



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Ann-Marie Lewis

**Respondent:** The Secretary of State for Work and Pensions

**Heard at:** London South (by CVP)      **On:** 11, 12, 13 and 14 April 2023

**Before:** Employment Judge Evans, Dr Chacko & Ms Saunders

## WRITTEN REASONS PROVIDED FOLLOWING A REQUEST MADE PURSUANT TO RULE 62(3)

The Tribunal gave oral judgment with reasons in this claim on 14 April 2023. On 20 April 2023 the claimant made a request for written reasons pursuant to Rule 62(3) of the Employment Tribunal's Rules of Procedure. Those written reasons are set out below.

The Tribunal's judgment given on 14 April 2023 was that the respondent had not discriminated against the claimant because of age. Therefore her claimant of age discrimination failed and was dismissed.

## REASONS

### Preamble

1. On 10 April 2021 the claimant presented claims of age discrimination and of having been subjected to a detriment because she had made a protected disclosure. The protected disclosure claim was struck out following a preliminary hearing by a judgment dated 29 November 2022. The remaining claim was heard by this Tribunal between 11 and 14 April 2023.
2. **BUNDLE:** the parties had agreed a bundle of 307 pages prior to the hearing and pages 308 to 314 were added with the consent of the parties during the course of the hearing. All page references are to that bundle unless otherwise stated.
3. **WITNESS STATEMENTS:** the following witnesses gave oral evidence and were cross-examined by reference to witness statements prepared and exchanged before the hearing:
  - a. The claimant;
  - b. Alex Newman, a Job Centre Customer Service Manager at Kennington Park Job Centre (and the manager of the claimant); and

- c. David Keogh, a Grade 6 manager responsible for the delivery of front facing services in 23 Job Centres.

A witness statement had also been prepared for Laura Anderson, an Advanced Customer Support Senior Leader. She did not attend the hearing due to ill-health. The Tribunal has taken account of her non-attendance when deciding what weight to give to the evidence contained in her statement.

4. A supplementary witness statement was also prepared and served on the second day of the hearing for Mr Newman for reasons which are explained below.

### **Preliminary matters dealt with at the final hearing**

5. **The application to amend:** on 22 March 2023 the claimant had made an application to amend her claim to add a complaint of direct race discrimination. That application was heard at the beginning of the hearing. The application was refused and reasons were given orally for that. A separate case management order has been sent to the parties in respect of the application.

### **The issues for the Tribunal to decide**

6. The claim form presented on 10 April 2021 contained complaints of age discrimination and that the claimant had been subjected to a detriment for making a protected disclosure. At a case management hearing on 12 September 2022 the claimant made clear that she also wished to pursue a claim of sex discrimination and harassment.
7. At a further case management hearing on 29 November 2022 the claimant's claim that she had been subjected to a detriment for making a protected disclosure was struck out and her application to amend to include claims of sex discrimination and harassment was refused.
8. As noted above, the claimant's subsequent application to amend to include a claim of race discrimination was also refused at the beginning of this hearing. Accordingly the only claim before the Tribunal was one of age discrimination.
9. The issues that the Tribunal would need to decide in order to determine the claim had been agreed at a preliminary hearing for case management purposes which had taken place on 12 September 2022. However, the list of issues was in some respects lacking in detail and so there was a further discussion of the issues once the application to amend had been dealt with at the beginning of the hearing on 11 April 2023. A revised list of issues was then agreed between the parties and the Tribunal by the end of 11 April 2023.
10. The respondent had not previously been provided with the information necessary to understand clearly in particular allegations B2 and C as set out below. Overnight between 11 and 12 April 2023 a further witness statement was prepared for Mr Newman. In addition, a further email was provided (pages 308-309) and then another at the beginning of his evidence (pages 310 to 314). These were admitted and added to the bundle with the consent of the parties.
11. The list of issues was then amended further by agreement on the morning of 12 April 2023 to make clear that (1) the respondent did not rely on any justification defence and (2) the comparator for allegation C was a hypothetical comparator and not Dominka Jelenska (because she was older than the claimant had believed). The finalised list of issues was therefore as set out below.

12. It should be noted that in the list of issues the claimant's and respondent's cases have been summarised in relation to some of the issues. These summaries do not form part of the list of issues.

Time limits

1. *Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*

a. *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?*

*It was agreed that only Allegation A and Allegation C were potentially out of time. It was agreed that so far as Allegation A was concerned, limitation had expired on 29 December 2020 and so the claim relating to that allegation was around 3 ½ months out of time. So far as Allegation C was concerned, limitation would have expired between 30 November 2020 and 17 March 2021 depending on exactly when the application had been made. As such the claim relating to that allegation would have been between just under one month and 4 ½ months at a time.*

b. *If not, was there conduct extending over a period?*

c. *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*

d. *If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:*

i. *Why were the complaints not made to the Tribunal in time?*

ii. *In any event, is it just and equitable in all the circumstances to extend time?*

Direct age discrimination (Equality Act 2010 section 13)

*The claimant's age group is those over 50 and she compares herself with people in the age group 20-35 years.*

2. *Did the respondent do the following things:*

**2.1 Allegation A:** *Hold the claimant back in the Administration officer role in September 2020 whereas younger colleagues were given temporary duty assignments ("TDAs") to better paid, higher band roles like work coaches and community outreach roles, with further training in relevant specialist fields like disabilities, domestic violence, troubled families. The claimant contends that the following individuals were given TDAs as work-coaches in September 2020 (their ages as assessed by the claimant are between brackets): Melanie O'Shea (early 30s), Adedayo Ayanda (about 32-33); Bliss Moukoko (20s); Jason Graham (early 30s), Dominka Jelenska (30s). Janet Bovell (50+) was also given such a role.*

In light of the evidence of Mr Newman, and given that the claimant did not know the age of any other comparators but rather was relying on her own assessment, the Tribunal finds that in fact as at the date of issue of the claim Mr Ayanda was aged 31, Ms Moukoko was aged 27, Mr Graham was aged 40, Ms Jelenska was aged 44 and Ms Bovell was aged 52.

