



EMPLOYMENT TRIBUNALS

Claimant: Miss J Wong

Respondent: The Commissioners for Her Majesty's Revenue and Customs

Heard: by video **On:** 10, 11, 12, 13 & 14 January 2022

Before: Employment Judge S Jenkins
Mr P Charles
Mrs L Owen

Representation

Claimant: In person

Respondent: Mr T Kirk (Counsel)

JUDGMENT having been sent to the parties on 17 January 2022, and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. The hearing was to deal with the Claimant's claims of:
 - direct age discrimination by association, pursuant to Section 13 of the Equality Act 2010 ("EqA");
 - victimisation pursuant to Section 27 EqA;
 - harassment pursuant to Section 26 EqA.
2. We heard evidence from the Claimant on her own behalf, with the occasional assistance of an interpreter, and from a number of witnesses on behalf of the Respondent; Andrea Sullivan, currently Senior Officer, formerly Higher Officer; Shazia Butt, currently Senior Operational Lead formerly Operations Manager; Charlotte Palmer, Operational Lead, formerly Front Line Manager; and Sharon Blakey, Higher Officer. We also read a witness statement of Dorothy Abernethy, Higher Officer, formerly Officer, on behalf of the Respondent, who was unable to attend the hearing due to illness. We could only give limited weight to that statement due to the fact that she was not present to be cross-examined.

3. We considered the documents in the hearing bundle spanning 844 pages to which our attention was drawn, and we also considered one additional document, a Manager's Guide to the Management of Travel and Subsistence claims, which the Claimant provided to us during the course of the hearing. We also took into account an agreed cast list, separate chronologies provided by the parties, and the parties' closing submissions.

Issues and Law

4. The issues we had to determine had been agreed between the parties and were included at pages 799 – 803 of the bundle.

THE CLAIMS

1. *The Claimant brings the following claims:*

- (a) Victimisation, pursuant to section 27 of the Equality Act 2010 ("EqA");*
- (b) Direct age discrimination, pursuant to section 13 of the EqA; and*
- (c) Harassment, pursuant to section 26 of the EqA.*

DIRECT (ASSOCIATIVE) AGE DISCRIMINATION

2. *Did the following acts occur? The Claimant relies on these acts as less favourable treatment.*
 - (a) On 27 June 2019 did Rebecca Wigfall initially discourage the Claimant from applying for a career development opportunity to deliver training to colleagues in Glasgow, which the Claimant later undertook? There is a factual dispute between the parties as to whether either Rebecca Wigfall or Andrea Sullivan described the Claimant as being her parents' "carer".*
 - (b) On 27 June 2019 did Andrea Sullivan discourage the Claimant from applying for the same opportunity?*
 - (c) On or around 12 July 2019 did Rebecca Wigfall ignore the Claimant's expenses claim for her trip to Glasgow despite being chased to process the same?*
 - (d) On 25 July 2019 did Ms Wigfall decline to approve the Claimant's expenses claim and ask her to re-submit it?*
 - (e) Between 12 to 13 August 2019 did Shazia Butt put the Claimant under undue pressure to make a decision as to whether she wished to make a formal complaint against Rebecca Wigfall?*
 - (f) On or around 6 September 2019 was the Claimant allocated less opportunities than her colleagues by Charlotte Palmer in respect of delivering further tranches of training at Cardiff and Brunel House? The Claimant says that Charlotte Palmer gave [NY] more opportunity than her to lead training from 9 September 2019 to 1 November 2019.*

- (g) *Between 10 to 11 September 2019 did Shazia Butt turn down requests from the Claimant to undertake more opportunities to get involved in training?*
3. *If so, did any of the above acts amount to treating the Claimant less favourably than an actual or hypothetical comparator was / would have been?*
4. *If so, was any of that treatment because of the age of the Claimant's parents? The Claimant's parents are in their 70s and the Claimant says that there was a stereotypical assumption that they would need care when they came to stay in the UK from Hong Kong.*

