



EMPLOYMENT TRIBUNALS

Claimant: Jennifer Webb

Respondent: Persimmon Homes Limited

Heard at: East London Employment Tribunal

On: 26, 27, 28 (in chambers) March and 1 April 2025

Before: Employment Judge Illing

Members: Mr J Webb
Mr M Rowe

Representation

Claimant: In person

Respondent: Miss Sarah Brewis (Counsel)

JUDGMENT

The judgment of the Tribunal is that: -

1. The complaints of direct age discrimination are not well-founded and are dismissed.

Reasons having been requested in accordance with Rule 60(3) of the Rules of Procedure 2024.

REASONS

Procedural history

1. The Claimant initiated Early Conciliation with Acas on 09 May 2023, which ended on 20 June 2023. The ET1 was issued on 16 July 2023.
2. The Respondent responded on 21 August 2023 and a preliminary hearing for Case Management was listed for 26 October 2023, before Employment Judge M Byrne.
3. The Case Management Orders identified the issues in the case, which were unfair dismissal and direct age discrimination. It also identified that the Claimant

did not have the required 2-years of service for an ordinary unfair dismissal. The Claimant was given the opportunity to write to the Tribunal to show written cause as to why her ordinary unfair dismissal claim ought not to be struck out on the grounds that she did not meet the minimum service requirement to bring such a claim.

4. The Claimant submitted her written reasons on 05 November 2023 citing that there was no fair reason for the dismissal, that there should have been a performance improvement plan and that the dismissal was not justified.
5. The Respondent applied for a strike out of the unfair dismissal claim on 20 December 2023 and, having considered the written applications of the parties, Employment Judge Beyzade struck out the complaint of unfair dismissal by Judgment dated 02 January 2024.
6. This case was originally listed for hearing in September 2024, but was adjourned due to the lack of judicial resource.

The hearing

7. We have a bundle of 295 pages. At the start of the hearing, the Respondent confirmed that several emails had been copied into the bundle, but only one of the sides had been copied. These additional copies were added into the bundle.
8. The Claimant requested the inclusion of new documents including copies of emails and text messages amounting to 4-pages. There was no objection from the Respondent and these were included at the back of the bundle.
9. The Claimant also wanted to include a new document that had not previously been disclosed. The Claimant explained that this was an updated document of one prepared for the purpose of litigation and it had hand-written notes on it. This document was not permitted to be included.
10. We heard evidence from the following witnesses:
 - 10.1. Mrs Jennifer Webb, Claimant.
 - 10.2. Mrs Claire Barrett, for the Claimant. (Customer Care Coordinator)
 - 10.3. Mrs Terri Smith, for the Respondent (Customer Care Manager and investigation manager)
 - 10.4. Mr Richard Hush, for the Respondent. (Managing Director and appeal manager)
11. The Claimant attended the first day of the hearing without the bundle. She stated that it had been changed and she couldn't reprint the entire bundle. The changes included the pages as detailed above for which the Claimant was given physical copies of these to insert into the bundle she had received for the September hearing. The first day was a reading day and cross examination of the Claimant's witnesses. There was no prejudice to the Claimant to continue without the bundle. She was also permitted to use the Public Bundle if required.

12. The Claimant attended the hearing on the second day, but again did not bring her bundle. She was permitted to use the Public Bundle for the hearing as required.

Findings of fact for direct discrimination

13. The Respondent is a house builder and part of the Persimmon Group.
14. The Claimant was employed as a Customer Care Coordinator for the Essex region. She was responsible for coordinating remedial works in customers' homes including reporting the issues, scheduling works and communicating with customers, contractors and the customer care team.
15. Ms Terri Smith had joined the Respondent in 2004 as a Customer Care Coordinator. Following subsequent promotions, from 2019 to June 2024, Ms Smith was Customer Care Manager and the Claimant's direct line manager.
16. On 8 June 2021 a requisition was authorised for the employment of the Claimant.
17. The Claimant commenced employment 1 July 2021 until her dismissal on 17 March 2023.
18. Kelly Beech, Head of Customer Care was employed by the Respondent in August 2022. She was Ms Smith's line manager and the Claimant's manager's, manager.
19. The Claimant signed a contract of employment dated 13 June 2021, which provides for a place of work to be the Respondent's offices in Dury Road, Witham. There is no provision for working from home.
20. The job description for Customer Care Coordinator provided as follows:

2. Job Purpose

To coordinate remedial works in line with team SLAs, whilst delivering a high standard of customer service.

To deliver all tasks in accordance with company process and policy, being a brand ambassador at all times.

3. Principal Accountabilities

Professionally handle incoming communications from customers through a variety of channels (phone, email, customer portal etc).

Carry out proactive calls to customers as may be required in order to provide the highest standard of customer service.

21. The Claimant passed her probation in January 2022. She received a bonus in March 2022, a pay rise in May 2022 and a further bonus in September 2022.
22. In October 2022, the Claimant requested to work from home. The circumstances were that on the occasional Friday, the Claimant would make a site visit and asked if rather than return to the office, as the office closed at 4pm on Fridays, could she work from home in the afternoon.