**Claimant's case in summary:** the claimant says she was "held back" because she felt she had no choice but to withdraw her own expression of interest for a TDA role as a result of Kathy Egbochue being appointed as the team manager of the TDA roles.

**Respondent's case in summary:** as pleaded at paragraph 58 of the amended response; see also paragraph 64.

**Comparators:** named comparators of Melanie O'Shea, Adedayo Ayanda, Bliss Moukoko, Jason Graham and Dominka Jelenska were relied on.

**2.2 ALLEGATION B:** Fail to acknowledge (1) the claimant's application of 15 July 2021 for the ambassador of fair treatment role and (2) the claimant's application made online in January 2021 for the position of work coach whereas younger people were successful in obtaining the roles.

**Claimant's case in summary:** (1) the claimant heard nothing back at all; (2) this was the claimant's third application for the position of work coach. The application was made online. She never heard anything back at all.

**Respondent's case in summary:** (1) as set out by Alex Newman in paragraph 22 of his statement – it was simply an oversight on his part; (2) following the clarification of the issue, the respondent's case was essentially that the relevant decision maker would simply not have known the claimant's age.

**Comparator:** hypothetical comparator.

**2.3 ALLEGATION C.** Did not interview the claimant following her application to be an executive officer made between September and November 2020.

**Claimant's case in summary:** The claimant says that she and Dominka Jelenska submitted identical applications. However Dominka Jelenska was interviewed (but not appointed) whereas the claimant was not interviewed.

**Respondent's case in summary:** following clarification of the issue, the respondent's case was essentially that (1) the relevant decision maker would not have known the claimant's age; and (2) the applications would not in fact have been identical.

**Comparator:** hypothetical comparator with Ms Jelenska being used as an "evidential comparator".

**ALLEGATION D:** Acted dismissively in the way the claimant's grievance dated January 2021 was handled up to and including the date on which the claim form was issued (10 April 2021).

**Comparator:** hypothetical comparator.

3. Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The relevant comparators are as set out above.

4. If so, was it because of age?

If the claimant had been treated less favourably because of age, the respondent accepted that her claim would succeed – it did not argue that such treatment was justified i.e. a proportionate means of achieving a legitimate aim.

Remedy for discrimination

6. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

7. What financial losses has the discrimination caused the claimant?

8. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

9. If not, for what period of loss should the claimant be compensated?

10. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

11. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

12. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

13. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

14. Did the respondent or the claimant unreasonably fail to comply with it?

15. If so is it just and equitable to increase or decrease any award payable to the claimant?

16. By what proportion, up to 25%?

17. Should interest be awarded? How much?

**The law**

Time Limits for claims under Equality Act 2010

14. Section 123 of the Equality Act 2010 provides where relevant as follows.

(1) Subject to sections 140B, proceedings on a complaint within section 120 may not be brought after the end of –

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable...

(3) For the purposes of this section –

*(a) conduct extending over a period is to be treated as done at the end of the period;*

*(b) a failure to do something is to be treated as occurring when the person in question decided on it.*

15. Turning first to the question of whether there is a "continuing act" (i.e. conduct extending over a period of time), there is a continuing act when the employer is responsible for an "an ongoing situation or a continuing state of affairs" in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents (Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686). The focus of the Tribunal should be on the substance of the complaint not on whether there was a discriminatory policy, rule, practice, scheme or regime – these are just examples given in the authorities of when an act extends over a period of time.

16. Turning to the "just and equitable" extension, it is for the claimant to show that it would be just and equitable to extend time. However, the discretion given to the Tribunal to extend time is a wide discretion to do what it thinks is just and equitable in the circumstances. The Tribunal should assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. (Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23 Underhill). These will usually include:

- a. the length of and reasons for the delay;
- b. whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigation the claims while matters were fresh;
- c. the prejudice to the claimant in refusing to extend time.

17. Other factors which may be relevant include:

- 17.1. the extent to which the cogency of the evidence is likely to be affected by the delay;
- 17.2. the extent to which the party sued had co-operated with any requests for information;
- 17.3. the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action;
- 17.4. the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action;
- 17.5. the merits of the claim.

18. Although the discretion is wide there is no presumption that it should be exercised so as to extend time. Indeed, the exercise of discretion is the exception rather than the rule (Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576). Further, the burden, which is one of persuasion, is on the claimant to persuade the Tribunal it is just and equitable to extend time.

#### Direct age discrimination

19. The Equality Act 2010 prohibits various forms of discrimination by employers against employees with certain protected characteristics.

20. The protected characteristics are listed in section 4 The Equality Act 2010. Age is a protected characteristic. In relation to the protected characteristic of age section 5 of the Equality Act 2010 provides:

*(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;*

*(b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.*

*(2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.*

21. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee as to the terms of their employment; in the way it affords access to (or by not affording access to) opportunities for promotion, transfer or training or for receiving any other benefit, facility or service; by dismissing the employee; or by subjecting the employee to any other detriment.

22. One of the forms of discrimination prohibited by the Equality Act 2010 is direct discrimination. This occurs where “because of a protected characteristic, A treats B less favourably than A treats or would treat others” (section 13(1) of the Equality Act 2010).

23. The question, therefore, is whether A treated B less favourably than A treated or would treat a hypothetical comparator and whether the less favourable treatment is because of a protected characteristic – in this case age. On such a comparison, there must be no material difference between the circumstances relating to each case (section 23 of the Equality Act 2010).

