



EMPLOYMENT TRIBUNALS

Claimant: Mr Olushola Akinyemi
Respondent: Lancashire County Council
Heard at: Manchester by CVP
On: 1 – 4 September 2026
Before: Employment Judge Liz Ord

Representation:

Claimant: In person
Respondent: Ms R Morgan (counsel)

JUDGMENT

1. The claim of direct sex discrimination is well-founded and succeeds.
2. The claim of direct race discrimination is not well-founded and is dismissed.

REASONS

The Complaints and Issues

1. The claimant complains of:
 - 1.1. Direct sex discrimination;
 - 1.2. Direct race discrimination.
2. The issues for the tribunal are set out in the attached Annex.
3. The claimant's ethnicity is Black British (African).

Evidence

4. The tribunal had before it the following documentary evidence: a documents bundle of 148 pages, a witness statement bundle of 23 pages.
5. On behalf of the claimant the tribunal heard evidence on oath from:
 - 5.1. Mr Olushola Akinyemi (the claimant).
6. On behalf of the respondent the tribunal heard evidence on oath from:
 - 6.1. Ms Charlotte Pinder (Registered Manager of Red Rose Manor Children's Home);
 - 6.2. Mr Richard Lawler (Registered Manager of Thornton Children's Home);
 - 6.3. Mr Mark Davies (Team Teach Lead Co-ordinator).
7. Ms Jane Sobanska (Assistant Manager at Thornton Children's Home at the relevant time) produced a witness statement but did not attend the hearing. As her witness statement was not tested in evidence, I give it limited weight.
8. Number references in brackets [01] are to pages in the documents bundle.
9. Only findings of fact relevant to the issues, and those necessary for the tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The tribunal has not referred to every document it read and/or was taken to in the findings below, but that does not mean it was not considered if the tribunal was taken to the document in evidence or as part of a reading list. The tribunal notified the parties at the outset of the hearing that they would only read documents that they were specifically referred to and would only read documents referred to in witness statements insofar as they were identified as being relevant to an issue in the case.

The Law

10. **Section 13 Equality Act 2010 (EqA) - Direct discrimination**

- (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.

11. There are two parts to consider, namely, whether the employer:

- Treated the person less favourably than it treated others, and
- Treated the person in that way because of a protected characteristic.

12. **Section 23 EqA comparison by reference to circumstances - provides:**

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

13. **Section 136 - Burden of Proof**

- (1) This section applies to any proceedings relating to a contravention of the 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.

14. This is a two staged test. At the first stage, the claimant must prove (on a balance of probabilities) facts from which the tribunal could decide discrimination had taken place (the prima facie case). At the second stage (only engaged if the first stage is passed) the burden shifts to the respondent, who must prove (on a balance of probabilities) a non-discriminatory reason for the treatment.

Case law

15. In **Madarassy v Nomura International plc**, 2007 ICR 867, CA, the Court of Appeal held that the claimant had to show "something more" than just poor treatment and a protected characteristic.

Findings of Fact

16. At all material times the claimant, known as "Pappy", was an agency worker undertaking the role of "Waking Watch Support Worker" within Lancashire County Council's (LCC's) children's residential services. As such, he worked nights at children's homes ensuring the safety of young people in residence and responding to any safeguarding incidents.

17. He sometimes worked at Thornton Children's Home, where there was a young female in residence, who was the victim of child sexual exploitation (CSE) by males.

18. Mark Davies (Team Teach Co-ordinator at LCC) said in evidence that that LCC had undertaken risk assessments on the young person. They knew about her abuse by males but they wanted her to have experience of males so that she would understand that not all males were abusers. They knew she

had a history of making false allegations and they knew she could become fixated on a particular member of staff,

The incident

19. On Sunday 4 August 2024, there was an incident with the young female at the home involving the claimant. There were three witnesses to the incident, namely, Emma Smith (another agency Support Worker), hereinafter referred to as Emma, Jane Sobanska (Assistant Manager), hereinafter referred to as Jane, and the claimant. They were all debriefed and most relevantly said the following:

20. Emma's debriefing [130-32]:

- 20.1. There had been several incidents all day with the young person before the claimant came on shift at 22.00. The young person seemed to be targeting Jane and looking for an excuse to hurt her.
- 20.2. When Emma and the claimant were restraining the young person, the young person went to bite Emma, and as the young person pushed forward, Emma's arm came in contact with her chest. The young person claimed that Emma had touched her boob, and Emma responded that the young person had moved forward and caused the contact. The claimant tried to secure the young person's legs and the young person shouted "You pedo, you just touched me between my legs". Her body then relaxed.
- 20.3. Emma and Jane guided the young person to the sofa to sit down. She was shaking and crying. On the sofa she said "I've been in restraints before, but I've never had anyone put their hands there, he put his hands up my shorts and they're baggy, I know what being sexually assaulted feels like."
- 20.4. Emma felt that there needed to be clear instructions on restraints. There was no way of them knowing that the young person would have a trauma response to a male in a restraint. If the claimant and Emma had not intervened, then Jane could have ended up really hurt. She suggested possibly avoiding males on waking watch.
- 20.5. She did not feel that there was any inappropriate conduct. She did not see a grab or a touch. The claimant was pushing the young person's leg away from him to stop her from kicking him.

