



EMPLOYMENT TRIBUNALS

Claimant: Mr Dean Fitzsimmons

Respondent: Trustwell UK Ltd

Heard at: Birmingham ET (via CVP) **On:** 17 June 2026

Before: Employment Judge Bennett

Representation

Claimant: in person

Respondent: Mr Anderson of Counsel, instructed by Jones Day

JUDGMENT was sent to the parties on 26 June 2026 and written summary reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. Employment Judge Bennett therefore provides the following written summary reasons:

SUMMARY WRITTEN REASONS

1. These are summary written reasons following a preliminary hearing on 17 June 2026. As such, they do not recite the background to the case or the parties' submissions but they do set out the reasons for my decisions on core issues.
2. I have considered the law as discussed with the parties at the start of the hearing, and as referred to by the Respondent in its skeleton argument.
3. This preliminary hearing was listed in order for the Tribunal to consider the Respondent's applications for strike-out and, in the alternative regarding one complaint, a deposit order.
4. When considering either of whether to strike-out or to make a deposit order the Tribunal is required to assess the prospects of success of the complaint. I deal first with the Claimant's complaint that his dismissal was an act of direct race discrimination.

Less favourable treatment

5. In order to succeed in a claim of direct race discrimination in relation to his dismissal, the Claimant will need to show, first, that he was subjected to less favourable treatment and, second, that this was 'because of' a protected characteristic. The protected characteristic need only have a significant

influence on the decision or be an effective cause of the treatment in order for the Claimant to succeed.

6. I first consider whether the dismissal amounted to less favourable treatment. I accept the Respondent's submission that the Claimant has not yet demonstrated to any extent that a comparator would have been treated differently. It is recorded in the Record of Preliminary Hearing before Employment Judge Hindmarch dated 16 December 2025 that the Claimant 'identifies as White British'. While the Respondent submitted that the Claimant would need to show, for example, that a Black British person or a White American person would have been treated more favourably, the precise comparator relied upon by the Claimant has not been not clearly identified. The Case Management Order records that the Claimant identifies as White British but does not specify the comparator. It is, however, clear from the case summary and the Claimant's own case that he relies on being British and on alleged hostility towards British people by Nick Bruckner.
7. It is therefore possible that the Claimant seeks to rely on a comparison with non-British individuals in otherwise the same circumstances. Those circumstances would include working in the United Kingdom, being subject to UK employment law, and having the same performance history and surrounding circumstances as the Claimant.
8. I have taken into account the Claimant's evidence about turnover within the European sales team and the characteristics of those who remained. It is possible, although I consider it unlikely, that he may be able to show that white British employees were disproportionately affected and that this may therefore assist his case. Aside from this I do not consider that there is anything in the Claimant's case which supports an assertion that such a comparator would not have been dismissed.
9. The Claimant also relies on what he describes as Nick Bruckner's general approach and manner of communication. I accept the Respondent's submission that it is consistent with the evidence that Mr Bruckner routinely took issue with a number of employees irrespective of their race/nationality. I have been taken to a number of contemporaneous emails in which Mr Bruckner criticised the performance of several employees, not limited to those who were white British. This supports the Respondent's case that any employee in the Claimant's position would have been dismissed for performance concerns regardless of race. I also place weight on the evidence that Mr Bruckner expressed a desire for the Claimant's replacement to be based in the United Kingdom, which is inconsistent with the Claimant's claim of direct race discrimination.
10. There is no further disclosure anticipated. The Claimant therefore faces significant difficulty in establishing less favourable treatment in the legal sense. He cannot point to an actual comparator, and the only basis for suggesting that a hypothetical comparator would have been treated differently rests on speculation arising from the alleged discriminatory comments.
11. I recognise the Claimant's description of the culture within the Respondent organisation. However, I do not consider that this can be linked to the Claimant's dismissal in any way beyond speculation.

Because of the protected characteristic

12. I turn then to the question of whether any less favourable treatment was because of a protected characteristic. The only serious basis for such a finding is the alleged comments said to have been made by Mr Bruckner. As the Claimant accepts, whether the Tribunal accepts that these comments were made will depend on whether the Tribunal prefers his evidence or that of Mr Bruckner who, it is noted, is now expected to give evidence.
13. Even taking the Claimant's case at its highest, however, and assuming that the comments were made, there are significant difficulties for the Claimant's case. There is substantial contemporaneous evidence consistent with the Respondent's case that performance was at the heart of the decision to dismiss. Although the Claimant disputes the fairness of the performance measures applied to him, the documentary evidence indicates that performance was the active reason for dismissal.
14. I bear in mind that the Claimant need only show that his protected characteristic had a significant influence on the decision. The involvement of others in the dismissal decision is material when considering this. HR oversight of the performance and dismissal process, and agreement that the performance concerns were sufficient to justify dismissal, is relevant. The involvement of Mr Detent in a real and substantive way towards the end of the process reinforces the conclusion that performance was central.
15. The Respondent has also taken me to emails showing that assistance was provided to the Claimant to help him improve, and that efforts continued even when termination appeared likely. I note that there was some internal discussion about whether or not to continue with the PIP. It is possible to read the correspondence between Mr Detent and Mr Bruckner as suggesting that there may have been factors beyond straightforward performance concerns, particularly given that the decision to proceed with termination was taken at a point when there had been improvement and it was against HR advice to wait. However, there is nothing to suggest that any such factor related to the Claimant's race. In particular, the concern expressed in those emails about the wider UK team, which included white British employees, weighs against the Claimant's case.
16. I accept that the Claimant has a genuine sense of grievance about his treatment. It appears to me that if he had sufficient service to pursue an unfair dismissal claim different considerations might arise, including issues as to procedural and substantive fairness in the PIP process. However, the claim before the Tribunal is one of discrimination. On the material before me, the race discrimination complaint has minimal reasonable prospects of success.
17. I do not consider that the claim has no reasonable prospect of success. There is a factual dispute as to the alleged discriminatory comments, and if those are established the Claimant could seek to argue that they influenced the decision to proceed with dismissal rather than allowing the PIP to run its course. The comments could potentially be enough to shift the burden of proof to the Respondent, which means that the complaint must have some

chance of success. I also take into account that the issue of comparators is not straightforward and the various outcomes which have befallen the Claimant's erstwhile colleagues may be further explored at a final hearing.

18. I recognise the exceptional nature of striking out discrimination claims, particularly where the Claimant is a litigant in person. There is value in the Claimant having the opportunity to have his complaint tested at a full hearing, although the Tribunal must also guard against the unnecessary use of resources in claims lacking merit.
19. In those circumstances, I do not strike out the complaint. However, I find that it has little reasonable prospect of success and that it is appropriate to make a deposit order.
20. The Tribunal considers that the complaint of direct race discrimination in respect of dismissal has little reasonable prospect of success because, first, the Claimant cannot identify a comparator, whether real or hypothetical, in materially the same circumstances who would have been treated more favourably. Second, because the evidence indicates that he was dismissed for performance reasons and does not show that his dismissal was because of his race.
21. The Claimant is therefore ordered to pay a deposit of £1,000 in relation to this complaint not later than 15 July 2026 as a condition of being permitted to continue to advance it. I have discussed with the Claimant his ability to pay and have had regard to the information he provided when determining the amount. I have also suggested to the Claimant that he might wish to seek legal advice before making a decision whether or not to continue.

Approved by:

Employment Judge Bennett

22 June 2026

Notes

Written full reasons will not be provided unless requested by any party by a written request received by the Tribunal within 14 days of the sending of the written summary reasons.

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can

be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/