23. The Claimant was permitted to work from home on 2 occasions, but not subsequently.
24. The Respondent was a 5-star rated company with the Home Builders Federation (“**HBF**”).
25. The 5-star rating is the top rating given by HBF and is based on Customer Satisfaction surveys taken from customers at given time frames following the purchase of a property, specifically at 8-weeks’ and 9-months’ post completion. The overall key question is whether the Customer would recommend the builder. This is a yes or no answer. If answered no, this survey would affect the builder’s star rating.
26. The Respondent’s rating was reduced to 4-star for the year 2021 – 2022 for the Essex region of the Company. We find that the management of the Company was made aware of this in December 2022 and took remedial action.
27. Prior to December 2022, the Claimants role was primarily telephone based with occasional site visits. She had a proactive role in making calls for the purpose of satisfaction surveys and a reactive role to take calls from new homeowners and to log any defects and organise for those defects to be repaired by a subcontractor.
28. The reactive role also extended to the National House Building Council (“**NHBC**”). The Respondent provided a 2-year warranty for new homes, this was extended to 10-years under the NHBC warranty. The Claimant’s role was to identify the homes that were out of the Respondent’s warranty and to forward complaints about defects to NHBC.
29. NHBC then takes over the report and organises a joint site visit. If the outcome of the Customer’s defect report is found to be valid, the Respondent would be required to arrange repair. At this stage, the Claimant would be responsible for coordinating this with the sub-contractor.
30. The Respondent states that the number of sites allocated to each member of the Customer Care team was shared equally. This took into account the number of new homes under warranty on each site. The Respondent also stated that for the Claimant, this allocation also included the NHBC homes, so the Claimant had fewer new homes for which she was responsible. On the balance of probabilities, we accept the Respondent’s explanation as to the allocation of homes and workload to the team members.
31. The Claimant stated that she was also responsible for taking calls for reception. She stated that her phone would ring first and only if she didn’t answer would the call then cascade to the other members allocated to take calls. This was called the Hunt Team. There were 8 members of the team.
32. The Respondent stated that the calls from the reception would only go to the Hunt Team if the receptionist was unavailable, such as at lunch or on a call and that all 8 phones would ring at the same time. Members of the Hunt Team included employees in other departments. The Claimant was one of 2 members of the Customer Care Team allocated to the Hunt Team. The Respondent also stated that there was no obligation on the Claimant to answer these calls.

33. When the Claimant's phone rang, it was not possible to determine whether the call was a customer call or from reception prior to answering.
34. We have considered the evidence of the parties and we find that the Claimant was a member of the Hunt team. We find that the Hunt team phones rang at the same time in all departments and that any one of the eight members of the team could answer a call and that there was no requirement for any of them to answer the phone. We find that whilst this could distract the Claimant from other work, it did not add significantly to her workload.
35. The Claimant also carried out occasional site visits, which were part of her duties.
36. On 13 December 2022, Ms Beech emailed the Customer Care team to confirm a change in task allocation. The email headed, "*MUST READ AND ACTION immediately please – defect management and customer satisfaction monitoring form 19.12.2022*"
37. The Respondent informed the Team for the reasons behind these changes. This was as follows:

The strategy is in response to 3 risks we need to manage that has been flagged as root causes to customer feedback from a review of surveys and complaints we have been completing:

1 quality – helping the site team to focus on defect management before legal completion to the customer takes place

2 fixing defects on time – focus customer care resources on consistent subcontractor management, post legal completion

3 proactive communications – improve the consistency and accuracy of customer engagement and updates

It is also in response to the need to coordinate our efforts more effectively across our teams for our customers. Achieving customer satisfaction will remain a team effort for us all, but customer focused activities post legal completion will be led by customer care, in response to our customer needs and your own team requests for support as they arise.

I have allocated 2 coordinators per development.

- Coordinator 1 will manage all customer contact*
- Coordinator 2 will manage all subcontractor engagement*

38. The email confirmed the change of the provision of services. Whereas previously a Coordinator had been responsible for all tasks for their allocated homes, the new Coordinator's were now paired into teams of Coordinator 1 and Coordinator 2 to share the tasks for their allocated homes.
39. The Claimant was allocated as Coordinator 1 and her role was now as follows:
- Coordinator 1 needs to be able to listen to what customers are asking and direct this quickly to a solution.*

- *You will manage the customer care timeline and customer communications, responding to phone calls and emails and completing proactive communications to make sure we complete all contact milestones, record this feedback on COINS and use the site team, operative and coordinator 2 to turn the feedback into actions.*

- *You will be reporting satisfaction status to us weekly and making sure that everything sales, site and customer care have told customers is completed as promised.*

- *You will work with Terri to feed-back on where we are for 8 wk and 9 mth satisfaction and use that feedback to work with customers until they are satisfied.*

40. This meant that the Claimant had fewer tasks but was responsible for more homes.

41. The Claimant's Coordinator 2 was Amanda Turner. Her role was as follows:

Coordinator 2 needs to be able to develop relationships with the site team and our subcontractors to get defects closed in SLA.

- *You will need to book appointments for all customers and monitor these, checking we have attended and progressing next step actions from that feedback.*

- *Where contractors are not engaging you will develop a resolution plan to manage serving notice and appoint a new contractor, contra charging as appropriate.*

- *Terri remains your line manager, but you will need to work with Michele, site, technical and commercial to deliver plans to diagnose and fix defects.*

- *You will be reporting defects statistics to us weekly and flagging blockers and improvement actions*

42. At this time, the Claimant continued with the NHBC role and was a member of the Hunt Team. The new role required the Claimant, as Coordinator 1, to be responsible for all customer contact including both proactive and reactive calls. We find that the Claimant also had a number of former duties removed, such as site visits, dealing with subcontractors and accounts, which were now dealt with by Coordinator 2.

43. This change affected all of the Customer Care Team.

44. In evidence, the Claimant, Mrs Barrett and Ms Smith confirmed that all of the team members were busy. We find from the Claimant's evidence that she was removed from the Hunt Group with effect from 1 February 2023. We also find that all of the Customer Care Team were busy and that the Claimant did not have a greater workload than others.