VICTIMISATION

5. *It is agreed that the Claimant made a single protected act for the purposes of section 27(2) EqA, when she raised her grievance dated 25 September 2019 ("the protected act").*
6. *Did any of the following occur? The Claimant relies on the below as acts of victimisation. The Respondent avers that the italicised allegations at (a)-(c) below are irrelevant and should not be considered by the Tribunal under this head of claim because they pre-date the protected act and therefore cannot, by definition, be detriments that occurred because of that protected act. The Respondent avers that allegations (a)-(c) should therefore be withdrawn or alternatively struck out under rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013 on the basis that they have no reasonable prospects of success.*
- (a) *Between 12-13 August 2019 did Shazia Butt send eight emails to the Claimant putting the Claimant under undue pressure to make a decision as to whether she wished to make a formal complaint against Ms Wigfall?*
- (b) *Did Rebecca Wigfall and Andrea Sullivan give more opportunities to [NY, TK and JB] to do training than they gave to her, and that they each did 5/6 weeks training between 2 July 2019 and 6 September 2019?*
- (c) *On 6 September 2019 did Charlotte Palmer allocate her fewer opportunities than her colleagues to deliver further tranches of training at Cardiff and Brunel House? She says that Charlotte Palmer gave [NY] more opportunity than her to lead training from 9 September 2019 to 1 November 2019.*
- (d) *Did the Respondent fail to resolve the Claimant's grievance from 25 September 2019 to date?*
- (e) *On 28 November 2019 did Shazia Butt discourage other managers from supporting the Claimant concerning that grievance?*
7. *Did any of the above amount to acts of detriment?*
8. *If so, did the Respondent subject the Claimant to any of the above acts because she had done the protected act referred to above?*

HARASSMENT

9. Did any of the following occur?

- (a) *Between 12-13 August 2019 did Shazia Butt send eight emails to the Claimant, putting the Claimant under undue pressure to make a decision as to whether she wished to make a further complaint against Ms Wigfall?*
 - (b) *Did Rebecca Wigfall and Andrea Sullivan give more opportunities to [NY, TK and JB] to do training than they gave to her, and that they each did 5/6 weeks training between 2 July 2019 and 6 September 2019?*
 - (c) *On 6 September 2019 did Charlotte Palmer allocate her fewer opportunities than her colleagues to deliver further tranches of training at Cardiff and Brunel House? She says that Charlotte Palmer gave [NY] more opportunity than her to lead training from 9 September 2019 to 1 November 2019.*
 - (d) *Did the Respondent fail to resolve the Claimant's grievance from 25 September 2019 to date?*
 - (e) *On 28 November 2019 did Shazia Butt discourage other managers from supporting the Claimant concerning that grievance?*
 - (f) *Did Rebecca Wigfall require the Claimant to re-submit her expenses claim in July 2019?*
 - (g) *On 11 September 2019 did Charlotte Palmer inform the Claimant that she would not deliver more training because of criticism that she was "too direct"?*
10. *If so, did any of the above amount to subjecting the Claimant to unwanted conduct?*
11. *If so, did that conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.*
12. *If so, did that unwanted conduct relate to the age of the Claimant's parents?*

JURISDICTION

13. *Were any of the Claimant's claims presented outside the three-month time limit under section 123 EqA. The Respondent will aver that any allegation pre-dating 7 September 2019 is prima facie out of time:*
- a. *Are any matters which are said to have occurred before 7 September 2019 part of a continuing act and so in time?*

- b. *If not, should the Tribunal extend time to hear such complaints on the basis that it is just and equitable to do so?*
5. During the course of the hearing, however, the Claimant amended the issues. First, she accepted that three of the five claimed acts of victimisation, Issues 6(a), (b) and (c), could not be pursued as they predated the protected act. Secondly, she confirmed that one of the eight claimed acts of direct age discrimination, Issue 2(e), should be withdrawn. Thirdly, she noted that the time period relating to the Claimant's assertion that the Respondent failed to deal with her grievance, which was asserted to be an act of victimisation and harassment, Issues 6(d) and 9(d), should be amended to be for the period 25 September 2019 to 15 January 2021.
 6. The core elements of the prevailing law that we needed to consider were addressed by the questions set out in the list of issues. We were however conscious of the following additional matters.
 7. We noted that in this case the Claimant's claims of direct age discrimination and harassment did not relate to her own age or to any other protected characteristic of her own, but related to the age of her parents, who were understood to have been in their mid 70s at the relevant time. Such claims are able to be pursued by association with a protected characteristic of another person by virtue of the way the legislation is worded.
 8. Section 13 of the EqA, which deals with direct discrimination, refers to discrimination arising if, "*because of a protected characteristic*", i.e. not necessarily the claimant's own characteristic, a person is treated less favourably than others.
 9. Section 26, which deals with harassment, refers to "*unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant*". Again, the reference is to "a" protected characteristic not necessarily the particular claimant's own protected characteristic.
 10. For those claims to succeed however, we had to be satisfied that the acts, (presuming that we were satisfied that they had occurred and did give rise to less favourable treatment or unwanted conduct) had taken place because of the Claimant's parents' ages or had been related to the Claimant's parents' ages.
 11. The essence of the Claimant's claims of discrimination by association was that there had been a perception on the part of those managing her that her parents were elderly and in need of care from the Claimant during the course of a visit they made from their home in Hong Kong in Summer 2019. The Claimant contended that that perception led to her being treated to her detriment and to be the recipient of unwanted conduct. We noted that, whilst the wording of Section 13 EqA allows a Respondent to advance a defence that an act of direct age discrimination can be justified as a proportionate means of achieving a legitimate aim, the Respondent did not put forward any such defence. Instead, it focussed on the asserted acts of less favourable

