



EMPLOYMENT TRIBUNALS

Claimant: Mr J Sheehy

Respondent: Lymington & Pennington Town Council

Heard at: Southampton

On: 1 and 2 October 2025

Before: Employment Judge Dawson

Appearances

For the claimant: Representing themself

For the respondent: Mr Ushieagu, litigation consultant

JUDGMENT

1. The claimant was subjected to indirect age discrimination when his application for the role of Town Clerk/CEO was rejected on 1 March 2024.
2. The claimant was not subjected to indirect age discrimination after 6 March 2024 when the respondent agreed to reconsider the claimant's application for the role of Town Clerk/CEO.
3. The claim of direct age discrimination is dismissed.
4. The respondent is ordered to pay the claimant compensation of £2792 in respect of injury to feelings, inclusive of interest.

REASONS

Introduction and overview

1. By a claim form presented on 17.4.24 the claimant brought a complaint of age discrimination.

The issues

2. The issues were recorded in an order following a Case Management hearing which took place on 18.12.24.
3. At the outset of the hearing, I went through the issues with the parties in detail. The parties agreed that the list of issues was accurate and set out the claims that I must determine.
4. At the end of the hearing, a question arose as to why the list of issues referred to people below the age of 32, when the claimant was 29 when he applied for the job. Neither the claimant nor they were respondent were clear about that point, no application was made to amend the list of issues and I have dealt with the issues as drafted.

Conduct of the Hearing

Reasonable Adjustments

5. No party or witness required reasonable adjustments for the hearing.

The evidence

6. I was provided with 5 witness statements and a bundle running to 129 pages. Except where otherwise stated, references to page numbers in this judgment are to the hearing bundle.
7. I heard evidence from the claimant and for the respondent I heard from
 - a. Ms Young, former town clerk of the respondent,
 - b. Mr Davies, councillor,
 - c. Mr McCarthy, councillor
 - d. Mr Penson, councillor,

Timetable

8. The timetable which had been set down at the case management hearing on 18.12.24 was discussed at the outset of the hearing and I explained to the parties the importance of sticking to it. The parties did stick to the timetable in terms of cross examination without asking for extra time.

Application for Late Evidence to be Admitted

9. After lunch on the first day of the hearing, after the claimant had given evidence and the respondent had called Ms Young and Mr Davies and their evidence had concluded, the respondent applied to adduce into evidence the application forms of the other four people who applied for the role of Town Clerk/ CEO. The documents were clearly relevant insofar as the respondent's witnesses asserted that the claimant was not selected for interview because the other candidates were better than him. As I understood the position, disclosure had only been given to the claimant at lunchtime, via email, but he had not been able to check his emails.
10. The respondent, through Mr Ushieagu, was unable to give me any explanation as to why the disclosure was made late. Mr Ushieagu submitted that he could not give me that explanation because he was not the case holder and had only been instructed very late. However, Mr Ushieagu is an employee of Peninsula, who represent the respondent. I consider to be unacceptable for Peninsula, through its representative at the tribunal, to be unable to give any explanation as to the late disclosure. It is a matter for Peninsula as to how it structures its operations, but it cannot hide behind that structure as a way to avoid explaining to the tribunal why the respondent has not properly complied with its obligations.
11. It was 3 p.m. before the claimant was able to see the documentation and I adjourned the hearing overnight to allow him to consider it. The claimant objected to the admission of the evidence. I refused to admit the extra documentation because it seemed to me the claimant would be prejudiced by its admission. The claimant's case had closed and the respondent had called two of its witnesses. If the evidence was relevant, as the respondent contended, it should have been put to the claimant in cross-examination for his comment. It was not in accordance with the overriding objective to allow the claimant to be recalled, since that would likely make the hearing go part heard. I determined that in order for the parties to be on an equal footing, the respondent should have disclosed the evidence at the date when disclosure was ordered, not halfway through the hearing. Given the lack of any explanation as to the late disclosure, it seemed to me that prejudice to the claimant outweighed any prejudice to the respondent.

The Law

Approach To Evidence

12. In *Gestmin SGPS SA v Credit Suisse (UK) Ltd*, Leggatt J gave the following helpful guidance

Evidence Based on Recollection

[16] While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

[17] Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory)

...

[22] In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. ... Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

13. I have approached the evidence in that way, whilst bearing in mind that in an employment context it is likely there are less documents and there would be in a commercial case.

The Law

14. The following are relevant sections from the Equality Act 2010.

13 Direct discrimination

- (1) 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.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

...