45. From the Claimants given comparators, Coordinator 1 included:

45.1. Claimant aged 65

- 45.2. Yvonne Tabram aged 60
- 45.3. Kim Manders aged 57
- 45.4. Joanne Tomlinson aged 49
- 46. Coordinator 2 included:
 - 46.1. Amanda Turner aged 54
 - 46.2. Claire Barrett aged 64
- 47. Sheila Robinson, aged 53 was the Customer Care Management Team Escalations Support.
- 48. The Respondent stated that under the new task organisation, the sites were again divided equally between the team members on the same basis, i.e. by the number of homes under warranty. It also stated that the Claimant's NHBC work was taken into account. We accept the Respondent's evidence on the division of work.
- 49. We have considered the tasks allocated to Coordinator 1 and 2 and we find that they are materially different as the pre-December role was effectively split in two by this change. However, in the absence of one Coordinator, their team member would step in to fulfil the entire role, but this was the exception rather than the rule.
- 50. The new system of work came into effect on 19 December 2022 and, in summary, the following instructions were issued:
 - 50.1. 12 January 2024, both the Claimant and Ms Turner were told of a call that had gone without reply and were asked to contact the customer.
 - 50.2. 16 January 2023, Ms Smith gave the Claimant a management instruction to complete calls on the same day.
 - 50.3. 24 January 2023, the whole team were given direct instruction to complete the customer satisfaction tracker and the Claimant and Ms Turner were specifically told to speak to their site managers daily.
 - 50.4. 24 January 2023, Ms Beech provided the team with a defects summary.
 - 50.5. 26 January 2023, Ms Beech again emails the team as the daily updates were not consistent and requested daily updates.
- 51. In addition to these instructions, the Respondent, Ms Beech, was made aware of the following emails:
 - 51.1. 29 January 2023, a customer complaint is escalated to Ms Beech by a Sales Advisor as the Claimant had not responded to a defect complaint dated 23 January 23 and 9 January 2023.
 - 51.2. 31 January 2023, the receptionist informed the Claimant that a customer was still waiting for a return call. This email was copied to Ms Beech.

- 51.3. 8 February 2023 at 0832, Mr Richard Hush, Managing Director, received a customer satisfaction survey titled “No and Slow response to customer.”. (**“The Survey”**). The customer reported that *“they had been dealing with someone called Jennifer and that she takes an age to get back to them, if at all. They had called twice and had had no response since 25 January and that this was pretty poor.”*
- 51.4. 14 February 2023 Ms Beech received an email from a customer complaining that despite Ms Beech’s assurances from 31 January, the Claimant still had not contacted them and that they were considering a formal complaint.
52. On 8 February 2023 at 0850 Ms Beech emailed Ms Smith with the subject title “Performance concerns for Jennifer Webb.” This email was an instruction to Ms Smith to discuss and feedback on The Survey. Ms Smith was also instructed to tell the Claimant of other outstanding customer calls and to investigate whether the Claimant was following the coordinator process. Ms Beech also confirmed that Ms Turner had raised a concern with her that the Claimant was not following this process. Ms Smith was also instructed to carry out weekly meetings with the Claimant.
53. The progress and timing of the review meeting is followed up by Mr Hush’s personal assistant (Ms Whyton).
54. We find that The Survey as sent to Mr Hush triggered Ms Beech’s heightened interest into the Claimant’s performance.
55. The Claimant was absent from work on 14 February and a meeting with Ms Smith was scheduled for 15 February.
56. Ms Smith met with the Claimant on the 15 February for an informal meeting to discuss the Respondent’s concerns regarding customer’s emails and telephone calls going unanswered. Ms Smith stated that the Claimant confirmed that she had a backlog of calls but that with her no longer being part of the Hunt team with effect from 1 February 2023, she was confident that she could get on top of it. Additionally, Mrs Turner had been absent and working from home during January, due to her husband’s illness and that the Claimant had been helping with her tasks too.
57. It was the Claimant’s evidence that the meeting on the 15 February was the only meeting with Ms Smith regarding her performance.
58. We find that there were no meeting minutes for the 15 February and that there was no performance improvement plan put in place. However, we find that this meeting was not the first or last discussion between the Claimant and Ms Smith regarding her performance under the new system. We find that there was a series of informal discussions on a daily basis.
59. On or about 22 February 2023, the Claimant states that she was called by an Employment Agency regarding 2 vacancies in the Customer Care Team. It is not known whether this was a call directly to her or via the Hunt Team. The Claimant asserts that this was for her role. The requisition form states that it is a replacement for existing headcount for a vacant role from November 2022. We find that this call happened and that it was in relation to the requisition

authority from November 2022 for new members to the team, including replacing temporary staff with a permanent position.

60. The Claimant went on scheduled annual leave on 23 February and was due to return on the 13 March.
61. On 25 February further emails from a customer showing unanswered emails from the customer in relation to the Claimant, are brought to Ms Beech's attention. These show delays in responses from the Claimant going back to defect complaints in December 2022. Ms Beech has then emailed Ms Smith and Ms Whyton as follows:

Can you add this to a file to run through with Jenny in a meeting on her return 2 missed emails/ failure to respond as below. There may be more to address....we all have been struggling to respond consistently, but there is a theme coming through in what I have seen so far and at this point not an obvious reason for there to be, as well as the absence review to address....

I think you should complete an investigation and pass this onto me to review?

62. The emails between Ms Beech and Ms Smith are headed performance and the content is that the Respondent is unclear as to how to proceed. Ms Smith is instructed to investigate and then pass the information back to Ms Beech to review. We find that the Respondent had not yet determined whether this was capability or conduct as it had not yet determined the potential cause of the performance issues.
63. On 26 February, Ms Smith receives further instructions from Ms Beech and is instructed to arrange a meeting on the Claimant's return. The instruction from Ms Beech also includes a copy of The Survey.
64. On 28 February Ms Smith emailed Ms Beech and Ms Whyton with a summary of her discussions with the Claimant from 15 February. At the meeting, Ms Smith and the Claimant had agreed to arrange a further meeting at the end of March and this email of the 28 February reflects this. These instructions had changed subsequently. We find that this email is an accurate summary of the meeting with the Claimant on the 15 February.
65. On 1 March at 0834, Ms Beech emails the customer care team to ask the team to search for emails where there are outstanding instructions from managers and responses to customers, so that the management team can work with the team to resolve outstanding matters. We find that this was the initiation of a department audit.
66. That day, 1 March, at 0927 Mr Hush emails the entire Essex team. He confirmed to the team that the Essex region had lost the 5*HBF rating for 2021 / 2022 and that it was a huge disappointment and similarly unacceptable. The priority for the business was to return to the 5* rating and that a failure to achieve this would have an impact on the entire team.
67. Mr Hush also confirmed that the business was already enroute to fail to regain the 5* rating for 2022 / 2023. It was made clear that there should be no misunderstanding and that the business must bounce back and achieve the 5*

status. It was for everyone to provide excellent quality homes with exceptional customer experience from sales through to post occupation with customer care.