21. Jane's debriefing [133-34]:

- 21.1. The young person was looking for some confrontation all day and made racist comments to Jane, who appeared to be a trigger. The claimant came on shift at 22.00 and was given a handover.
- 21.2. At 23.00 the young person would not turn the TV off as asked. She was screaming and threatening staff and ripping wallpaper off the walls. She named four members of staff she had got rid of and said she was going to get rid of the claimant and Jane too. She punched Jane in the chest.

- 21.3. The claimant and Jane attempted a two person intervention. The young person kicked Jane in the groin. She was kicking the claimant and the claimant tried to stop her from kicking. She was trying to bite everyone involved.
- 21.4. Emma and Jane were trying to swap out. The young person started shouting at the claimant calling him a “pedo” and that he had touched her.
- 21.5. The restraint was dropped. The young person went into a shock reflex. She sat on the sofa with Jane and Emma and said she had baggy shorts on and the claimant put his hand up her shorts.
- 21.6. Jane knew they should not really use their hands, however, in the moment she felt like the claimant was just trying to stop the young person from kicking him. Jane could see his hand and at no point did she see him grab the young person. She felt that the restraint was reasonable and proportionate.
22. The claimant’s debriefing [81-82]:
- 22.1. Jane gave him the handover explaining that the young person had been rude and nasty towards her since 17.30. The claimant usually had a good relationship with the young person, but on his last two shifts he had to tell her off, so he wasn’t sure how she was going to be. She said she was going to hit Jane and pushed her.
- 22.2. He and Jane went into the restraint with the claimant on the left, Jane on the right, and Emma in front. The young person said she was going to kick off his balls and tried to do this several times. The claimant tried to use his hand to stop this and used his own leg to protect himself.
- 22.3. The young person said she knew “how to stop you guys from coming, ...you Pappy are next.” She was screaming and shouting and claimed that Emma touched her “tits” and then shouted “you Paedophile, you touched me in my privates.” She then started to calm down and the allegation came.
- 22.4. He did not touch her leg; she moved her leg towards his hand as she was kicking out.
23. These three accounts of the incident are contemporaneous and similar and I accept that they are the authors’ honest recollections of what happened. From these accounts I find the following most pertinent facts regarding the restraint:
- 23.1. The young person was aggressive and punched Jane. In response the claimant and Jane restrained her. The young person kicked Jane in the groin. Emma went into a swap over with Jane. The young person tried to bite all three staff members.

- 23.2. During the swap over, the young person pushed herself forward and Emma's arm came into contact with her breast. Emma immediately responded by saying the young person moved forward and touched her.
- 23.3. The young person tried to kick the claimant in the testicles. As she thrust her leg forward towards him, he attempted to stop it with his hand/arm, which came into contact with the young person's inner leg.
- 23.4. The young person then stopped lashing out and was released. She became distressed. She sat on the sofa with Emma and Jane where she alleged that the claimant had put his hands up her shorts.
- 23.5. Emma did not see a grab or a touch. Jane could see the claimant's hand and saw that he did not grab the young person at any point. I find that the claimant did not grab the young person's leg or put his hands up her shorts. He simply pushed her leg away as she kicked out at him.
- 23.6. The restraint was proportionate and reasonable. There was no inappropriate conduct on behalf of any of the staff.
- 23.7. Nonetheless, the young person was re-traumatised by her inner leg being in physical contact with the claimant's hand/arm and she fixated on this.
- 23.8. At no time did the young person withdraw her allegation against Emma or the claimant.
24. As a result of the young person's adverse reaction to the claimant, Jane contacted the Assistant Registered Manager of the home, Frankie Hearty, for advice. Mr Lawler, the Registered Manager, was absent from work that day. Ms Hearty agreed that the claimant should be sent home because of the young person's reaction to him and the distressed state she was in.
25. There was no consideration of Emma being sent home and Emma was not sent home. This was because the young person's reaction to Emma was less severe and she allowed Emma to comfort her.