19 Indirect discrimination

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if:
 - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
 - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - (c) it puts, or would put, B at that disadvantage, and
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
- (3) The relevant protected characteristics are—
age;
disability;
gender reassignment;

marriage and civil partnership;
race;
religion or belief;
sex;
sexual orientation.

136 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.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to—

an employment tribunal;

15. In *Dr J Ali v Drs Torrosian, Lechi, Ebeid & Doshi t/a Bedford Hill Family Practice* Appeal No. UKEAT/0029/18/JOJ, HHJ Eady QC (as she then was) helpfully summarised the principles in relation to justification as follows.

15. Section 15(1)(b) thus allows that the unfavourable treatment relevantly identified for the purposes of section 15(1)(a) - here, the Claimant's dismissal - might be justified if it is a proportionate means of achieving a legitimate aim. To be proportionate, the conduct in question has to be both an appropriate means of achieving a legitimate aim and a reasonably necessary means of doing so (see *Chief Constable of West Yorkshire Police & Another v Homer* [2012] ICR 704 SC, and *Allonby v Accrington & Rossendale College & Others* [2001] ICR 1189 CA).

16. Justification of the unfavourable treatment requires there to be an objective balance between the discriminatory effect and the reasonable needs of the employer (see *Ojutiku v Manpower Services Commission* [1982] ICR 661 CA per Stephenson LJ at page 674B-C, *Land Registry v Houghton & Others*

UKEAT/0149/14 at paragraphs 8 and 9, and Hensman v Ministry of Defence UKEAT/0067/14 at paragraphs 41, 42 and 44).

17. It is, further, common ground that when determining whether or not a measure is proportionate it will be relevant for the ET to consider whether or not any lesser measure might nevertheless have served the employer's legitimate aim (see the EAT's judgment in Naeem v Secretary of State for Justice [2014] ICR 472).

18. More specifically, the case law acknowledges that it will be for the ET to undertake a fair and detailed assessment of the working practices and business considerations involved, and to have regard to the business needs of the employer (see Hensman at paragraph 44). In that context, the severity of the impact on the employer of the continuing absence of an employee who is on long-term sickness absence will, no doubt, be a significant element in the balance that will determine the point at which their dismissal becomes justified, albeit, the evidence that may be required in this respect will be primarily a matter for the ET (see per Underhill LJ at paragraph 45 of O'Brien v Bolton St Catherine's Academy [2017] ICR 737 CA).

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20. As to the time at which justification needs to be established, that is when the unfavourable treatment in question is applied (see Trustees of Swansea University Pension and Assurance Scheme v Williams [2015] ICR 1197 EAT at paragraph 42). When the putative discriminator has not even considered questions of proportionality at that time, it is likely to be more difficult for them to establish justification (see Ministry of Justice v O'Brien [2013] UKSC 6 , see in particular the judgment of the Court at paragraph 48; although the test remains an objective one, see O'Brien at paragraph 47).

Findings of Fact

16. Much of the evidence in this case is not in dispute. I start by setting out that evidence which is not in dispute which, in the circumstances, I accept and find accordingly.

Undisputed Facts

17. The claimant was born in 1994. In February 2024 the respondent sought to appoint a new Town Clerk/CEO. The claimant was, at that time, 29 years old.
18. The respondent, as is often the case, set out a Person Specification in respect of the role which included essential criteria. They appear at page 80.

19. One of the essential criteria was that the candidate had a degree level education in a relevant subject, as well as a Certificate in Local Council Administration (CiLCA), another was that the candidate had at least 10 years' experience in the direct management of employees at a senior level.
20. The person specification was created by Ms Young, but only to the extent that she used the process under which she and her predecessor had been appointed. Thus the criteria were, she told me, created some 10 years before this appointment process. Ms Young did not suggest that she had carried out any detailed assessment of whether the essential criteria remained essential for the job.
21. The claimant says that it is the combination of those two criteria which disadvantage younger people.
22. The claimant has experience of working as a clerk in other councils, including, according to his application for the role in question;
 - i. a position as a Committee Clerk for Wareham Town Council (January 2016 – September 2016)
 - ii. a position as Town Clerk and RFO (Responsible Financial Officer) in Witham Town Council (September 2016 – January 2022)
 - iii. a position as Town Clerk and RFO in Dunmow Town Council, (January 2022 – December 2022),
 - iv. a position as Town Clerk and RFO in Christchurch Town Council (January 2023 – August 2023).
23. The budgets for the Witham and Dunmow councils were around £700,000 when he left.
24. The claimant does not have a degree (or A-levels) but is CiLCA qualified. He also, I note, has qualifications of FAA Level II award: Health & Safety in the workplace and PRINCE2. The claimant does not have 10 years' experience in the direct management of employees at a senior level. After the claimant left Christchurch Town Council, according to his application form, he became a director of his own business which involved being a self-employed decorator/plasterer and local council auditor/consultant. In his application he gave the reason for leaving Christchurch Town Council as a career break.
25. I was told by Ms Young that the respondent's budget when she left was £1.25 million and the precept was nearer to £1 million. The claimant did not know what the respondent's budget or precept was when I asked him, although he thought it was similar to the budget of Bury St Edmunds, being £650,000. Given that the claimant did not know what the respondent's budget was, I see no reason to disbelieve the figure provided by Ms Young. I find accordingly.

