



EMPLOYMENT TRIBUNALS

Claimant: Mr Joseph Johnson

Respondent: (1) Rights And Equalities in Newham
(2) Mr John Leslie

Heard at: East London Hearing Centre

On: Wednesday 31 March 2021, Thursday 1 April 2021 and
Friday 30 April 2021 for Deliberations

Before: Employment Judge Speker OBE DL

Members: Ms M Legg
Ms S Jeary

Representation

Claimant: Mr Anirudh Mathur (Counsel)

Respondent: Miss Lisa Hatch (Counsel)

RESERVED JUDGMENT

The Unanimous Judgment of the Employment Tribunal is as follows: -

1. The claim of direct age discrimination is not established, and the claim is dismissed.
2. The claim of victimisation is not established and is dismissed.
3. The claim of age-related harassment is not established and is dismissed.

REASONS

Introduction

1. Mr Joseph Johnson brings claims of direct age discrimination, victimisation and age-related harassment against his former employer Rights and Equalities in Newham (first Respondent) and Mr Paul Leslie (second Respondent), Mr Leslie being the Chief

Executive Officer of the first Respondent.

2. The hearing of this case was conducted by video using the Cloud Video Platform as a consequence of the restrictions imposed by the Covid19 Pandemic. I was present in the Tribunal Hearing Room together with one of the non-legal members. The other non-legal member participated from her home. The parties, witnesses and representatives all participated by video. We were provided with a bundle containing over 200 pages of documents. The evidence was heard over a two-day period but there was insufficient time for submissions or deliberations. Accordingly, after conclusion of the evidence orders were made for written submissions to be exchanged and then file. The Tribunal has had the opportunity of considering the written submissions from Counsel on behalf of the parties.

3. These claims had been considered at a Telephone Preliminary Hearing before Employment Judge John Crosfill on Monday 12 October 2020. The issues were identified and were set out in a list attached to the notes of the Telephone Preliminary Hearing.

The Issues

List of Issues

Claims of Direct discrimination contrary to Sections 13 and 39 of the Equality Act 2010

1. The detriments said by the Claimant to amount to less favourable treatment are:
 - a. That the Second Respondent falsely suggested that the Claimant was negatively impacting on the progression of the project; and
 - b. That the Second Respondent showed hostility to the Claimant in the content of e-mails sent on 10 and 12 June;
 - c. That the Second Respondent dismissed the Claimant.
2. Other than the dismissal, which is admitted, the first issue for the Tribunal will be whether the Claimant can establish that the treatment complained of occurred as alleged.
3. The Claimant relies upon 'Mo' 'Nicholas' and 'Tosin' as comparators. The Claimant is 39 years old. The comparators are said to be in their later teens or early 20s.
4. The Tribunal will have to determine whether the comparators are in the same material circumstances as the Claimant.
5. Can the Claimant establish facts from which, absent any explanation from the Respondent a Tribunal could infer that the reason for any treatment was age?
6. If so, can the Respondents establish that age was in no sense whatsoever the reason for the treatment?

Claims of victimisation contrary to Sections 27 and 39 of the Equality Act 2010

7. Was the action taken by the Claimant of sending an e-mail to the first Respondent's HR Department on 12 June 2020 a protected act falling within sub section 27(2) of the Equality Act 2010?
8. If not, did the Respondent believe that the Claimant had done, or may do a protected act?
9. The detriment relied upon by the Claimant is his dismissal.
10. As a matter of fact, did the Respondents know, or have any cause to believe, that the Claimant had submitted a grievance prior to his dismissal?
11. Can the Claimant establish facts from which in the absence of any explanation from the Respondent it could be inferred that his dismissal was because he had done a protected act and/or because the Respondent believed he had done a protected act or may do so?
12. If so, can the Respondent show that the reason for dismissing the Claimant was in no sense whatsoever that he had done any protected act or that the Respondent believed that he had done a protected act, or may do so?

