



EMPLOYMENT TRIBUNALS

Claimant: Mr O B Ogedegbe

Respondent: Regulux Transport Ltd

Heard at: Teesside Justice Centre

On: 23 and 24 April 2026

Before: Employment Judge Heather

REPRESENTATION:

Claimant: in person

Respondent: Ms L Dawson (Counsel)

WRITTEN REASONS

JUDGMENT having been given orally at the hearing on 24 April 2026 and written reasons having been requested in accordance with Rule 60 (4C) of The Employment Tribunal Procedure Rules 2024, the following reasons are provided:

Introduction

1. Mr Ogedegbe presented his claim on 20 October 2024 bringing complaints that he was subject to direct age discrimination and direct race discrimination in connection with his application to work as a delivery driver.
2. The response and grounds of resistance are undated but were accepted by the Tribunal on 3 January 2025. The respondent denies the claims on the basis that it says that the role that Mr Ogedegbe applied for was as a self-employed driver so the Tribunal does not have jurisdiction to hear the claim. In the alternative the respondent's position is that Mr Ogedegbe's application was not progressed because concerns arose regarding his reliability and not because of any protected characteristic.

Issue to determine / list of issues

3. The issues to be determined are:

3.1 Employment status

3.1.1 if the claimant's application to the respondent had succeeded, would the claimant have been:

3.1.1.1 an employee;

3.1.1.2 a worker; or

3.1.1.3 genuinely self-employed;

3.2 Direct discrimination

3.2.1 did the respondent reject the claimant's application or refuse to progress the claimant's application?

3.2.2 if so, was that less favourable treatment?

3.2.3 was an actual or hypothetical comparator treated more favourably than the claimant?

3.2.4 if so was that treatment because of age or race?

3.2.5 has the claimant proved facts from which the tribunal could properly conclude, in the absence of an adequate explanation, that the respondent committed unlawful discrimination?

3.2.6 if so, has the respondent proved that the treatment was in no sense whatsoever because of age or race?

3.2.7 did the treatment amount to a detriment?

Relevant law and legal principles

Employment status

4. The definition of employee is set out in s.230(1) Employment Rights Act 1996 as:

'an individual who has entered into or works under ... a contract of employment'.

5. Applying s.230(2) Employment Rights Act 1996, a contract of employment:

"means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing."

6. By section 83 of the Equal Act 2010, certain employment protections are extended to include “*employment under... a contract personally to do work*”.
7. A contract of employment cannot exist without the irreducible minimum mutuality of obligation and a sufficient degree of control: *Ready Mixed Concrete*. For a contract of employment to exist there must be an irreducible minimum of obligation on each side: *Carmichael and anor v National Power plc* [2000] IRLR 43.
8. Generally, if one of the factors of personal service and substitution rights, control, and mutuality of obligation are not met, there is no contract of employment. Even if there is a significant degree of control, if there is no mutuality of obligation there will be no contract of employment: *Cheng Yuen v Royal Hong Kong Gold Club* [1998] ICR 131.
9. The parties’ intentions may be a relevant factor but it is the substance of the situation that should be given significant consideration. The Tribunal must determine the true nature of the proposed working relationship and is not bound by contractual labels (*Uber BV and others v Aslam and others* [2021] UKSC 5). The conduct of the parties and other evidence may show that the written terms were in fact understood and agreed to be a record, possibly an exclusive record, of the parties’ rights and obligations towards each other. However, there is no legal presumption that a contractual document contains the whole of the parties’ agreement and no absolute rule that terms set out in a contractual document represent the parties’ true agreement just because an individual has signed it: *Uber* at [85].
10. In *Nursing and Midwifery Council v Somerville* EWCA Civ 229 a panel member chair of the Nursing and Midwifery Council’s Fitness to Practice Committee with a portfolio career was found to be a worker. The fact of an overarching contract did not impose an obligation to offer hearing dates, and a claimant’s acceptance of hearing dates did not preclude a finding that they were a worker when they were in fact working. Applying *Somerville*, an individual does not need to be offered and accept a minimum amount of work in order to be a worker.
11. Regulation 2(1) of the Working Time Regulations 1998 defines a worker as an individual who has entered into, or works under, or worked under, a contract of employment, or any other contract, whether express or implied and (if it is express) whether oral or in writing whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual. A similar definition of worker is included in the Employment Rights Act 1996. In order to qualify as a worker, there must be a contract between the claimant and respondent, the contract must be one in which the claimant undertakes to perform work personally, and the respondent must not be a client or customer of a profession or business carried

