



EMPLOYMENT TRIBUNALS

Claimant: Mr J Johnson

Respondents: (1) Barking and Dagenham Youth Zones (Future Youth Zone)
(2) Onside Youth Zone
(3) Mr Z Hussain
(4) Mr G Evans
(5) Mr D Barton

Heard at: East London Hearing Centre

On: 14, 15, 16, 17 and 21 July 2020 by Cloud Video Platform

Before: Employment Judge Burgher
Members: Ms M Long
Mr M Rowe

Representation

Claimant: Mr C Tay (Counsel)
Respondent: Mr M Palmer (Counsel)

JUDGMENT

The judgment of the Tribunal is that the Claimant's claims fail and are dismissed.

REASONS

Issues

1. The Claimant was dismissed by the First Respondent, Barking and Dagenham Youth Zone (Future Youth Zone) ("FYZ"), on 26 April 2019 during his probation period. At the outset of the hearing the issues the Employment Tribunal is required to decide were confirmed as follows.

Direct age discrimination [Sections 5 and 13 Equality Act 2010]

2. The Claimant makes allegations of age discrimination against FYZ, Onside, Zak

Hussain and Dave Barton.

3. Did the Respondent treat the Claimant less favourably than those who did not share his age? The Claimant is 38 years old. The Claimant states that the relevant age group for comparison is less than 35 years old.

4. The Claimant relies on Ellie, aged 23, Amber aged 29 and Gershom, aged 33 and/or a hypothetical comparator being an employee of Barking and Dagenham Youth Zone aged 35 years or younger.

5. The Claimant alleges that:

5.1 His colleagues referred to the Claimant as 'Uncle'. The Claimant will refer to emails and WhatsApp messages in this regard.

5.2 Ellie, Amber and Gershom conveyed concerns about him and Mr Zakaria Hussain accepted their version against the clear incontrovertible evidence of an email dated 10 April 2019 to show that the allegations were unfounded.

5.3 The Claimant claims that Mr Hussain and Mr Barton forced him to work unreasonable hours on weeks commencing 5, 14 and 18 April 2019 and that his comparators were not required to do this.

6. The Claimant makes the following allegations of direct age discrimination linked to the above matters.

6.1 On 3 April 2019 Zak Hussain selected the Claimant to remain at the training session instead of Gershom.

6.2 On 5 April 2019 the Claimant asked Zak Hussain and Dave Barton for a break and was refused.

6.3 On 5 April 2019 Dave Barton accusing the Claimant of failing to contribute, looking tired and not showing enthusiasm.

6.4 On 5 April 2019 Dave Barton falsely accused the Claimant of not paying attention to detail with his planning and failing to support employees.

6.5 On 8 April 2019 Dave Barton spoke to the Claimant in a negative tone when speaking about preventing young people using the elevator.

6.6 On 10 April 2019 Zak Hussain allegedly falsely criticised the Claimant regarding not keeping Ellie 'in the loop'.

6.7 On 14 April 2019 Zak Hussain refused to allow the Claimant time off after working a six-day working week.

7. The Respondent alleges that insofar as any of the allegations are found to have occurred there was a non – discriminatory reason for them, namely the reasonable actions dealing with the relevant circumstances.

Direct race discrimination [Sections 9 and 13 Equality Act 2010]

8. The Claimant makes allegations of race discrimination against FYZ, Onside, Gavin Evans and Dave Barton.

9. Did the Respondents treat the Claimant less favourably than those who did not share his race?

10. The Claimant makes the following allegations.

10.1 Gavin Evans did not deal with the Claimant's grievance of 29 March 2019 but did deal with the grievance/concerns of Amber and Ellie made against him regarding not been supported.

10.2 Dave Barton did not deal with the Claimant's grievance of 17 April 2019 but did deal with the grievance/concerns of Amber and Ellie made against him regarding not been supported.

11. The Claimant relies on Ellie and Amber who are white as comparators, in the alternative a hypothetical comparator being an employee of the Barking and Dagenham Youth Zone who are not black.

12. The Respondents deny that Ellie or Amber submitted a grievance against the Claimant and denies that the Claimant's race had any relevance to how he was treated.

Direct sex discrimination [Sections 11 and 13 Equality Act 2010]

13. The Claimant makes allegations of sex discrimination against FYZ, Onside, Gavin Evans and Dave Barton.

14. Did the Respondents treat the Claimant less favourably than it would treat a woman?

15. The Claimant makes the following allegations.

15.1 Gavin Evans did not deal with the Claimant's grievance of 29 March 2019 but did deal with the grievance/concerns of Amber and Ellie made against him regarding not been supported.

15.2 Dave Barton did not deal with the Claimant's grievance of 17 April 2019 but did deal with the grievance/concerns of Amber and Ellie made against him regarding not been supported.

16. The Claimant relies Ellie and Amber as comparators, in the alternative a hypothetical comparator being an employee of the Barking and Dagenham Youth Zone who is not a man.

17. The Respondents deny that Ellie or Amber submitted a grievance against the Claimant and denies that the Claimant's sex had any relevance to how he was treated.

Victimisation Section 27 Equality Act 2010

18. Did the Claimant do protected act within the meaning of section 27(2) of the Equality act 2010 namely by doing the following:

- 18.1 Sending an email complaint to Gavin Evans about Mr Hussain on 15 April 2019.
- 18.2 Sending an email all grievance against Mr Hussain on 16 April 2016.
- 18.3 Sending an email formal grievance against Gavin Evans and Dave Barton on 19 April 2019 and/or
- 18.4 Sending an email to Gavin Evans on 24 April 2019.

19. The Claimant makes allegations of unlawful victimisation against FYZ, Onside, Zak Hussain and Gavin Evans.

20. The Claimant relies on the following allegations of detriment arising from his protected acts:

- 20.1 On 15 April 2019 Mr Hussain demanded the Claimant attend a meeting with him and refused the Claimant the right to have someone present.
- 20.2 On 15 April 2019 Mr Hussain sent an email with false allegations against the Claimant which also threatened to dismiss the Claimant.
- 20.3 On 24 April 2019 Gavin Evans insisting on having a review meeting with the Claimant.
- 20.4 On 26 April 2019 the Claimant was dismissed by Gavin Evans.
- 20.5 The Board of Governors sanctioning the Claimant's dismissal on 26 April 2019.
- 20.6 Debbie Wright carrying out poor and unfair investigation.
- 20.7 Debbie Wright asking Jane Vickers to carry out a poor and unfair investigation
- 20.8 Jane Vickers carried out an investigation which is alleged to be poor and unfair.

21. Whether one or combination of the above acts were motivated by the Claimant's protected acts. The Respondent denies this.

Harassment [Section 26 Equality Act 2010]

22. Did the Respondents engage in conduct which was unwanted by the Claimant? The Claimant relies on the treatment as set out in 5.1 and 20.1 – 20.8 above.

23. Was that conduct related to a relevant protected characteristic?
24. If so, did that conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In determining this the Tribunal should have regard to:
- 24.1 the perceptions of the Claimant;
 - 24.2 the circumstances of the case; and
 - 24.3 whether it is reasonable for the conduct to have that effect.

Hearing

25. The hearing was conducted by Cloud Video Platform. The first day was used for reading relevant documents and witness statements; on days 2 – 4 the Tribunal heard evidence from the relevant witnesses; and on day 5 the Tribunal heard closing submissions from the parties.

26. There were difficulties with the Tribunal having full access to the Tribunal bundle. Initially, the non-legal members did not have the full bundle and only had volume 3 of the bundle in pdf. By the third day of the hearing only Mr Rowe had a full copy of the paper bundle. Ms Long's paper bundle was not delivered to her by TNT. Despite this, all relevant pages that were referred to in evidence were separately scanned and emailed to the members of the Tribunal in pdf format to ensure that the all documentary evidence relied on was fully and properly considered.