68. This email was followed up by Ms Beech at 1629 to the customer care team, copied to Mr Hush. The team were given specific instructions to address Mr Hush's email. This email identified the need for improvement in 3 key areas:

- *Proactive communications with our customers and our response rates*
- *Time taken to fix defects*
- *Quality – of the service we offer to our customers – this will be measured across the entire customer journey of our customers*

69. Whilst the Claimant is absent on leave, Ms Smith conducts her investigation and finds evidence of 16 emails with complaints specifically against the Claimant for delays and failures in responding. These were complaints regarding customer service and they named the Claimant personally.

70. The Claimant states that this was 13 complaints, we find that it was 13 complaints as 4 complaints were in relation to the same house plot.

71. With regards to the complaints found by Ms Smith, she takes action to either bring the outstanding need for a response to the Claimant's attention or contacts the customer direct.

72. Ms Smith confirmed in evidence that the issue was not with the number of emails in any one persons' account but with the number of emails complaining about a specific person within the Customer Care Team that had been escalated to management. There were more complaints naming the Claimant than any other team member. Ms Turner was named in 3 complaints alongside the Claimant. We accept this evidence.

73. Mrs Claire Barrett gave evidence that on 9 March she was called into a meeting with Ms Beech. Ms Beech wanted to discuss some rumours that she had heard about Mrs Barrett possibly retiring. Mrs Barrett said that she told Ms Beech that she had told colleagues that she had found a personal pension of which she was previously unaware of and that she might retire early. This information had got back to Ms Beech. Mrs Barrett stated that Ms Beech called her into the office several times on the same day and that this resulted in Mrs Barrett saying that she would go now, i.e. retire.

74. Mrs Barrett says that she followed this up by resigning in an email. Ms Beech subsequently called her back into the office to invite Mrs Barrett to retract her resignation. Mrs Barrett says that she did so and then when called back to Ms Beech's office, Ms Beech told her that HR would not allow a retraction without a reason. Mrs Barrett therefore resigned and believed that she was coerced into giving her resignation.

75. We find that there was a conversation between Ms Beech and Mrs Barrett and that Mrs Barrett resigned with notice as a result of this conversation. Subsequently, Mrs Barrett approached Mr Hush regarding the March bonus and he permitted her to receive her bonus, which she would otherwise not have received for being in her notice period when the bonus fell due.

76. The Claimant returned from leave in Australia to return to work on 13 March 2023. Prior to her return, the Claimant had asked to work from home that day. This request was refused and the Claimant was required to attend work on that Monday as scheduled. The Claimant accepted in her oral evidence that this was the only time she had asked to work from home and she also accepted that this refusal was not related to her age. We accept this evidence.
77. We find that as a consequence of the investigation and the number of complaints found, the Respondent determined that the performance concerns were a matter of conduct rather than capability.
78. On 14 March Ms Whyton emailed the Claimant with an invitation to a disciplinary meeting to be held on Friday 17 March at 3.15pm. The email was sent at 4.15pm
79. The invite letter put forward the following allegations:
- 79.1. That she had allegedly failed to follow reasonable management instructions.
- 79.2. That she had been negligent in her duties
- 79.3. That she had failed to adhere to Company working procedures
- 79.4. That the Company had lost trust and confidence in her ability to complete the role to the required standard.
- 79.5. The letter also goes into specific details as to the conduct that is alleged to amount to the above failings providing an appendix of information for each allegation.
80. The letter warned that this may amount to gross misconduct and that one outcome may be summary dismissal. It also permitted the Claimant to be accompanied.
81. The letter included copies of all of the emails that raised complaints naming the Claimant for issues as to customer service. It also contained copies of the management instructions and the Claimant's job description.
82. The Claimant called in sick on the 15 March.
83. We find that the Claimant had 3-days' notice of the disciplinary meeting.
84. On 17 March 2023 at 0949, Ms Smith forwarded Ms Beech her notes in relation to her investigation with Tashan Bartless, Project manager for Castellum Grange, one of the Claimant's sites. He confirmed that "*many homeowners were not happy with the service they have received from Jenny Webb, they feel that they are constantly having to chase her to get any responses to emails or phone calls, if they get a response at all.*" This email also included a summary of Amanda Turner's concerns as reported to Ms Smith, in that the Claimant is not picking up emails leaving Mrs Turner to do so.
85. The disciplinary meeting was held as scheduled. Ms Beech was the Chairperson, Mr Whyton was the notetaker and the Claimant was accompanied

by Debra Croghan (Senior Conveyancer). HR were also present (Danielle Kelly, Regional HR Advisor).