out by the claimant (*Uber* at [41]). The fact of mutually enforceable obligations does not necessarily make a contract a worker's contract (*Somerville* at [46]).

12. The way in which an individual is taxed is not, on its own, determinative of employment status. Whether or not someone is self-employed does not in itself determine whether they are worker (*Clyde & Co LLP v Bates van Winkelhof* [2014] UKSC 32 and *Stuart Delivery Ltd v Augustine*, [2021] EWCA Civ 1514, [2022] ICR 511).
13. In *Uber BV and ors v Aslam and ors* [2021] ICR 657, SC, the Supreme Court held that not only is the written agreement not decisive of the parties' relationship, it may not be even the starting point for determining employment status because the purpose of the legislation is to ensure that the substance of the agreement takes precedence over the stylistic characterisation in any written document. The Tribunal must also take account of the relative bargaining power of the parties when deciding whether written contract reflects the truth of the agreement (*Autoclenz Ltd v Belcher and ors* [2011] ICR 1157).
14. The leading authority on personal service and the significance of substitution is the decision of the Supreme Court in *Pimlico Plumbers v Smith* [2018] UKSC 29. The Supreme Court held:

"34. The tribunal was clearly entitled to hold, albeit in different words, that the dominant feature of Mr Smith's contracts with Pimlico was an obligation of personal performance. To the extent that his facility to appoint a substitute was the product of a contractual right, the limitation of it was significant: the substitute had to come from the ranks of Pimlico operatives, in other words from those bound to Pimlico by an identical suite of heavy obligations. It was the converse of a situation in which the other party is uninterested in the identity of the substitute, provided only that the work gets done. The tribunal was entitled to conclude that Mr Smith had established that he was a limb (b) worker – unless the status of Pimlico by virtue of the contract was that of a client or customer of his."
15. A limited right of substitution does not preclude the conclusion that a person is a worker. By contrast a genuine and absolute right to substitute would suggest that the individual is not a worker (*Independent Workers' Union of Great Britain (IWGB) v RooFoods Limited (t/a Deliveroo)* [2018] IRLR 84).

Direct discrimination

16. Section 13 of the Equality Act 2010 provides as follows:

"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".

17. The examination of less favourable treatment because of the protected characteristic involves the search for a comparator and a causal link. When assessing an appropriate comparator, “*there must be no material difference between the circumstances relating to each case*” (section 23(1), Equality Act 2010).
18. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, Lord Nicholls explained that frequently Tribunals will apply a two-stage test in direct discrimination claims. Firstly, it is necessary to ask whether the claimant has been treated less favourably than an appropriate comparator and then secondly whether any less favourable treatment was because of the relevant proscribed ground. A two-stage approach will not necessarily be appropriate in every case, and sometimes it may be that the less favourable treatment issue cannot be resolved without, at the same time, resolving the reason why issue.
19. *Shamoon* also confirms the principle that, for a comparator to be appropriate, the circumstances of the comparator must be the same as those of the claimant, in all material respects, save for the protected characteristic.
20. It is well established that where the treatment of which the claimant complains is not overtly because of race, the key question is the “reason why” the decision or action of the respondent was taken. This involves consideration of the mental processes of the individual responsible (*Amnesty International v Ahmed* (2009) IRLR 884). The protected characteristic need not be the sole reason for the treatment, but it must have a significant influence on the decision maker's mental processes. The Tribunal is concerned with the actual reason operating on the mind of the decision-maker.
21. The test for direct discrimination is objective. The fact that the claimant may subjectively believe that she has been treated less favourably because of a protected characteristic is not a factor that the tribunal may consider (*Burrett v West Birmingham Health Authority* [1994] IRLR 7, EAT).
22. It is not sufficient, for a direct discrimination claim to succeed, for the claimant to show that she has been treated differently. The treatment must be “less favourable” (*Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065, HL).
23. The burden of proof is governed by section 136 Equality Act 2010. The claimant must first prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that discrimination has occurred. At the first stage it is only necessary that a tribunal could find discrimination, not that it necessarily would find discrimination (*Igen Ltd v Wong* [2005] EWCA Civ 142; [2005] IRLR 258 and *Madarassay v Nomura International Plc* [2007] IRLR 246). The claimant must first prove facts from which the Tribunal could conclude, in the absence of an adequate