Because of the size of the role, the respondent had split the roles of Town Clerk and RFO despite the fact they are often (if not usually) held by the same person.

26. At page 71 is the job description for the Clerk to the Council for Hythe and Dibden Parish Council. That Council had a budget of £1.3 million (that figure was put to Councillor Penson in cross examination and he agreed with it) but the job specification only requires the appointee to have significant experience in senior management, not a minimum of 10 years. At page 75 of the bundle is the job description for the Town Clerk for Bury St Edmunds. It does not require 10 years experience of senior management experience.
27. On 16th February 2024, the respondent's HR manager, Ms Butler, wrote to the claimant asking him if he was able to supplement the eight years working history he had put in his application and pointing out that one of the essential requirements was 10 years' management experience. She also asked whether the claimant could show that he had degree or equivalent level qualifications. The claimant replied clarifying his position (page 110) and on 1 March 2024 the same HR manager wrote to the claimant stating that although the respondent was impressed with his skills and qualifications, the candidates which were being taken forward to interview were those who had extensive experience in the role along with meeting all the essential criteria required (page 110)
28. The claimant decided to ask for a review and managed to get a message to Ms Young who called him on 5 March 2024. The claimant has set out a number of difficulties which he had in contacting anyone for feedback, the respondent has said that he incorrectly typed one email address and did not use the email which was dedicated for this recruitment exercise. I do not need to resolve that dispute.

Findings in respect of Disputed Matters

29. In cross-examination, Ms Young told me that the CEO role for the respondent goes significantly beyond the town clerk's statutory duties. The respondent receives significant business income which, she said, is taken into account in the budget and which affects the precept. The respondent manages its own Saturday Charter Market and the income from that forms part of the council budget, doing so requires the CEO/Town Clerk to manage the stallholders as well as the staff who manage the market. Ms Young also pointed to the upcoming project to revive the Sea Water Baths which would require a clerk with good experience who could deal with the need for lottery funding. She also referred to the need for the town clerk to be able to deal with very articulate people who contact the council and the need for skills to manage those relations. She referred to the council being a "strong council", it being at the upper end of councils (I took that to be a reference to budget) and the amount which one has to work with the local community. I see no reason to doubt that evidence and, it seems to me, to be probable that in an area such

as Lymington, the town clerk will be dealing with people who have strong views as well as the ability and resources to articulate them forcefully.

30. The parties disagree about what happened in the telephone call on 5 March 2024. The claimant says that Ms Young was hostile and combative, Ms Young says that the claimant became progressively more aggressive during the telephone call.
31. What is not in dispute, however, is that as a consequence of that telephone call, Ms Young told the claimant that his application would, now, be reconsidered by the staffing subcommittee (page 117).
32. The staffing subcommittee met on 11 March 2024 and considered five sets of applications. They decided to take three applications forward but did not take forward the claimant's and one other. The minutes of that subcommittee show that Ms Young relayed to the councillors her version of the conversation which had taken place on 5 March 2024. The claimant says that she gave a false account to the councillors because she was prejudiced against him as a younger person and wished to, effectively, turn the councillors against him. It is, therefore, necessary for me to make findings as to what happened in the phone call.
33. I find that the claimant had a strongly held belief that he was well suited for the role. He was unwilling to rule himself out based on the essential criteria because, as he said to me, he did not consider them to be valid criteria. That opinion is one I have formed from observing the claimant in evidence and observing him conduct cross examination (and I record that he presented his case with conspicuous care, skill and courtesy). It is also consistent with the claimant's closing submissions, in which he told me that he is a young person in a profession which is generally filled with older people. He said it has been very difficult for him to succeed in his career at his age and when the events around this case were unfolding he felt this was just another example of the same - and it was unfair given that he had been doing the job for seven years.
34. After the telephone call the claimant sent an email to Ms Young. In the course of that email he wrote:

I am also sorry you got upset when I talked about how difficult it has been to get in touch with you. When you said to me "it sounds like I haven't been doing my job very well" I was in no way questioning your professional ability, but rather the general way it feels the process is being carried out and the feedback I was given for not being taken forwards.
35. I find that the claimant's description in that email is somewhat different to the one in his witness statement, where he describes Ms Young as being hostile and combative.

