



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms H Needham**

**v 1. The Groundwork South Trust Ltd  
2. Mr T White**

**Heard at:** Watford (Hybrid – in person and by CVP) **On 20-23 September 2021**

**Before:** Employment Judge Alliot  
Miss Hamill  
Mr W Dykes

## **Appearances**

**For the Claimant:** In person  
**For the Respondent:** Ms A Johns, Counsel

## **JUDGMENT**

The Judgment of the Tribunal is that:

1. The claimant's claims are dismissed.

## **REASONS**

### **Introduction**

1. The claimant was employed by the respondent as a River Project Officer on a fixed term contract from 27 August 2019 until 4 April 2020. By a claim form presented on 17 June 2020, following a period of early conciliation from 26 March to 26 April 2020 (first respondent) and based on an early conciliation certificate dated 17 June 2020 (second respondent), the claimant brings complaints of discrimination on the grounds of age and/or sex, harassment and (by amendment) victimisation.

### **The issues**

2. The issues were recorded by Employment Judge Daniels in a case management summary following a closed preliminary hearing held on 26 November 2020.

3. The issues are as follows:

“Time Limits/Limitation Issues”

- 3.1 Were all of the claimant’s complaints presented within the time limits set out in s.123(1)(a)&(b) of the Equality Act 2010 (“EqA”)/s.23(2) to (4), 48(3)(a)&(b) and 111(2)(a)&(b) of the Employment Rights Act 1996 (“ERA”)? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; within the primary time limit; whether time should be extended on a “just and equitable” basis; when the treatment complained about occurred; etc.

Equality Act, s.13: Direct Discrimination Because of Age/Sex

- 3.2 Has the respondent subjected the claimant to the following alleged treatment:

3.2.1 In week commencing 30 [August] 2019 did Mr Tom White snap at the claimant and tell her to stop being difficult and over complicating matters (when she notified him of an apparent error in the data entry system);

3.2.2 Mr White side-lining her between September 2019 and December 2019 in project planning meetings and talking mainly to a man named Matt instead and/or speaking dismissively to her and bluntly about her contribution to lifting activities;

3.2.3 In a meeting on 8 October 2019 Mr White acting angrily when he realised that the claimant had invited the volunteers and said the day would be a failure because of her actions;

3.2.4 Later on 8 October 2019 Mr White was dismissive of the claimant and spoke sharply to her in front of the volunteers;

3.2.5 In regard to the claimant performing a feasibility study for Watford Borough Council, on around 12 November 2019, and inviting Mr White to review the work, Mr White became irritated, critical and/or angry;

3.2.6 On Tuesday 28 January 2020 Mr White reviewed the claimant’s budget, asked her to justify certain costs and became frustrated and cross with the claimant and said she was refusing to back down and should let go of her idea; further he allegedly asked why she was rolling her eyes/being rude to him;

3.2.7 In a meeting on 30 January 2020 in a meeting with two close partners, (Mr Rees and Mr Beechey) (both male and over 40) Mr White spoke exclusively to them, acting as if she was not present and then instantly rejected her idea about setting up a Facebook page, with a negative and harsh manner, which created an uncomfortable/hostile atmosphere and environment for her.

3.3 Was that treatment “less favourable treatment” ie did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances?

3.4 If so, was this because of the claimant’s age and/or sex and/or because of the protected characteristic of age and/or sex more generally?

#### Age Only

3.5 If so, has the respondent shown that the treatment was a proportionate means of achieving a legitimate aim?

#### Equality Act, s.26: Harassment Related to Age and/or Sex

3.6 Did the respondent engage in conduct as follows:

3.6.1 As set out in paragraph 3.2

3.6.2 If so, was that conduct unwanted?

3.6.3 If so, did it relate to the protected characteristic of age and/or was it of a sexual nature?

3.6.4 Did the conduct have the purpose or (taking into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

#### Remedy

3.7 If the claimant succeeds in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded. Specific remedy issues that may arise and that have not already been mentioned include:

3.7.1 Did the respondent unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in

all the circumstances to increase any award, and if so, by what percentage, up to a maximum of 25%, pursuant to s.207A of the Trade Union & Labour Relations (Consolidation) Act 1992 (“s.207A”)?

3.7.2 Did the claimant unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to decrease any award and if so, by what percentage (again, up to a maximum of 25%), pursuant to s.207A?

3.8 The victimisation claim added by way of amendment is put as follows:

“What and when was the protected act?”

1. In early January 2020, I told senior manager Deborah Valman that I was being bullied by Tom White (respondent 2). I informed Deborah about the discrimination events listed in the Case Management Summary s.4.2(a)-(e). I cannot remember the precise date but it was the first or second week of January 2020.
2. On 28 January 2020, after the incident described in s.4.2(f) of the Case Management Summary, Deborah Valman told me that she was now obligated to escalate my complaint and that she would inform her manager, Stewart Pomeroy (Tom White’s line manager), about my complaint immediately.
3. Stewart did not contact me. On 30 January 2020 another incident of bullying took place (described in s.4.2(g) of the Case Management Summary). The next day, on 31 January 2020, I asked Stewart at 08:00 if we could discuss my complaint. In a meeting at 11:00 that day, I told Stewart that I was being bullied by Tom White and described all the discrimination events listed in the Case Management Summary s.4.2(a)-(g).