explanation, that discrimination has occurred. Only if that burden is discharged does the burden shift to the respondent.

Findings of fact

24. I make the following findings of fact on the balance of probabilities.
25. Where evidence conflicted, I generally preferred the evidence of Ms Wigham and Mr MacDonald. Their evidence was internally consistent, consistent with the contemporaneous documents and remained largely unchanged in cross-examination. I found Mr Ogedegbe genuinely believed he had been discriminated against. However, a genuine belief is not evidence that discrimination occurred.
26. Mr Ogedegbe applied for a role as a delivery driver with the respondent in July 2024.
27. The respondent operated a relatively informal recruitment process. Applicants who met Amazon's minimum requirements were provided with access to an online onboarding process, including compliance documentation and a service agreement. I accept the evidence of Ms Wigham and Mr Macdonald in this respect.
28. The completion of the onboarding documentation did not guarantee engagement. I accept the respondent's evidence that completion of those steps was only part of the recruitment process and would ordinarily be followed by further stages, including drug and alcohol testing before an applicant would be offered work.
29. The role applied for was described throughout as a self-employed delivery driver role. Drivers were responsible for their own tax arrangements. Drivers were expected to supply their own vehicle or enter into a separate vehicle rental arrangement. Drivers were responsible for arranging appropriate insurance. Drivers were not provided with a uniform.
30. The respondent liaised with drivers weekly to ascertain their availability to work the following week and usually offered work in accordance with the driver's stated availability. The respondent was under no obligation to provide work and drivers were under no obligation to accept work offered to them. The agreement contained a right of substitution. Any substitute was required to satisfy the respondent's requirements and be registered with the respondent in the same way as a delivery driver.
31. Mr Ogedegbe says that he had a telephone conversation with Mr MacDonald on 27 July 2024 and that Mr MacDonald then sent him an application pack. Mr MacDonald's evidence is that he does not recall a telephone conversation with Mr Ogedegbe and that his preferred method of communication is by text message so that he has a record of communications with applicants.

32. I have reviewed the evidence of the text message exchange between the parties which has been provided by Mr Ogedegbe. The messages provided are not set out in chronological order, the date of individual messages is not apparent and the transcript appears to be incomplete as some of the messages are truncated. One of the messages reads:

“Afternoon, i’m Simon from Regulux transport, you have applied for a multi drop delivery driver role, is this something you are still interested in?”