24. Section 136 of the Equality Act 2010 provides for a shifting burden of proof:

*(1) This section applies to any proceedings relating to a contravention of this Act.*

*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

25. The correct approach to the shifting burden of proof remains that set out in the guidance contained in Barton v Investec Securities Ltd [2003] IRLR 332 approved by the Court of Appeal in Igen Ltd v Wong [2005] IR 931 and further approved recently in Efobi v Royal Mail Group Ltd [201] ICR 1263. The Barton guidance is as follows:

*(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as “such facts”.*

(2) *If the claimant does not prove such facts he or she will fail.*

(3) *It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that “he or she would not have fitted in”.*

(4) *In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*

(5) *It is important to note the word “could” in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*

(6) *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.*

(7) *These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.*

(8) *Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.*

(9) *Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.*

(10) *It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.*

(11) *To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since “no discrimination whatsoever” is compatible with the Burden of Proof Directive.*

(12) *That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.*

(13) *Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need*

*to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."*

26. There is therefore a two-stage process to the drawing of inferences of direct discrimination. In the first place, the claimant must prove facts from which the tribunal *could* conclude in the absence of any other explanation that the respondent had committed an act of discrimination against the complainant.
27. In Efobi the Supreme Court confirmed the point that a Tribunal cannot conclude that "there are facts from which the court could decide" unless on the balance of probability from the evidence it is more likely than not that those facts are true. All the evidence as to the facts before the Tribunal should be considered, not just that of the claimant.
28. In Madarassy v Nomura International plc [2007] ICR 867 the Court of Appeal stated that "could conclude" must mean "a reasonable Tribunal could properly conclude" from all the evidence before it. The Court of Appeal also pointed out that the burden of proof does not shift simply on proof of a difference in treatment and the difference in status. This was because it was not sufficient to prove facts from which a Tribunal could conclude that a respondent *could have* committed an act of discrimination.
29. In deciding whether there is enough to shift the burden of proof to the respondent, it will always be necessary to have regard to the choice of comparator, actual or hypothetical, and to ensure that they have relevant circumstances which are the same or not materially different as those of the claimant having regard to section 23 of the Equality Act 2010.
30. If the burden does shift, then the employer is required to show a non-discriminatory reason for the treatment in question.

### **Submissions**

31. Mr Paulin made his submissions first. The Tribunal then summarised those submissions in sections so that the claimant could respond to them.
32. We do not set out the respondent's submissions in full. However, in summary, in relation to the question of time limits, the respondent submitted that the acts relied upon were all discrete acts which did not link together in any apparent way and that therefore if discrimination were found there was no "continuing act". Insofar as those acts which would therefore have been presented out of time were concerned, the respondent submitted that the claimant had not provided evidence in support of her explanation that the delay was due to her state of mind. The Tribunal should not extend time.
33. Turning to the substantive allegations, the respondent submitted that the claimant had failed to prove facts which shifted the burden of proof. So far as allegation A was concerned, one of the successful candidates was in fact over 50. There was no evidence whatsoever that the claimant would have had to provide her age when applying. Further, the claimant's own evidence was that she had withdrawn her expression of interest because she had a difficult relationship with a particular manager. All the evidence pointed away from age being relevant.
34. Turning to allegation B1, Mr Newman had addressed his oversight and apologised for it in his witness statement and when he gave oral evidence. He accepted that the claimant was good at her job.

35. Turning to allegation B2, it was clearly the case that in an online application nobody stated any protected characteristic. The nature of the process meant that the decision maker would have been unaware of her age.
36. Turning to allegation C, the claimant's own evidence had been confusing and confused. The email at page 310 set out the process correctly. It was clear that the applications of Ms Jelenska and the claimant would have been different and there was no basis on which to assert that they had been treated differently on the grounds of age
37. Turning to allegation D, there was no *prima facie* case established. It was accepted that Mr Nandha had dealt with the grievance in a procedurally incorrect manner in the first place but the evidence did not support an inference that the procedural error had anything to do with the protected characteristics of the claimant.
38. The claimant submissions were brief. In relation to the question of time limits, the claimant said that she had been going through a lot at the time. She had been confused and very low. She was not thinking straight and she had done the best she could. She believed that the discrimination was a continuing act because she was still being ignored and discriminated against which had had professional consequences. Nothing had been done in her favour. She was taking on a big organisation. It had taken a lot to reach as far she had but she still tried to be professional at work.
39. Turning to the substantive allegations, in relation to Allegation A, the claimant stated that the successful candidate who was over the age of 50 before she had been given a TDA role had been "set up" and there had indeed been a problem. Management knew the claimant's age and she had withdrawn her application because she did not wish to work with Ms Egbochue. It made no sense to her that Ms Egbochue had been made a manager of the TDA team just after she had left it. There was also the comments about her age by colleagues to consider.
40. Turning to allegation B1, the claimant said she felt ignored. She had asked lots of things of Mr Newman and was still waiting for answers. While she had used to think that this was because he was busy, now she saw it as avoidance.
41. Turning to allegation B2, the claimant maintained that she and Ms Jelenska had submitted the same answers. Therefore there was no reason why she had not been given an interview. Management knew her age and management in different offices spoke to one another.
42. Turning to allegation C, the claimant made very similar submissions as she had in relation to allegation B2.
43. Turning to allegation D, the claimant submitted that Mr Nandha had been very dismissive. The email he had written at page 117 was inappropriate. His interview with Mr Kpakima at page 103 was very brief. It was not a thorough investigation. The claimant said that she put that down to her age. Mr Nandha simply could not be bothered with her.

## **Findings of fact**

44. In making these findings of fact the Tribunal has taken into account all of the evidence before it although of necessity it does not refer to each element of it in these reasons.
45. The claimant's employment with the respondent began on 26 June 2020 when she was employed as an administration officer based at its Kennington Park Job Centre. The claimant's employment in that capacity continues, having been made permanent in January 2022.