What was the act(s) of victimisation?

1. Victimisation event (1)
  - On 28 January 2020, a member of staff told Deborah that I was in the café crying after I was chastised by Tom White in front of colleagues (described in s.4.2(f) of the Case Management Summary). At this point, Deborah was aware of the details of my complaint.
  - Deborah surprised me by making a sudden and unsolicited comment “Tom is not a bully”.

- Deborah said that in my life it is inevitable that I will face bullies in the workplace and that I needed to learn how to not let them get me down.
- Deborah also told me that “that’s what men are like”.
- Deborah’s obvious intention was to persuade me to drop my complaint against Tom.
- I suffered a detriment from a senior manager because of my complaint.

2. Victimization event (2)

- On 31 January 2020 at 08:00, the day after the incident described in s.4.2(g) of the Case Management Summary, I was alone in the office with Stewart Pomeroy. I asked if he had yet had a chance to discuss my complaint with Tom White.
- Stewart said that he was “not interested in becoming involved in a “he said, she said” situation”.
- Stewart also said “from what I can see, you are both as bad as each other”.
- I suffered a detriment from a senior management because of my complaint.

3. Victimization event (3)

- On 31 January 2020 at approximately 9:00, Stewart found me crying in a meeting room and invited me to meet with him to discuss my complaint. When we met at 11:00 that morning, I told Stewart what I was experiencing. To my surprise, Stewart made the same sudden and unsolicited comment that Deborah had made on 28 January – to say that “Tom is not a bully”.
- Stewart’s obvious intention was to persuade me to drop my complaint against Tom.
- I suffered a detriment from a senior manager because of my complaint.”

**The law**

Direct discrimination

4. Burden of proof

4.1 The IDS Employment Law Handbook Discrimination at Work at 33.12 summarises the guidelines from Barton v Investec Henderson Crossthwaite Securities Ltd [2003] ICR 1205, EAT as follows:

“

- It is for the claimant to prove, on the balance of probabilities, facts from which the Employment Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. If the claimant does not prove such facts, the claim will fail.
- In deciding whether the claimant has proved such facts it is important to bear in mind that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In many cases the discrimination will not be intentional but merely based on the assumption that “he or she would not have fitted in”.
- The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal.
- The Tribunal does not have to reach a definitive determination that such facts would lead it to conclude that there was discrimination – it merely has to decide what inferences could be drawn.
- In considering what inferences or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.
- These inferences could include any that it is just and equitable to draw from an evasive or equivocal reply to a request for information.
- Inferences may also be drawn from any failure to comply with a relevant code of practice.
- When the claimant has proved facts from which inferences could be drawn that the respondent has treated the claimant less favourably on a protected ground, the burden of proof moves to the respondent.
- It is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed that act.
- To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever on the protected ground.
- Not only must the respondent provide an explanation for the facts proved by the claimant, from which the inference could be drawn, but that explanation must be adequate to prove, on the balance of probabilities, that the protected characteristic was no part of the reason for the treatment.
- Since the respondent would generally be in possession of the facts necessary to provide an explanation, the Tribunal would normally expect cogent evidence

to discharge that burden – in particular the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or any code of practice.”

**4.2 Further, at 33.42:-**

“Unreasonable treatment not sufficient. On the other hand, it is not enough for a claimant simply to show that he or she has been treated badly in order to satisfy the Tribunal that he or she has suffered less favourable treatment. In Essex County Council v Jarrett EAT 0045/15 the EAT confirmed that a claimant must adduce evidence to support the contention that the treatment was less favourable by comparison with the treatment of others who do not share the same protected characteristic. Where a case consists of several allegations, the Tribunal must consider each allegation separately to determine whether less favourable treatment occurred by comparison with others so as to shift the burden of proof, rather than taking a broad-brush approach in respect of all the allegations.

Moreover, the fact that the claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift. This was established by the House of Lords in Glasgow City Council v Zafar [1998] ICR 120, HL where their Lordships held that a Tribunal had not been entitled to draw an inference of less favourable treatment on the ground of race from the fact that the employer had acted unreasonably in dismissing the employee. Although in the later case of Igen Ltd (formerly Leeds Careers Guidance) and others v Wong [2005] ICR 931, CA, Lord Justice Peter Gibson accepted that it was open in the Employment Tribunal on the facts of that case to draw an inference of discrimination from *unexplained* unreasonable conduct on the part of the employer, he cautioned Tribunals “against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground”.

**4.3 Further at 15.10:-**

“Where the employer behaves unreasonably, that does not mean that there has been discrimination, but it may be evidence supporting that inference if there is nothing else to explain the behaviour – Anya v University of Oxford & another [2001] ICR 847, CA. Thus an employer might escape a finding of direct discrimination by arguing, before the Tribunal, “I’m a bastard to everyone”, but this is likely to be harder to demonstrate, though not impossible, in a case where the evidence shows that only one employee was subjected to the employer’s unreasonable behaviour.”