treatment as not having taken place, or as having taken place but as having had no connection to the age of the Claimant's parents.

12. With regard to the Claimant's victimisation claim, we noted that the Respondent had accepted that the Claimant's grievance dated 25 September 2019 was a protected act for the purposes of Section 27 EqA. Our focus therefore was on whether the asserted detrimental treatment had taken place and, if so, whether that had been because of the protected act.
13. In that regard we were conscious that the House of Lords had made clear, in the case of Nagarajan v London Regional Transport [1999] ICR 877, that any such treatment does not need to have arisen solely by reason of the protected act, and if the act has a significant influence on the employer's decision making, the claim will be made out. We noted that the Employment Appeal Tribunal confirmed, in the case of Villalba v Merrill Lynch [2007] ICR 469, that that principle also applies in victimisation claims. We also noted that the Court of Appeal in Igen Ltd v Wong [2005] ICR 931 had confirmed that for an influence to be "significant" it does not have to be of great importance, but must be an influence which is more than trivial.
14. We were also conscious with regard to all of the Claimant's claims that we needed to apply the burden of proof provisions set out in Section 136 EqA. They provide that we would first need to consider whether there were any facts from which we could decide, in the absence of a non-discriminatory reason from the Respondent, that an act of discrimination had taken place. If so, the burden would then shift to the Respondent to demonstrate a non discriminatory explanation.

Findings

15. Our findings, made on the balance of probability where there was any dispute, were as follows.
16. The Claimant, who was originally from Hong Kong, commenced employment with the Respondent on 1 June 2015. She was, and remains, employed as an Administrative Officer within the Respondent's Business Tax and Customs department based in Cardiff, although she was temporarily promoted, between June and October 2021, to work as a Higher Officer, remotely in Glasgow.
17. No evidence was put before us about matters prior to 2019, and our understanding was that there had been no issues of concern arising from the Claimant's employment. Her focus prior to 2019 was in dealing with telephone enquiries. At that time, work was split by the Respondent between employees working on telephone enquiries, and back office administration staff who would deal with the queries raised by the calls.
18. By the end of 2018 however, the Respondent proceeded to merge the telephone and administrative sections in a process known as "test and learn" or "industrialisation". That led to staff both answering calls and dealing with the administration of the queries raised in those calls, a process known as "once and done". A trial took place in the Cardiff office, involving the Claimant, with staff being trained on the combined process, in the first half of 2019, and the Respondent then rolled out the training to its other offices.

19. As part of that process, staff members who had undergone the training in Cardiff were invited, in June 2019, to take part in the delivery of the rolled out training programme. The first tranche of that training commenced in July 2019 in Glasgow, and the second commenced in September 2019 in Cardiff. The training lasted some nine weeks in each case.
20. The first tranche of training was managed by Rebecca Wigfall, then the Claimant's line manager, who left the Respondent's employment in August 2019. Ms Wigfall was in turn managed by Andrea Sullivan. Ms Wigfall and Ms Sullivan asked for volunteers in June 2019 to assist with the Glasgow training commencing in July 2019.
21. In July 2019, the Claimant's parents arrived from Hong Kong for a lengthy visit, staying with the Claimant and, separately, with her brother. The arrival of the Claimant's parents was known to her managers and to staff in the office generally, with staff passing suggestions to the Claimant of places the Claimant might like to take her parents to visit. The Claimant booked several days leave in July, August and September.
22. Following the request from Ms Wigfall and Ms Sullivan for volunteers to undertake the Glasgow training, the Claimant put herself forward, indicating that she would cancel some of her leave. Whilst Ms Wigfall was not present to give evidence to us, Ms Sullivan confirmed that she spoke to the Claimant and suggested that she should not miss out on the opportunity to spend time with her parents, and that there would be other opportunities for her to deliver training as part of the industrialisation process. It seemed that Ms Wigfall had had a similar conversation with the Claimant.
23. It was one of the Claimant's core contentions that Ms Wigfall and Ms Sullivan discouraged her from applying for the training because she needed to take care for her parents due to their age and their perceived infirmity. However, we did not, on balance, consider that any such comments had been made, for the following reasons.
24. First, the evidence of Ms Sullivan was very clear and consistent that the discussion about not cancelling leave, whilst it took place, did not include any reference to the age of the Claimant's parents. That contrasted with the Claimant's evidence, which varied slightly between her witness statement and her answers to questions. In her witness statement the Claimant quoted Ms Sullivan referring to her parents' ages, whereas in her grievance about the issue, submitted on 25 September 2019, she made no such reference, quoting Ms Sullivan as saying, "*Do enjoy the time with them and take good care of them*". It seemed to us that it was more likely that the more contemporaneous quote in the grievance was the accurate one.
25. It also seemed to us that the reference to the Claimant taking care of her parents may have been the source of the Claimant's concerns. We felt that she may have interpreted that as meaning to take physical care of her parents, due to a need of some kind, whereas it seemed to us that the reference was likely to have been meant as a suggestion that the Claimant act as a good host for her parents.