Findings relevant to the question of time limits

46. The claimant's explanation for the delay in presenting her claim has to some extent varied over time. In the document which she prepared prior to the preliminary hearing in November 2022, she focused on the fact that she had been dependent upon her union representative who had been having problems of their own (pages 48 and 49). She also said that she thought she had "three months from the date of the certificate".
47. In her oral evidence to the Tribunal, she said that at the time she had been a "psychological mess", she could not think straight, she had felt alienated, she had received conflicting advice, and she felt that her union representative was compromised because they worked for the DWP. She said that she would have preferred to raise the matter internally rather than going to the Tribunal.
48. In fact the two aspects of the claim which are potentially out of time were not dealt with in the claimant's grievance raised in January 2021. Further, whilst the claimant has relied on her own ill-health and inadequacies of her union representative, she has not provided any significant evidence in relation to either of these matters.
49. The Tribunal finds that the reason that the claimant did not present claims in relation to Allegation A and Allegation C earlier than she did was simply that she had not focused on this possibility or sought advice clearly in relation to it notwithstanding that such advice was in principle available to her from her union representative. The Tribunal does not accept that the claimant was unable by virtue of her ill-health to take or act upon advice.

Findings in relation to behaviour relating to the protected characteristic of age

50. The Tribunal finds that the claimant has a history of difficult relationships with managers and employees at work which are not related to her age. The Tribunal makes this finding in light of the contents of the claimant's own witness statement which details a range of disagreements with a range of employees for a range of reasons.
51. It also makes this finding in light of the evidence of Mr Newman. It is appropriate at that point to note that the Tribunal found Mr Newman to be a credible witness. This was for the following reasons: the evident care with which he gave his evidence; its internal consistency; and his willingness to accept that everything had not been done perfectly.
52. Whilst it is clear that Mr Newman regards the claimant as being good at her job – indeed he said this during his oral evidence to the Tribunal – we accept as true his evidence that he finds her challenging to manage and that she has had disagreements with a number of colleagues. In making this finding we note that the claimant asked Mr Newman in cross-examination who she had had

disagreements with. Mr Newman immediately listed six employees saying those were just “off the top of my head” and “I’m not digging down into all of those there have been issues with in the past”. The claimant did not challenge this evidence but moved on to ask how many of those employees were still working in the same office.

53. The claimant is unrepresented. Her witness statement focused only to a limited extent on why she considered the treatment which she had received to relate to the protected characteristic of age. The specifically relevant content includes allegations at paragraphs 23 and 24 that management prefer younger employees to older employees for TDA roles (and there is another reference to this issue at paragraph 42). Other contents dealing with the question of age but not with any focus on the allegations themselves include: the claimant’s reference at paragraph 6 to an incident early in her employment when her then team leader had said to her that she “couldn’t believe that she was in charge of people older than her mum”; an allegation that as a menopausal woman she did not receive consideration in the summer with fans or heaters in winters; an allegation that she had been told that she should be grateful to be employed at her age at paragraph 34; and references to problems which she alleges a particular manager has with people of colour who are over the age of 50 (paragraphs 43 to 45).
54. Given the limited nature of the relevant evidence contained in her witness statement, and bearing in mind that the claimant was unrepresented, the Tribunal gave the claimant an opportunity to explain in relation to each of her allegations and before she was cross examined why she considered that the relevant less favourable treatment was because of age.
55. Some of the evidence that the claimant gave was similar in relation to each or most of the allegations and it is helpful to deal with that evidence together. On several occasions she repeated what she had said at paragraph 34 of her witness statement: that she had been told that she should be grateful for a job at her age. The Tribunal asked her which of her colleagues had said this. She named five colleagues as having said this but did not provide any further information about exactly what they had said, when or in what context. Further, she did not contend that such comments had been made by any manager.
56. The claimant also said on more than one occasion when asked to explain why she believed the treatment she had received was because of her age that it was because “they” thought I was “old and miserable”. When asked who “they” were, she named 4 colleagues, but again none of them were managers. Further she did not provide any significant evidence about exactly what they had said, when, or in what context.
57. The Tribunal finds that it may have been the case that on occasion some of the claimant’s colleagues may have made reference to the claimant’s age in conversation with her as set out in the two previous paragraphs. However, the Tribunal does not find that any such comments were made by any of the claimant’s managers or in their presence (and indeed the claimant did not allege this).
58. The claimant also said that a particular manager had problems with people of colour over the age of 50. However, the examples which she gave of this were primarily limited to him not responding in what she regarded as a timely manner to messages. Her evidence was not detailed. Further, the manager in question was not said to have been directly involved in relation to any of the matters to which the allegations relate. The Tribunal therefore concludes that the way in

which the manager in question dealt with the claimant does not provide any significant supportive evidence to her contentions in relation to the allegations.

59. Generally, whilst it is clear that the claimant has had difficult relationships with a number of colleagues and managers, the Tribunal finds that the claimant has not proved that she or other employees within her age group are generally treated differently or are at a disadvantage in her workplace as a result of management's attitude towards them on a day-to-day basis. Her general evidence in relation to matters of age (including that summarised at paragraph 53 above) was simply far too vague to establish either of these things.

Allegation A – held back in administration officer role (September 2020)

60. The first complaint relates to the claimant's claim that she was "held back" in the administration officer role in September 2020 whereas younger colleagues were given temporary duty assignments.

61. The Tribunal finds that those employees of the respondent who were appointed to temporary duty assignments in September 2020 were appointed because they expressed an interest in response to an email sent to all relevant employees including the claimant. Indeed the claimant accepted in her oral evidence that she too had expressed an interest. She had withdrawn her expression of interest when she had discovered that the manager of those appointed to temporary duty assignments would be Kathy Egbochue.