**Less favourable treatment**

**5. From 15.17**

“A successful direct discrimination claim depends on a Tribunal being satisfied that the claimant was treated less favourably than a comparator because of a protected characteristic. It is for the Tribunal to decide as a matter of fact what is less favourable.

The test posed by the legislation is an objective one – the fact that a claimant believes that he or she has been treated less favourably does not of itself establish that there has been less favourable treatment.

...

That said, the claimant's perception of the effect of treatment upon him or her is likely to significantly influence the Tribunal's conclusion as to whether, objectively, that treatment was less favourable."

## Comparator

### 6. From 15.37

"No materially different circumstances

S.23(1) provides that on a comparison for the purposes of establishing direct discrimination there must be "no material difference between the circumstances relating to each case". In the pivotal case of Sharmoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL (a sex discrimination case), Lord Scott explained that this means that "the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class".

7. Nevertheless, the EHRC Employment Code indicates that the circumstances are the same or nearly the same for the claimant and the comparator they need not be identical in every way.

## Victimisation

8. For a protected act consisting of making an allegation (whether or not express) that A or another person has contravened the Equality Act, it is not necessary that the Equality Act actually be mentioned in the allegation or even be envisaged as coming into play. However, the asserted facts must, if verified, be capable of amounting to a breach of the Equality Act.
9. At 19.27 the following example is quoted:-

"Beneviste v Kingston University EAT 0393/05: B claimed that she had been victimised because she had raised various grievances. She admitted that she had not at the time complained that her treatment was on the grounds of sex or race but thought this did not matter. The EAT upheld the Tribunal's decision that the grievances could not amount to protected acts, saying that a claim does not identify a protected act in the true legal sense "merely by making a reference to a criticism, grievance or complaint without suggesting that the criticism, grievance or complaint was in some sense an allegation of discrimination or otherwise a contravention of the legislation."

## The evidence

10. We have been provided with a hearing bundle extending to 240 pages along with a remedy bundle extending to 35 pages.
11. We have been provided with witness statements and heard oral evidence from the following:
- 11.1 The claimant;



- 11.2 Mr Tom White, a programme manager at the respondent and the claimant's line manager based at Denham;
  - 11.3 Ms Deborah Valman, a programme manager at the respondent based at Denham;
  - 11.4 Mr Adam Bolton, a project manager at the respondent based at Denham;
  - 11.5 Mr Stewart Pomeroy, managing agent at the respondent and Mr White's line manager based at Denham;
  - 11.6 Ms Becky Spake, operations delivery manager at the respondent based in Hampshire;
  - 11.7 Ms Claire Woodcock, central services manager at the respondent based in Kent.
12. In addition we had two witness statements from two witnesses called by the claimant which, due to there being no challenge to their evidence by the respondent, we accepted without hearing from them. The witnesses are:
- 12.1 Ms Jan Stannard, a trustee for an environmental charity who knew the claimant at the time;
  - 12.2 Ms Niamh Young, a volunteer for the respondent.

### **The facts**

13. The first respondent is a federation of charities mobilising practical community action on property and the environment across the UK. The second respondent, Mr Tom White, worked as the programme manager for the Colne Valley Regional Parks Rivers Improvement Programme. His role involved working with local partners, contractors and volunteers to enhance the Colne river catchment.
14. The claimant was born on 26 February 1994 and consequently was 25 years old in 2019. She describes herself as a passionate wildlife conservationist. She has a degree (although we were not told in what subject) and undertook two years post-graduate biological research at Imperial College obtaining a Masters. She is clearly an intelligent and articulate person who Ms Stannard describes as "an exceptionally able individual".
15. In her claim form the claimant refers to Mr White speaking openly about being overworked and stressed throughout her time at the respondent. Due to his workload, Mr White decided he needed assistance. Accordingly, he developed the job description for the role the claimant was appointed to, secured the funding for it and conducted the interview process for all applicants. Mr White selected the claimant for the role. Obviously enough in doing so he was aware of her age and sex. At the time Mr White was 31 years old.
16. Following her post-graduate Masters, the claimant threw herself into volunteering in June 2018 and in January 2019 she raised finance for and established her own local volunteer group. Later, in 2019 she applied for

the role with the respondent and was successful. It would appear that the position with the respondent was her first paying employment. The claimant was in a team of two with Mr White as her line manager.

17. Having heard all the evidence, it is clear to us that Mr White's management style left something to be desired. In his oral evidence Mr White accepted that there were instances when his management style did not work. In his notes for what was called a "mediation" meeting (in actual fact more of a conciliation meeting) held on 6 January 2020 he states:-

"I'll start with saying a few points about my personality. I'm a direct communicator and I will often ask for things done a certain way. After discussing something I like to draw a line under it and move on to the next thing in the interests of making progress.

I have seen that this approach isn't working for you and that I may come across as abrupt, so I will try to be more adaptive in my approach to managing you and communicating with you in future."

18. We also noted from the claimant's oral evidence that she perceived Mr White's management style as treating her like "a stroppy" or "rebellious teenage girl" and she felt that as an "older" man he did not have tolerance for a "young woman to be clear and direct".
19. Following the claimant's departure from the respondent an investigation was conducted and we have the notes of investigation meetings with a number of employees. When asked about Mr White's communication style Mr Pomeroy is recorded as saying:-

"Tom is clear in how he communicates things, perhaps a little more abrupt, direct or to the point than other people in groundwork but compared to the outside world Tom is not direct or abrupt at all."