Claims of harassment contrary to Section 26 and 39 of the Equality Act 2010

13. Can the Claimant establish as a matter of fact that the Respondent(s) engaged in the following unwanted conduct:
 - a. Made a false allegation on 10 June 2020 that he was negatively impacting on the progression of the project; and/or
 - b. On 12 June 2020 insisted on the Claimant attending a face to face meeting; and
 - c. Failed to take any action on his grievance sent on 12 June 2020; and
 - d. Dismissed him on 12 June 2020 (which is admitted)?
14. Can the Claimant establish that any of the conduct established related to age?
15. If so, can the Claimant establish that the unwanted conduct had the effect of:
 - a. Violating his dignity, or
 - b. Creating an intimidating, hostile, degrading, humiliating or offensive environment for him?
16. If not, can the Claimant show that the unwanted conduct had the effect of:
 - a. Violating his dignity, or
 - b. Creating an intimidating, hostile, degrading, humiliating or offensive environment for him?
17. In determining whether any unwanted conduct had the effect set out above the Tribunal will have regard to
 - a. The perception of the Claimant;

- b. The other circumstances of the case;
- c. Whether it is reasonable for the conduct to have that effect.

The Hearing

4. At the commencement of the hearing, Mr Mathur on behalf of the Claimant provided a written opening statement dealing briefly with the claims and commenting upon the law involved. Before opening his case, Mr Mathur made a preliminary application as to the Claimant giving additional evidence in chief on matters not covered in his written statement. Miss Hatch challenged this on the basis that the statement, in accordance with standard directions, should cover all of the evidence of that witness and that if the Claimant's case was not fully pleaded then this should not be remedied by him adding further oral evidence as this could prejudice the Respondent being taken by surprise if new matters were raised. Mr Mathur submitted that it had been open to the Respondents to request further and better particulars of the claim but they had not done so.

5. The Tribunal retired to consider the matter and did note that the Claimant had summarised his case as set out in paragraph 6 of the notes from the Telephone Preliminary Hearing. However, applying the overriding objective, the Tribunal felt it appropriate to permit the Claimant to give further evidence and answer supplementary questions put to him by Mr Mathur. The Counsel had taken into account that the Claimant certainly at the early stages had been representing himself.

6. The evidence heard by the Tribunal on behalf of the Claimant was from the Claimant himself. On behalf of the Respondents, evidence was given by Morag Ford (referred to as Mo Ford) who worked as Youth Work Coordinator for the first Respondent on the same project as that on which the Claimant was engaged and by Paul Leslie, second Respondent, who as stated was the CEO of the first Respondent. All three witnesses were subject to detailed cross-examination.

Findings of Fact

7. We found the following facts:

7.1 The first Respondent Rights and Equality in Newham (REIN) is a charity based in Newham with the aim of eliminating racial discrimination and promoting equality of opportunity, justice and good relations between people of different racial groups in the local community. Various projects are used to achieve these objectives. During the lock down in early 2020, the first Respondent was successful in obtaining funding for the setting up of a cross-borough partnership bid for a project to support young people at risk of serious youth violence. The funding was for a one-year fixed term contract for what was called "Everyone's Business Community Project" (EBCP).

7.2 The second Respondent, on behalf of the first Respondent, aimed to recruit a team of four people to work on the project. The Claimant applied for the position of Community Networks Development Worker. He was interviewed by the second Respondent on 1 May 2020 and from a small number of candidates for the role, he was successful in being appointed to the position on a one-year contract with

a three-month probationary period. The Claimant was born on 8 September 1980 and was 39 years of age at the time of appointment.

7.3 The three other people who were recruited to deliver the project were Morag Ford, born 29 March 1983 (37), Nicholas Oyeniya born 15 March 1997 (23) and Tosin Agbeji, born 25 October 1998 (21). Although the dates of birth of the four employees were included on their application forms, Mr Leslie stated that he paid no attention to the ages as he was aware of age being a protected characteristic and it could be seen as discriminatory to discuss it.