62. The claimant had not explained in any detail in her witness statement why she considered her non-appointment to a temporary duty assignment role in September 2020 to be less favourable treatment because of age, given that she had herself withdrawn the application. In cross examination she accepted that she had withdrawn her expression of interest because of her difficulties with Ms Egbochue. It was put to her that these were unrelated to age and she said "but comments in relation to age had already been made". These were comments of the kind considered above.

63. In light of the evidence provided to it, the Tribunal finds that the claimant was not "held back". The Tribunal also finds that the difficulties between the claimant and Ms Egbochue did not relate to the claimant's age.

Allegation C – the claimant was not interviewed following her application to be an executive officer made between September and November 2020

64. This aspect of the claim was only clarified on the first day of the hearing. Previously, the claimant had referred to applications for the role of "equality officer". The respondent had been unable to identify any such application.

65. As a consequence of that, the respondent had had only a very limited opportunity to collate relevant documentary and witness evidence. This was discussed at the beginning of the second day of the hearing and both parties agreed that the Tribunal should proceed without further delay and determine the issue with reference to the evidence available to it.

66. The Tribunal accepts that the claimant was not interviewed. The thrust of the claimant's case in relation to why she had not been interviewed was that she and Ms Jelenska had provided exactly the same answers to a situational judgment test, that no other information had been provided beyond an employee reference number and yet Ms Jelenska (who is younger than the claimant) had been offered

an interview but the claimant had not. The claimant said that this showed that in fact the question of who to interview had not been based solely on the situational judgment test (as she had been led to believe) but rather had been based wholly or at least in part on enquiries made in relation to applicants. She contended that in her case such enquiries had resulted in negative information being provided to the decision maker which had resulted in her not being offered an interview. Such negative information resulted in part because of her age.

67. The claimant accepted in her oral evidence that she had not been required to provide her age when she made the application. Her witness statement did not deal in any detail with why she believed the fact that she had not been interviewed, whereas Ms Jelenska had been, was in some way related to her age so she was asked about this in her oral evidence. She said that this was because of “age and ability” and added that Ms Jelenska was more popular with management. The claimant said “they thought I was old and miserable”.
68. The respondent said that the application process in question was as set out in the email included at page 310 of the bundle. This explains that the application process required candidates to write a 500-word statement and then, after submitting the statements, to complete an online situational judgement test. The email states (page 313):

*The on-line test is pass or fail and if you pass the Situational Judgement Test your written application form evidence will be assessed. If you meet the required standard and your application is successful, you will receive an invitation to a pre-recorded interview which is accessed via a link to Microsoft Teams.*

69. The Tribunal finds that the process was as set out in the email rather than by the claimant in her oral evidence. This is because it is more likely that the email as a contemporaneous document is correct than that the recollection of the claimant is. Further, the recollection of the claimant changed during her oral evidence. Consequently, we find that the question of whether a candidate was invited to interview depended not only on the situational judgement test but also on the application form completed.
70. The Tribunal rejects as improbable the suggestion by the claimant that those administering the application process made local enquiries of an informal nature before deciding to offer an interview. The Tribunal rejects this suggestion because it was unsupported by any significant evidence – it was, in reality, simply speculation on the part of the claimant - and because when Mr Newman gave his evidence he said that he had never received an enquiry of this nature. The Tribunal attached significant weight to the evidence of Mr Newman in this respect because he had relevant practical experience and because it found him to be a credible witness for the reasons given above.

Allegation B (2) – the failure to acknowledge the claimant’s online application for the position of work coach in January 2021

71. In the list of issues prepared prior to the first day of the hearing this application was simply described as being a “similar role” to that of Ambassador of Fair Treatment. The respondent had not been able to identify the role and as such had not produced any significant evidence in relation to it. However, again the parties agreed that the Tribunal should proceed to deal with the issue on the basis of the evidence before it.

72. The claimant had not provided any evidence of significance in relation to this issue in her witness statement. The Tribunal therefore provided her with an opportunity to provide further information in her oral evidence. The claimant explained that it was a substantive role. She had applied for it online. She had no documentation relating to it. When given the opportunity to explain why she believed that the respondent's failure to acknowledge it was because of her age, she said that the "proof is in the bundle", but did not when invited identify exactly which documents comprised such proof. She said it was not acknowledged "because of her age and because I was notorious". She referred the Tribunal back to her witness statement but in fact the witness statement does not deal expressly with this issue in any detail.
73. In answer to questions asked in cross-examination, the claimant accepted that her age ethnicity and gender would have been hidden when she had made the online application. When asked why in this case she believed that the failure to acknowledge her application was in some way related to her age she said, in essence, that she had a negative reputation amongst managers in south London. When it was put to her that the application process was run centrally by Civil Service Jobs and not locally she noted that that was what she had been told with the implication that she did not believe this.
74. Mr Newman addressed the issue of this application in his supplementary witness statement. He noted that the application would not have been dealt with locally by his team but rather through Civil Service Jobs. He noted that personal information such as age ethnicity and gender was hidden before the application was sent to those who review and assess the application at the sifting stage. He stated that the fact that the claimant was unsuccessful would have meant that she did not meet the objective criteria or had failed the situational judgement test.
75. As a result of the fact that the details of this issue were only identified on the first day of the hearing, the evidence available to the Tribunal in relation to it is limited. The Tribunal accepts the claimant's evidence that she did not receive an acknowledgement in relation to her application.
76. The Tribunal finds that the application was dealt with centrally, that the claimant's age was not included in it and that the claimant has failed to prove on the balance of probability that the relevant central decision maker would have made local enquiries about her and discovered that she was "notorious". The Tribunal preferred the evidence of Mr Newman in this respect to that of the claimant: his evidence that such enquiries were not made was informed by experience whereas the evidence of the claimant was really no more than speculation.