86. During the course of the meeting the following was discussed:
- 86.1. The Claimant confirmed that she had received the invite letter and had had enough time to prepare.
 - 86.2. Anyone could ask for an adjournment at any time.
 - 86.3. Each allegation and each email was discussed in turn.
 - 86.4. With regards to the failure to follow reasonable management instructions, each email was discussed in turn. The Claimant asserted that she had responded to many of the emails, but that she did not have the emails with her. She confirmed to Ms Beech that she had not updated COINS (a management logging system for customer contact in relation to both proactive and reactive actions) and that she had just started to use it as she could see how valuable it was.
 - 86.5. The Claimant blamed her workload for these failings and accepted that there were 13 complaints about her in relation to customer service.
 - 86.6. The Claimant asserted that others had hundreds of emails outstanding, allegedly unread, but Ms Beech just wanted to focus on her.
 - 86.7. With regards to negligence of duties, the Claimant was asked how she organised her work and she stated that she just worked through the jobs as best she could.
 - 86.8. With regards to Company procedures, she confirmed that dealing with subcontractors was for coordinator 2, but she helped as required.
 - 86.9. With regards to loss of trust and confidence, it was explained to the Claimant that if the allegations above were upheld, then the Company may lose trust and confidence in her ability to perform the role to the required standard.
87. The meeting was adjourned for Ms Beech to consider her outcome. On her return, Ms Beech confirmed that the allegations against her were upheld and this amounted to multiple acts of misconduct and that she was to be dismissed immediately and would be paid in lieu of notice.
88. We find that the Claimant was dismissed for the reasons given in the outcome letter.
89. The Claimant was informed of her right to appeal.
90. The Claimant asserts that she was bullied and intimidated in the disciplinary meeting. The meeting was fact finding in relation to a large number of emails that had been sent to the Claimant in advance of the meeting. Ms Beech took the Claimant through the emails, one by one. The Claimant had not produced any email evidence as to her actions in relation to these emails, and she could only provide some oral explanations of her actions. The Claimant had not prepared for this meeting fully.

91. Meeting notes were taken and have not been objected to. The Claimant was also accompanied. We find that the notes record that that Ms Beech was robust in her questioning of the Claimant, but not that there was any bullying or intimidation.
92. The Respondent confirmed the termination of the Claimant's employment by letter dated 21 March 2023, sent at 1318. This summarised the Respondent's findings for each allegation and confirmed that the Claimant had not provided any evidence to support her assertions.
93. During submissions, the Claimant asserted that she had provided the Respondent at the disciplinary with evidence and responses to the complaint emails. We find that she did not provide any such information.
94. On 26 March the Claimant emailed to confirm her appeal and gave details of the grounds of appeal. The grounds of appeal included:
 - 94.1. That the letter on 14th March (disciplinary invite) was the first indication of any performance issues.
 - 94.2. That they hadn't followed the disciplinary procedure.
 - 94.3. That they hadn't followed Acas Procedures.
 - 94.4. That the incidents cited were either trumped up or the result of poor management of others and did not constitute gross misconduct anyway.
95. On 26 March the Respondent wrote to the Claimant inviting her to an appeal meeting on 5 April. The Claimant was invited to be accompanied.
96. The Claimant could not make the 5 April and an alternative date was agreed.
97. The appeal meeting was held on 18 April at 0900. The meeting was chaired by Mr Hush, with Ms Whyton taking notes, Mr Julian Holmes attended as the HR representative.
98. Prior to the meeting the Claimant submitted a bundle of documents which raised the assertion of age discrimination and included issues as follows:
 - 98.1. Age discrimination
 - 98.2. Her comments included that she had given explanations to the emails to Ms Beech at the disciplinary meeting. The Claimant also stated that she was scared to raise points during the disciplinary.
 - 98.3. That other customer care coordinators had 1,100 emails outstanding but were not investigated and that this amounted to unfavourable treatment.
 - 98.4. A summary of inconsistencies in Ms Beech's outcome letter and adding her own findings as to the allegations against her.
 - 98.5. She raised working from home as an issue.
99. During the course of this meeting, Mr Hush worked through the Claimant's additional document to discuss all of her concerns.

100. Mr Hush also confirmed that the issue was not with the number of emails in any one person's account but with the number of emails complaining about a specific person within the Customer Care Team that had been escalated to management. We accept this explanation.
101. Following the appeal meeting, we accept Mr Hush's evidence that he accessed COINS to review the management information in relation to the complaints against the Claimant.
102. Mr Hush took into consideration the Claimant's grounds of appeal and bundle of documents. He then summarised the Claimant's concerns and his findings in an outcome letter dated 19 May 2023. The appeal was not upheld.

Evidence

103. We have taken into account contemporaneous documents and written and oral testimony in making our decision on the balance of probabilities.

The law

104. This is a claim for direct discrimination only, the unfair dismissal claim having been struck out. It is important to note that the only legal tests that have been applied are those required by the Equality Act. The question of the fairness of the Claimant's dismissal and the fairness of the procedure are not questions that have been asked of this Tribunal.
105. Section 13 of The Equality Act sets out the legislation and the Tribunal have applied the 2-stage test. Firstly, to consider whether the Claimant has proven facts which, on the balance of probabilities from which the Tribunal could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. If the burden of proof switches to the Respondent, we have then applied the second stage and considered whether there is cogent evidence that the treatment was in no sense whatsoever on the grounds of the protected characteristic, in this case, age.
106. The claim relied upon is on section 13 of the Equality Act 2010 which provides that:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."
107. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination can occur and these include any other detriment and dismissal. The characteristics protected by these provisions include age.
108. Under Section 23(1) of the Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case. The requirement is that all relevant circumstances between the claimant and the comparator must be the same and not materially different, although it is not required that the situations have to be precisely the same.

109. Section 136 of the Equality Act 2010 sets out the manner in which the burden of proof operates in a discrimination case and provides as follows:

“(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 sub-section (2) does not apply if A shows that A did not contravene the provision”.