7.4 The intention of the second Respondent had been that Morag Ford would take the lead on the project when she became familiar with it but in the initial stages the second Respondent headed up the project and the 4 members were accountable to and managed by him.

7.5 The Claimant had sole responsibility for a key stage at the beginning of the project which was to identify and approach a number of grass roots and community organisations in order to create the network for the project. This was to be a list of organisations who had expressed an interest in participating with contact details. The list would be utilised in order to provide resources and support to achieve the aims of the project.

7.6 The Claimant signed his contract with the second Respondent on 12 May and commenced work on 18 May 2020. Before commencement he was provided with a background of the project and he designed a poster and a flow chart and suggested an initial list of organisations.

7.7 The intent was for the Claimant to provide the list of potential grass roots and community organisations to form the network. There appeared to be a lack of cohesion between the Claimant and the second Respondent about the precise intention although Mr Leslie was making it clear that the list was to be specifically of grass roots and community organisations and not to include statutory or umbrella organisations. When the Claimant began preparing lists, he was including umbrella organisations such as Youth Zones (Council Youth Centres) and One Newham, which was statutory. He also included two faith groupings on the basis that they consisted of a number of different places of worship which he considered would have access to grass roots groups. The Claimant in the early weeks provided a number of versions of his intended list including: -

18 May 2020 – Before joining the project;

25 May 2020 – An email list which included umbrella faith based and statutory organisations;

26 May 2020 – A further list setting out four organisations to be contacted but again including faith-based umbrella and statutory bodies;

28 May 2020 – An action plan listing twelve organisations only one of which could be regarded as grass roots, namely Fight for Peace

31 May 2020 - A revised action plan containing the same list.

7.8 Mr Leslie emailed the Claimant on 26 May stating that he expected a list of grass roots organisations of at least 36. The Claimant responded making it clear that he thought that the list which he had already supplied contained the correct

type of organisations and he stated again that he was to contact One Newham, Newham Group for Christ and Newham North Islamic Association as well as semi-independent homes for care leavers. Mr Leslie responded stating that he was expecting a longer list of non-statutory grass roots organisations, at least 36 in number.

7.9 On 27 May there was a Team Meeting. The Claimant then met with Mr Leslie who noted that there were issues of concern about the Claimant and his lack of focus and as to what he was producing.

7.10 On 28 May Mr Lesley emailed the Claimant with regard to the previous day's meeting and asked that the Claimant clarify the focus of his role and set out in writing his objectives. The Claimant was asked to specify his understanding of what had been agreed as the plan and the list of the type of organisations which were to be approached and to the level agreed. The Claimant responded by sending a revised version of his action plan.

7.11 Later on 28 May, at 6:24pm, Mr Leslie emailed the Claimant stating that the Claimant's response did not reflect what had been agreed at the meeting. Mr Leslie pointed out that he had been offering the Claimant support but stressed that time was running out for this first stage of the project and the Claimant was requested to demonstrate that he was devoting sufficient time and to explain how he could ensure that the grass roots groups would grow in capacity. In particular, Mr Lesley asked how the Claimant planned to do this "with enough detail to demonstrate ownership of the project". This information was requested before a meeting arranged for the following Monday morning. The Claimant replied stating that he considered that what he had already provided was adequate and he repeated his action plan.

7.12 On 31 May, the Claimant sent a further breakdown of his action plan suggesting that this may iron out any confusion which he suggested Mr Leslie may have.

7.13 Views were received from a member of the team that the Claimant had not provided contribution to the project visual which had been requested from him.

7.14 On 4 June, the Claimant met Mr Leslie who again specified what was required and requested further clarity with regard to what was being done by the Claimant. At this stage Mr Leslie stated that the Claimant must target and make contact with 10 grass roots, non-faith-based community centres across Newham which work with young people age 16 – 25 and who are or may be addressing issues of serious youth violence. It was pointed out that the target of 10 was an agreed KPI with the lead partner. The Claimant was also asked to add to the plan structure which had been created by Nicholas.