33. That message reads as if it is an initial communication between the two men rather than a follow up to a telephone call. There are no messages in the transcript that has been provided to me that suggests that there was any subsequent telephone call between Mr Ogedegbe and Mr MacDonald.
34. Having reviewed the documentary evidence, I find no contemporaneous support for Mr Ogedegbe’s assertion that a telephone discussion took place. If such a conversation did occur, it does not affect any issue I am required to determine and I therefore make no finding as to whether such a telephone call occurred.
35. The respondent’s onboarding process includes requirements that a prospective driver set up an account with Amazon and complete various administrative tasks such as having their identity verified and providing evidence of their driving license and insurance details. The parties agree that an application pack was sent to Mr Ogedegbe which he completed and that Mr Ogedegbe provided all of the necessary documents and information for the application to progress to the next stage of drug and alcohol testing.
36. Mr Ogedegbe says that the respondent did not progress the drug and alcohol testing because of his age and skin colour. He says that he had provided his driving license and date of birth as part of the application process so the respondent would have been aware of his age and the colour of his skin. The respondent says that it did not progress Mr Ogedegbe’s application because Ms Wigham had received negative feedback about Mr Ogedegbe from staff who worked at other companies which share office space with the respondent
37. Mr MacDonald and Ms Wigham gave credible and consistent evidence that Mr MacDonald discussed Mr Ogedegbe’s application with Ms Wigham as he was new to his role at the time so he needed guidance and support from Ms Wigham. Mr MacDonald gave evidence that he used a template message provided to him by Ms Wigham when making initial contact with prospective delivery drivers. Having reviewed the transcript of the text messages provided by Mr Ogedegbe it is apparent to me that the message from Mr MacDonald which sets out the details and requirements of the role is a pro forma message which is different in style, cadence, language and punctuation to other messages in the exchange which appear to be prepared personally by Mr MacDonald on an ad hoc basis for his

specific exchange with Mr Ogedegbe. I therefore accept the respondent's evidence that Mr MacDonald discussed the Mr Ogedegbe's application with Ms Wigham and sought guidance from her regarding the next stage of the recruitment process.

38. Ms Wigham's evidence was that she is solely responsible for receiving confirmation that an application has been fully completed and all relevant information and evidence has been provided with identity checks and DBS checks being satisfactory. The next stage would be for Ms Wigham to instruct Mr MacDonald to liaise with the applicant to arrange a drug and alcohol test.
39. I accept Ms Wigham's evidence that while discussing Mr Ogedegbe's application with Mr Macdonald, other on-site managers working within the shared depot office recognised Mr Ogedegbe's name and volunteered information concerning their previous dealings with him. I also accept Ms Wigham's evidence that she understood from those conversations that Mr Ogedegbe had a reputation for being difficult to deal with during recruitment, required repeated chasing to complete recruitment processes and had failed to take up work after previous applications. Whether that information was accurate is not a matter which I need to determine. The relevant question is whether Ms Wigham genuinely received the information and whether it materially influenced her decision-making. I am satisfied that she did receive the information and that it did materially influence her decision. I did not consider this evidence inherently improbable given the shared office arrangements operating at the depot and the evidence that applicants frequently applied to a number of delivery companies operating from the same site.
40. The decision not to progress Mr Ogedegbe's application was made by Ms Wigham. Mr Macdonald's role was administrative and limited principally to communicating with applicants and progressing recruitment steps when instructed. He was not the decision maker. I accept the evidence of both witnesses on this issue.
41. Mr Ogedegbe repeatedly asserted that the respondent's explanation could not be true because he had never previously worked at the DNE2 depot and had never previously worked for the respondent. I accept Mr Ogedegbe's evidence that he had not previously worked at DNE2. However, I do not accept that this renders the respondent's explanation untrue. Ms Wigham's evidence was not that Mr Ogedegbe had previously worked for the respondent or for her company. Her evidence was that managers employed by other companies operating from the same depot recognised Mr Ogedegbe's name from previous recruitment dealings and provided information regarding their experiences of him during those recruitment processes. Those matters are not inconsistent with Mr Ogedegbe's evidence that he had never previously worked at DNE2. I therefore reject Mr Ogedegbe's submission that the respondent's explanation was demonstrably false for that reason.