LCC's response to the incident

26. The following day, being 5 August, Ms Charlotte Pinder (the Registered Manager supporting Thornton Children's Home), with the authority of Richard Lawler (Registered Manager of Thornton Children's Home) and Michael Nunn (Mr Lawler's Manager) referred the allegation against the claimant to the Local Authority Designated Officer (LADO) [89-94].
27. Ms Pinder compiled a fact finding report [98-102] and sent this, along with the witness debriefs, and notification to Mr Lawler and Mr Nunn for their consideration [97]. The report was then sent to LADO.
28. The report stated in the Risk Assessment section [101] that the young person used to make "blanket allegations" when in a heightened state, and this was a response to the situation at the time.

29. The Senior Manager outcome section [101-2] said that the team was aware of the young person's history and that being held and touched can bring up feelings of abuse. It stated that there was no evidence that directly inappropriate touch occurred. It recommended that no further action be taken against the claimant as the allegation was not upheld.
30. Ms Pinder's referral email to LADO did not mention the allegation against Emma [88] and she was not referred. However, the fact finding report recorded Emma's touching, which led LADO to challenge the non-referral. However, LADO did not pursue the matter further after the respondent told them that there was no allegation against Emma [136].
31. The reason for referring the claimant was that the respondent believed the allegation against him met the National LADO Network guidance for referrals [66] in that it reached the criminal threshold of "behav[ing] in a way that has harmed, or may have harmed a child." LCC did not believe the allegation against Emma met the threshold. LCC distinguished the allegations based on the young person's differing reactions to Emma and the claimant.
32. Because LCC took the view that the allegation against the claimant reached the criminal threshold, they also referred the matter to the police. It took the police some time to investigate, partly because the young person refused to engage with them [113]. The claimant was only cleared of any wrongdoing some months later.
33. In the meantime LCC would not allow the claimant to work for them. They did allow Emma to continue working for them. They informed the claimant's agency of the allegation, and the referral to LADO and the police [email trail 110-18]. The agency told LCC that they were unable to deploy him elsewhere pending investigation [118], and that he was informally suspended without pay [117; 112].
34. A Record of Incident Requiring Physical Intervention was compiled by Richard Lawler [138-143]. In his Manager Section [141] he said that he felt the young person may have been re-traumatised during the restraint and that, if possible, two females should take the lead in any restraint, if needed again. It also recorded that the young person did not understand why the police needed to talk to her.
35. He recorded an outcome of an unsubstantiated allegation [142]. His reasoning was that, following the fact finding process and the police investigation, he felt there was not enough evidence to continue with the allegation. He felt that the incident was an accident in which, in an attempt to protect himself, the claimant found himself becoming a trigger for the young person. The claimant was advised of the outcome on 1 November 2024.
36. In the lessons learnt section Mr Lawler recorded that they felt that, moving forward, only female members of staff should engage in restraint with the young person [142].

Discussion and Conclusions

Comparators

37. The question is whether there were any material differences between what happened to Emma and what happened to the claimant during the restraint.
38. Both Emma and the claimant were restraining the young person to stop her assaulting staff members. The young person pushed herself towards Emma and Emma's arm came in contact with the young person's breast. The young person kicked her leg towards the claimant's testicles and the claimant used his hand/arm to push her leg away, thereby making contact with her inner leg.
39. Both Emma's and the claimant's upper limbs came into contact with what might be considered private parts of the young person's body. This was whilst they were both reacting to a difficult and dynamic situation. Neither of them deliberately touched the young person sexually.
40. The young person alleged that Emma had touched her "boob". She did not withdraw the allegation. The young person alleged that the claimant touched her between the legs and put his hands up her shorts. She did not withdraw the allegation.
41. Emma explaining her contact and comforting the young person, and the young person continuing to accuse the claimant, are simply consequences of the event. They do not make the circumstances of the event materially different.
42. Although the young person pushed forward into Emma during the restraint and Emma touched her breast accidentally, the young person also kicked her leg towards the claimant and he touched her inner leg accidentally.
43. The respondent submits that it was not certain that the claimant did not put his hands up the young person's shorts and touch her between the legs, and just because Emma and Jane did not see the claimant do this, does not mean it did not happen.
44. However, it was as certain as could be that the claimant did not put his hands up the young person's shorts. There were two witnesses to the incident besides the claimant. Jane said that she saw his hands and he did not grab the young person's leg at any point. Both Jane and Emma indicated that his actions were reasonable and proportionate and not inappropriate.
45. Consequently, Emma was in a sufficiently similar situation to the claimant for the comparison to be meaningful.
46. Therefore, I find that there is no material difference between Emma and the claimant for comparison purposes and that Emma is an appropriate comparator.

