



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr Mohammed Shamsian

**Respondent:** University of Essex

**Heard at:** East London East Hearing Centre (by CVP)

**On:** 19 – 21 January 2021

**Before:** Employment Judge Housego  
**Members:** Mr J Webb  
Mrs A Berry

## Representation

**Claimant:** In person

**Respondent:** Ben Jones, of Counsel, instructed by Chris Mordue of Evershed Sutherland (International) LLP

## JUDGMENT

**The claim for age discrimination is dismissed.**

## REASONS

1. Dr Shamsian is an academic of vast experience. He sought employment with the University of Essex, in its “*Pathways*” department. The courses taught here are at a foundation level: that is the cohort is of students who want to study for a degree, but do not have the conventional qualifications needed to enter degree courses. Pathway courses are designed to equip them with knowledge and skills such that they are able successfully to undertake a degree course.
2. Dr Shamsian was one of 4 candidates asked to attend interview. One withdrew. Another candidate was appointed. He was aged 34. Dr Shamsian was aged 73. A third candidate was younger than the person

appointed. He was considered appointable, but not as experienced as the person appointed. Dr Shamsian was not considered appointable.

3. Those interviewing him gave reasons why they came to this conclusion, in feedback soon after the interview result was conveyed to Dr Shamsian. The reasons were<sup>1</sup>:
  - 3.1. He was asked to give a 10 minute presentation on a topic notified to him beforehand. His was felt to be too complex for the student cohort he was to teach. Also he used a long handout, but it was not a guide to the lesson, and would only have served to confuse.
  - 3.2. Asked how he would deal with students who had problems he referred to discussing matters with their parents, which would breach GDPR obligations and was inconsistent with treating the students as individuals and adults in their own right. This, they say, was on its own a “red flag”.
  - 3.3. He did not have an understanding of generic assessment processes in the UK.
  - 3.4. He had not shown an understanding of the specific context of Essex Pathways, and this had reflected in his answers to questions asked of him.
4. Dr Shamsian believes this to be age discrimination. He points to the age differential between him and the candidate who was appointed. He says that he had an MSc and a PhD in physiology, which was the discipline to be taught, whereas the person appointed had a PhD in kinesiology (the science of body movement), and a BSc in physical education. He prepared a detailed comparison table listing attributes of each of them. His other reasons are set out in his submissions.

## Law

5. Age is a protected characteristic<sup>2</sup>. Dr Shamsian asserts that his non-selection dismissal was direct age discrimination<sup>3</sup>.
6. Age is the one characteristic where such discrimination is capable of justification<sup>4</sup>. The Respondent does not rely on such a defence. Their defence is that this was a decision in which the ages of Dr Shamsian (and of the successful applicant) played no part.
7. It is for Dr Shamsian to show reason why there might be discrimination<sup>5</sup>, and if he does so then it is for the Respondent to show that it was not. The test for direct discrimination is whether the Tribunal is satisfied that in no

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<sup>1</sup> At page 107 of the bundle

<sup>2</sup> S11 Equality Act 2010

<sup>3</sup> S13 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.

<sup>4</sup> S13(2) Equality Act 2010.

<sup>5</sup> Igen v Wong (above), Madarassy v Nomura International plc [2007] EWCA Civ 33, Laing v Manchester City Council [2006] I.C.R. 159, and Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913

sense whatsoever<sup>6</sup> was the dismissal tainted by such discrimination.

8. It is necessary for a claimant to show a causal connection between the protected characteristic and the less favourable treatment. It is not enough to have the protected characteristic, and to have suffered detriment. The protected characteristic must be shown to be (at least part of) the reason the claimant suffered the detriment<sup>7</sup>.

### **Evidence**

9. Dr Shamsian gave oral evidence. For the Respondent, Dr Nilifer Demirkan-Jones, Head of Department at Essex Pathways and part of the selection panel, and Professor Tracey Loughran, who chaired the selection panel, gave oral evidence. All those who gave oral evidence were cross-examined.
10. There was an agreed bundle of documents, and additionally the UK Professional Standards Framework document and The Teaching Excellence and Student Outcomes Framework (“TEF”).

### **Submissions**

11. Dr Shamsian’s firm view is that he had 44 years’ research and teaching experience, was a much published author of relevant scientific pieces, and had a Masters degree and a doctorate in physiology. The successful applicant had a Bachelors degree and a doctorate in kinesiology which was a related but different discipline, and far less experience. It was obvious that the person appointed was not as good a candidate as he was. He rejected the critique of his presentation made by the Respondent. They were simply wrong about that and so (as a matter of logic) the only reason they appointed the other candidate was that he was younger. He also thought that there was an impermissible and improper connection between the successful applicant and the Respondent, although he could provide no evidence of that. He asserted that one or more of the interviewing panel did not speak good enough English to conduct a fair interview. He said that the panel did not know his discipline and so were not competent to judge his presentation.
12. Dr Shamsian asserted as fact that British qualifications are of higher standing than those of anywhere else in the world, that the higher the qualification the better the person is as a teacher, the more research someone has done the better they become as a teacher, and the more teaching someone does the better teacher they are. He asserted that as he has more than the successful applicant in every area, he was necessarily the better candidate. He asserted that he was not selected because of his age. He asserted that the way this was achieved was by negative profiling of him in the interview in the matters set out by the panel. He disagreed with all their points, which he said were disingenuous.