27. The Tribunal was grateful for the patience and perseverance shown by the hearing participants when technical and connectivity problems arose from time to time.

Evidence

28. Save for the supporting witnesses for the Claimant, the Respondent gave evidence first and was followed by the Claimant. All witnesses gave sworn evidence and were subject to cross examination and questions from the Tribunal. The order of witnesses was as follows;

29. The Claimant called Mr Majid Ahmed, sessional staff, who worked with the Claimant and found the Claimant to be positive, passionate hard-working and supportive towards staff. He stated that he did not witness or experience the Claimant being subjected to any form of discrimination during the Claimant's short period of employment.

30. The Claimant then called Ms Marilyn Khan. She similarly found the Claimant to be very happy and positive around staff and stated that he always listened and took on board feedback. She stated that she did not witness or experience the Claimant being subjected to any form of discrimination during his employment.

31. The Fourth Respondent, Mr Gavin Evans, gave evidence. He has been the Chief Executive Officer of FYZ since 1 June 2017. He is 37 years old and is a white British man. We found his evidence to be professional, consistent and in crucial respects credible concerning matters he was involved with.

32. The Third Respondent, Mr Zakaria Hussain, Head of Youth Work at FYZ, gave evidence. He was the Claimant's immediate line manager and was 29 years old at the time of the allegations. He is the central proponent of the Claimant's allegations of age discrimination. Mr Hussain was evidently very affected by the serious allegations brought against him and this was reflected in the way he gave evidence. It is clear that there were a number of matters where Mr Hussain's line management concerns of the Claimant were not documented and there was a sense of frustration by Mr Hussain' about this. He frankly stated that he had learnt from this experience him in respect of his failure to document management matters.

33. Mr Evans was recalled and was asked a few supplementary questions by the Tribunal Members following Mr Hussain's evidence.

34. The Tribunal then heard from the Fifth Respondent, Mr David Barton. Mr Barton was 39 years old at the time of the events and is white British. Mr Barton was employed by the Second Respondent, Onside Youth Zone ("Onside") and seconded to FYZ. He was the Openings Manager was required to manage and support the opening of the FYZ prior to its opening date of 18 May 2019. In his role for the Onside he had previously supported the opening of nine separate youth zones. We found that Mr Barton was an open and honest witness who is passionate about securing the success of FYZ and all youth zones. We consider that the evidence he gave relating to his interaction and involvement with the Claimant was based his desire to secure the success of FYZ.

35. Ms Debbie Wright, Head of HR of Onside, gave evidence relating to her involvement in the grievance process and the structures between the Onside and associated charities, including FYZ. Ms Wright was initially one of the 10 additional individual Respondents that the Claimant discontinued claims of unlawful discrimination against following the preliminary hearing on 2 September 2019. Ms Wright's misfortune in this regard was being involved in the Claimant's grievance process. It is evident that as far as the Claimant was concerned anyone who was involved in what he perceived as negative actions towards him, however remote, was deemed an active unlawful discriminator. Ms Wright's evidence was matter of fact and from her evidence, which we accept, there was nothing that the Tribunal is critical of regarding her involvement with the Claimant.

36. The Claimant gave evidence on his own behalf. He consistently asserted that he was less favourably treated because he is a black 38-year-old man. He was given ample opportunity to explain to the Tribunal the specific allegations of less favourable treatment in relation to the alleged discriminatory campaign against him. The Claimant adopted a scattergun approach to making unlawful discrimination allegations. Despite invitation to do so he was unable to provide specific details over and above those in his witness statement. He maintained that he was mocked about his age daily by Mr Hussain and others but was unable to say what actually was said, what the context was and how he responded to such treatment. In these matters he brought 4 separate claims, initially naming 13 individual Respondents before reducing that to 3. Evidence was adduced that the Claimant has made two previous unlawful discrimination claims which he has either withdrawn or that he has failed to establish. His case against London Borough of Hackney (3346873/2016) was dismissed by Watford Employment Tribunal on 20 February 2018 following a 10-day hearing. The Claimant brought 4 separate claims (2303752/2018, 2301282/2019, 2301283/2019, 2301284/2019) in respect of his work at Knights Youth

Centre and 8 individual named Respondents. He subsequently withdrew these claims which were dismissed by the Tribunal on 30 January 2020. The Respondents had no knowledge of the Claimant's previous claims during his employment with them. Whilst the circumstances of the Claimant's previous claims have no bearing on the factual matters we must decide we consider that they are relevant to the credibility of the Claimant's evidence in the claims he makes.

37. The Claimant is experienced in bringing discrimination complaints to the Tribunal and is aware of the legal protections against unlawful discrimination. However, he maintained that he suffered a campaign of unlawful discrimination from 2 February 2019 to 29 March 2019 without making any complaint. We consider that it is incredible for the Claimant to assert that he raised these serious concerns with Mr Evans on 29 March 2019, and that these concerns were dismissed by Mr Evans with the instruction to go back to Mr Hussain, the lead discriminator to deal with. We also consider, as incredible, the Claimant's reference to the term 'uncle' as a basis for age discrimination when he stated he took no offence to this term at the time that it was used; and the term is used as part of the title to his autobiography published in April 2020. We gained the impression that the Claimant believed that if he perceived, and then expressed his belief that he was being discriminated against, then it must be true. However, there was a need for a reasonable analysis of his perceptions and requirement for there to be some evidential basis there. The Claimant has seemingly failed to appreciate this.

38. Our assessments of the witnesses set out above form part of our consideration when determining the issues.

Documents and bundles

39. The Tribunal did the best it could with the limitations of having not all having a paper hearing bundle and ensured that all the relevant documents that were referred to were distributed so that all Tribunal members had electronic copies. The Respondent had sent sufficient copies of the paper hearing bundle to the Tribunal. However, given the late notification that the hearing would be by Cloud Video Platform the Respondent did not have sufficient socially distanced resources to be able to scan and email the pdf bundle in time. The hardcopy paper bundles were sent to the Tribunal members by TNT for overnight delivery for day two of the hearing. However, TNT failed to deliver one of the bundles at all and this was recorded lost, and the paper bundle that was sent to Mr Rowe was finally received by him at 3pm on the third day. By this time however the Respondents representatives had emailed a composite pdf bundle of all the relevant pages that the Tribunal needed to consider. There was no objection by Mr Tay and we all worked from those documents. At all times the Tribunal had the Claimant's electronic bundle which proved to be very helpful for the Tribunal to manage the proceedings from the outset.

Facts

40. The Tribunal has found the following facts from the evidence

41. The Second Respondent, Onside, is a charity founded in 2008 seeking to implement a vision to create safe places for children and young people to spend time in the towns and cities. Onside plans to open centres seven days a week with activities to educate and entertain children. Its ultimate aim is to open 100 youth zones in the UK

within 50 years. Each of the youth zones, including the First Respondent, FYZ, is an independent charity that uses Onside as a model. Onside provides help and support and expertise to the independently operated charities to establish their operations. FYZ entered into a network agreement with Onside and Mr David Barton was provided by Onside to FYZ on secondment from September 2018 until August 2020 for these purposes. At the time of the matters before us there were nine youth zones and FYZ was due to be the tenth.

42. FYZ was registered as a charity in 2019. It is a separate legal entity from Onside with different trustees. FYZ aims to provide a purpose-built facility for young people of Barking and Dagenham, those between 8 and 19, or up to 25 for those with disabilities, so that they have a safe environment to attend, enjoy and engage in a full range of activities from sports to arts, music drama and employability workshops.

Claimant's contract and role

43. Contrary to the Respondent's requirement the Claimant did not provide a complete summary of his employment history in his application for the role. He omitted any reference to London Borough of Hackney and Bethnal Primary School in the application submitted. However, the Respondent did not know this during the Claimant's employment.