Allegation B1 – failure to acknowledge the claimant's application of 15 July 2021 for the Ambassador of Fair Treatment role

77. The claimant emailed her manager, Mr Newman, after seeing an advertisement for volunteers to train as Ambassadors for Fair Treatment. The process required a potential applicant to discuss the opportunity with their line manager who would also need to submit the expression of interest (page 170). Mr Newman did not respond to the email.
78. After receiving a reminder email about the possibility of applying sent to staff of the respondent generally, the claimant emailed the author of the email on 9 August 2021 (page 168) saying she had contacted her manager "but to no avail". Raegan Frost replied to her email on 11 August 2021 saying she was not sure

what “no avail” meant and suggesting that the claimant should speak to her line manager again (page 168). The claimant replied as follows on the same day:

*No avail means I haven't received a response to the email I sent to my manager (Alex Newman). He is extremely busy and what's why I responded to Edna's email in relation to the Voluntary Ambassador for Fair Treatment position directly. It would be unfair of me to add any more pressure to Alex. I know it is not intentional because he has to prioritise his workload.*

79. There was no further contact between the claimant and Mr Newman in relation to the vacancy. The claimant did not chase Mr Newman about the matter. Mr Newman's evidence was that he accepted that he had received an email from the claimant about the vacancy but he had overlooked it. He said that this was due to workload and that he would have supported the application if he had dealt with it. He noted that the claimant had not chased him about this.
80. The claimant had not explained clearly in her witness statement why she considered this failure on the part of Mr Newman to be an act of age discrimination. The Tribunal therefore asked her to explain. Her evidence was vague. She said that she had heard rumours going around and that more than once colleagues had said that she should be grateful to have a job at her age. The claimant certainly did not suggest that Mr Newman had ever spoken to her in those terms.
81. The claimant at the suggestion of the Tribunal put to Mr Newman that his failure to deal with her email was not simply an oversight but rather an act of age discrimination. Mr Newman denied that that was the case and said that he would have liked to deal with the claimant's email but as a result of the pressure of work he had simply failed to do so. It had been an oversight.
82. Taking the evidence in the round, it is clear that at the time the claimant regarded Mr Newman's failure to deal with her email as being simply due to the pressure of work (her email of 11 August 2021).

Allegation D - acting dismissively in the way the claimant's grievance dated January 2021 was handled up to and including the date on which the claim form was issued (10 April 2021).

83. The claimant submitted a grievance on 20 January 2021 about various matters including being told on 14 January 2021 to sit at a particular desk due to coronavirus social distancing requirements (notwithstanding that she had sat at that desk the day before), being told to clean the desk at which she then did work, being denied toilet breaks, not being offered the opportunity to work from home, and the provision of PPE. She alleged that she had been treated differently after bringing her first grievance and the problems internally “seem to be with the new recruits over 50s”.
84. The bundle contained two versions of the grievance. The full version was at page 88. An incomplete version dealing with only some of the matters dealt with by the full version was at page 263. This dealt primarily with the employee not being permitted to work from home, being denied toilet breaks and the incident on 14 January 2021. The most significant differences between the two versions of the grievance were that the incomplete version did not deal with the alleged failure to provide PPE, the allegation that she had been treated differently after bringing her first grievance and the question of whether over 50s were dealt with differently.

85. Mr Alpesh Nandha was appointed to investigate the grievance. He interviewed a number of employees including the claimant on 26 February 2021 (page 96). The interviews conducted by Mr Nandha with the first two employees to be interviewed (Mr Newman and Ms Dixon) focused on the incomplete version of the grievance. This was because Mr Nandha only became aware that he was working from an incomplete version of the grievance during his interview with the claimant. During the course of that interview the claimant's union representative said that he had sent in the wrong version of the grievance and the claimant added "I forwarded the wrong one too" (page 101).
86. The complete version of the grievance was sent to Mr Nandha during the meeting and he read it. At the conclusion of the interview Mr Nandha said that he would need to take advice on the team and that he "might have to come back to you". He then said "I will come back with maybe some more questions".
87. After interviewing the claimant, Mr Nandha conducted an interview with Sean Kpakima and asked him about the PPE issue (which was dealt with only in the complete version of the grievance).
88. The claimant chased Mr Nandha in relation to a follow-up meeting on 2 March 2021 (page 104). They then exchanged further emails on 15 March 2021 because Mr Nandha took the view that the grievance form he had received was still incomplete.
89. In fact Mr Nandha did not hold a further meeting with the claimant. Rather he produced a management investigation report (page 107). This dealt with the incident on 14 January 2021, the alleged failure to provide PPE, and the alleged denial of toilet breaks. He found that there was no case to answer in relation to the incident on 14 January 2021 and the alleged failure to provide PPE. So far as the alleged refusal of toilet breaks was concerned he said that he was "unable to make a decision because there is insufficient evidence..." (Page 110).
90. The management investigation report was provided to another manager, Ms Brown, to make a decision. She did not interview the claimant before reaching her decision which was dated 7 April 2021. She rejected the grievance essentially for the reasons given by Mr Nandha in the management investigation report.
91. The claimant's claim in relation to the handling of her grievance only relates to the period up to the issuing of the claim form. However, it is appropriate to record that the claimant appealed the rejection of her grievance. Her appeal was heard by Laura Anderson on 19 May 2021. Ms Anderson wrote to the claimant on 28 May 2021 (page 125) upholding the grievance. The letter stated: "your appeal is upheld because the investigation manager deferred the meeting and did not update you with the process as to why he did not re-interview as part of the investigation. The case was passed to a decision maker who based the decision on available information and applied an outcome without meeting with you to hear your case." As a result of this, another manager was appointed to reinvestigate the grievance. This resulted in a further investigation report following which the claimant's grievance was again rejected.
92. In light of the above chronology, which is apparent from documents contained in the bundle, the Tribunal discussed with the claimant how she believed that the respondent had acted "dismissively" in relation to the grievance (because this was not set out with any great clarity in her witness statement). The claimant accepted in her oral evidence that the way in which Mr Nandha had conducted the meeting with her on 23 February 2021 was "fine". However, she had "a problem" when she

received a decision maker's letter. Consequently, when she said that the respondent had acted "dismissively", this was directed at the failure of Mr Nandha to interview her again after the meeting on 23 February 2021 and the fact that the decision was then taken without further interview. The claimant said that she "felt no one could be bothered with me".