42. In reaching my assessment of credibility, I considered Mr Ogedegbe's repeated assertion that the respondent must have fabricated its explanation because he had never worked at DNE2. However, I found that submission was based upon a misunderstanding of the respondent's evidence. Once the actual evidence of Ms Wigham was examined, there was no inconsistency between her account and Mr Ogedegbe's evidence that he had never previously worked at that depot.
43. I also accept the clear and consistent evidence of both Mr MacDonald and Ms Wigham that they did not view Mr Ogedegbe's personal data or identity documents. They were candid that they could have accessed the information and documents if they had wanted to but they had not done so because they did not need to. Mr MacDonald explained that he is able to view an applicant's profile that they create in the Amazon portal. He gave evidence that there are thumbnails on the screen that show a green tick if the relevant part of the application has been completed and he can also see if a section has been started but remains incomplete. That is why he sent a text message to Mr Ogedegbe pointing out that some of the sections were incomplete and needed to be signed by him.
44. I found both Ms Wigham and Mr MacDonald to be straightforward and consistent witnesses. Their evidence that they did not know Mr Ogedegbe's age or race was not undermined in cross-examination. I accept that documents existed from which information about Mr Ogedegbe's age and race might have been identified. However, I find that neither witness reviewed those documents for that purpose and neither in fact knew Mr Ogedegbe's age or race when Ms Wigham made the decision not to progress Mr Ogedegbe's application to the next stage of drug and alcohol testing.
45. Mr Ogedegbe thereafter attempted to contact Mr Macdonald seeking updates.
46. I accept Mr Macdonald's evidence that his mobile telephone was damaged at around this time and that a number of messages were not transferred to his replacement device. His oral evidence about this was particularly compelling. Mr MacDonald explained that he also works as a mechanic and that the phone of his screen was smashed when he accidentally dropped a spanner on it.
47. I found Mr Macdonald's explanation plausible and credible.
48. I do not find that he ignored Mr Ogedegbe's communications because of Mr Ogedegbe's age or race.
49. The Tribunal heard no evidence capable of supporting Mr Ogedegbe's allegations that the respondent hacked his computer, forged documents or engaged in criminal conduct. Those allegations were not relevant to the pleaded discrimination claims. To the extent they were advanced as supporting an inference of discrimination, the Tribunal rejects them and places no weight upon them.

50. The Tribunal found Ms Wigham to be a straightforward witness who gave clear and internally consistent evidence. Her account was consistent with the contemporaneous documents and with Mr Macdonald's evidence.
51. The Tribunal similarly found Mr Macdonald to be an honest witness. His evidence regarding the broken phone and lost messages was plausible and was not shaken during cross-examination.

Discussion and conclusions

If the claimant's application to the respondent had been succeeded, would the claimant have been: (a) an employee; (b) a worker; or (c) genuinely self-employed?

52. Mr Ogedegbe asserts that a precedent has been set by similar claims that he has brought previously against different respondents. No precedent have been sent by any previous claims that Mr Ogedegbe may have made. I have to decide the issues as they relate to this specific claim.
53. The Tribunal is required to determine Mr Ogedegbe's status for the purposes of the Equality Act 2010 in the context of his application for a prospective role with the respondent. The question is whether, had the engagement proceeded as envisaged, the relationship would have been one of employment, worker status, or genuine self-employment.
54. The parties agree that there would have been no mutuality of obligation. The Respondent would be under no obligation to offer work, and Mr Ogedegbe would be under no obligation to accept any work that was offered. I therefore conclude that the proposed arrangement would not have constituted employment.
55. The question is whether Mr Ogedegbe would nevertheless have fallen within the wider Equality Act definition as a worker or whether he would have been genuinely self-employed. I have regard to the reality of the arrangement as it was described to Mr Ogedegbe during the application process as well as to the draft contract that was provided to Mr Ogedegbe and which he was required to sign as part of the application process.
56. The respondent accepts that it set the contractual terms on a non-negotiable basis, that the respondent mandated collection times, and determined the overall framework within which deliveries would be carried out. The evidence from the respondent was that whilst it suggested rather than mandated routes for delivery drivers the drivers would generally choose to follow the suggested routes. Mr Ogedegbe would have been financially penalised if deliveries were not completed or if he required assistance from another driver to complete his deliveries. The payment to be made by the respondent was to be at a flat daily rate that was set by the respondent. The same rate was to be payable, irrespective of hours

worked, with no scope for Mr Ogedegbe to negotiate price nor any means for him to increase profit through efficiency.