44. Mr Hussain and Mr Barton interviewed the Claimant for the role of Junior and Holiday Club Manager at FYZ. It is obvious that at the time they selected him for the role that they knew that his was 38-year-old black man. The Claimant comments and we accept, that it may be positive to have a black man leading the youth zone as he could be a positive mentor and role model given the likely demographics of the club users in Barking and Dagenham. Mr Evans confirmed the Claimant's employment following a telephone interview and the Claimant commenced employment with FYZ on 2 February 2019.

45. The Claimant's contract of employment stated that the first six months of his employment was a probationary period during which FYZ will monitor his performance and conduct. If FYZ was not satisfied with his performance or conduct during the probationary period it could, at its discretion, extend the probation period. During the probationary period, either FYZ or the Claimant could terminate the employment contract by giving one weeks' notice.

46. The Claimant's contract stated that his normal hours work were 40 hours per week including weekends and evenings. He was required to work such additional hours as deemed necessary by FYZ for the proper performance of his duties and he would not be entitled to any further remuneration for such additional hours worked. Whilst there was no contractual entitlement for time off in lieu of notice there was an acknowledgement by Mr Hussain that if staff booked time off in lieu of additional hours this would be allowed. Mr Hussain mentioned that there was a time off in lieu policy but this was not evident before us. We find that there was a requirement for adequate notice to be provided before time off in lieu would be granted to accommodate operational requirements. In respect of holidays there was a requirement to give the manager not less than two weeks written notice of proposed holiday dates.

47. The Junior Club, is a club for children aged 8 to 12. As Junior and Holiday Club Manager, the Claimant was responsible for organising and delivering sessions and events for young people. He was also required to organise staff for events, complete a range of paperwork tasks including planning and risk assessing, attend training sessions and be a positive role model for his team and young people. He was responsible for between 6 – 8 members of staff including sessional workers.

Structure of the FYZ senior management team

48. The relevant structure of the senior management team at FYZ relating to matters before us and comparators was:

- 48.1 Gavin Evans CEO;
- 48.2 Mr Hussain, Mr Barton, Raymond Lau, Recruitment Volunteer Manager, and Jane Vickers, business operations manager were next in seniority;
- 48.3 The Claimant was employed as Junior and Holiday club Manager and Gershom Clarke (white male 33 at the relevant time) was Senior Club Manager. As the youth zone was being established there was a requirement to work hours necessary to ensure that it was successfully opened by proper planning and management.
- 48.4 Ellie Daly (white woman aged 23) sports coordinator and Amber Reed (white woman aged 29) arts coordinator were recruited at the same time as the Claimant and commenced employment at the same day. They worked with the Claimant but reported to Mr Hussain. They were not as senior as the Claimant and Mr Clarke, they had less responsibility and the pressure for them to work longer hours to do complete their work was less.

Induction and Uncle comments

49. At the start of their employment the Claimant, Mr Clarke, Ms Daly and Ms Reed were required to attend at an induction in Chorley. This was a team building and training event where existing youth zones were visited. During this induction training event the Claimant was engaging and demonstrated that he was a warm and reassuring character. We accept Mr Barton's evidence that he overheard the Claimant saying that the team did not need to worry as "*Uncle Joseph*" and "*Aunty Jane*" (referring to Jane Vickers) were at hand. Mr Barton stated he remembered this at the time because he thought it was a good display of teamwork and friendliness between colleagues. We find that the Claimant and other members of staff had positive feedback from their time at Chorley Youth Zone. We also find that the Claimant was liked by some of his colleagues as is evidenced by the statements of Ms Khan and Mr Ahmed and we do not doubt that he was well liked by some other sessional workers who reported to him.

50. There was friendly discussion between the Claimant and his peers at the outset of his employment. The Claimant referred to two WhatsApp messages. The first in early February 2019 where the Claimant writes at 18:26 "*Aunty Ellie get well soon!*", Ellie responded to this at the same time stating "*Thank you uncle!* 😊".

51. The Claimant refers to a separate WhatsApp conversation with Mr Clarke where Mr Clarke states at 19.28, on date unknown, "Hows this uncle?". The Claimant did not object to this and wrote a WhatsApp message to Mr Clarke stating, "your cool dude 😊".

52. In this context, during cross examination the Claimant accepted that he has written an autobiography released in April 2020 entitled *Fallen Short: Issues of Uncle J*, he accepted that the use of the term uncle did not form part of his grievance and that he took 'no offence' to the term. Having considered the evidence the Tribunal find that the Claimant cannot credibly maintain that use of the term uncle was objectionable in the circumstances.

FYZ requirements and Claimant's performance

53. FYZ was to launch a new youth zone in Barking and Dagenham with a defined launch date of 18 May 2019. Prior to that a series of soft openings involving local schools were to be arranged to seek to ensure that when finally open FYZ would succeed. FYZ required its policies and procedures to be adhered to and for there to be a supportive, collaborative and flexible approach to management and organisation.

54. On 1 March 2019 the Claimant fell asleep during the Respondent's Kronos Training. He stated that he, and other members the team, found the room to be stuffy.

55. On 5 March 2019 the Claimant took a day off work without following the Respondent's procedures. He was aware of the need to provide proper notice for time off as he had previously completed a holiday form on 18 February 2019 to take holiday on 21 March 2019.

56. On 6 March 2019 staff were provided with a sessional template to proactively plan the staffing and activities for events at the youth zone. Advance notice and forward planning of events was necessary to ensure soft opening events were effectively progressed. The Claimant decided not to use this template and created his own method by reference to miscellaneous notes and pieces of paper recording who was to do what and when.

57. On 13 March 2019 Ms Stygal, a head teacher notified of the FYZ's opening plans, emailed Mr Evans in response to the email that the Claimant had sent to local schools, she stated:

'...you might want Joseph to re-issue it as there are a few spelling mistakes which won't look good to schools and teachers...hope this is helpful'.

58. Mr Evans replied to Ms Stygal thanking her but stated that the email may not be reissued to avoid filling up headteachers busy inboxes. However, he stated that he hoped the same mistake would not be made again. Mr Evans passed Ms Stygal's concerns onto Mr Hussain who then sent an email, dated 14 March 2019, to the Claimant, Mr Clarke and Marcel Andrew (Outreach Worker) emphasising that it is important that everything is spell checked. Mr Hussain did not single the Claimant out as the person who had sent out the email of concern and there was nothing to identify the Claimant as being the person at fault. Before us, the Claimant sought to suggest that the concerns Ms Stygal expressed

were insignificant and that there were not many mistakes. However, we find that there were mistakes in the email, concerns were expressed, and these concerns were properly addressed.

59. Mr Hussain managed FYZ and arranged one-to-one discussions with the Claimant and members of his team setting out his expectations. Not all action points were recorded and we find that this allowed for an element of misunderstanding to creep in as to what the expectations actually were. Mr Hussain had a clear view of what he believed he was communicating to the Claimant and the team about the processes and deadlines that were required to be met. The Claimant did not accept Mr Hussain's evidence that there were clear deadlines and expectations set.

60. Mr Hussain stated that he set a deadline of 29 March 2019 for the Claimant to outline what the holiday club would look like. He stated that 'Lewis' was seconded from Onside for one week prior to this to provide the Claimant support in formulating plans and for the presentation to be made. The Claimant denied that there was any deadline set for 29 March 2019 for this information to be finalised. We find that whilst this may have been Mr Hussain's plan, it was not made crystal clear to the Claimant that this was a definitive deadline, and after the deadline was missed there were no immediate comments or concerns conveyed to the Claimant about missing this date. However, we do find that the Claimant was required to liaise with Lewis on or before 29 March 2019. Mr Evans wrote to the Claimant on 23 April 2019 at 20:15 and stated:

"There was one outstanding action from the email of 17 April which was: can you forward the plans to Dave that you sent to Lewis for review on 29 March please. You recalled that you handed Lewis the plans on 29 March rather than emailed them."