26. Secondly, we noted that there was no indication that the Claimant's parents' ages and any possible infirmity would necessarily have arisen as a point of discussion with Ms Wigfall and Ms Sullivan. Whilst we could only see the Claimant on screen, we noted that, at the relevant time, she was aged 45, and it was not obvious to us that the Claimant was of that age even now. We anticipated that she could easily have been perceived to be under the age of 40 at the relevant time. It could then have been perceived that her parents would have only been in their 60s, and not 70s as they actually were.
27. We also noted that if Ms Wigfall and Ms Sullivan had been motivated to discourage the Claimant from cancelling her leave to do the training because of concerns about her parents' ages, that was extremely short lived, as Ms Wigfall, soon after, approached the Claimant to see if she was still interested in delivering the training as they had had insufficient volunteers. The Claimant did then attend to deliver the training in Glasgow in the second week of July 2019. The week prior to that, in fact, the Claimant had also participated in telephony training in the Respondent's Euston office in London over two days.
28. Employees of the Respondent undertaking travel, and spending time away from their main office and away from home, are understandably entitled to the reimbursement of the expenses they incur in doing so. The additional document submitted by the Claimant during the course of the hearing, the guide to the manager's role in managing travel and subsistence expense claims, indicated that the manager should agree in advance, i.e. before the travel, the key elements of the expenses to be incurred, including the method of travel, and when travel for journeys starting and ending at home could be claimed. The guide also noted that the manager should make sure that the member of staff is familiar with the guidance on subsistence payments.
29. In relation to the visit to Glasgow, Ms Wigfall, on 3 July 2019, sent emails to five employees, including the Claimant, due to travel to Glasgow, attaching links to the Respondent's guidance on subsistence expenses and how to claim reimbursement.
30. In relation to the training in London, Ms Wigfall rejected the Claimant's expense claim on 4 July 2019, and she also rejected an amended claim on 5 July 2019. In the email noting the second rejection, Ms Wigfall suggested that she and the Claimant could talk through the claim when the Claimant was next in the office to make sure that she could approve it.
31. Following the Claimant's return to the office on 8 July 2019, Ms Wigfall also did not immediately approve the Claimant's expenses in relation to the Glasgow trip, due to concerns she had about the sums claimed. That contrasted with at least one of the Claimant's colleagues, who confirmed to her that his expenses had been approved on the day he submitted them.
32. The following week, on 16 July 2019, the Claimant queried with Ms Wigfall as to whether she would approve her expense claims. Ms Wigfall replied that she had been interviewing that day but would look to approve them on the following day.
33. In the event that did not happen, and Ms Wigfall met with Ms Sullivan on 25 July 2019, to confirm her understanding that some of the expenses could not

be approved. Ms Sullivan agreed that there were some errors, due to the fact that there was a cap on the amounts that could be claimed for certain expenses. Ms Wigfall then sent an email to the Claimant on that day, noting that the Claimant's expenses, both for the London and Glasgow visits, were rejected, setting out the reasons for doing so. She concluded her email by saying that if the Claimant could update her claim to reflect her comments, then she would be happy to approve the expenses straight away.