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<sup>6</sup> Igen Ltd & Ors v Wong [2005] EWCA Civ 142, para 14 applying *Barton v Investec Securities Ltd.* [2003] ICR 1205 para 25.

<sup>7</sup> Law Society v Bahl [2003] UKEAT 1056\_01\_3107

13. For the Respondent, Mr Jones said that Dr Shamsian's age was apparent from his cv, and his application was progressed to interview because he had the necessary qualifications and experience. He had been called for interview in the full knowledge of his (approximate) age. Plainly his qualifications and experience were more than sufficient. The issue with his application was solely his performance at interview. He had not shown understanding of the cohort he was to teach – they were people who for one reason or another were not yet up to undertaking an undergraduate degree, and who needed nurturing and encouraging. Dr Shamsian had provided an 8page complex paper to accompany a 10 minute presentation, but not used it as a guide in that talk. His presentation, which was to be as if the panel were students, was not aimed at the right level. In answer to questions he had suggested speaking to student's parents, which was totally inappropriate. He had not shown adequate understanding of the means of ensuring all students were marked on an equivalent basis. The panel were all skilled educators, and well able to judge whether the 10 minute presentation was delivered skilfully, bearing in mind that it was to be at level 3, equivalent to BTech level 3, or A level. The job description looked for someone with physiology experience or other similar experience. It looked for someone with Fellowship (at some level) of the Higher Education Academy, or ability to acquire it. These were alternatives, not a second best. The most important criterion, for those interviewed, was the ability to teach the cohort well. Research and teaching ability were not synonymous. The other points put forward by Dr Shamsian were denied, but were nothing to do with age in any event.
14. Counsel submitted that Dr Ben Jones, a lecturer in the School of Sport, Rehabilitation and Exercise Sciences, had input into the recruitment and he had the necessary expertise. He also sat on the interview panel.
15. Finally, he submitted that as Dr Shamsian was found not appointable, on the merits, nothing else was relevant because he would not have been appointed, even if he had been the only person called for interview.

### **Findings of fact**

16. Dr Shamsian has all the professional requirements for the post for which he applied. The successful candidate also had all the professional requirements required for the post.
17. The role was in the University of Essex's Pathway programme, to lead to undergraduate study in the School of Sport, Rehabilitation and Exercise Sciences. The job description which solely referred to physiology did not fully reflect the fact that this was a role in a programme to prepare pre undergraduate students to join that School. The ability to teach that cohort effectively was a core and essential requirement of the job.
18. The recruitment exercise involved Dr Ben Jones of the School of Sports, Rehabilitation and Exercise Sciences (not connected with Counsel), who had entirely relevant experience to structure it.
19. The Respondent has proper training for its staff, including the witnesses in this hearing, about unconscious bias, and has a full equality, diversity and

inclusion policy. The members of the interviewing panel have all had such training, and the Tribunal is satisfied that the witnesses for the Respondent espouse the values enshrined in the policies.

20. Dr Shamsian has a Masters degree and a doctorate in physiology. He has 44 years' experience relevant to the post for which he applied.
21. The successful applicant also had relevant experience and relevant qualifications which satisfied the requirements of the job description and person specification, such that he was properly called for interview. Dr Shamsian was exercised as to whether the successful applicant had a Masters degree at all. The Tribunal accepted the Respondent's evidence, which was that the format of educational qualification had changed in Slovenia so that pre and post reform they were calibrated differently, such that the successful applicant had a Masters equivalent – but in any event he had a doctorate so that it was not a point of importance. In so far as the person specification might suggest otherwise, that was the result of all posts using a standard template. The Tribunal is entirely satisfied that it was appropriate for the successful candidate to be invited for interview. It would have made no difference in any event, as for the reasons that follow, had he not been invited for interview.
22. The Tribunal did not accept that the interview was conducted in an atmosphere of hostility or that “g/lee” was shown when he gave a wrong answer. The very assertion is an admission that wrong answers were given.
23. Dr Shamsian did not perform well in interview. The reasons given by the Respondent for this assessment are accurate and genuine. The interviewing panel decided that Dr Shamsian was not appointable to the post for which he had applied.
24. The successful applicant did perform well in interview. He was appointable, and was preferred to the third candidate, who was also appointable, but with less experience than the successful candidate. The interviewing panel had good reason to find that Dr Shamsian was not appointable to the post for which he had applied, based solely on his performance at interview.
25. Even if he had been the only person interviewed he would not have been appointed to the post, for genuine reasons which had no connection with the age of Dr Shamsian.