57. The draft contract provided a right of substitution and the evidence from the respondent was clear that there would be no financial penalty or contractual breach if Mr Ogedegbe provided a substitute to undertake deliveries that were assigned to him. However, the contract required that any substitute was required to be registered with, and vetted by, the respondent in the same manner as any delivery driver including identity checks as well as drug and alcohol testing. That level of control significantly restricted the practical utility of the substitution provision. In practical terms, the restrictions attached to the substitution provision make it unlikely that it would be exercised other than by another driver already approved by the respondent. The requirements of the contract meant, in reality, that a delivery driver's right to substitution was limited to substituting to another delivery driver approved by the respondent.
58. The absence of a uniform and the option to use Mr Ogedegbe's own van point towards independence, but they are not determinative. Looking at the proposed relationship as a whole I am satisfied that Mr Ogedegbe would not have been operating a business on his own account. Rather, he would have undertaken to perform work personally for the respondent within a relationship characterised by control and economic dependency.
59. Although Mr Ogedegbe would have supplied his own vehicle and there were some indicia of independence, viewed in the round those features were outweighed by the requirements of personal service and the degree of operational control. The Tribunal concludes that, had the engagement proceeded, Mr Ogedegbe would have been a worker for the purposes of section 83, Equality Act 2010. Accordingly, the Tribunal has jurisdiction to determine the complaints of direct age discrimination and direct race discrimination.

Did the respondent reject the claimant's application?

60. It is agreed that the respondent decided not to progress Mr Ogedegbe's application.

Was that less favourable treatment?

61. In one sense the respondent has treated Mr Ogedegbe unfavourably by not progressing his application. The critical question is why that occurred.
62. Mr Ogedegbe's pleaded case is that his application was not progressed to the drug and alcohol testing stage because of his age and skin colour whereas an unidentified comparator described as a male in his 30s had his application progressed to the drug and alcohol testing stage at a different depot at a later date.

63. Mr Ogedegbe bears the burden of establishing primary facts regarding the proposed comparator. Mr Ogedegbe did not know the comparator's name. There was no evidence regarding the comparator's qualifications, work history, experience, application history, reputation, recruitment assessment, dealings with the respondent or circumstances in which his application were assessed. The Tribunal is therefore unable properly to determine whether that individual was in materially similar circumstances to Mr Ogedegbe as required by section 23, Equality Act 2010. The comparator evidence is accordingly of very limited evidential value.
64. Section 136 Equality Act 2010 requires the Tribunal first to consider whether Mr Ogedegbe has established facts from which the Tribunal could conclude, in the absence of an adequate explanation, that unlawful discrimination occurred.
65. Mr Ogedegbe relies upon four principal matters:
- 65.1 he is a black man;
 - 65.2 he was in his seventies at the material time;
 - 65.3 his application was not progressed beyond the onboarding stage; and
 - 65.4 he met an unidentified white applicant at the Carlisle depot whose application was apparently progressing.
66. I have considered those matters individually and cumulatively.
67. I am not satisfied that they establish facts, individually or collectively, from which the Tribunal could properly infer unlawful discrimination. The evidence concerning the alleged comparator is extremely limited and does not enable me to conclude that he was in materially similar circumstances to Mr Ogedegbe.
68. More significantly, I have found as a fact that Ms Wigham did not know Mr Ogedegbe's age or race when she made the decision not to progress his application. I have further found that she did not progress his application because information had been provided to her by managers employed by other companies operating from the depot and because she formed the view that Mr Ogedegbe was unlikely to be a reliable driver.
69. In those circumstances, I am not satisfied that Mr Ogedegbe has established facts from which the Tribunal could conclude that unlawful discrimination occurred. The burden of proof does not therefore pass to the respondent.