61. The Claimant did not provide these plans to Mr Evans.

62. On 3 April 2019 Mr Hussain requested the Claimant, Mr Gershom, Ms Daly and Ms Reed to attend Radio Training event in Barking between 1.30 and 4pm. Mr Hussain had authorised Mr Clarke to leave the training early as Mr Clarke was required to attend Vibe Youth Centre in Dagenham at 3.30pm. The Claimant had an event at City Hall commencing at 6pm that evening. It was not in dispute that it would take between 45 minutes to an hour to travel from Barking to City Hall. The presentation materials for the City Hall event had already been prepared and the Claimant would therefore have had at least an hour to prepare for the City Hall event if he left the Radio training when it finished at 4pm. Notwithstanding this the Claimant left the Radio training event before 4pm and was at City Hall by 16.40 that day. Mr Hussain was not happy with the Claimant leaving the training early.

63. On 4 April 2019 (not 5 April 2019 as in the list of issues) Mr Barton arranged an evening training planning session focussing on training sessional staff. It was part of the Claimant's role to manage these sessions, and be involved in creating the content for sessions and assume responsibility for members of staff working under him during sessions. The timetable for the training was shared in advance by email on 3 April 2019 and indicated that it would commence at 5.30pm and there would be a 15 break at 8.00pm. At 7:15pm the Claimant left the session while it was running, without commenting to anyone in the room. Mr Barton having realised that the Claimant had not left the room for a short period, went to see where Claimant was and check what was happening. Mr

Barton found the Claimant in the office having something to eat. The Claimant stated that he was tired and hungry and that he had worked long hours that day. Mr Barton asked the Claimant to return to the training and reminded him that there was going to be a break at 8pm. Mr Barton was critical of the Claimant and did not think it was appropriate for him to leave the training session as he had responsibility and line management for a number of staff in attendance and the topic of discussion was one of his direct accountabilities. Mr Barton believed the Claimant was unenthusiastic and disengaged. He expressed his concerns in this regard to the Claimant.

64. On 5 April 2019 Mr Barton and Mr Hussain had a 3-way meeting with the Claimant where Mr Barton repeated the concerns about the Claimant's behaviour at the 4 April 2019 training and Mr Hussain outlined that there was a lack of attention to detail and support to coordinators and a failure to meet the 29 March 2019 deadline for providing final planning information.

65. On 8 April 2019 when the Claimant was involved in running a session, a group of young people who were a part of the session became disruptive by repeatedly traveling up and down in a nearby lift. Mr Barton directed the Claimant that he needed to challenge and supervise the young people in order to create a positive and safe environment for all. The Claimant was upset that Mr Barton challenged him in this way, especially in front of the young people as it undermined his authority.

66. We find that there was confusion about who was responsible for contacting sessional staff prior to 9 April 2019, when managers were provided with a spreadsheet sheet of emails and telephone staff. At this time, they were required to ask Dionne for the contact details of sessional workers. However, following 9 April 2019 the Claimant and other managers could contact sessional workers directly.

67. On 9 April 2019 Ms Daly requested from the Claimant an update as to what was going to happen at the soft opening event on 14 April 2019. The Claimant responded that he would provide this once staff was sorted out. Mr Hussain assessed this and on 10 April 2019 concluded that the Claimant was not keeping Ms Daly or Ms Reed 'in the loop', there was too short notice to properly consider events in the short time, sessional staff had still not been confirmed and there was a lack of collaboration and discussion. The Claimant stated that Mr Hussain's concerns in this regard were demonstrably false. We do not accept the Claimant's evidence in this respect. The Claimant's view was that he was an effective manager and that he was consulting coordinators and properly communicating with sessional workers. However, we find that his view of his performance is contradicted by:

- 67.1 His email dated 16/04/2019 at 02:28 to various recipients which gives short notice of planning for events between on 17 April 2019 and 1 May 2019. This email demonstrated a failure of planning, communication and agreement with the staff who the Claimant had assigned tasks to do at short notice. It included asking Mr Barton to buy 3 cheap camcorders at short notice without consideration of budget or properly assessing whether he had time to purchase them or whether there was in fact a real need for them;
- 67.2 Ms Reed's email to Mr Hussain dated 18 April 2019 (10:08) where she outlined how she felt. She stated that she would like the lead staff, i.e.

Joseph and Gershom to communicate when they are planning, and what they would like their session to look like. She wrote that the Claimant did not include her in any of his planning and an email notification was not enough for her. She stated that on one occasion the Claimant had informed Ms Reed that her activities for our work were “poo” and saying young people would think that too and this made her feel really bad as an arts coordinator;

- 67.3 Sessional workers expressing concerns that they needed more information from the Claimant about when they were required to work and be given sufficient notice. Carol (23 April 2019), Vanessa (24 April 2019) and Leah (24 April 2019) all expressed such concerns;
- 67.4 His email to Mr Barton on 24 April 2019 asking to arrange a water fountain. Mr Barton responded that there was no budget for this and implied it was not something he should have been asked to arrange;
- 67.5 His email to Mr Hussain and others on 26 April 2019 at 8:38 requesting cooking ingredients for sessions from 30 April to 1 May 2019. Mr Hussain responded at 8.47 stating that it was the Claimant’s remit to plan this and provide a breakdown of costing and items.

68. On 14 April 2019 FYZ had a resident complain about the Claimant parking his vehicle on Wroxall Road. The Claimant had ignored the Mr Evan’s instruction that staff should not park on that road to seek to ensure that local residents were supportive and not react negatively to the opening of the youth zone.

69. At 2.30pm on Sunday 14 April 2019 the Claimant verbally asked Mr Hussain on 14 April 2019 to take 15 April 2019 off work. The Claimant had worked long hours that week, including the Sunday. Mr Hussain responded that he could not authorise a day’s leave on no notice and that there was a process for booking time off. Later that day, at 17.46 the Claimant sent Mr Hussain an email requesting to take 18 April 2019 off work. The Claimant’s request would have been insufficient notice for a holiday request. The Claimant was seemingly applying for time off in lieu. Mr Hussain did not respond to this email and it was not followed up by the Claimant. The evidence showed that Mr Reed had taken some time off for sickness absence but there was no evidence that any member of staff was provided with time off without complying with the notice requirements. The Claimant alleged that Mr Clarke had taken time off in the week beginning 14 April 2019 but the documentary evidence contradicted this.

70. On 17 April 2019 during the delivery training meeting, Ms Reed reacted emotionally to the Claimant’s comments towards her. She left the meeting in tears. Mr Barton considered that the Claimant’s tone of voice was aggressive and overly assertive towards Ms Reed. In an email on 18 April 2019 (13.26) Mr Barton informed the Claimant that:

“during the delivery planning meeting you raised your voice several times and became very animated with your body language, this happened in particular when other team members expressed the view that may have been different from your own.”

71. By email of 18 April 2019 (18.27) Mr Evans followed up Mr Barton's by stating that raising voice and becoming animated with body language is unacceptable for any member of staff.

72. Having assessed the evidence we find that the Claimant's method of working during his short period of employment disorganised, it was not collaborative or accepting the reasonable instructions and processes (use of template, time off requests process, disregarding parking instructions). He was reactive and resistant to having his work or approach challenged. This was not compatible with the expectations FYZ had for the managerial role.

Campaign of discrimination

73. The Claimant maintains that he was subjected to a campaign of unlawful discrimination from the start of his employment. Paragraph 3 of his witness statement states before the Tribunal states:

"Zakaria Hussain (Future youth zone head of youth), Gerham Clark (Future senior club lead), Ellie Daly (Future sports coordinator), and Amber Reed (Future art coordinator) subjected me to a campaign of discrimination from 2nd February 2019 to 29th March 2019. During this period Zak treated me less favourably than Gershom, Amber, and Ellie, because I was over 35 and they were under 35, by being hostile to me, frequently raising his voice at me, engaging me with a demeaning tone which Ellie, Amber and Gershom found entertaining, making false accusations against me, making me work long hours, regularly saw Gershom, Amber and Ellie treat me like a second class citizen and not do anything and in fact got entertained by it, insult me about my age, which got Amber, Ellie, and Gershom to do the same."