### **Conclusions**

26. The reasons given for not appointing Dr Shamsian were set out in feedback given to him, at his request, soon after the interview. They are not retrospective constructs.
27. Dr Shamsian is entirely mistaken in his firm belief that, inexorably and as a matter of logic, the longer one does something the better one becomes at doing it. That may be the case, but it may not. Dr Shamsian asserted that British degrees and doctorates are the best in the world and so those from

universities abroad (including all the academic qualifications of the successful applicant) were of lower value, so he should have been considered a better candidate. The assertion that British qualifications are better than those of anywhere else and so should carry more weight is not one backed by any evidence, and the Tribunal does not accept that it is self evident. While pride in one's country is laudable, it is no reason to belittle the achievements of those from other countries. This forms part of Dr Shamsian's claim of a right to be appointed by reason of his academic background and length of experience.

28. Research work, of itself, does not train anyone to teach anything. There was a recurrent theme in Dr Shamsian's submissions evidence and questions that "*we all believe*" these various things. There is no evidence that any of the beliefs of Dr Shamsian are received wisdom, and no evidence that any of them have any factual basis.
29. Dr Shamsian is entirely mistaken in his view that his academic background was better than that of the successful applicant for this post, because it was a physiology background, and it was a physiology post. It was to teach at level 3: BTech level 3 / A level. Similar backgrounds were also entirely suitable. That of the successful applicant was sufficiently similar.
30. Dr Shamsian is entirely mistaken in asserting that his Fellowship of Higher Education Academy means that he was a better candidate than the successful applicant who was aspiring to Fellowship. The post called for the ability to become a member or membership. These were alternatives, not an order of precedence.
31. The details given in the application, of qualifications gained and of experience, were gateways to interview. At interview, the choice of who to appoint depended on who demonstrated in interview that they would be best able to teach the cohort. The panel was made up of skilled educators. They do not have to understand the science of physiology to judge whether or not the information is delivered well. As intelligent people, the 10 minute presentation (which Dr Shamsian said was about a basic topic) ought to have conveyed some sense of what the key issues were. The presentations of the other two candidates who were interviewed did so.
32. Dr Shamsian accepted the factual accuracy of the panel's observations about some of the matters they raised. He sought to explain those matters, or disagreed with the panel's conclusions about them. That does not mean that they were wrong in their conclusion, or that they were not genuine reasons. They were legitimate and genuine conclusions.
33. The point also fails to deal with the fact that the interview was to assess what each candidate could do for the relevant student body in future, not what the candidate had done in the past. What had been done in the past was the gateway to be able to show what they could do in the future, and that was to be demonstrated in the 10 minute presentation and in answer to the questions asked (which were the same for all three candidates).

34. Dr Shamsian failed at interview to show a satisfactory standard of teaching. His answers to questions were not adequate. He would not have been appointed even if he had been the only person to be interviewed.
35. He would have failed the interview solely on the point about speaking to the parents of students who were failing to attend or struggling to perform. In the hearing he sought to justify his stance at the interview. The panel's view is not said to be other than genuine. It was a "*red flag*" for them, and on its own a reason not to appoint. It has no connection with age. This is, on its own, fatal to the claim.
36. Dr Shamsian said in evidence that there would be regular and routine training about this topic so that would not be an issue. It is entirely reasonable for the panel to expect a person who relies on 44 years' experience (a recurring theme of Dr Shamsian's case) to know about this already and not expect the Respondent to train him. On his own case he had been trained regularly on these matters throughout that time.
37. Dr Shamsian accepted that he had not answered well about the means of ensuring consistency in outcome measurement for students. He sought to explain, during the hearing, what he had meant. The time for doing that was in the interview, and he accepts that he did not do it.
38. The handout he provided was 8 pages for a 10 minute presentation, and was replete with highly technical terms. It is highly unlikely that the cohort to whom the talk was intended to be given would have any idea what it was about. It is no answer to say, as Dr Shamsian did, that the course was about physiology so that it covered such technical matters. The students would first need to be educated as to what they were. It might well have confused or discouraged that cohort. Nor did Dr Shamsian use it much during his talk, and he did not say that he told the panel that (his explanation to the Tribunal) it was intended to be provided before the presentation and used for reference by students.
39. The fourth reason given by the panel was that Dr Shamsian had not fully grasped the needs of the students he was to educate if appointed. It was apparent from the oral evidence of Dr Shamsian that he still has no real understanding of that.
40. The Tribunal did not accept that members of the panel "*smirked*" or showed "*glee*" when he tripped up. That allegation itself accepts that Dr Shamsian did "*trip up*" in his interview.
41. Dr Shamsian has the view that he was necessarily the right appointment by reason of his academic degrees and his 44 years' experience in academia, and that to appoint a younger person with lesser experience can only be because they discriminated against him by reason of his age. This is not the case.
42. Dr Shamsian's other complaints about the process would, if made out, undermine his claim that it was age discrimination. If there had been an improper connection between the successful candidate and the University there is no evidence that this would have any connection to age. We make

no finding of fact that this was so – it is merely speculation generated by Dr Shamsian’s inability to comprehend that his performance at interview was not good enough for him to be appointed. If (and again we accept that it was not so) some of the panel struggled with English that would be the same for everyone.

43. Dr Shamsian has not shown facts that could lead to an explanation being required from the Respondent. Had it been necessary for there to be an explanation the facts supply it completely.
44. Accordingly the claim of direct age discrimination fails and is dismissed.

**Employment Judge Housego  
Date: 25 January 2021**