34. On 26 July 2019, the Claimant sent an email in reply querying the rejections, and it was agreed that Ms Sullivan would meet with her on 30 July 2019, to discuss the expense claims. That meeting took place as planned, and the Claimant accepted that her claim needed to be reduced by a small amount, some £1.99. Her expenses were then approved later that day.
35. The Claimant however remained concerned that Ms Wigfall had rejected her expenses claim, and a meeting therefore took place on 31 July 2019, between the Claimant, Ms Wigfall and Ms Sullivan. That did not appear to resolve matters, and mediation was therefore suggested, and a mediation took place on 9 August 2019. By this stage, Shazia Butt had taken over the management of the team in which the Claimant worked. Ms Wigfall was on the point of leaving the Respondent and therefore, if the Claimant was to pursue a formal grievance, there was a need to arrange it promptly. Ms Butt then met the Claimant on 12 August 2019, to understand how she felt about the mediation and to see if the Claimant wished to file a formal grievance.
36. Following the meeting, Ms Butt sent an email to the Claimant, with links on the grievance process, and there were then further email exchanges between the Claimant and Ms Butt on that day and the following day. During these exchanges, which appeared to us to be very informal and good natured, the Claimant explained that she was trying to arrange a meeting with her trade union representative who was busy, and she then confirmed on 13 August 2019, that she did not wish to take matters further.
37. The Claimant contended that Ms Butt by sending her emails put her under undue pressure to make a decision on whether to pursue a grievance. However, we did not consider that there was anything untoward about Ms Butt's approach.
38. The next tranche of the industrialisation programme took place in Cardiff at the start of September 2019. The management of this training was undertaken by Ms Butt and Charlotte Palmer. They met, together with two other managers more involved on the technical side, on 29 August 2019 to allocate the sessions to particular trainers. The Claimant had again indicated her desire to be involved, although she had indicated that she would be unavailable for two of the weeks.
39. Following the Glasgow training however, some feedback had been received by the Respondent that the Claimant had been in "teacher mode", telling staff what to do rather than supporting them. Further concerns were later raised in feedback from the first week of training which the Claimant undertook in Cardiff in September.
40. The group of managers took the Glasgow feedback into account, including further positive feedback about the way other individuals had provided the

training, and created a rota of managers to deliver training. Two of the individuals had in fact received excellent feedback. They also took into account the specific technical experience of the trainers, two of the weeks of the training being considered to be particularly complex. Consequently, the Claimant was rostered to deliver one week of training, as well as being involved in the consolidation weeks at the end, and another week as a “floor walker”. That is someone who supported individuals alongside the main technical training. Other individuals were allocated more training sessions, with two being rostered to deliver five sessions. Two others however, also only delivered one week of training.

41. In addition to the reaction arising from the feedback of the Claimant on the Claimant’s training in Glasgow, we were not surprised that the Claimant was viewed as being less technically equipped to undertake the training than some of her colleagues, coming as she did from a telephony background, and therefore with comparatively less technical experience.
42. Following the circulation of the rota, the Claimant emailed Ms Palmer asking if she could do more of the training; her email was copied to Ms Butt. Ms Palmer sent a brief reply saying that she was busy undertaking inductions, and would catch up with the Claimant on the following day. Ms Butt sent a longer reply saying that Ms Palmer would have a conversation with the Claimant about the tranche two training. She noted that the Claimant had been allocated roles within the training and that the Claimant’s passion and enthusiasm for the training was appreciated. However, she noted that plans were already in place and that individuals had been informed about the training they would undertake and that it would be unfair to move others off the rota.
43. Ms Palmer and the Claimant then met on 11 September 2019, and Ms Palmer explained to the Claimant that there had been negative feedback about her training in Glasgow, and indeed in Cardiff, regarding her approach, and that it was felt that she sometimes came across as too direct. Ms Palmer commented that that was something that could be worked on and that the Claimant could complete workshops and courses to improve.
44. The Claimant was then absent on sickness leave for several weeks and did not take any further part in the training. She then submitted a grievance on 25 September 2019. In that she complained that she had been unfairly treated, due to an assumed need for her to care for her elderly and disabled parents, in comparison to colleagues who had been given more chances for their career development in relation to the delivery of training. She also referenced the dispute that had arisen between herself and Ms Wigfall over her travel and subsistence claim.
45. Following a request by the Claimant for the grievance to be dealt with outside of the Cardiff office, the grievance was handled by the Respondent’s Leeds office. Initially a senior officer, Rachel Appleyard, in that office was designated to be the decision-maker, with Dorothy Abernethy, an Officer, undertaking the investigation. Information surrounding the grievance was provided to Ms Abernethy, and she then arranged to meet the Claimant on 3 December 2019. In advance of that, the Claimant was notified of her right to be accompanied at the meeting, and she approached two of her colleagues about that, one being her then line manager and the other being a manager.