74. The Claimant was asked to provide the specific evidential basis for this broad wide-ranging statement and save for the matters that were specified in the list of issues he was unable to do so. In evidence the Claimant stated that the generic allegations of hostility and discrimination towards him was occurring on a daily basis.

75. In his grievance submitted against Mr Hussain submitted on 15 April 2019 at 10.37 states:

"INTERACTIONS WITH MANAGEMENT:- Interactions with my direct line manager Zak Hussian (Head of Youth), from the beginning have been mostly negative, because despite my efforts to be cordial, pleasant, helpful and engaging, I found his approach toward me to be somewhat hostile and generally dismissive (I suspect this is because amongst the 4 staff I started with namely Gershom, Ellie and Amber I am furthest from him in age), which I professionally confronted him about on the 1st of April 2019."

76. It is clear that no specific events have been mentioned.

77. The Claimant further states in this grievance that "One should note for every clear example of me being engaged like a second class citizen, there are many more that are blatant but subtle." The Tribunal was unable to identify the clear examples of being a second class citizen that the Claimant was referring to.

78. In the grievance investigation with Ms Vickers on 22 April 2019 the Claimant was asked to give specific examples of age and gender discrimination (race discrimination was not being alleged at this time). He stated:

*“I explained; from very early on I noticed unprovoked natural hostility toward me from the Zak plus very early on it was highlighted I was furthest from him in age (Ellie being youngest at 23, Amber and him turning 30 this year, Gershom being 33, with me being 38 going on 39), combining both factors, this came across to me as being a major factor behind hostility. As he seemed to instantly view me as the least relatable due to age. The above hostility, in my view, led to Ellie going out of her way to negatively interact with me (insults, lack of cooperation with work tasks etc) to impress that who was frequently hostile to award me in front of her, Amber and Gershom. The hostility showed to be an influence and Amber when she refused to use the template we have all had agreed on, because the request was coming from me, going as far as being rude and generally negative. When Zak is being hostile toward me, with Ellie and Amber following suit with insults and general negative attitude, I would keep quiet or tried gearing things to a more positive approach, to avoid escalating things. **A good example of the above is a day before our first soft opening, after last-minute changes from Gavin, Zak had a delivery meeting with myself, Ellie, Gershom, and Amber. During which everything I was saying was being dismissed, with Ellie supporting Zak’s approach, while Gershom was given more room to share his input. In terms of gender discrimination; I found Amber and Ellie crying when things aren’t going their way, leads to Zak not fact checking before making accusations, which I feel wouldn’t happen if they were male. Example of this is when Ellie claimed, when team was still in CU, that I hadn’t been supporting her session plans, once I showed her to be not telling the truth she began to cry. The same thing happened with Amber regarding the 14th and 17th of April session plans, where I had verbally and in writing organised her to coordinate staff for these dates, and she failed to do so along with Ellie.”***

79. Therefore, the only specific example that the Claimant provides during the grievance investigation relates to the day before the first soft opening as highlighted in bold above. There are no specific examples of the insults, lack of cooperation with tasks, hostility, rude and generally negative attitude that the Claimant complains of.

80. Absent any specific allegations, and on the evidence presented to us we are unable to find that the Claimant has established any campaign of discrimination or that he was treated like a “*second-class citizen*” as alleged in his generic statements. His generic statements in this regard are not sufficient the form the basis of such a finding especially when no particulars have been provided and when they are flatly denied by the Respondent. The fact that Mr Hussain did not single the Claimant out in respect of the spelling mistakes mentioned by Ms Stygal undermines the contention that Mr Hussain orchestrated a campaign of discrimination against him.

81. In the context of this case, the fact that we do not find that the Claimant was subjected to a campaign of unlawful discrimination is significant because he relies on this campaign, without specific evidenced particulars, as the basis for everything that happened to him. Without the foundation of the alleged unlawfully discriminatory campaign the specific unlawful discrimination complaints made are decidedly shaky.

82. The Claimant maintained that he spoke with Mr Evans about the campaign of discrimination on 29 March 2019 and Mr Evans told him to speak with Zak Hussain directly about it. Mr Evan's stated that he had a discussion with the Claimant who stated that he felt that Amber Reed and Ellie Daly were not responsive to his requests or willing to accept his advice which was based on his experience of working in the sector. Mr Evan's commented to the Claimant that his approach to his interaction with colleagues might be too assertive and spoke to him about exploring different methods of working with others and suggested that he consider using different approaches to build positive and effective relationships with people. Mr Evans stated that he viewed the conversation as a positive opportunity to provide support and to find ways to delegate work and share ideas. He stated that if the Claimant had continued concerns with Amber and Ellie then the Claimant should raise them with Mr Hussain as their line manager. We accept Mr Evan's evidence in this regard. Specifically, we find it would be incredible for Mr Evans to refer the Claimant to speak to Mr Hussain in response to an allegation that Mr Hussain was the main proponent of a discriminatory campaign against him.

83. The Claimant also stated that he spoke to Mr Hussain about the campaign of discrimination against him on 1 April 2019. Mr Hussain denies this. We prefer Mr Hussain's evidence in this regard. The Tribunal had regard to the list of issues and noted that neither 29 March 2019 or 1 April 2019 were mentioned as dates for alleged protected acts, and no application to amend the claims to reflect this evidence was made. Given the extensive scope of the Claimant's pleaded claims, where these matters are not mentioned, we conclude that his allegations in this respect are not credible.

84. On the evidence before us we find that there were references to the actual ages of the members of the team in friendly discussions as part of the team building process. It is more likely that the Claimant, being the eldest and self-titled '*Uncle Joseph*' believed that his age and experience gave him an authority over Amber and Ellie to determine how they should work which they did not accept. The Claimant took offence that these younger members of the team did not respect his wishes and simply do as directed. However, FYZ required a more collaborative approach to planning events and activities which required discussion, sufficient notice and proper planning.

85. The Claimant alleged that Mr Hussain threatened Mr Sam Short, Sessional Staff, with dismissal if he volunteered to speak on the Claimant's behalf. Mr Short did not give evidence and a witness order was not sought in this regard. At most the Claimant is referring to what Mr Short was alleged to have said to him. Mr Hussain flatly denied the allegation. On the evidence the Claimant has not established this matter for use as an inferential basis for his claims.

Grievances, dismissal and appeals

86. On 15 April 2019 (10.36) the Claimant sent Mr Evans an email of concerns alluding to age discrimination led by Mr Hussain. This email was not copied to Mr Hussain. It is clear that this grievance follows on from the concerns highlighted to him by Mr Hussain and Mr Barton on 10 April 2019. The Claimant alleged that there were false allegations being made against him about the deadline 29 March, and not keeping Ellie and Amber in the loop and there were reasonable explanations for other matters raised, such as him working very long hours and being tired. The Claimant asked for more supportive and understanding management and requested that the coordinators be held

accountable for their behaviour and treatment towards him.

87. Later that morning, at 10.45 Mr Hussain sought a meeting with the Claimant to follow up the concerns raised on the 10 April 2019 more formally. We accept Mr Hussain's evidence that he had not seen the Claimant's grievance which was sent to Mr Evans at this time and he did not know about it. When Mr Hussain sought the meeting with the Claimant, the Claimant refused and asked to have someone present with him. Mr Evans agreed to attend the meeting and Mr Hussain raised concerns about the Claimant's performance and conduct and set out expectations moving forwards. Mr Hussain then wrote an email of 15 April 2019 (12:47) stating that the incidents referred to fell short of expectations and were not in keeping with the values of FYZ and the role.

88. At 17:30 on 15 April 2019 Mr Evans responded to the Claimant's grievance, he copied Ms Wright from Onside into the email and concluded that the concerns the Claimant were raising about operational matters had to be put in context of the needs and expectations of the Respondent as a new charity seeking to launch.