7.15 On 10 June, a meeting of the four members of the project took place in order to share information of activities. Detailed notes were prepared of this meeting by Mo Ford, and in it she recorded that it was unclear what the Claimant had been working on over the previous two weeks and it was noted that lists of organisations prepared included large or public sector run bodies rather than grass roots and concern was expressed as to whether work on developing the

network of local grass roots projects was taking place as planned. Mo Ford referred to the lack of response from the Claimant to various emails which he then said he had not received but which were located during the meeting as being in the Claimant's email in-box. Mo Ford also discussed the information sheet in relation to which it had been expected that the Claimant would create a corresponding version designed for organisations interested in joining the network, but it was clear that this had not taken place. The Claimant commented upon the document created by Mo Ford although he stated that he had not seen the document. The Claimant requested that Mo Ford add network information to the 'information for referrers' document on his behalf rather than him producing the separate document which it had been agreed he was to produce.

7.16 That day, Mr Leslie emailed the Claimant referring to the previous request for detailed information from the Claimant as to the establishment of the network and for him to provide a detailed contacts list with a breakdown of contact information, the draft information poster and how the Claimant would implement his actions. In his email, Mr Leslie pointed out that the lack of information was impacting on the progression of the project overall. Mr Leslie sent a further reminder to the Claimant.

7.17 Later that day at 17:09, the Claimant emailed Mr Leslie with further information but challenged the suggestion that the lack of information from the Claimant was impacting on the progression of the project.

7.18 On 12 June, Mr Leslie emailed the Claimant suggesting that it was necessary for them to meet in person on the following Monday in order to address a number of issues and he suggested the meeting be at REIN at 11am and that the Claimant should bring with him his laptop, telephone and any printed materials which would be gone through. The Claimant responded stating that he wished the meeting to be by zoom rather than face to face and there was an exchange of emails regarding this. At 15:21, the Claimant repeated that he wished the meeting to be by zoom.

7.19 At 16:32, the Claimant sent an email to the Respondent's HR email address stating that he wished to make a formal grievance against Chief Executive Paul Leslie and asking for contact details of the REIN Director in line with the grievance policy. At that time, the First Respondent's HR function was much reduced as staff had been placed on furlough and the responsible HR person was off sick. The email was not seen by anyone in HR. It was not copied to Mr Leslie and he did not see it.

7.20 At 21:27 on 12 June Mr Leslie emailed the Claimant in what was effectively a dismissal letter which stated as follows *"I am surprised by your refusal to have followed a reasonable line management request spoken instruction. Working together and following reasonable Line Management instructions are essential components to working effectively in an organisation. It is with regret that I feel I have no other choice but to terminate your employment with REIN giving one week's notice, as detailed in the terms of your contract"*.

7.21 There was a further subsequent email exchange requesting that the Claimant return the Respondent's equipment and property. The Claimant had

contacted ACAS on 12 June and an ACAS Early Conciliation Certificate was issued on 15 June. The Claimant presented his claim to the Tribunal on 15 June 2020.

8. It was part of the Claimant's claim that the second Respondent made adverse comments to the Claimant and about the Claimant at various times during meetings. These included suggestions that the Claimant was less familiar with social media than the other members of the team which the Claimant took to be a reference to his age. The Claimant also alleged that Mr Leslie was hostile and dismissive towards him as compared with other members of the team. The Claimant's perception was that he was clearly the oldest member of the team of 4 being 39 and that the other three members were significantly younger. This was correct in relation to two members of the team, namely Nicholas and Tosin, whereas the third member of the team Mo Ford was in fact 37 and only two years younger than the Claimant. The Claimant's case was that he perceived Mo Ford to be younger than she was, and that Mr Leslie would also have perceived her to be younger. The Tribunal did not find as a fact on the basis of the evidence produced that the Claimant had been treated in a hostile, dismissive or demeaning manner or that comments were made which were reflective upon the Claimant's age. This was because there was no persuasive evidence and that these appeared to be allegations raised by the Claimant significantly after the event.