20. In Mr Pomeroy's account of a meeting with the claimant on 31 January 2020, he records:-

"This is the way Tom is, he has responded like that to me on occasions."

21. In his oral evidence Mr Pomeroy told us that Mr White "did snap back to all of us including me".

22. The notes of a meeting with Chloe Crompton contains the following:-

"Clare Woodcock – did you witness Tom cutting Hannah off?

CC – no, I only ever really saw them together in the office and I quite often wasn't paying attention to their conversation. He may have been short in answering something if he was busy, he may have just responded with a yes or a no response.

CW – was he short with others in the office?

CC – once or twice he may have said just a yes or no or said I'm sorry I can't right now, I'm busy.

CW – do you recall who to?

CC – he once said to me “sorry I’m busy” and maybe Adam on another occasion.”

23. The notes of Mr Adam Bolton’s interview refer to him saying of Mr White:

“He has been blunt with me before but I know he can get stressed, but he is not horrible.”

CW – how have you felt when he reacted that way towards you?

AB – I know he is really stressed in his home life, his mother passed away just before he had a child and his brother was ill, he has had a really terrible year. He has only been blunt when he has been busy and he can be really busy at work.”

24. In his oral evidence he confirmed that on two occasions Mr White had been blunt to him.

25. In her claim form the claimant herself stated:

“Young, male members of staff were also made to feel uncomfortable by Tom. My colleague Adam Bolton told me that before I joined he spent a short time using my desk (located in the corner next to Tom). Adam said that during that time, Tom was very rude and dismissive with him, just as he had seen Tom act towards me”.

26. In the notes of the meeting with Mr Matt Hartgroves the following is recorded:-

“CW – Did you notice anything about Tom’s behaviour towards Hannah on any of those sessions?

MH – Not necessarily anything bad, I think Tom found it difficult as HN expressed her views on how things should be done and Tom as the overseeing manager wanted things to be done differently. Tom wouldn’t necessarily always agree with me on my opinions either.”

27. Later, referring to the claimant, he states:-

“I think she is a confident person and she could be quite opinionated if there were times I didn’t agree with her.”

28. In her oral evidence the claimant accepted that she would highlight to Mr White other ways of doing things. She stated that her offering an opinion was not in order to challenge Mr White or make him look foolish. Nevertheless, she told us that she thought Mr White perceived her conduct as making a point. On another occasion she told us that when Mr White asked her to justify suggesting training for partners, she did so but said that she did not do so in a stroppy or “I know better than you” way. That may be her perception, but it was now how Mr White took it. From his perspective

she was challenging him and showing him up in front of others. We find that it was that that caused Mr White's conduct, not the claimant's age or sex.

29. We found the witness statement of Ms Jan Stannard to be both perceptive and persuasive as it had been prepared as part of the claimant's case. She states:-

“During the same period of time, she [the claimant] confided in me about the difficulties she was experiencing with her manager... I remember her describing an incident where she had asked her manager a technical question in front of volunteers and he reacted badly (defensively) as if she was trying to challenge or embarrass him. I remember that she was upset by this and she told me that her only motivations were to learn and to help him deliver the projects successfully. I also recall her telling me about a sequence of events relating to a plan she had developed. He disagreed with it and instructed her to take a different approach. At a subsequent meeting, someone in a position of authority over both of them, though I don't know who it was, rejected her manager's approach and said that Hannah's plan was a better way forward. However, her manager then chose to cancel the project but said that the others in the meeting had advised cancellation. This did not align with Hannah's understanding of what was said. Based on Hannah's account of these situations, it appeared that her manager perceived her as a threat because she was a competent, capable and confident young woman.”

30. It is clear to us that the claimant and Mr White initially worked well together. However, over time their relationship deteriorated and became unworkable following an incident on 28 January 2020. The claimant started working for the respondent full of knowledge and enthusiasm, no doubt hoping to translate her learning into a positive impact on the environment. We find that the claimant would ask technical questions and make suggestions to do things differently to Mr White. That would sometimes be in front of volunteers or partners. We find that on occasions Mr White had a blunt manner, was not particularly receptive to new ideas and perceived that, on occasions, he was being shown up in front of others.
31. It is against the background of that relationship that we have examined the individual instances of alleged discrimination in order to determine whether they raise a prima facie case of discrimination, and, if so, whether the respondent has an explanation.
32. The claimant has suggested as comparators Matt Hartgroves and/or partners. We find that these are not comparators as they are in materially different circumstances. Matt Hartgroves had worked for the respondent but at the time of the events we are dealing with was an independent contractor. He had worked for two years on the Crown Meadow site, knew and managed the volunteers and had an established good relationship with landowners. The partners were external to the respondent.
33. Consequently, we find that it is only a hypothetical comparator that is appropriate. Ms Johns, for the respondent, suggested that the hypothetical comparator should be an older male individual employed as a project officer on a fixed term contract. We find that that is an appropriate hypothetical comparator.