The Claimant asserted that Ms Butt discouraged those managers from supporting her.

46. Ms Butt, in her evidence, and as could be seen from the note of her meeting with Ms Abernethy, confirmed that both employees had indeed approached her for her views on the Claimant's request, and that she had told both of them that it was not a decision that she could make, and that they should speak to HR or to their senior officer. Both ultimately indicated to the Claimant that they did not wish to accompany her, although the Claimant confirmed that the second manager she approached did indicate that, if she had difficulty finding someone else, then he would accompany her as a source of support, but would not undertake any representation of her.
47. The Claimant contended that she had overheard Ms Butt and the second manager discussing the issue on a Teams call, but she did not indicate that she had heard Ms Butt dissuade the manager from accompanying the Claimant. She noted however, that the manager shortly after that call, had told her that he was not prepared to accompany her.
48. On balance we did not consider that Ms Butt had done anything other than advise the managers to speak to HR or senior management about the issue. We did not consider that she, in any way, discouraged the managers from supporting the Claimant with her grievance.
49. The meeting between the Claimant and Ms Abernethy took place on 3 December 2019, and, following that, in January 2020, Ms Abernethy met separately with Ms Sullivan, Ms Butt and Ms Palmer, and also with two other individuals the Claimant had asked her to speak to.
50. Following those meetings Ms Abernethy produced a timeline of events and worked on her recommendation for the decision maker. That was delayed due to the onset of the Covid-19 pandemic, with Ms Abernethy needing to care for her young child following the closure of schools.
51. On 6 February 2020, the Claimant submitted her Tribunal claim form and that was received by the Respondent in the middle of that month. Ms Abernethy was informed of that some weeks later, in early April.
52. Following that, Ms Abernethy spoke to one of the Respondent's HR advisers who informed her that, as the grievance investigation covered the same issues as the Tribunal claim, she did not need to complete the investigation. We observed, and we noted that the Respondent subsequently accepted, that that advice was incorrect. Nevertheless Ms Abernethy took no further steps with the investigation from the middle of April 2020 until September 2020, when she was contacted by another of the Respondent's HR managers asking her what was happening with the investigation.
53. We noted that that HR manager was the named contact in the Respondent's Tribunal response form, and also that a preliminary hearing in relation to the Claimant's case had taken place on 20 August 2020, in which an application on behalf of the Claimant to add a claim relating to the handling of her grievance was granted. We therefore presumed that that contact was made with Ms Abernethy as a result of that.

54. There was no explanation for the lack of progress between September and December 2020, but Ms Abernethy, in her witness statement, noted that she was contacted again by the HR manager in early December 2020, and was asked to complete her investigation and to forward her findings to Ms Appleyard. She then provided her recommendation to Ms Appleyard, which was that she did not consider that there was a case to answer, on 9 December 2020.
55. At that time however, Ms Appleyard did not have the capacity to act as decision maker, and therefore Sharon Blakely was appointed in her place in January 2021. She reviewed all the documentation provided by Ms Abernethy and sought further clarification from her at a meeting on 13 January 2021. Following that, on 15 January 2021, Ms Blakely contacted the Claimant and scheduled a meeting with her on 27 January 2021. The Claimant did not attend that meeting but a meeting was held between the Claimant and Ms Blakely on 15 March 2021.
56. The Claimant then met another employee, at the Claimant's request, on 30 March 2021, before reaching her decision. She provided that to the Claimant on 23 April 2021 and her decision was that she did not uphold the grievance. Ms Blakely reminded the Claimant of her right to appeal her decision and the Claimant did appeal in May 2021. The appeal was considered by a more senior officer in the Respondent's Washington office, and was rejected in a letter sent to the Claimant on 29 July 2021.