Submissions

9. On behalf of the Claimant, Mr Mathur provided detailed written submissions. He argued that the evidence of the Claimant should be taken as reliable and that his beliefs and interpretations were genuine. He suggested that the Second Respondent had not offered a good explanation on important issues such as to why a face to face meeting was required. He argued that the evidence of the Claimant should be treated as more reliable than that of Mo Ford or Paul Leslie. He submitted in detail as to the alleged detrimental treatment and submitted that the Claimant's performance had been in accordance with what was required of him and that there was a problem in that the Respondent had kept 'changing the goal posts' with regard to what was required. He further submitted that there was clear evidence of hostile and dismissive treatment of the Claimant, that the criticisms which were made of what was being produced by the Claimant were unjustified and that there were unreasonable demands made of him. He also argued that the dismissal of the Claimant was highly suspect and that it had been contrary to the Respondent's own handbook. He challenged the suggestion that Mr Leslie was unaware of the grievance email and stated that this was not credible. In the circumstances he argued that the Claimant had discharged the burden of establishing that the treatment could be based upon age discrimination and that the Respondent had failed to discharge its burden of otherwise justifying the treatment. He also argued that the grievance email sent by the Claimant was a protected act. He provided to the Tribunal details of the legal framework in relation to the three heads of claim and submitted that all of the claims should be allowed in their entirety.

10. On behalf of behalf of the Respondent, Miss Hatch outlined in detail the chronology of feedback and the guidance and support provided by Mr Leslie to the Claimant in one to one meetings, emails and texts and the great lengths to which Mr Leslie had gone in order to support the Claimant to succeed in his post. She submitted that the evidence of the Claimant was unreliable, that he had failed to answer questions, exaggerated his

own accomplishments and failed to comply with requirements as to his performance. The suggestion that the Claimant was negatively impacting on the progression of the project was clearly justified from the evidence and was not in any way false. There was no evidence that there had been any hostility towards the Claimant whether at meetings or in emails. As to dismissal, the real reason for this was not to do with age but because of the Claimant's failure to follow a reasonable instruction to attend a face to face meeting which was necessary because of the Claimant's unsuccessful performance in his role. She submitted that there had been no harassment of the Claimant and that the claim of victimisation should not proceed because the email did not amount to a protected act and Mr Leslie had no knowledge of the grievance email before dismissal.

The Law

11. Sections 13, 27 and 26 of The Equality Act 2010

**12. Cases: Shamoon v Chief Constable of the Royal Ulster Constabulary (Northern Ireland) [2003] 285 HL
Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830 HL**

Findings

13. With regard to the evidence given on behalf of the Claimant and Respondents, there were various conflicts. In seeking to resolve these conflicts the Tribunal took into account its perception of the evidence given by the various witnesses. With regard to the Claimant, it was noted that he had based his initial claim on an incorrect perception of the age of Mo Ford who on the evidence was only two years younger than the Claimant himself rather than in the same age bracket as the two other members of the team. The Tribunal found that the Claimant was evasive with regard to answering questions on key issues such as the true nature of a grass roots organisations. He was also reluctant to concede that in the performance of his role he was not providing what was required of him in the key introductory aspect of the project. Despite numerous attempts and offers of support he still failed to produce any significant list of grass roots organisations with contact details of them in order to demonstrate that he had been in touch and obtained indication that such grass roots organisations were willing to cooperate and participate in the project. The Claimant was imprecise with regard to the case he was ultimately putting forward with regard to dismissive treatment and hostility towards him from Mr Leslie.