36. Ms Young says in her witness statement that in the phone call, the claimant said it was stereotypical for a Town Clerk to be in their 50s. She says that she tried to defend the council by stating that she had been significantly younger than middle-fifties when she took the role and how supportive the council had been to her pregnancy and ever juggling childcare needs. She added that the respondent had many young councillors and age would not be a concern. She repeated that evidence in cross-examination and I accept that evidence.
37. It is clear from the claimant's own email, set out above, that Ms Young became upset in response to what he said to her. The email refers to him raising with Ms Young how difficult it had been to get in touch with her. I note that at the council meeting on 11 March 2024, Ms Young said that the claimant had accused her of being secretive, not having direct contact email on the website and wondering what the respondent was trying to hide. Whatever the claimant said to Ms Young elicited the response "it sounds like I haven't been doing my job very well".
38. Weighing all of those matters, I find it is more likely than not that the claimant was at least, very assertive with Ms Young during the conversation. It is likely that his manner reflected his belief that he was being blocked in succeeding in his career because of his age. I find that Ms Young sought to defend herself against the allegations by saying what she did. I do not accept the claimant's case that Ms Young was hostile and combative. I am fortified in this view by the fact that, as set out below, the claimant had also attempted to contact Councillor Davies by voicemail when he had been told that he had not been selected for interview. It is clear that the claimant was very exercised about his rejection.
39. I find that Ms Young was not hostile towards the claimant because of his age.
40. Continuing with the chronology of events, Councillor McCarthy gave evidence, which was difficult to follow, that he and certain other councillors from the subcommittee had met informally prior to the meeting on 11 March 2024, in the first week of March. He told me that they had discussed the applications and discussed shortlisting but, did not actually short list at that time. That meeting was not minuted. Councillor McCarthy says that at that stage he had not been told that the claimant's application had been rejected. He also said that there was no decision at that stage to reject the claimant's application.
41. It is difficult to work out where this meeting fits within the chronology that I have related. Although I found Councillor McCarthy's evidence to be unsatisfactory in that it lacked clarity, I did not form the view that he was seeking to deceive me. It seems to be most likely that this informal meeting would have taken place after the 6 March 2024 when Ms Young told the claimant that his application would be considered by the staffing subcommittee. That is largely consistent with the evidence of Councillor Penson, who I found to be a much more impressive witness, who said that he had not been involved in any such meeting, having been operated on in the week before 11 March 2024. He said that he had received two calls from Ms

Young, one where she had told him that the claimant did not meet the criteria for the job and suggested that the claimant's application should be rejected and then another where she said she had spoken to the claimant and thought that the subcommittee should consider his application with the other applications it had received.

42. The process at the committee meeting on 11 March 2024, as is apparent from the minutes (p101), was that the councillors considered the applications which had been received and a shortlist of three applicants who were to be invited for formal interview was created. Ms Young then told the meeting that an initial rejection had been sent to the claimant based on not meeting the essential criteria and outlined the content of the telephone call of 5th March 2024
43. I have heard evidence from the councillors on the subcommittee.
44. Councillor Davies told me that he received a voicemail from the claimant on 1 March 2024 in relation to the claimant's application. The claimant said that he had not made the shortlist and wanted to chat to him about being able to interview for the role. Councillor Davies did not call the claimant back.
45. His evidence about what happened at the meeting on 11 March 2024 is very brief. He says that the councillors discussed the merits of the applications with the aim of taking the strongest to interview. He simply states, "on this occasion, the three candidates we took to interview stage were vastly experienced and had a multitude of different skills that would suit such a demanding role."
46. Councillor McCarthy's evidence contains little more. His witness statement explains that the Lymington role is a particularly demanding one and it was important to recruit a replacement town clerk who would stay for a reasonably long period of time. He explains that Lymington & Pennington Town Council is made up of a 20 strong team of staff including a chartered accountant and 15 largely politically elected councillors. He states that the respondent was looking to recruit someone with the knowledge and expertise of being a Town Clerk. Having made that statement, he simply states that three of the candidates were shortlisted due to their expertise and knowledge of what the Lymington & Pennington Town Council required at that time due to the work allocation that the Town Council was undergoing.
47. Councillor Penson says, in his witness statement, that the role is a particularly demanding one and he gives much more detail as to the council's needs. His witness statement says as follows:
 10. The Staffing Sub-Committee met on 30th January 2024, and I was in attendance [FHB/100]. The Town Clerk presented a draft job description which the committee approved unanimously. The role of CEO/Town Clerk for Lymington and Pennington is a particularly demanding role, and I was pleased to see that the personal specification required a high level of education and experience.