Conclusions

57. Applying our findings and the applicable law to the issues we had to consider, our conclusions were as follows.

Direct age discrimination (List of Issues paragraphs 2 – 4)

Issues 2(a) and 2(b)

58. We noted that both Ms Wigfall and Ms Sullivan did speak to the Claimant following her indication that she wished to take part in the Glasgow training and to cancel some of her leave in order to do so. We also noted that both Ms Wigfall and Ms Sullivan suggested to the Claimant that she should not miss out on the opportunity to spend time with her parents and that there would be other opportunities for her to deliver training. We would not however describe their comments as discouragement, and we did not consider that their actions amounted to unfavourable treatment.
59. We also did not consider that Ms Wigfall and Ms Sullivan made any reference to the age of the Claimant's parents, or to any infirmity on their part, merely indicating that the Claimant should take care of her parents in the sense of looking after them as their host. Even if we had felt that there had been any unfavourable treatment, we would not therefore have concluded that it had arisen due to the age of the Claimant's parents. We also noted that, if there had been any discouragement, it was extremely short lived as Ms Wigfall approached the Claimant to ask her to undertake some of the training when it became apparent that there were insufficient volunteers and the Claimant did indeed undertake some of the training.

Issues 2(c) and (d)

60. We did not consider that Ms Wigfall in any sense ignored the Claimant's expense claims relating to her time in Glasgow. There was a delay in approving them in comparison to some of the Claimant's colleagues, but their claims were accepted without query. In the Claimant's case there were queries which needed to be resolved before her expenses could be approved. The Claimant chased up approval of her expenses some eight days after they were submitted, and Ms Wigfall indicated that she had been busy interviewing but would look to approve them the following day. However, Ms Wigfall could not approve them and, in order to be certain of her view, she met with her manager, Ms Sullivan, the following week. She then confirmed to the Claimant the day after her meeting with Ms Sullivan that her expenses had been rejected and she explained why. Following that, the Claimant complained further and met with Ms Sullivan four days later, which led to the approval of a slightly modified claim.
61. We were satisfied that Ms Wigfall had legitimate reasons for declining to approve the Claimant's claim, and did not consider that she had in any sense ignored the claim. Again, therefore, we were not satisfied that any unfavourable treatment had occurred. Even if we had however, we again saw no connection of any such treatment with the age of the Claimant's parents.

Issue 2(f)

62. As a matter of fact, the Claimant was granted fewer training opportunities than some of her colleagues, including the colleague she named in the list of issues. We noted however, that other colleagues were granted the same opportunities as the Claimant, or indeed were allocated fewer opportunities.
63. We did not see that there was any connection of the allocation with the age of the Claimant's parents. First, we saw no evidence that Ms Butt or Ms Palmer were aware of the age of the Claimant's parents. It did not arise in any discussion with the Claimant. Secondly, there were reasons for the allocation, both the more limited opportunities to the Claimant and the greater opportunities to some of her colleagues, arising from the feedback provided about the previous training, and the greater technical knowledge and experience of the Claimant's colleagues. Again, therefore, we did not see that any direct discrimination arose.

Issue 2(g)

64. Again, as a matter of fact Ms Butt did turn down the Claimant's request to get more involved in the September training. Again, however, we noted that Ms Butt did not appear to have any knowledge of the age of the Claimant's parents. We could not connect her decision with the Claimant's parents' ages. In any event, we considered that Ms Butt had a cogent, non-discriminatory reason, for turning down the Claimant's requests, namely the fact that the rota had been published, that other employees had been informed about the training they had been asked to deliver, and that it would be unfair on them to alter those arrangements. We also noted that that decision was made in the context of the fact that there were going to be further tranches of training with which the Claimant could get involved.

65. Overall therefore, we did not consider that any element of the Claimant's direct age discrimination claim had been made out.

Victimisation (List of Issues paragraphs 5 – 8)

Issue 6(d)

66. With regard to this, there was a clear delay in the resolution of the Claimant's grievance between April and September 2020, in addition to other delays in February/March 2020 and in October/November 2020. However, we noted that the reason for the principal, five or six month, delay was the mistaken advice received by Ms Abernethy that she should not continue her investigation in light of the Claimant's Tribunal claim.
67. We noted Mr Kirk's submissions, and reliance on the case of Cornelius v University College Swansea [1987] IRLR 141, that the required causal link between the protected act and the asserted detriment must involve more than a "but for" connection. In that case the Respondent was found not to have victimised the Claimant by refusing to action a transfer request and to consider a grievance whilst a Tribunal claim was ongoing.
68. In this case we saw no evidence to show that Ms Abernethy, or the Respondent more generally, was motivated to delay considering the Claimant's grievance because it had been brought. Ms Abernethy had met the Claimant and other relevant parties and had largely concluded her investigation before she was contacted to put it on hold. She was then contacted to resume it after it had become clear to the Respondent, following the Tribunal hearing at the end of August 2020, that the failure to deal with a grievance was an issue of concern for the Claimant. We also noted that the grievance was then completed, and whilst the Claimant took issue with the outcome, she had no concerns over the process taken to conclude it from January 2021 onwards.
69. Overall therefore, whilst we felt that some detriment had arisen to the Claimant in the failure to progress her grievance between April and September 2020, we saw nothing to lead us to conclude that that had arisen because of her protected act in the form of her grievance.