89. The Claimant was not happy with this response and on 16 April 2019 pursued a formal grievance (Hussain grievance), repeating the contents of his earlier grievance dated 15 April 2019. As the grievance was about against Mr Hussain, Mr Evans decided to place Mr Barton as the Claimant's line manager going forward.

90. Mr Barton and Mr Evans sought to meet with the Claimant on 17 April 2019 to discuss the performance concerns and the way forward. The Claimant then wrote an email on 18 April 2019 expressing concerns that there were false accusations be made against him and that if there are any problems they were the fault of others. Mr Evans responded robustly that day (18:27) and raised a number of concerns about the Claimant's poor planning, poor communication and assertive/bordering aggressive behaviour.

91. The Claimant then raised the grievance against Mr Evans and Mr Barton dated 19 April 2019 (Evans grievance). He repeated the concerns that he raised against Mr Hussain in his grievance of 16 April 2019 and stated that Mr Barton and Mr Evans had clearly indicated that they were furthering Mr Hussain's campaign of cultivating a working environment that is hostile discriminatory and generally unfair towards him and containing false claims.

92. On 23 April 2019 Mr Evans sent the Claimant an email expressing further concerns about his planning and referred to Vanessa and Carol not being provided sufficient information. He also requested documentary support of the planning that the Claimant said he sent on 29 March to Lewis. This was not forthcoming.

93. The Claimant was informed that Ms Vickers would be investigating the Hussain grievance. He was resistant to Ms Vickers carrying out any investigation because of her relationship and the senior management team with Mr Hussain. He sought an independent investigator from another youth zone or from Onside to undertake the grievance investigation against Mr Hussain. FYZ did not agree to this and there was no one else available. FYZ is an independent charity and manages its staff in accordance with its procedures. Ms Vickers tried to arrange time to meet with the Claimant to discuss his grievance and the Claimant suggested 3 May 2019. This was considered to be too far into the future and eventually a date of 22 April 2019 was agreed

94. The Claimant also sought to have his grievances dealt with before consideration of the performance management process. On 24 April 2019 (19:30) the Claimant emailed Mr Evans, copying Ms Wright and Ms Vickers, stating that it was not appropriate, for Mr Evans to raise concerns as he had submitted a grievance. He stated that Mr Evans is cultivating a work environment that is discriminatory and unfair. He stated that it is not appropriate for him to be given any verbal feedback until a proper investigation of his grievances has been carried out and completed.

95. Ms Wright then informed the Claimant in an email of 24 April 2019 (20:35) that this would not be possible. She stated:

“... your meeting with Gavin is due to you not wishing to have meetings with your own line manager, this was a measure put in place to support you. All parties copied in to this email are aware that you have submitted further grievances, one of which is against Gavin. Nevertheless, this does not preclude you from being managed and that means that there will be a requirement to attend management meetings as requested. It wouldn't be a reasonable measure to expect that you would simply remove yourself from all management meetings going forward, or until the investigations are complete. It is a reasonable measure however to expect you to attend with the support of a designated colleague, which in this case is Jane, who I am sure you will agree is a trusted professional who will take an impartial yet supportive role in such meetings. Janes role will be to act as a neutral third party. Unfortunately due to the management structure, there are no other appropriate managers to conduct this meeting with you.

It is really important that you trust in both the integrity of the process and the integrity of your colleagues, in addition to all parties showing willingness to work together to resolve this. Gavin will continue to deal with the issues he raised prior to you submitting a grievance, as these were raised pre, and not post your submission...”

96. Consequently, on 26 April 2019 Mr Evans met with the Claimant to address performance concerns and informed the Claimant that he was being dismissed that day. The Claimant was still in his probation period and Mr Evans took the view that the Claimant was not going to accept any feedback or management instruction and his approach to his work and colleagues continued to fall short of what was expected and required. Whilst not in the dismissal letter in his evidence before us Mr Evans stated the reason for his dismissal was because his attitude was aggressive, he could not take feedback from others and that he fell way short of the standards of service expected of someone during their probationary period. When questioned on the specifics of aggressive behaviour Mr Evans referred to the meeting of 17 April 2019 which left Ms Reed in tears, the tone of his emails maintaining that ‘false’ allegations were being made against him, and his observations of meetings with him when shortcomings in his performance were being raised.

97. Ms Vickers undertook the investigation into the Hussain grievance and provided an investigation outcome to the Claimant on 29 April 2019. It concluded that there was no evidence to support the allegations the Claimant made in respect of the Hussain grievance.

98. Given that the Evans grievance was against Mr Evans and Mr Barton, Ms Wright undertook the investigation. The Claimant was invited to the Evans grievance meeting on 26 April 2019. Ms Wright sought to interview the Claimant however he submitted 121 pages of emails and grievances, number of which were duplicated to her on 29 April to review. Ms Wright questioned those alleged to have been involved in the campaign of discrimination and submitted her report and statements to Charles Mindenhall, chair of FYZ Board of Trustees. Mr Mindenhall dismissed the Claimant's Evans grievance by letter dated 13 May 2019. The Claimant stated that the failure of Mr Mindenhall to interview the Claimant and simply accepting Ms Wright's reports was a breach of the procedure.

99. The Claimant appealed against his dismissal and this appeal was heard on 23 May 2019 by Mark Fowler. His appeal against dismissal was unsuccessful.

100. By letter dated 10 June 2019 Onside informed the Claimant that his grievance against Mr Barton (part of the Evans grievance) was not upheld.

Law

101. The Tribunal applied the following statutory provisions, appellate court authority and guidance when considering the issues of the case.

"Section 13 Equality Act 2010 (EqA) defines 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.

(2)If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3)If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4)If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5)If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6)If the protected characteristic is sex—

(a)less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b)in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7)Subsection (6)(a) does not apply for the purposes of Part 5 (work).'

102. Sections 5, 9 and 11 EqA respectively define age, race and sex as protected characteristics. The Claimant asserts that he is less favourably treated because he is over 35 years old, because he is black and because he is a man.

103. Section 26 EqA defines harassment.

'(1)A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.

(5)The relevant protected characteristics are—

- age;*
- disability;*
- gender reassignment;*
- race;*
- religion or belief;*
- sex;*
- sexual orientation.'*

104. When considering harassment, the Tribunal had regard to the Equality and Human Rights Commission guidance.

'...harassment of a worker occurs when a person engages in unwanted conduct which is related to a relevant protected characteristic and which has the purpose or the effect of:

- violating the worker's dignity; or*
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker.*

7.7 Unwanted conduct covers a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.

7.8 The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not mean that express objection must be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment.

Example: In front of her male colleagues, a female electrician is told by her supervisor that her work is below standard and that, as a woman, she will never be competent to carry it out. The supervisor goes on to suggest that she should instead stay at home to cook and clean for her husband. This could amount to harassment related to sex as such a statement would be self-evidently unwanted and the electrician would not have to object to it before it was deemed to be unlawful harassment.

7.9 Unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.'

105. Section 27 EqA defines victimisation

'(1)A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2)Each of the following is a protected act—

(a)bringing proceedings under this Act;

(b)giving evidence or information in connection with proceedings under this Act;

(c)doing any other thing for the purposes of or in connection with this Act;

(d)making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.'

106. When considering causation for victimisation complaints we had regard to the case of Greater Manchester Police v Bailey [2017] EWCA Civ 425. Underhill LJ stated at paragraph 12 that:

"Both sections use the term "because"/"because of". This replaces the terminology of the predecessor legislation, which referred to the "grounds" or "reason" for the act complained of. It is well-established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [1999] UKHL 36, [2000] 1 AC 501, referred to as "the mental processes" of the putative discriminator (see at p. 511 A-B). Other authorities use the term "motivation" (while cautioning that this is not necessarily the same as "motive"). It is also well-established that an act will be done "because of" a protected characteristic, or "because" the Claimant has done a protected act, as long as that had a significant influence on the outcome: see, again, Nagarajan, at p. 513B."