34. Although the first item of alleged treatment was dated as 30 September 2019 in the original list of issues, the claimant clarified that it was in fact 30 August 2019. The allegation is as follows:-

“Did Mr Tom White snap at the claimant and tell her to stop being difficult and overcomplicating matters (when she notified him of an apparent error in the data entry system).”

35. In her oral evidence the claimant described it as follows:-

“We were at the canal in my first week. We were surveying floating pennywort. The app survey form had a number of tick boxes to record the level of infestation. There was a box for 0-10 metres, a box for 10-50 metres and a box for 100 metres plus. There was no tick box for 50-100 metres. I asked how to get round the problem and was shocked by the response that there was nothing wrong with the system and don't over complicate things.”

36. Mr White acknowledged that there was a flaw in the app that was later rectified.

37. Whilst Mr White could not recall this incident, he denied saying stop being difficult or over complicating the issue. We find that he probably did say words to that effect and sharply.

38. We have gone on to consider whether that was less favourable treatment. We find that Mr White would have treated any new starter, including a hypothetical older man, in the same way. Further, we consider it to be inconceivable that within three days of the claimant starting her employment having been recruited by Mr White that he would subject her to that treatment on the grounds of her sex or age.

39. The next item of alleged treatment is that:-

“Mr White side-lining her between September 2019 and December 2019 in project planning meetings and talking mainly to a man named Matt instead and/or speaking dismissively to her and bluntly about her contribution to lifting activities.”

40. This allegation involves Matt Hartgroves. The claimant accepted that she was less familiar with the project than Mr Hartgroves. Mr White told us that Mr Hartgroves was effectively site manager for that site. In his investigation meeting notes Mr Hartgroves is recorded as follows:-

CW – Are you aware of any conversations between Tom and Hannah regarding the work that was to be required on site?

MH – Yes, Hannah did talk to me about how she was feeling and she felt that Tom didn't always listen to her views. I was involved in planning discussions both in the office and on site with Tom and her about how the work would be completed.”

41. Mr White denied side-lining the claimant in meetings with Mr Hartgroves. We find that in all probability Mr White did confer with Mr Hartgroves more

than he conferred with the claimant, but this was due to Mr Hartgroves being effectively the site manager and vastly more experienced and knowledgeable about the project. The claimant may have had a perception that Mr White was side-lining her but we find that was not. We find that the claimant was included in planning meetings. We find that the hypothetical comparator would have been treated in the same way. Further, that that treatment was not because of the claimant's age or sex. It was due to her lack of familiarity with the project.

42. As regards lifting activities, the claimant referred to the men on site being able to lift tree trunks on their shoulders whereas the claimant was only able to drag tree trunks. The treatment the claimant complains about is Mr White only making eye contact with the men lifting tree trunks, calling them mates, and laughing with them. She says that at the end of the day when everyone was stood around Mr White thanked the men and gave her the cold shoulder as if she had done something wrong. Mr White denied treating the claimant in this way. Again Mr Hartgroves was asked about this and the exchange is as follows:-

“CW – Would you say that Tom was dismissive of Hannah’s ability to do some of the work – for example heavy lifting etc?”

MH – No not at all.”

43. We find that the claimant was not side-lined from project planning meetings during this period. Further, we find that she was not spoken to dismissively or bluntly about her contribution to lifting activities.

44. The next item of alleged treatment is as follows:-

“In a meeting on 8 October 2019 Mr White acting angrily when he realised that the claimant had invited the volunteers and said the day would be a failure because of her actions.”

45. In fact, this complaint relates to shortly before 8 October 2019. This appears to be a classic case of misunderstanding due to miscommunication. Mr White states that he had previously asked the claimant and Matt not to invite volunteers to the first workday at the Crown Meadow site and he wanted to train the claimant and Matt first. The claimant states that she had been instructed to invite the volunteers.

46. The notes of the claimant's feedback in March 2020 provides a possible explanation. The following is recorded:-

“Volunteer training – NH said that TW said he would train all the volunteers in one go, when HN set up the training and when TW realised he reacted badly saying that he could never do that and it be impossible. On the day it ran very well and TW had a positive day.”

47. We find that there was clearly a misunderstanding between the claimant and Mr White as to what she was expected to do. Mr White clearly wanted

to train all the volunteers on one day. He may have assumed that Matt and the claimant would be trained on another day whereas the claimant assumed they would be trained at the same time. We find that, when he realised that the volunteers were coming on the first day and he was training everyone, he became angry and said words to the effect that the day would be a failure. We find that that was not less favourable treatment as the hypothetical comparator would have been treated in the same way in the same circumstances. Further, we find that Mr White's actions were not because of the claimant's age or sex.

48. The next item of alleged treatment is as follows:-

“Later on 8 October 2019 Mr White was dismissive of the claimant and spoke sharply to her in front of the volunteers.”