14. By way of contrast, the Tribunal found the evidence of Mo Ford and Paul Leslie coherent and consistent. In particular Mo Ford provided clarity with regard to the purpose of the project and how it was to be undertaken and was very clear in relation to all aspects of it and the respect in which Mr Johnson had not provided what was expected and how he was not working at an adequate pace or with sufficient particularity or in cooperation with the other members of the team. For these reasons, the Tribunal found the evidence of the Respondent's witnesses more credible, reliable and persuasive. Mo Ford also accepted that although only two years younger than Mr Johnson, she may be perceived by her appearance and presentation to be rather younger than her actual age. She stated that this was something which made her aware of the need to present with sufficient gravitas in order to overcome the appearance being younger than she was.

However, she was clear that in any discussions which took place, no comments were made which appeared to reflect upon the ages of the members of the project and in particular the age or generation of the Claimant. The Tribunal was also influenced by the fact that in the claim form and in the description given by the Claimant at the Preliminary Hearing, he did not mention aspects of his claim which he then suggested were significant.

15. The Tribunal considered in turn the issues set out in the list of issues and our findings on these issues are as follows:

Claims of direct discrimination contrary to Section 13 and 39 of the Equality Act 2010

- 1 As to the detriments said to amount to less favourable treatment –
 - a. The Tribunal did not find that the second Respondent had '*falsely*' suggested that the Claimant was negatively impacting on the progression of the project. This is because the Tribunal found that the suggestion was not 'false' as there was clear evidence presented to the effect that the performance of the Claimant was indeed having a negative impact on the project, was preventing the project moving forward and failing to provide the other members of the project team with the list of grass roots organisations which they needed in order to commence their own detailed work;
 - b. The Tribunal did not find any convincing evidence that Mr Leslie showed hostility to the Claimant in the emails of 10th and 12th June. On the contrary, Mr Leslie had repeatedly shown a wish to support the Claimant to achieve his objectives. By the time of the email on 12th June, it was clear that Mr Leslie was becoming very concerned and frustrated at the lack of progress and the Tribunal did not find that this could properly be described as hostility.
 - c. It is acknowledged by the Respondent and accepted by the Tribunal that dismissal would amount to less favourable treatment.
- 2 As indicated above, the Tribunal did not find that the Claimant had established that the treatment at (a) and (b) occurred as alleged. This is because the Tribunal was not persuaded by the evidence of the Claimant as to this and no corroborative evidence was provided.
- 3 The Claimant relied upon Mo, Nicholas and Tosin as comparators at the time of the drawing up of the list of issues. It appeared clear that the Claimant was still minded to suggest that the three persons mentioned including Mo were in their late teens or early twenties when in fact Mo Ford was 37 years of age and accordingly not a suitable comparator.
- 4 The Tribunal determined that the three persons named as comparators were not in the same material circumstances as the Claimant. Mo Ford was not a suitable comparator as stated. However, it is conceded that Nicholas and Tosin were suitable comparators being workers on the same project and being considerably younger.
- 5 The Claimant did not establish facts from which, absent any explanation from the Respondent, the Tribunal could infer that the reason for any

treatment was age. This is for the reasons set out above. As to dismissal, the Tribunal finds that this could infer that the reason for dismissal was age.

- 6 The Tribunal unanimously finds that age was not the reason either for the alleged treatment or for the dismissal itself. There was clear evidence with regard to conduct and performance which led to the decision to dismiss the Claimant. The precipitating factor was the Claimant's refusal to meet with Mr Leslie face to face in order to address serious concerns with regard to the Claimant's performance and the state of the project. This clear evidence is set out in emails and the notes which were taken with regard to interchange between the Claimant and Mr Leslie and involving the other members of the team, in particular the evidence of Mo Ford. It was apparent from the evidence that the Claimant had a fundamental misunderstanding of what he was expected to do. He also appeared not to comprehend that this being a short-term project, urgent steps needed to be taken to get the list of organisations in place so that the real work of the project could commence. The Tribunal did not find that the Claimant's age of 39 and being only two years older than Mo Ford, was the cause of dismissal. The Tribunal also took into account that Mr Leslie himself had recruited and interviewed the Claimant and was aware in general terms even if not upper most in his mind specifically of the age of the Claimant and that he was of a similar age to Mo Ford even though older than the other two members of the team. The fact that the Claimant was experienced and proud to recite his previous accomplishments was an asset which would have assisted the Claimant in gaining the post.