107. In Ahmed v Amnesty International [2009] UKEAT 0447/08, at paragraph 37 Underhill J (as he then was) stated:

"The fact that a Claimant's sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment. That point was clearly made in the judgment of this Tribunal in Martin v Lancehawk Ltd (UKEAT/0525/03). In that case the (male) managing director of the respondent company had dismissed a (female) fellow employee when an affair which they had been having came to an end. She claimed that the dismissal was on the ground of her sex because 'but for' her being a woman the affair would never have occurred. At para. 12 Rimer J. referred to the Tribunal's finding that the dismissal was 'because of the breakdown of the relationship' and continued:

'... [T]he critical issue posed by section 1(1)(a) [is] whether Mr Lovering dismissed Mrs Martin "on the ground of her sex", an issue requiring a consideration of why he dismissed her. As we have said, we interpret the tribunal as having found that the dismissal was because of the breakdown of the relationship. That, therefore, was the reason for the dismissal, not because she was a woman. We accept that, but for her sex, there would have been no affair in the first place. It could, however, equally be said that there would have been no such affair "but for" the facts (for example) that she was her parents' daughter, or that she had taken up

the employment with Lancehawk. But it did not appear to us to follow that reasons such as those could fairly be regarded as providing the reason for her dismissal.'

108. Section 136 EqA provides the burden of proof provisions.

(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.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

109. The Court of Appeal, in Madarassy v Nomura International Plc [2007] EWCA Civ 33, Mummery LJ stated at paragraph 56.

“The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant 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 unlawful act of discrimination). It was confirmed that a Claimant must establish more than a difference in status (e.g. race) and a difference in treatment before a tribunal will be in a position where it ‘could conclude’ that an act of discrimination had been committed.”

110. The burden is therefore on the Claimant to prove, on a balance of probabilities, a prima facie case of discrimination or victimisation. In considering this we must first decide whether the Claimant has established a prima facie case of unlawful discrimination or victimisation and if so, the burden shifts to the Respondent(s) to prove a non-discriminatory explanation.

111. We considered the helpful written and oral submissions made by both Counsel. Whilst Mr Tay did not make any submissions on the law he submitted that the Claimant’s claims should succeed because the Claimant was a highly effective performer, subject to false allegations, and that his dismissal during the probationary period before his grievance had been concluded was so unreasonable that inferences of unlawful discrimination and victimisation should be drawn. Mr Palmer referred the Tribunal to a number of cases including from Glasgow CC v Zafar [1998] IRLR 36 that unreasonable treatment was not sufficient, in itself to infer unlawful discrimination.

Conclusions

112. In view of the facts that have been found and the law set out about the Tribunal's conclusions on the issues are as follows.

Direct age discrimination [Sections 5 and 13 Equality Act 2010]

113. In view of our findings of fact outlined above that the Claimant was not subjected to a campaign of discrimination and our findings on the discrete issues the Claimant has not established that any Respondent treated him less favourably than those who did not share his age, being 38 years old at the time. The Claimant states that the relevant age group for comparison is less than 35 years old. The high-water mark of the Claimant's case was the use of the term uncle, which we have found was volunteered by the Claimant himself. Save for his reference to 'uncle' and the factual differences in age there was no evidence to suggest that age played any part in the treatment the Claimant alleges.

114. Whilst we have found that there were references to the actual ages of the members of the team in friendly discussions as part of the team building process we conclude that the Claimant, being the eldest and self-titled '*Uncle Joseph*' believed that his age and experience gave him an authority over Ms Reed and Ms Daly to determine how they should work which they did not accept. The Claimant took offence that these younger members of the team did not respect his wishes and simply do as he directed. However, FYZ sought to operate on a different basis and required a more collaborative approach to planning events and activities which required discussion, sufficient notice and proper planning.

115. As far as the specific allegations of less favourable treatment, because of age, are concerned we conclude that the Claimant volunteered at the term Uncle Joseph and Auntie Jane at the induction. This led to two examples of 'uncle' being used in Whatsapp conversations. The Claimant stated he took no offence to this term being used there was no contemporaneous complaints from the Claimant about being called 'uncle' and no reference to this in his lengthy and repetitive grievances. In any event, the Claimant was unable to show that his age was reason for the use of the term uncle.

116. There were ongoing discussions relating to effective team working. We accept that Ellie, Amber and Gershom conveyed concerns about the Claimant's ways of working and Mr Zakaria Hussain, as manager sought to address the concerns raised. Mr Hussain sought to ensure that the Claimant, and other members of staff, worked in accordance with the expected standards of collaboration, communication and planning. To the extent that the Claimant's team members were complaining about the Claimant's shortcomings in this regard Mr Hussain tried to address them. We conclude that the Claimant's age played no part in the approach taken by Mr Hussain to the Claimant in this regard. There was a clearly a disconnect between what Mr Hussain expected and what the Claimant was delivering and Mr Hussain sought to address this.

117. There is no evidence that Mr Hussain forced the Claimant to work unreasonable hours. The opening period was a challenging time for managers and we conclude that Mr Clarke and the Claimant had greater responsibilities and demands on their time than Ms Daly and Ms Reed. As such Ms Daly and Ms Reed are not appropriate comparators as

they were not in the same or similar circumstances due to reduced seniority and accountability. Mr Clarke was required to work to the same pressures as the Claimant in respect of hours worked. The Claimant's age was not a relevant factor at all in this respect.

118. On 3 April 2019 Mr Hussain asked the Claimant to remain at the Radio Training session instead of Mr Clarke because Mr Clarke had another commitment at 3.30 on the day to attend to. The Claimant had to be at City Hall by 6pm and had ample time to leave Barking, travel to City Hall and prepare to the presentation as 6pm. In any event the Claimant disregarded Mr Hussain's request and left early anyway. The Claimant was not treated less favourably than Mr Clarke in this regard and his age played no part in Mr Hussain's request.

119. On 4 April 2019 Mr Barton requested the Claimant to take his break later, when planned, in the evening training session. Mr Barton was critical of the Claimant and did not think it was appropriate for him to leave the training session as he had responsibility and line management for a number of staff in attendance and the topic of discussion was one of his direct accountabilities. Mr Barton believed the Claimant was unenthusiastic and disengaged. He expressed his concerns in this regard to the Claimant. Whilst the Claimant was tired he was not less favourably treated. He was a manager being held to the required standard. The Claimant's age was irrelevant in this respect.

120. On 8 April 2019 Mr Barton challenged the Claimant to supervise the young people playing in the lift to create a positive and safe environment for all. It would have been better for Mr Barton to have made his comments outside of the earshot of the young people. However, we conclude that this comment was a reaction to the incident being observed at the time and the Claimant's age did not feature in this consideration.

121. On 10 April 2019 Mr Hussain concluded that the Claimant was not keeping Ms Daly or Ms Reed 'in the loop', there was too short notice to properly consider events in the short time, sessional staff had still not been confirmed and there was a lack of collaboration and discussion. Whilst there was difference in interpretation of what 'in the loop' meant, on the evidence Mr Hussain was not raising a 'false' concern. The Claimant was not seen as an effective manager and Mr Hussain was entitled to raise perceived shortcomings with him. The Claimant's age was not a relevant consideration.

122. On 14 April 2019 Mr Hussain refused the Claimant permission to take 15 April 2019 given it was such short notice. The Claimant has mentioned that he had worked long hours but Mr Hussain stated that proper notice was required. Whilst this may have been unsympathetic, there is no evidence that Mr Hussain took a different view to Ms Reed, Ms Daly or Mr Clarke and we conclude that the Claimant's age was not a relevant factor.

123. In view of our conclusions the Claimant's claim for age discrimination fails and is dismissed.

Direct race discrimination [Sections 9 and 13 Equality Act 2010]

124. The Claimant is black. He alleges that Ms Daly and Ms Reed (both white) raised grievances and concerns against him that were accepted without due process whereas his grievances were rejected.