49. The claimant's evidence on this related to when the claimant and the volunteers were being trained on how to construct “brush” work on the riverside. The claimant told us that she wanted to understand what height the structure should be and said that when she asked Mr White the question his answer seemed to the claimant like he acted as if the claimant had attacked him. The claimant referred to the river going up and down and she said Mr White responded sarcastically that of course the river goes up and down. She commented that Mr White's behaviour did not make sense and said he reacted like that whenever she asked him technical question. Mr White told us that he did not recall being asked the question but denied that he would have put the claimant down. He said he was so passionate about rivers that he would only want to teach people to the best of his ability and suggested that this might have been invented with hindsight. Ms Niamh Young's unchallenged evidence was that Mr White acted dismissively and rudely towards the claimant in front of colleagues and volunteers on this day. We find that Mr White probably did react bluntly and defensively at being asked technical questions in front of volunteers. We accept that such treatment of the claimant represented poor management of the claimant and would have upset her. However, we find that this was not less favourable treatment than the hypothetical comparator who would have been treated the same in the same circumstances. Further we find that the treatment was not related to the claimant's age or sex.

50. The next item of alleged treatment is as follows:-

“In regard to the claimant performing a feasibility study for Watford Borough Council on or around 12 November 2019 and inviting Mr White to review the work, Mr White became irritated, critical and/or angry.”

51. The claimant's evidence on this issue was that both she and Mr White were preparing updates for the partners. They were working on different workstreams. In the context where there was plenty of time to prepare the work the claimant presented a diagram on an A4 piece of paper dealing with a budget and tasks for monitoring/volunteers. The claimant told us that she slid over the diagram to Mr White in the office asking him if he was happy. She told us that initially he was more or less happy and then started making

comments such as “they can’t do that”, “how much is that going to cost”, “how many days is that going to take”. The claimant told us that she did not know about budgets at that time and so was unable to answer many of his questions. She said that Mr White spoke sharply and dismissively to her and then just sat down, opened a spreadsheet and started drafting it himself. She thought that he had started to panic as there was so much to be done.

52. Mr White’s evidence was to the effect that she was a new member of staff and he thought that by asking questions it would not put her on the spot but help her understand how to do the job. He said his purpose in asking questions was to get a response and to encourage the claimant to move on and use her initiative. It was in this context that he told us that he appreciated that there were instances where his management style did not work.
53. We have seen two follow up emails consequent upon this incident. On 22 November 2019 the claimant sent an email to Mr White as follows:-

“I think we had a bit of a misunderstanding that day. I just want to reiterate that I am here solely to help you! I am only ever asking questions or commenting because I am trying to learn or because I am concerned that there is something wrong that can be improved. I am never trying to make a point or anything like that. I just want our projects to be as successful as we can make them! I’m very happy when we’re working as a team and I really struggle when we clash.”

54. On 26 November 2019 Mr White replied as follows:-

“The other day I was trying to get a quick, approximate indication of project co-ordination fees from you. I need this to work on the basis of me asking some specific questions to calculate a quick estimation. I appreciate it was not your intention to be obstructive, but from a line management perspective sometimes I will ask questions and expect direct answers.

The sticking point for me was that you were struggling to differentiate between different types of staff time (project co-ordinator staff time vs delivery partner staff time). The budget you have provided still does not provide clear separation between these costs.”

55. Being contemporaneous documents, we have placed considerable reliance upon the picture they paint. The claimant refers to asking questions or commenting due to concern that there is something wrong that can be improved. We find that when she did that, rightly or wrongly, Mr White perceived it as criticism or, if the comment was in front of others, challenging his expertise. Combined with his propensity to be blunt this could lead to the two of them clashing. We find Mr White was irritated, critical and/or angry. Given that Mr White was in the more senior position that represents poor management style. Nevertheless, we find that this was not less favourable treatment as the hypothetical comparator would have been treated the same in the same circumstances. Further we find that it was not because of the claimant’s age or sex.



56. On 9 January 2020 the claimant emailed Ms Deborah Valman as follows:-

“Would you be free today to have a chat about some problems I’m having at work?”

57. Later that day the two of them went for a walk and the claimant says that she explained her situation to Ms Valman. In her witness statement she says:-

“On Thursday 9 January, I told senior manager Deborah Valman that my relationship with Tom had broken down, that I feared interacting with him, that his treatment of me was causing my self-confidence to degrade and that, as a result, my mental health was suffering.”

58. In her oral evidence she told us that she informed Ms Valman of the way she had been treated and the way she felt. She referred to being bullied, it being negative and being shut down. The claimant suggested that Ms Valman remarked that “He is not a bully” referring to Mr White and that this was out of the blue.

59. Ms Valman agreed that she had spoken to the claimant on this occasion but put the context as the claimant raising issues concerning anxiety. Ms Valman told us that during her discussions with the claimant she felt she was in the role of helping the claimant cope with her anxieties and giving her advice on how to deal with any workplace environment issues. Ms Valman told us that she was surprised when it was alleged that Mr White was a bully and that it was after this suggestion had been made that she stated that he is not a bully. On this issue we prefer the evidence of Ms Valman.

60. The claimant accepted that the issues she raised with Ms Valman were not raised in the context that she thought the treatment was because of her age or sex. Further, we accept Ms Valman’s evidence that the claimant did not ask her to escalate the issue formally.