93. The Tribunal asked the claimant why she believed that this treatment was related to her age. Again, she said that it was because she had been told that she was "old and miserable" by a few people.
94. The Tribunal notes that the claimant did not argue that the way in which grievance had been dealt with was less favourable treatment because of age when she appealed the grievance outcome (page 115). Nor did she raise the question of age discrimination at her appeal hearing on 19 May 2021 (page 118).
95. The Tribunal finds that the immediate cause of the procedural failing by Mr Nandha and the decision maker was the fact that he had not been provided with the final version of the grievance before the meetings that he conducted on 26 February 2021. There is, however, no clear evidence in relation to why Mr Nandha did not then interview the claimant as he had said he would or explain to her why he did not regard this as necessary. Nor is there any clear evidence about why in breach of procedure the decision maker did not interview him (see Ms Anderson's witness statement paragraphs 14 and 16).
96. The Tribunal accepts that the claimant had legitimate grounds for complaint about the way the grievance had been handled, particularly in light of what had been said to her by Mr Nandha at the meeting on 26 February 2021 (a fact recognised by the respondent, in effect, when Ms Anderson allowed the appeal on procedural grounds). However, using its industrial experience of how grievances are dealt with by many employers, the Tribunal does not find that the way in which the grievance was dealt with was "dismissive". Mr Nandha interviewed a number of people before preparing a reasonably detailed management investigation report (page 107) which gives every sign of being a conscientious evaluation of the incomplete evidence before him. The Tribunal finds that it would be more accurate to characterise the failures of Mr Nandha and Ms Brown to interview her as being careless. This is also more consistent with the claimant's own evidence that she had no complaint about the way Mr Nandha conducted the meeting on 26 February 2021 – her complaint was about what happened (or did not happen) thereafter.

## **Conclusions**

### The question of time limits

97. Allegation A and Allegation C were not made to the Tribunal within three months (plus early conciliation extension) of the act to which they relate.
98. In light of the conclusions reached below, there was also not conduct extending over a period.
99. Turning to the reason why the complaints were not made to the Tribunal in time, the Tribunal has found above that this was simply because the claimant had not focused on this possibility or sought advice clearly in relation to its notwithstanding that such advice was in principle available to her from her union representative.

100. The Tribunal accepts that the delay in presenting the claim in relation to Allegation A and Allegation C was relatively short. The prejudice to the respondent is essentially limited to the need to defend those allegations. However, the prejudice to the claimant is also limited: she is left with other significant parts of her claim which are in time.

101. The burden of persuasion to persuade the Tribunal that it is just and equitable to extend time is on the claimant. The Tribunal finds that she has not discharged this burden given its findings in relation to the reason for delay. There was no good reason for it.

102. However, in case the Tribunal has reached the wrong conclusion in relation to this issue, it has set out below what its conclusion would have been in relation to Allegations A and C if it had found it just and equitable to extend time.

#### The substantive claims

103. Having regard to the list of issues, and the two-stage process envisaged by the guidance in Igen, the Tribunal has first of all considered whether the claimant has proved facts from which the Tribunal *could* conclude in the absence of any other explanation that the respondent had committed acts of age discrimination against the complainant.

104. The Tribunal has concluded that she has not proved such facts. Part of the Tribunal's reasoning for this conclusion is general in that it applies to all the allegations. We turn first to this general part of our reasoning.

105. First, the Tribunal finds that the claimant has not proved that employees within her age group are generally treated differently or are at a disadvantage in her workplace as a result of management's attitude towards them on a day-to-day basis. As found above, her general evidence in relation to matters of age was simply far too vague to establish either of these things.

106. Secondly, it is clear that the claimant has and has had difficult relationships with a wide range of employees and managers of different ages in her workplace over the past 2 ½ years for a wide variety of reasons. This must be taken into account in any broad assessment of her assertions of how those in her age group are treated.

107. We turn now to the specific allegations.

#### Allegation A – that the respondent held the claimant back in the Administration officer role in September 2020 whereas younger colleagues were given temporary duty assignments to better paid, higher band roles

108. The main reasons in addition to the general reasons given above for the Tribunal concluding that the claimant has not proved such facts in relation to allegation A are that in light of the findings set out above it is clear that the successful applicants were of different ages (including one over the age of 50 and two over the age of 35) and had made expressions of interest. By contrast, the claimant had withdrawn her expression of interest as a result of her difficulties with Ms Egbochue (which did not relate to age). The claimant has not proved that she was "held back" in the administration officer role at all. Rather she chose not to pursue a temporary duty assignment.

109. Further, none of the comparators of the claimant were in materially the same circumstances because none had withdrawn their expression of interest.

110. A reasonable Tribunal could not have concluded from these facts in the absence of any other explanation that the respondent had discriminated against the claimant because of age by the way it dealt with the temporary duty assignments in September 2020.

Allegation B 1 – the failure to acknowledge the application of 15 July 2021 for the Ambassador of Fair Treatment role

111. The reasons in addition to the general reasons given above for the Tribunal concluding that the claimant had not proved such facts in relation to allegation B1 is that (1) at the time she accepted that Mr Newman's oversight was due to him being very busy; and (2) this was Mr Newman's evidence to the Tribunal. There is no evidence of significance which points to the failure having been anything other than an unfortunate oversight.

112. The Tribunal concludes that there is no evidence of significance which suggests that the hypothetical comparator of the claimant would not have been treated in the same way: Mr Newman would have overlooked their application because he was very busy.