110. At the first stage, the Tribunal must consider whether the claimant has proved facts on a balance of probabilities from which the Tribunal could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. This is sometimes known as the prima facie case. It is not enough for the claimant to show merely that she has been treated less favourably than her comparator and there was a difference of a protected characteristic (such as age) between them. In general terms “something more” than that would be required before the respondent is required to provide a non-discriminatory explanation. 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, the question is whether it could do so.
111. If the first stage has resulted in the prima facie case being made, there is also a second stage. There is a reversal of the burden of proof as it shifts to the respondent. The Tribunal must uphold the claim unless the respondent proves that it did not commit (or is not to be treated as having committed) the alleged discriminatory act. To discharge the burden of proof, there must be cogent evidence that the treatment was in no sense whatsoever on the grounds of the protected characteristic.
112. In practice Tribunals normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, second, whether the less favourable treatment was on the ground that the claimant had the protected characteristic. However, a Tribunal is not always required to do so, as sometimes these two issues are intertwined, particularly where the identity of the relevant comparator is a matter of dispute. Sometimes the Tribunal may appropriately concentrate on deciding why the treatment was afforded, that is was it on the ground of the protected characteristic or for some other reason?
113. In most cases there is a need to consider the mental processes, whether conscious or unconscious, which led the alleged discriminator to do the act. Determining this can sometimes not be an easy enquiry, but the Tribunal must draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). The subject of the enquiry is the ground of, or the reason for, the alleged discriminator’s action, not his or her motive. In many cases, the crucial question can be summarised as being, why was the claimant treated in the manner complained of?
114. The Tribunal needs to be mindful of the fact that direct evidence of discrimination is rare, and that Tribunals frequently have to infer discrimination from all the material facts. Few employers would be prepared to admit such

discrimination even to themselves. The protected characteristic does not have to be the only reason for the conduct, provided that it is an effective cause or a significant influence for the treatment. The explanation for the less favourable treatment does not have to be a reasonable one. Unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment. It cannot be inferred from the fact that one employee has been treated unreasonably that an employee of a different age (or with any other difference of a protected characteristic) would have been treated reasonably.

115. The way in which the burden of proof should be considered has been explained in many cases, including: Barton v Investec Henderson Crosthwaite Securities Limited [2003] IRLR 332; Shamoon v Chief Constable of the RUC [2003] IRLR 285; Hewage v Grampian Health Board [2012] ICR 1054; Igen Limited v Wong [2005] ICR 931; Madarassy v Nomura International PLC [2007] ICR 867; and Royal Mail v Efofi [2021] UKSC 33.

Submissions

116. Both parties gave oral submissions and provided copies in writing. These have been taken into consideration. Within closing submissions, where new evidence has been raised, this information has not been afforded the weight given to evidence tested under Oath and cross examination.

Conclusions

117. As stated, this is a claim for direct discrimination in relation to the protected characteristic of age. It is important to note that the question of the fairness of the dismissal by the Respondent is not in question. It is the reason for the dismissal that is for the Tribunal to determine.
118. The issues for the Tribunal to consider are as follows.

Time limits

- 118.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 February 2023 may not have been brought in time.
- 118.2. Was the discrimination complaint made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
- 118.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- 118.2.2. If not, was there conduct extending over a period?
- 118.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

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

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

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

Direct age discrimination (Equality Act 2010 section 13)

119. The claimant's age group is over 65s and they compare their treatment with people in the age group 40s to 50s.

119.1. Did the respondent do the following things:

119.2. Dismiss the Claimant.

119.3. Advertise the Claimant's position before she was dismissed.

119.4. Only give the Claimant two days' notice of the disciplinary hearing on 17 March 2023.

119.5. Conduct the hearing on 17 March 2023 in a manner that left the Claimant feeling bullied and intimidated.

119.6. Wrongly accuse the Claimant of misconduct in the context of a failure to conduct formal management performance meetings with the Claimant.

119.7. Give the Claimant an increased workload in comparison to younger colleagues in the form of dealing with NHBC claims and having to take telephone calls.

119.8. As a consequence of the increased workload given to the Claimant, enforce tighter deadlines against the Claimant concerning the completion of tasks.

119.9. Deny the Claimant the same "working from home" privileges given to other staff.

119.10. 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 they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Yvonne Pabram (late 50s), Sheila Robinson (45), Amanda Turner (48), Clarie Barrett (64), Kin Manders (late 50s) and Joe Tomlinson (50).

119.11. If so, was it because of age?

119.12. Did the respondent's treatment amount to a detriment?

119.13. The Respondent has not pleaded the Statutory Defence and offers no legitimate aim for the alleged treatment of the Claimant. The Respondent does not ask the Tribunal to consider the question of whether the treatment was a proportionate means of achieving a legitimate aim.

120. We will consider each allegation of direct discrimination in turn.

Allegation 1: Dismiss the Claimant.

Does the time limit issue apply

121. The dismissal took effect on 17 March 2023. This alleged discriminatory act is therefore in time.

Burden of Proof

122. In the first instance we consider the burden of proof; has the Claimant satisfied the Tribunal that there are primary facts from which it could, in the absence of any other explanation, determine that discrimination took place.

123. The primary facts found in relation to the dismissal that the Claimant has established are:

123.1. On 13 December there would be a new defect management and customer satisfaction monitoring procedure from 19 December 2022.

123.2. The Claimant accepted that there were 13 complaints that named her in relation to poor customer service.

123.3. The Claimant accepted that not all of her actions were recorded on COINS or reported to management.

123.4. The Claimant attended an informal meeting with Ms Smith on 15 February and that there were no meeting notes or performance plan produced. The email was titled "performance concerns".

123.5. That the Claimant received a call from an Employment Agency in relation to the recruitment of a new team member.

123.6. On 1 March the loss of the 5* status was announced to the Respondent's employees and the consequence of this were made clear. It also informed the employees that the Respondent was still

failing to meet its expected standards to regain the 5* status and that everyone was expected to improve their performance.

- 123.7. Following a conversation on 9 March with Ms Beech, Mrs Barrett resigned with notice.
 - 123.8. In response to the complaints, during the disciplinary, the Claimant did not provide written information regarding her actions to Ms Beech. Whilst she stated in response to some allegations, "I did reply" or "I have the email but not with me", she did not provide Ms Beech with copies of her responses during the disciplinary or afterwards.
 - 123.9. At appeal, her grounds were considered, however she did not provide documentary or oral evidence in relation to all of her actions following the complaints against her.
124. It is also a primary fact that Mrs Barratt resigned with effect from 9 March and the Claimant was dismissed on the 17 March and they were the oldest members of the Customer Care Team. These colleagues were replaced by younger team members (under 40) several months later.
125. On these primary facts we conclude that the balance of the burden of proof shifts and it is for the Respondent to prove that there is no discriminatory influence in its decision and actions.