Was it because of age or race?

70. If I am wrong in my conclusion that Mr Ogedegbe has failed to establish facts capable of shifting the burden of proof, I am nevertheless satisfied that the respondent has proved, on the balance of probabilities, that the treatment occurred because Ms Wigham believed Mr Ogedegbe would be an unreliable recruit and for no reason whatsoever connected to either age or race.
71. I have found as a fact that Ms Wigham received information from managers employed by other companies operating from the depot and that she acted upon that information because of concerns regarding Mr Ogedegbe's reliability. I do not repeat those findings here. I accept that evidence as the genuine and operative cause of the decision.
72. It is well established that, for the purposes of direct discrimination, what matters is the decision-maker's reason for the treatment. It is therefore immaterial whether the information provided to Ms Wigham was accurate or not. What matters is that she believed it and acted upon that belief. I am satisfied that she did so and that she formed a genuine view that Mr Ogedegbe was unreliable.
73. I have also considered the possibility that the information may have been mistaken (for example, relating to a different individual). That does not alter the analysis. The operative reason for the decision remains Ms Wigham's belief, based on what she had been told.
74. I have specifically considered Mr Ogedegbe's submission that the respondent's explanation must be rejected because he had never previously worked at the DNE2 depot. In my judgment that submission proceeds from a misunderstanding of the respondent's case. The respondent's case was not that Mr Ogedegbe had previously worked for the respondent. Rather, the respondent's evidence was that other managers working within the depot recognised Mr Ogedegbe's name from earlier recruitment dealings with him and expressed concerns regarding his reliability. I accept that evidence. Accordingly, Mr Ogedegbe's assertion that he had never previously worked at DNE2 does not undermine the genuineness of Ms Wigham's explanation for the decision she took.
75. I am satisfied that Mr Ogedegbe's age and race played no part in Ms Wigham's decision. The reason for the treatment was her belief as to his reliability, and not any protected characteristic.
76. As for Mr MacDonald, I accept his evidence that he ceased communicating with Mr Ogedegbe because his mobile telephone was accidentally damaged and he no longer had access to messages stored on that device. I found his evidence on this issue to be credible and reliable. Mr Ogedegbe submitted that I should draw adverse inferences from the loss of those messages and relied upon *Rooney v Vardy* [2022] EWHC 2017 (QB). I decline to do so. The circumstances are materially different. In *Rooney v Vardy*, the issue concerned the deliberate destruction of potentially relevant evidence. In the present case, I have found that

the loss of the messages resulted from accidental damage to Mr MacDonald's phone and not from any deliberate act designed to prevent relevant evidence from being considered. In any event, I have been able to consider the relevant message exchanges from Mr Ogedegbe's own evidence and I do not consider that the absence of further messages causes any evidential difficulty in determining the issues before me.

- 77. I am satisfied that Mr MacDonald's actions were unrelated to Mr Ogedegbe's age or race.
- 78. Again, the burden would not, therefore, pass to the respondent.
- 79. In reaching these conclusions I have considered all of the evidence and submissions advanced by the parties, whether or not specifically referred to in these reasons. Any matter not expressly mentioned was not material to the outcome of the claim.

Summary

- 80. Had the engagement proceeded, the claimant would have been a worker.
- 81. The tribunal therefore has jurisdiction to determine the complaints that he has presented under section 13 of the Equality Act 2010.
- 82. The complaint of direct age discrimination is not well founded and is dismissed.
- 83. The complaint of direct race discrimination is not well founded and is dismissed.

**Approved by:
Employment Judge Heather**

14 July 2026

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