113. A reasonable Tribunal could not have concluded from these facts in the absence of any other explanation that the respondent had discriminated against the claimant because of age when Mr Newman failed to acknowledge the application.

Allegation B 2 – the failure of the respondent to acknowledge the claimant's application made online in January 2021 for the position of workcoach

114. The reasons in addition to the general reasons given above for the Tribunal concluding that the claimant had not proved such facts in relation to allegation B2 are these. The Tribunal has found above that the application would have been dealt with centrally, that the claimant's age would not have been shown on it and that the relevant centralised decision maker would not have made local enquiries about her before failing to acknowledge the application.

115. The Tribunal concludes that there is no evidence of significance which suggests that the hypothetical comparator of the claimant - someone whose application was identical but who was between the age of 20 and 35 - would not have been treated in the same way. The Tribunal so concludes because (in the absence of any age marker on the application form) there would have been nothing to distinguish them from the claimant.

116. A reasonable Tribunal could not have concluded from these facts that in the absence of any other explanation the respondent had discriminated against the claimant because of age when it failed to acknowledge the application.

Allegation C – failure to interview the claimant following her application to be an executive officer role between September and November 2020

117. The reasons in addition to the general reasons given above for the Tribunal concluding that the claimant had not proved such facts in relation to Allegation C are these. What the facts found above strongly suggest is that the reason the claimant's "evidential comparator" Ms Jelenska was interviewed and the claimant was not was that their applications were not in fact identical.

118. More generally, in light of the findings of fact made above, the decision whether to interview was made without the decision maker being aware of the claimant's age and without them making local enquiries in relation to the claimant.
119. The Tribunal concludes that there is no evidence of significance which suggests that the hypothetical comparator of the claimant - someone whose application was identical but who was between the age of 20 and 35 - would not have been treated in the same way. The Tribunal so concludes because (in the absence of any age marker on the application form) there would have been nothing to distinguish them from the claimant.
120. A reasonable Tribunal could not have concluded from these facts that in the absence of any other explanation the respondent had discriminated against the claimant because of age when it failed to interview the claimant for the executive officer role.

Allegation D – acted dismissively in the way the grievance of January 2021 was handled up to and including the date on which the claim form was issued (10 April 2021)

121. The reasons in addition to the general reasons given above for the Tribunal concluding that the claimant has not proved such facts in relation to allegation D are these. The Tribunal has found above that whilst the claimant had legitimate grounds for complaint in relation to how her grievance was handled, it was not handled dismissively. It was, however, handled carelessly.
122. The Tribunal concludes that the origin of the failings of Mr Nandha - albeit it does not excuse them – was the confusion in relation to the contents of the grievance which gave rise to the possibility of a further interview. The Tribunal concludes that there is no evidence of any significance that the failure of Ms Brown to interview was explained by anything that Ms Brown knew or had been told about the claimant.
123. The Tribunal concludes that there is no evidence of significance to suggest that a hypothetical comparator of the claimant - someone who had pursued a similar grievance in relation to which there had been similar confusion but who was between the age of 20 and 35 - would not have been treated in the same way.
124. However, the Tribunal further concludes that even if such a comparator would have been treated differently – and so interviewed by Mr Nandha and/or Ms Brown - a reasonable Tribunal could not have concluded from these facts that in the absence of any other explanation the respondent had discriminated against the claimant because of age by Mr Nandha and/or Ms Brown failing to interview her. This is because the something more required by Madarassy is absent. There would be nothing beyond the difference in treatment and the difference in status.
125. The claimant's claims of age discrimination therefore fail because she has failed to prove facts from which we *could* conclude in the absence of any other explanation that the respondent had committed an act of age discrimination against the complainant.

#### The second stage

126. The Tribunal concluded that the position in relation to allegations A, B1, B2 and C was clear-cut in relation to the first stage of the test required by Igen.

However, the Tribunal was more concerned by Allegation D, because it concluded that although the respondent had not acted dismissively, it had given the claimant cause for complaint for the reasons set out above.

127. We therefore went on to consider what our conclusions would have been in relation to the employer's explanation if we had concluded that the claimant had proved such facts as were necessary to shift the burden of proof (which of course we have not).

128. We would in fact have accepted that the respondent had proved on the balance of probabilities that the reason for the failure of Mr Nandha and Ms Brown to interview the claimant was in no sense whatsoever because of age. Briefly, we would have concluded this because we would have accepted the explanation provided by the respondent in the witness statement of Ms Anderson that it was due to the inexperience of Mr Nandha and Ms Brown and a change in internal guidance.

Overall conclusions in relation to the allegation by reference to the agreed issues

129. **Allegation A:** The Tribunal has concluded that the claimant was not held back in the Administration officer role in September 2020 and that what happened in relation to the temporary duty assignments in September 2020 was not less favourable treatment because of age.

130. **Allegation B1:** The Tribunal has concluded that the respondent did fail to acknowledge the claimant's application of 15 July 2021 for the ambassador of fair treatment role but this was not less favourable treatment because of age.

131. **Allegation B2:** The Tribunal has concluded that the respondent did fail to acknowledge the claimant's online application in January 2021 for the position of workcoach but this was not less favourable treatment because of age.

132. **Allegation C:** the Tribunal has concluded that the respondent did fail to interview the claimant following her application to be an executive officer made between September and November 2020 but this was not less favourable treatment because of age.

133. **Allegation D:** the Tribunal has concluded that the respondent did not act dismissively in the way the claimant's grievance dated January 2021 was handled up to and including the date on which the claim form was issued. The Tribunal has also concluded that the way in which the grievance was handled in this period as found above was not less favourable treatment because of age.

134. In light of the conclusions set out above the claimant's claim fails and it is not necessary to reach any conclusions in relation to the remaining issues.

Employment Judge Evans

Date reasons signed: 29 April 2023