125. We do not conclude that there was any less favourable treatment. Firstly, we do not conclude that the Claimant raised a grievance on 29 March 2019. He mentioned tensions in the working relationship with them and Mr Evan's commented to the Claimant that his approach to his interaction with colleagues might be too assertive and spoke to him about exploring different methods of working with others and suggested. When the Claimant complained against Mr Hussain on 15 April 2019, Mr Evan's responded in a similar way.

126. The Claimant's grievances of 15, 16 and 19 April 2019 were investigated and concluded in accordance with the FYZ policies and the staff resources it had at the time. We reject, as unreasonable, the Claimant's suggestion that it would have been possible and appropriate to second a further manager and HR from Onside or another Youth zone to manage him. It is likely that anyone who disagreed with the Claimant's view of things would have been subject to a grievance by him. There was no less favourable treatment on the basis of the Claimant's race.

127. Operational and communication concerns were raised by Ms Daly and Ms Reed against the Claimant as subordinate members of his team and these were fed back to the Claimant. Instead of using these as a basis for development and improvement the Claimant reacted and refused to positively engage in the feedback given and asserted certain matters were 'false'.

128. We considered whether there was a basis for race discrimination based on possible stereotypical assumptions by Mr Evans and Mr Barton of an aggressive black man. The Claimant submitted that it was only Mr Evans and Mr Barton, both white men, that alleged that he had acted aggressively and that neither Ms Reed, Mr Hussain nor any other member of staff had described him in this way. We conclude that this could be a basis to infer race discrimination for the Respondents to prove that race played no part whatsoever in the treatment of the Claimant.

129. When considering the evidence given by Mr Evans and Mr Barton relating to their perception of the Claimant's aggression, we conclude that it was based on their assessment of specific events and actual interaction with the Claimant. Mr Barton saw the Claimant 'yelling' at Ms Reed who left a meeting on 17 April 2019 in tears, Mr Evans encountered the Claimant raising his voice with him when challenged about his performance. Some of the Claimant's emails and grievances demonstrated an uncompromising approach to matters he disagreed with. He repeatedly accused others of making 'false' allegations against him without considering whether there could be a difference in perception or miscommunication. These behaviours were objectively considered overly assertive and aggressive, they were not expected management behaviours. We therefore do not conclude that either Mr Evans or Mr Barton held any stereotypical view towards the Claimant of a black man being aggressive.

130. The Claimant's race discrimination complaints therefore fail and are dismissed.

Direct sex discrimination [Sections 11 and 13 Equality Act 2010].

131. The Claimant alleges that he was less favourably Ms Daly and Ms Reed because he is a man.

132. The Claimant contends that Mr Evans and Mr Barton took a more sympathetic and

accepting view to the concerns of Ms Reed and Ms Daly because they were women, whereas his concerns were not dealt with properly. We do not accept this. The Claimant was a manager and operational and management concerns were being raised by way of feedback which the Claimant refused to positively engage with. We conclude that the matters being discussed with him were proper performance and conduct concerns that the Claimant, as a manager, had an opportunity to address. He failed to do so and focused, ill advisedly, on objecting to management suggestions for improvement.

133. We therefore conclude that there is no less favourable treatment and no reasonable to suggest that sex played a part in his treatment. The relevant paragraphs for race discrimination above are repeated in this context.

134. The Claimant's sex discrimination complaints therefore fail and are dismissed.

Victimisation [Section 27 Equality Act 2010]

135. We conclude that the Claimant made 4 protected acts namely his email on 15 April 2019 to Mr Evans, the Hussain grievance on 16 April 2019 (repeating what was said on 15 April 2019) and the Evan's grievance on 19 April 2019 (repeating what was said in the Hussain grievance and adding Mr Evans and Mr Barton as the continuing the campaign of discrimination) and his email to Mr Evans on 24 April 2019 stating that Mr Evans was cultivating a discriminatory environment.

136. When considering whether the Claimant was subjected to detriment because of his protected acts we conclude as follows:

137. On 15 April 2019 Mr Hussain held a meeting with the Claimant, this was adjourned following the Claimant's request and Mr Evans during the meeting. The Claimant observes that the meeting, to discuss his performance was immediately after he had sent his grievance email to Mr Evans. However, we have found that Mr Hussain did not know of this email and the conversation he sought with the Claimant was following on from the performance concerns that had been previously raised. The Claimant was therefore not subject to unlawful victimisation in this respect.

138. Mr Hussain's email to the Claimant dated 15 April 2019 summarised the content of the meeting that had been had with the Claimant that morning and identified the concerns that were raised. Whilst the Claimant disagreed with a number of the concerns raised, they were not false and were based on Mr Hussein's reasonable perception. In any event they are unrelated to any protected act that the Claimant had raised.

139. Mr Evans held a review meeting on 24 April 2019 with the Claimant prior to the grievance being completed. The Claimant was dismissed at this review meeting. Mr Evans addressed the performance concerns that needed to be addressed given the impending launch of the youth zone separately from the grievances the Claimant had raised. Whilst the Claimant disagreed with this course it was not a detriment arising from a protected act. The performance concerns predated any of the Claimant's grievances and in the critical period time prior to the launch of the youth zone it was not considered to be appropriate to suspend consideration of the performance concerns. The Board of Governors sanctioned the dismissal was not connected with any protected act. They simply approved Mr Evans decision to operate and effectively manage the youth zone.

140. We considered the fact that the Claimant's expressed resistance to address performance concerns was outlined in his grievances and this was used as a basis for Mr Evans to conclude that the Claimant would be unable to accept feedback and be a basis for dismissal. We therefore considered whether the protected acts demonstrating a resistance to feedback caused the review meeting and dismissal on 24 April 2019. We conclude that had the Claimant adopted a more co-operative approach to his feedback he may not have been dismissed when he was. However, there was clearly a distinction between the performance concerns and the Claimant's grievances which were being dealt with separately and this was clearly expressed by Ms Vickers and Mr Evans. Therefore, when considering causation, we do not conclude that the protected acts in raising Equality Act concerns was a basis for the Claimant's dismissal.

141. We do not consider that Ms Wright's involvement in asking Ms Vickers to carry out the Hussain investigation or by carrying out the Evans investigation herself amounted to detriments. The fact that the Claimant disagreed with the process was apparent but he had no entitlement to dictate who should undertake the investigation.

142. In any event we do not conclude that any alleged shortcomings that the Claimant raises about the investigations undertaken by Ms Vickers or Ms Wright were because he had made a protected act. FYZ was in its infancy and policies and procedures were bedding down. It was obviously not anticipated that there would be a grievance at such a senior level within such a short time and the grievance was undertaken appropriately in accordance with the resources that were open to it.

143. The Claimant's victimisation complaints therefore fail and are dismissed.

Harassment [Section 26 Equality Act 2010]

144. We do not consider that any of the allegations the Claimant makes concerning harassment related to a protected characteristic. There is no indication that his age, race or sex was relevant to the environment the Claimant was in. He was being performance managed which he found upsetting and unfair. However, he has failed to establish how any relevant protected characteristic was engaged.

145. The high watermark of the Claimant's case in this regard was the use of the term uncle. However, he accepted in evidence that he was not offended by this and it was not referred to in his lengthy and repetitive grievances. Therefore, the Claimant has not established that he was subjected to an intimidating hostile, degrading, humiliating or offensive environment using this term.

146. In these circumstances the Claimant's claims for harassment section 26 of the Equality Act 2010 fail and are dismissed.

**Case Numbers: 3201220/2019; 3201221/2019
3201222/2019; 3201223/2019**

147. The Claimant's claims fail and are dismissed. As such the provisional remedy hearing listed for 22 September 2020 is vacated.

**Employment Judge Burgher
Date: 29 July 2020**