Did the Respondent dismiss the Claimant?

126. The dismissal is admitted.

Was that less favourable treatment?

127. The dismissal is unfavourable treatment.

If so, was it because of age?

128. The circumstances of the dismissal, including the Respondent's explanation is as follows:
- 128.1. The Respondent's Essex region had lost its 5* status with HBF and it was a priority that this was regained. This would require an improvement of the customer experience from all departments.
 - 128.2. As part of the remedial actions, on 13 December there would be a new defect management and customer satisfaction monitoring procedure from 19 December 2022.
 - 128.3. The Survey had been sent by the customer naming the Claimant and expressing dissatisfaction with the customer service from her directly to the Managing Director, Mr Hush.
 - 128.4. The Survey instigated an investigation into the Claimant's emails, which discovered that there were 13 complaints from customers naming her specifically in relation to poor customer service.

- 128.5. We have found that that the investigation into the Claimant's conduct was instigated following Mr Hush's receipt of The Survey. At this time, the customer experience was a primary focus as a consequence of its loss of its 5* status.
- 128.6. We have found that at a departmental level, Ms Beech asked the whole team to identify where actions had been requested from management so that the management team could work through these.
- 128.7. Upon investigation into the Claimant's actions, it was found that there were 13 complaints specifically naming the Claimant for poor customer service and the Claimant had not been reporting her actions on COINS or directly to management. This was contrary to the new procedures implemented in December 2022.
- 128.8. The Claimant accepted that there 13 complaints naming her,
- 128.9. The Claimant did not provide satisfactory documentary or oral evidence to the disciplinary hearing or appeal to support her actions.
- 128.10. The Claimant accepted at the disciplinary that she had not always used COINS.
- 128.11. The Claimant has not accepted that the Respondent's case was not about the number of emails logged to any colleague within the coordinator inboxes, but about the number of complaints naming a colleague for poor customer service.
- 128.12. The Claimant had less than 2-years' service.
- 129. We have found that the investigation was initiated as a potential performance issue. However, the Respondent discovered that the Claimant had repeatedly failed to comply with the reasonable management instructions in relation to the new reporting procedures and required contact with customers.
- 130. The Claimant had not reported the issues and therefore the customer defects could not be escalated to management and proactively addressed before they became complaints, which in turn increased the risk in relation to the attempt to regain the 5* status.
- 131. As a consequence of the Respondent's discovery, it determined that this was not a capability issue, but one of conduct, in that the Claimant had not followed reasonable management instructions. It therefore deemed that the formal process would be disciplinary and not performance.
- 132. Additionally, we have found that Ms Beech initiated an audit to determine whether other team members had not acted on management instructions. We have accepted the Respondent's evidence that there were more complaints against the Claimant than other team members.
- 133. We conclude that the Respondent dismissed the Claimant for her conduct in relation to the 13 complaints as detailed in the Termination Outcome letter.
- 134. We find that there is cogent evidence that the treatment, being dismissal, was in no sense whatsoever on the grounds of the protected characteristic of age.

Allegation 2: Advertise the Claimant's position before she was dismissed.

Does the time limit issue apply

135. The Claimant states that she received the call in February 2023. Any act before 10 February 2023 is out of time. The call was received before the Claimant went on holiday on 23 February 2023.
136. We will consider this allegation from the Claimant's position, finding that the call was received just before she went on holiday.

Burden of Proof

137. In the first instance we consider the burden of proof; has the Claimant satisfied the Tribunal that there are primary facts from which it could, in the absence of any other explanation, determine that discrimination took place.
138. The primary facts from the Claimant are as follows:
- 138.1. The Claimant has only provided oral evidence as to the receipt of the call, which she says occurred before her holiday. This would be before the Claimant was invited to a disciplinary meeting.
- 138.2. The Claimant accepted that the team had temporary members of staff.
- 138.3. The Claimant joked to the recruiter that the team would be growing.
139. We are not satisfied that there are primary facts from which the Tribunal could, in the absence of any other explanation, determine that discrimination took place.

Allegation 3: Only give the Claimant two days' notice of the disciplinary hearing on 17 March 2023.

Does the time limit issue apply

140. The invitation letter was issued on 14 March 2023. This is within time.

Burden of Proof

141. In the first instance we consider the burden of proof; has the Claimant satisfied the Tribunal that there are primary facts from which it could, in the absence of any other explanation, determine that discrimination took place.
142. The primary facts from the Claimant are as follows:
- 142.1. The invitation letter was issued on the 14 March 2023 at 1515.
- 142.2. The disciplinary meeting was on 17 March 2023 at 1600.
143. We have found that the Claimant had 3-days' notice of the disciplinary meeting.

144. The Claimant has not established any primary evidence of a different notice period applicable to her in comparison to her younger colleagues. We are not satisfied that there are primary facts from which the Tribunal could, in the absence of any other explanation, determine that discrimination took place.

Allegation 4: Conduct the hearing on 17 March 2023 in a manner that left the Claimant feeling bullied and intimidated.

Does the time limit issue apply

145. The hearing was on the 17 March 2023, so the time limit does not apply,

Burden of Proof

146. In the first instance we consider the burden of proof; has the Claimant satisfied the Tribunal that there are primary facts from which it could, in the absence of any other explanation, determine that discrimination took place.
147. The primary facts established by the Claimant are as follows:
- 147.1. The disciplinary meeting took place on the 17 March 2023.
- 147.2. Notes were taken during the meeting and the Claimant has not objected to these or asked for any amendment.
- 147.3. The meeting notes do not record any wording or language that might amount to bullying or intimidation.
148. We have found that the words used by MS Beech were robust, but that there was no evidence of bullying or intimidation.
149. The Claimant has not established any primary evidence of bullying and intimidation during the disciplinary meeting in comparison to her younger colleagues. We are not satisfied that there are primary facts from which the Tribunal could, in the absence of any other explanation, determine that discrimination took place.