Issue 6(e)

70. As we have indicated in our findings, we saw no evidence of any discouragement on the part of Ms Butt to other managers in relation to accompanying the Claimant to her grievance meeting. We noted that one of the managers approached by the Claimant indicated that he would attend with her if she could not find anyone else, and we felt that had there been any discouragement by Ms Butt then he would not have made that offer. We therefore did not see any evidence of detrimental treatment arising in relation to this issue and we concluded overall that the Claimant's victimisation claims failed.

Harassment (List of Issues paragraphs 9 – 12)

Issue 9(a)

71. As we have noted in our findings, we considered that Ms Butt's emails to the Claimant in August 2019 were informal, matter of fact, communications, aimed only at getting an understanding of whether or not a grievance process would need to be implemented, which would have needed to have been arranged promptly due to Ms Wigfall's imminent departure from the Respondent. We saw nothing in the emails which suggested that Ms Butt was putting the Claimant under pressure, let alone any undue pressure as seemed to have been accepted by the Claimant at the time, as she thanked Ms Butt for her patience. We therefore did not see that any unwanted conduct had arisen.

Issues 9(b) and (c)

72. These were factually similar to the direct age discrimination issue at 2(f). As we have indicated, we did not consider that the allocation of training opportunities had amounted to any unfavourable treatment arising from the Claimant's parents' ages, or that, if there had been any unfavourable treatment, that there was any connection of it to the Claimant's parents' ages.
73. Similarly, whilst the allocation of more training opportunities to the Claimant's colleagues than the Claimant herself may potentially have been viewed as conduct unwanted by her, we did not consider that it was reasonable in all the circumstances for the Respondent's actions to be viewed as unwanted. It had clear and compelling reasons for its allocation of training, which were not in any way connected to the ages of the Claimant's parents.

Issue 9(d)

74. This was identical to the Claimant's victimisation claim addressed at issue 6(d). As we have noted, there was a delay in progressing the grievance and, as we have also noted, that could be described as a detriment. Similarly, we considered that it could be described as unwanted conduct. However, similarly to the victimisation claim, where we saw nothing to connect the delay with the Claimant's grievance, we also saw nothing to indicate that the delay had arisen due to the age of the Claimant's parents.

Issue 9(e)

75. This was also identical to one of the Claimant's victimisation claims, issue 6(e). As we noted in relation to that, we did not consider that Ms Butt had discouraged the other managers from supporting the Claimant with her grievance, and similarly we did not conclude that any unwanted conduct had arisen in that regard.

Issue 9(f)

76. This was the same issue addressed in relation to the Claimant's direct age discrimination claim under issues 2(c) and (d). Factually, Ms Wigfall did ask the Claimant to resubmit her expenses claim in July 2019, but that was because of concerns about the validity of some of the expenses claimed. The

request from Ms Wigfall came matter of factly, with an indication that, if the Claimant took on board Ms Wigfall's comments, then the expenses would be approved, as ultimately transpired. We therefore saw nothing to indicate any form of unwanted conduct in that regard, but even if any had arisen, we saw nothing to connect Ms Wigfall's actions with the age of the Claimant's parents.

Issue 9(g)

77. Again, as a matter of fact Ms Palmer did inform the Claimant that she would not be delivering more training in September 2019, in part because of feedback from the Glasgow training that she had been too direct. We noted however, that that was not the only reason, and we also noted that Ms Palmer confirmed to the Claimant that there was scope for her to develop her skills through further training and thus to take part in further tranches of training in the future.
78. Whilst the Claimant may have perceived Ms Palmer's comments as unwanted, we did not consider that it would be reasonable in all the circumstances for those comments to be described in that manner. In any event, as we have noted in relation to the Claimant's direct age discrimination claim, we saw nothing to connect the actions of Ms Palmer with the Claimant's parents' ages.
79. Overall, therefore, we saw nothing to lead us to conclude that the Claimant's harassment claims had been made out and they therefore fell to be dismissed.

Employment Judge S Jenkins

Date: 10 March 2022

REASONS SENT TO THE PARTIES ON 16 March 2022

FOR THE TRIBUNAL OFFICE Mr N Roche

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