what he said were not clear. The claims were not particularised in a clear fashion. It appears that much of what the Claimant relies upon is an assumption or a belief. There is a lack of clarity generally.
81. It is not a case in which it is possible to say that there are no reasonable prospects of success.
82. There was not a suggestion of any particular age related comment or remark being made by the person with responsibility the driving permit or airside pass. These allegations are based on an assumption by the Claimant. A belief in something is not the same as proving facts tending to show discrimination. I was satisfied that the Claimant had little reasonable prospects of success in discharging his burden of proof in relation to these allegations and accordingly he had little reasonable prospects in relation to them.
83. In relation to the allegations about work allocation and leaving him in the office, the comments the Claimant relies upon could be something that shifts the burden of proof. This will be dependent on the evidence given and findings of fact. I was not satisfied that there were little reasonable prospects of success in relation to these allegations. That was not to say that the claims were strong. There are difficulties the Claimant will need to overcome.
84. A deposit order is made in relation to the allegations in relation to the driver's permit and airside pass. The appropriate figure is £150 on each allegation.

Approved by Employment Judge J Bax
Dated 16 January 2026

Judgment sent to Parties on
19 January 2026
For the Tribunal Office

NOTE ACCOMPANYING DEPOSIT ORDER

1. The Tribunal has made an order (a “deposit order”) requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegations or arguments specified in the order.
2. If that party pays the deposit and continues to advance the allegations or arguments specified in the order, but the Tribunal decides those allegations or arguments against that party for substantially the reasons given in the order, that party would then lose their deposit. In addition, the Tribunal might make an award of costs or preparation time against that party for unreasonably pursuing those allegations or arguments.

What happens if you do not pay the deposit?

3. If the deposit is not paid the complaint or response to which the order relates will be struck out on the date specified in the order.

When to pay the deposit?

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.
5. If the deposit is not paid within that time, the complaint or response to which the order relates will be struck out.

What happens to the deposit?

6. If the Tribunal later decides the specific allegation or argument against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

How to pay the deposit?

7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.
8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.
9. Payment must be made to the address on the tear-off slip below.

10. An acknowledgment of payment will not be issued, unless requested.

Enquiries

11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.
12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 01179 302 410. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you are not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.
13. You have the right to appeal against the decision to make a deposit order if you consider that the decision, or the amount ordered, is wrong in law. The time for appealing is 42 days from the date on which the deposit order was sent out in writing by the Tribunal. Details of how to appeal can be found here:

HMCTS Booklet T440:

<https://www.gov.uk/government/publications/how-to-appeal-to-the-employment-appeal-tribunal-t440>

The website of the Employment Appeal Tribunal:

<https://www.judiciary.uk/courts-and-tribunals/tribunals/employment-appeal-tribunal/>

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DEPOSIT ORDER

**To: Judicial Fees, Expenses and Payroll (JFEPS) Team
 Magistrates' Court & Tribunal Hearing Centre
 Marlborough Street
 Bristol
 BS1 3NU**

Case Number _____

Name of party _____

I enclose a cheque/postal order (*delete as appropriate*) for £_____

Please write the Case Number on the back of the cheque or pos