Whether there was direct sex discrimination

Discussion

47. The key question is whether the claimant was treated less favourably because of the protected characteristic of sex. His sex need not be the sole or main reason, but must have a significant causal connection with the treatment.
48. Direct discrimination is not confined to cases where the decision maker acts because of the claimant's sex in the abstract. It can extend to treatment because of circumstances inextricably linked to the claimant's sex. A broad inquiry needs to be made into the real reason for the treatment.
49. In this case both the claimant's and Emma's upper limbs came into contact with parts of the young person's body that might be considered to be private. She accused both of them, but her reaction to the claimant was more severe. Her emotional state changed and she started to cry and expand upon the accusation against the claimant, whereas she allowed Emma to comfort her.
50. The young person had been subjected to CSE by males and it appears that she had been re-traumatised by the contact with the claimant, who is male. She was distressed because the claimant was male. She did not have the same reaction to Emma, who is female. It is highly unlikely that the young person would have been so distressed if Emma was the one who touched her inner leg. Her reaction would have been less severe and Emma would not have been sent home.
51. LCC knew about the young person's CSE background and had undertaken risk assessments on her. They knew or ought to have known that there was a potential risk of her reacting more adversely to a male than a female when she was touched. In fact, the lessons learnt from the incident suggested that only female workers undertake restraints in the future, if possible.
52. Whilst male workers had done shifts in the young person's home before without any serious issues, this is not an indication that she would not adversely react to a male restraining her if he touched certain parts of her body. She was a vulnerable, unstable child, who was capable of aggression towards her Support Workers, and that was known by LCC. They knowingly put the claimant in a risky situation. When asked about this, Mr Davies in evidence said that they wanted to give the young person exposure to males so that she could understand that all males were not bad.
53. Because of the traumatic reaction of the young person to the claimant, Jane asked him to leave the home that night. She knowingly acted on the young person's sex based reaction. Emma was not asked to leave because the young person's reaction to her was calmer.
54. The traumatic reaction was inseparable from the fact the claimant was male. The causal link between the young person's reaction and the claimant's sex was sufficiently close for his treatment, in being sent home, to be a consequence of his sex. Therefore, the claimant's sex materially influenced the decision to send him home.
55. Because of the young person's adverse reaction to the claimant he was prevented from working for LCC pending investigation, and the allegation against him was reported to LADO. This led to a police investigation and the

claimant being “informally suspended” by his agency without pay. Emma was not prevented from working for LCC and was not referred to LADO because the young person’s response to her was less adverse.

56. The LADO referral was a direct consequence of what happened on the night of the 4 August and the young person’s adverse reaction. Again, when considering direct sex discrimination, the same reasoning applies to the LADO referral as to the claimant being sent home. The young person’s reaction was inseparable from the fact he was male.
57. The causal link between the young person’s reaction and the claimant’s sex was sufficiently close for his treatment, in being referred to LADO, to be a consequence of his sex. Therefore, the claimant’s sex materially influenced the decision to refer him to LADO.
58. Whilst the respondent argues that the reason was a safeguarding response and the young person’s distress, this does not amount to an intervening event that breaks the causal link with sex.

Conclusion on the allegations within the list of issues

1- Suspension by Richard Lawler on 4 August 2024

59. The claimant explained that he was not familiar with employment terminology and was referring to being sent home and thereafter not being allowed to work pending the outcome of the investigation.
60. Whilst this allegation is not made out as pleaded, the claimant was treated less favourably because of his sex by being sent home on 4 August. Being sent home was direct sex discrimination.

2- Referral to LADO on 5 August 2024

61. This was less favourable treatment because of the claimant’s sex. Consequently, it was direct sex discrimination.
62. Even if the first allegation were to fall away, the LADO allegation stands, and this is the behaviour which led to the claimant’s suspension by his agency and his consequential losses.

Overall conclusion on sex discrimination

63. In summary, the claimant’s case succeeds with respect to direct sex discrimination.

Whether there was direct race discrimination

64. There is nothing within the evidence that I have seen or heard that demonstrates direct race discrimination. The claimant himself accepted that his case was more about sex discrimination than race.
65. Consequently this claim is dismissed.

Employment Judge Liz Ord

Date 4 September 2026

JUDGMENT SENT TO THE PARTIES ON

15 September 2026

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgements and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

ANNEX

List of Issues

1. Direct sex and race discrimination (Equality Act section13)

1.1 Did the respondent do the following things:

1.1.1 On 4 August 2024 Richard Lawler asked the deputy manager to suspend the claimant.

1.1.2 On 5 August 2024 the respondent reported the incident to the Local Authority Designated Officer (LADO).

1.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Emma Smith.

1.3 If so, was it because of sex and race?

2. Remedy for discrimination

2.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

2.2 What financial losses has the discrimination caused the claimant?

2.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

2.4 If not, for what period of loss should the claimant be compensated?

2.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

2.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

2.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

2.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

2.9 Did the respondent or the claimant unreasonably fail to comply with it?

2.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

2.11 By what proportion, up to 25%?

2.12 Should interest be awarded? How much?