Allegation 5: Wrongly accuse the Claimant of misconduct in the context of a failure to conduct formal management performance meetings with the Claimant.

Does the time limit issue apply

150. Again, this is in relation to the disciplinary hearing and the time limit does not apply.

Burden of Proof

151. In the first instance we consider the burden of proof; has the Claimant satisfied the Tribunal that there are primary facts from which it could, in the absence of any other explanation, determine that discrimination took place.

152. The primary facts established by the Claimant are as follows:
- 152.1. The Claimant attended an informal meeting with Ms Smith on 15 February 2023.
 - 152.2. The meeting invite to the Claimant was headed "Catch up"
 - 152.3. The Claimant was invited to a disciplinary meeting by an invite dated 14 March 2023 on her return from annual leave.
153. On these primary facts we conclude that the balance of the burden of proof shifts and it is for the Respondent to prove that there is no discriminatory influence in its decision and actions

Did the Respondent Wrongly accuse the Claimant of misconduct in the context of a failure to conduct formal management performance meetings with the Claimant.

154. The Respondent denies wrongly accusing the Claimant of misconduct in the context of a failure to conduct a formal management performance process.
155. We have found that the Respondent instigated an investigation into the Claimant's performance as a consequence of The Survey being received. We have found that the Respondent found 13 other examples of the same complaint from homeowners.
156. The Claimant has accepted that there were 13 complaints and she has accepted that she did not update COINS regularly.
157. We have found that as a consequence of the investigation and the number of complaints found, the Respondent determined that the performance concerns were a matter of conduct rather than capability. We therefore conclude that the Respondent did not wrongly accuse the Claimant of misconduct.

Was that less favourable treatment?

158. This conduct by the Respondent was not less favourable conduct. We find that there is cogent evidence that the treatment, i.e. accusing the Claimant of misconduct was in no sense whatsoever on the grounds of the protected characteristic of age.

Allegation 6: Give the Claimant an increased workload in comparison to younger colleagues in the form of dealing with NHBC claims and having to take telephone calls.

Does the time limit issue apply

159. The time limit does not apply.

Burden of Proof

160. In the first instance we consider the burden of proof; has the Claimant satisfied the Tribunal that there are primary facts from which it could, in the absence of any other explanation, determine that discrimination took place.
161. The primary facts that the Claimant has established are:
- 161.1. That all of the team members were busy.
 - 161.2. That until February 2023 she was assigned to the Hunt team, to take calls, if possible, in the receptionist's absence.
 - 161.3. That she had responsibility for the NHBC defect reporting in addition to her allocated sites.
 - 161.4. That there was no problem with her work before the change in working practices in December 2022.
 - 161.5. That there was no change to her workload following the change in working practices.
162. On the primary facts, the Claimant has not established that she had a greater workload in comparison to her younger colleagues. We are not satisfied that there are primary facts from which the Tribunal could, in the absence of any other explanation, determine that discrimination took place.

Allegation 7: As a consequence of the increased workload given to the Claimant, enforce tighter deadlines against the Claimant concerning the completion of tasks.

Does the time limit issue apply

163. The time limit does not apply.

Burden of Proof

164. In the first instance we consider the burden of proof; has the Claimant satisfied the Tribunal that there are primary facts from which it could, in the absence of any other explanation, determine that discrimination took place.
165. The primary facts that the Claimant has established are:
- 165.1. That all of the team members were busy.
 - 165.2. That she had responsibility for the NHBC defect reporting in addition to her allocated sites, which had its own timeline.
 - 165.3. That there was no problem with her work before the change in working practices in December 2022.
 - 165.4. That there was no change to her workload following the change in working practices.
166. The Claimant has not established any primary evidence of a differential tighter deadlines applicable to her in comparison to her younger colleagues. We are

not satisfied that there are primary facts from which the Tribunal could, in the absence of any other explanation, determine that discrimination took place.

Allegation 8: Deny the Claimant the same “working from home” privileges given to other staff.

Does the time limit issue apply

- 167. The time limit issue applies to the 2 occasions as alleged regarding not returning to the office following site visits. However, she was permitted to work from home on these occasions. These do not therefore fall to be considered as she was permitted to work from home.
- 168. The third allegation is with regards to the day after the Claimants return from holiday, which is 13 March, which is in time. This is the only occasion on which the Claimant has given evidence of a request to work from home being refused.

Burden of Proof

- 169. In the first instance we consider the burden of proof; has the Claimant satisfied the Tribunal that there are primary facts from which it could, in the absence of any other explanation, determine that discrimination took place.
- 170. The primary evidence established by the Claimant is:
 - 170.1. That her contract required her to work from the office.
 - 170.2. That working from home was the exception rather than the rule.
 - 170.3. That Mrs Turner had worked from home when caring for her husband.
 - 170.4. That the phones were in the office.
 - 170.5. That the Claimant had been absent from work from 23 February until 13 March on holiday.
- 171. We have found from the Claimant’s evidence that this was the only occasion where her request to work from home had been refused. We have also found that the Claimant has accepted that this was not due to her age.
- 172. The Claimant has not established any primary evidence of a difference to the working from home approach applicable to her in comparison to her younger colleagues. We are not satisfied that there are primary facts from which the Tribunal could, in the absence of any other explanation, determine that discrimination took place.

173. It is the unanimous decision of this Tribunal that the complaint of direct age discrimination is not well-founded and is dismissed.

**Employment Judge Illing
1 April 2025**