61. In any event, Ms Valman thought that it was after this first meeting on 9 January 2020 that she did escalate the matter to Mr Pomeroy. Mr Pomeroy accepted that Ms Valman spoke to him but told us that it was not reported as a complaint about bullying on the grounds of age or sex discrimination. He told us the first time he heard this was an allegation of age and/or sex discrimination was months later and it was a complete shock to him. We accept Ms Valman’s and Mr Pomeroy’s evidence on this issue.

62. We find that the matters raised by the claimant with Ms Valman did not contain any suggestion that the treatment was an allegation of discrimination or otherwise a contravention of the Equality Act. Consequently, we find that the claimant did not do a protected act.

63. It is clear to us that by November 2019 the working relationship between the claimant and Mr White was beginning to deteriorate. Indeed, a section of the claimant’s witness statement is titled “Deterioration of working relationship – November – December 2019”. The three month probation review which would have been in about November 2019 was very positive about the

claimant's performance but does contain the following comment from Mr White:-

“Communication could occasionally be better, but this can be attributed to us both adapting to each other's working/management style.”

64. The next item of alleged treatment is as follows:-

“On Tuesday 28 January 2020 Mr White reviewed the claimant's budget, asked her to justify certain costs and became frustrated and cross with the claimant and said she was refusing to back down and should let go of her idea; further he allegedly asked why she was rolling her eyes/being rude to him; this incident took place in the office in front of a number of witnesses from whom we have heard.”

65. This incident took place within the office in front of witnesses.

66. On the day before, 27 January 2020, the claimant sent Mr White a draft budget for the Watford Environmental Monitoring Project. The email states that it is not a finished draft and that she would appreciate it if he would make the time to go through it with her in detail the next day. She makes plain that she was finding the task difficult and sets out the reasons why. Shortly after sending it to Mr White the claimant forwarded it to Ms Valman stating:-

“I am going through this draft budget with Tom tomorrow.

I am a bit nervous about it. I have worked really hard on it.”

67. Ms Valman replied stating it looked very thorough and wishing her luck the next day.

68. The claimant's witness statement describes the incident as follows:-

“On Tuesday 28 January 2020, when reviewing a draft budget that I had prepared, my manager became angry and irritated with me and confronted me in front of the office. When, because I felt intimidated I was unable to speak, he accused me of rolling my eyes at him and being rude.”

69. In oral evidence she told us that she could see that Mr White was looking at the draft as she was in the next desk. She said he did not speak to her about it and started making a new budget. She said he asked her about it and she explained. They had a discussion about training for partners. He said no and explained why. He asked her to justify it and so she did. The claimant told us she was not stroppy and it was not done in a “I know better than you” way.

70. On the other hand, in his witness statement Mr White referred to the claimant being extremely protective over her work and was resistant to making the revisions that he recommended. He wanted to remove training costs for external partners as there were other means available to fund the activity and the claimant refused to do so.

71. It is quite clear to us and we find that the claimant and Mr White had an argument concerning the details of the draft budget.

72. In assessing the context of this disagreement we have examined the witness evidence from the others present. Ms Valman states:-

“On 28 January 2020, I heard Tom and Hannah have a discussion about a project in the office. It was slightly sharper than usual in our office which is why I noted it but there was no shouting and it was not prolonged or one-sided.”

73. Mr Adam Bolton stated:-

“On 28 January 2020, I remember there was a slightly heated discussion between the claimant and Mr White just across the desk from me. I honestly can’t remember what was discussed but they seemed to disagree on something work related. I didn’t notice any insulting or derogatory language used by either party.”

74. Ms Clare Woodcock interviewed witnesses in the light of the claimant’s discrimination claims made in June 2020. She states:-

“From the interviews I conducted with witnesses, I understand that a discussion took place in the office on 28 January 2020 between Hannah Needham and Tom White over a project budget. Witnesses stated that neither party seemed to be listening to the other’s point, both voices were becoming strained however they were not shouting, just talking loudly and both seemed frustrated. The claimant was giving her ideas or suggestions and Tom White was expressing why they would not work and trying to give his reasons. I understand Hannah Needham became upset and left the office at this time.”

75. We find that Mr White did review the claimant’s budget, asked her to justify certain costs and became frustrated and cross with the claimant. Further we find he probably said words to the effect that she was refusing to back down and should let go of her idea. Further, we find that he probably asked her why she was rolling her eyes and being rude to him. We find this incident did take place in the office in front of a number of witnesses. Nevertheless, we find that this was not less favourable treatment as the hypothetical comparator would have been treated the same in the same circumstances. Further we find that it was not because of the claimant’s age or sex.