Claims of victimisation contrary to Section 27 and 39 of the Equality Act 2010

- 7 The action of the Claimant in sending an email to the first Respondent's HR Department on 12 June 2020 was potentially a protected act falling within sub Section 27(2) of the Equality Act 2010 even though that email did not specify anything about the content of the alleged grievance
- 8 The Tribunal does not accept that the Respondents believed that the Claimant had done or may do a protective act. As far as the first Respondent was concerned, the email was sent to the HR Department, but the Tribunal accepts that there was no one working in the HR Department at that time and accordingly, at the stage when the Claimant was dismissed, no-one on behalf of the Respondent was aware of the email. As far as the second Respondent was concerned the Tribunal accepts the evidence of Mr Leslie that he did not receive the email and was totally unaware of it and therefore had no reason to think that the Claimant had done or may do a protected act at the time of dismissal.
- 9 It is noted that the Claimant relies upon dismissal as the alleged detriment.
- 10 As stated, the Tribunal finds that the Respondents did not know and had no cause to believe that the Claimant had submitted a grievance prior to the dismissal.

- 11 The Tribunal finds that the Claimant cannot establish facts from which in the absence of any explanation from the Respondents it could be inferred that dismissal was because he had done a protected act or because the Respondent believed he had done a protected act or may do so. This is covered above.
- 12 This issue does not arise. In any event the Tribunal has already found that the reason for dismissal was not to do with a protected act or belief that there may be a protected act but was for the reasons referred to above.

Claims of harassment contrary to Section 26 and 29 of the Equality Act 2010

- 13 a. The Claimant has not established that the second Respondent made a false allegation on 10 June that the Claimant was negatively impacting on the progression of the project. As stated above, the Tribunal has found that this allegation was not false;
b. It is accepted by the Tribunal that Mr Leslie insisted on the Claimant attending a face to face meeting;
c. The Claimant cannot establish the failure to take action on the grievance as unwanted conduct because the Tribunal has found that the Respondents were unaware of the email;
d. The Tribunal accepts that dismissal was unwanted conduct.
- 14 The Claimant has not established that the conduct above, namely insisting on the face to face meeting or the Claimant's dismissal, related to his age. For the reasons set out above, the Tribunal finds that the face to face meeting requirement was a genuine attempt by Mr Leslie to remedy problems with regard to the Claimant's performance and that dismissal was to do with that unsatisfactory performance and concerns about the project not being advanced. The Tribunal does not find that the unwanted conduct related to age.
- 15 The Tribunal does not find that the unwanted conduct namely the requirement to attend a face to face meeting or the dismissal violated the Claimant's dignity or created an intimidating hostile, degrading, humiliating or offensive environment. These were management decisions taken by Mr Leslie for the reasons expressed.
- 16 The Claimant has not shown that the unwanted conduct described had the effects described.
- 17 The Tribunal has found that the requirement to attend a meeting and the ultimate dismissal were not to do with the Claimant's age or any perception of it but were based upon performance issues.
16. For the above reasons the Tribunal finds unanimously that all three of the claims are not established and that they are dismissed.
17. The Tribunal emphasises that this was not an unfair dismissal claim. The Tribunal finds it appropriate to mention that the manner in which the dismissal was conducted

was not in accordance with the principles of fairness and was not following the first Respondent's own disciplinary policy. In dealing with any dismissal it would have been fair to call the Claimant to a disciplinary hearing and offer him the opportunity of being represented and the ability to present his case and have his say. This is notwithstanding that the contract was terminated during the three-month probationary period which could also have been taken into account. However, as stated, the case before us is not one of alleged unfair dismissal but is on discrimination and for the clear reasons set out we have found that the Claimant has not established that he has been subjected to discrimination on the grounds of age.

Employment Judge Speker OBE DL
Date: 26 May 2021