76. It is clear and we find that the incident upset the claimant. Ms Valman was asked by a colleague to go and talk to her as she was crying in the café. In her witness statement she says:-

“While comforting me in the café, Adam and Chloe asked Deborah to come over. I explained what had happened and told her that the situation with Tom was having a serious impact on my self-confidence and that the anxieties it induced was now deeply affecting my personal life. Deborah said that his behaviour was concerning and unprofessional and that she would now escalate the issue to Tom’s line manager, Stewart [Pomeroy]”

77. In her evidence Ms Valman accepted that she gave the claimant advice along the lines of minimising her interaction with Mr White, taking a step back and only asking questions once a week. She agreed that she advised the claimant to stand her ground but not because Mr White was a man. She told us it was worldly advice that was well intentioned. She accepted that she may well have said words to the effect “That’s what men are like”. Ms Valman denied she was trying to prevent the claimant from pursuing her complaints. She said she was trying to help the claimant and, indeed, on 6 February 2020 she sent the claimant a link to an employee assistance programme which was confidential. Ms Valman told us that a reference to it being tough for youngsters was due to the fact that they were only ever employed on short-term contracts and they needed support. Once again, Ms Valman’s evidence was that she did not make an unsolicited comment that “Tom is not a bully” and that this would have been in response to the allegation by the claimant that Mr White was a bully.
78. We find that the matters raised by the claimant to Ms Valman on 28 January did not suggest at all that the matters she was complaining about were in some sense an allegation of discrimination or otherwise a contravention of the Equality Act. Consequently, we find that the claimant did not do a protected act.
79. The next item of alleged treatment is as follows:-
- “In a meeting on 30 January 2020 in a meeting with two close partners, (Mr Rees and Mr Beechey) (both male and over 40) Mr White spoke exclusively to them, acting as if she was not present and then instantly rejected her idea about setting up a Facebook page, with a negative and harsh manner, which created an uncomfortable/hostile atmosphere and environment for her.”
80. The two partners were from external organisations, namely the Chilterns AONB and the Environment Agency. The claimant’s complaint is as follows:-
- “Throughout the meeting, Tom spoke exclusively to the other partners (both male and older) as if I was not present.”
81. In her oral evidence the claimant complained that Mr White only made eye contact with the two men, turned towards them and that she was not invited to contribute any input to the discussion.
82. Nevertheless, the claimant did have input to the meeting in that she suggested that there should be a Facebook page associated with the project. She told us the partners believed it would be of great value to the project but that Mr White instantly became critical, negative and harsh.
83. Mr White’s evidence was that a Facebook page had been considered and discussed previously and had been rejected due to the lack of resources. Further, the claimant’s temporary contract was due to expire in only three months and he was concerned as to who would manage the site thereafter. In his witness statement Mr White says as follows:

“I politely explained my reasoning to Hannah and expected her to understand. Hannah ignored my comments, continuing to address the two external partners in the room, requesting that she should be able to set up a Facebook page. This led to an uncomfortable situation where I had to repeat the reasons that I had previously stated. The external partners in the room supported my decision, while Hannah did not.”

84. Once again, we find that there was clearly a clash between Mr White and the claimant. We find that there was nothing untoward in Mr White as the senior manager, conducting the meeting by engaging with the two partners. We find that Mr White did instantly reject the claimant’s idea about setting up a Facebook page and that this was because it had been considered before and the decision had been made to reject it. We find that Mr White probably was negative and somewhat harsh in his manner in repeatedly rejecting the suggestion. We find that it probably did create an uncomfortable/hostile atmosphere and environment for the claimant. Nevertheless, we find that this was not less favourable treatment as the hypothetical comparator would have been treated the same in the same circumstances. Further we find that it was not because of the claimant’s age or sex.
85. On Friday 31 January 2020 the claimant approached Mr Stewart Pomeroy in the office at about 8am. The claimant’s evidence is that she asked for help as her line manager was bullying her. Mr Pomeroy’s evidence was that she asked him if he was aware of the 28 January 2020 incident. The claimant told us that Mr Pomeroy said he was not interested in becoming involved in a “he said, she said” situation and that they were both as bad as each other. Mr Pomeroy told us that he had racked his brain to recall if he said that and didn’t know if he did. We can understand why he would make such remarks and find that he probably did. They agreed to speak later at 11am as Mr White came in.
86. The claimant and Mr Pomeroy met at 11:00. Mr Pomeroy made some notes of the meeting. This records:
- “negativity about all proposed
  - Automatic reaction to say no
  - Acts like Hannah threatens him
  - Want to be a team
  - Patronising – dismissive
  - 6 month appraisal next week
  - My opinions are not valid – that the way he makes me feel
  - .....
  - Said it’s the way Tom is, he does it to all of us but this is not bullying.
  - .....
  - It’s a personality clash we need to work it through”
87. The claimant agreed that there was no mention of any suggestion that her complaints related to her age or sex. Clearly bullying was discussed even if Mr Pomeroy dismissed it. We find that the matters raised by the claimant to Mr Pomeroy did not suggest at all that the matter she was complaining about were in some sense an allegation of discrimination or otherwise a

contravention of the Equality Act. Consequently, we find that the claimant did not do a protected act.

**Conclusions**

- 88. We have found that the treatment alleged in issues 3.2.1, 3.2.3, 3.2.4, 3.2.5, 3.2.6 and 3.2.7 did take place. We have found that that treatment was not less favourable treatment and that it was not because of the claimant's age or sex.
- 89. We find that that treatment was unwanted. However, we find that it was not related to the claimant's age or sex.
- 90. We have found that the claimant did not do any protected acts.
- 91. In the circumstances, we have made no determination on the time issues or the alleged victimisation detriments.
- 92. For the foregoing reasons the claimant's claims are dismissed.

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**Employment Judge Alliot**

Date: 8 December 2021

Sent to the parties on: 8 December 2021

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For the Tribunal Office