11. Lymington is an attractive coastal town with an active sailing community. It attracts wealthy highly educated people which results in high property values but also has some of the worst areas of deprivation in the New Forest District. The Town Council is often the first port of call for residents with issues that need resolution. Managing this situation requires considerable skill, tact and experience.
 12. The Council was in the final stages of preparing a Neighbourhood Plan. The process had been masterminded from the beginning by Ms Young. I was anxious to appoint a successor who would have sufficient experience to take this forward and who would be capable of dealing with strong and very vocal local interest groups.
 13. Another concern was to recruit a replacement Town Clerk who would stay for a reasonably long period of time and would undertake to live locally. It was also my view that the Town Clerk should be educated to degree level or equivalent in order to be able to manage the particular demands on the position. This included managing the twenty strong team of full and part time staff which included a chartered accountant and fifteen largely politically elected councillors.
48. He describes, in his witness statement, the events of 11 March 2024. He says that he arrived early at the Town Hall to read the application forms and compiled a handwritten schedule of each applicant's home, education, CiLCA qualification, previous experience and achievements as well as senior management experience. His notes are at page 219. He ranked the claimant as fifth and in his witness statement gives his explanation as follows:

There were several reasons why I positioned the Claimant as number 5. On the plus side he was CILCA qualified and able to meet my requirement of travelling daily to Lymington or relocating. He also had experience of being the Clerk on Town Councils similar to Lymington and Pennington. However, none of this set him apart from the other applicants. On the minus side his educational attainment was only to GCSE level, and I was unconvinced about his senior management experience. Another big negative was that he had only stayed at his two previous employers for a year and then just six months. The latter spent at Christchurch really concerned me. To move on after only six months for what he termed a 'career break' seemed very odd.

49. In cross examination, the claimant challenged Councillor Penson and suggested that he was wrong to be concerned about a career break or, at least, that he should have given the claimant the opportunity to explain it in interview. In my judgement it was reasonable for Councillor Penson to have those concerns. It does seem odd for somebody to obtain a significant role as Town Clerk & RFO, at a significant salary of £50,512 per annum and then, after 8 months (not 6), leave for a career break. If the claimant had wanted the

respondent to be aware of more information as to why he left Christchurch he could have put that in the application form or state that the reasons were confidential but he would discuss it at interview. Instead, he stated that the reason for leaving was to have a career break. Councillor Penson was entitled to take that at face value. Further, regardless of whether Councillor Penson's concerns were valid or not, I am satisfied that they have nothing to do with age.

50. Upon further questioning, Councillor Penson stated that he had been unconvinced by the claimant's application, that the claimant's supporting statement did not refer to any specific council or role, it was written in general terms whereas other applications had specific details. He questioned whether the application form had been written by AI. It is fair to say that the application form does not give any specific examples of situations where the claimant has applied his experience, skills or abilities to advance a council's aims or resolve a problem. In that sense it is written in general terms. Again, I find the view of Councillor Penson to be reasonable.
51. The claimant suggested that Councillor Penson had only thought of AI because of the claimant's age.
52. I found Councillor Penson's evidence to be thoughtful and measured. I find that he had approached his role with considerable care, which is why he had attended the council well in advance of the meeting (he said one or two hours) in order to read the applications. He had made notes to assist him in that process. There is nothing to suggest that he was concerned about the claimant's age and I do not find that the reference to AI to be indicative that he was. He was concerned because of the nature of what the claimant had written and the way it had been written, not because of anything age related.
53. Councillor Penson was asked about how the claimant could have met the essential criteria and said that a lack of experience had not prevented the application being considered and did not influence him as to who should be taken forward.
54. I gained the firm impression from all of the councillors that I heard from that none of them had rigidly stuck to the idea that the candidates must have 10 years previous experience. I find accordingly.
55. I accept the councillors' evidence that the three candidates went forward because the councillors considered they were better suited to the job overall. It may be that those candidates had, as a matter of fact, more experience than the claimant, but there were other factors which prevented the claimant's application proceeding, particularly those explained by Councillor Penson and referred to above.
56. I find that even if the respondent had not required substantial experience on the part of its candidates, it is more likely than not that the claimant would not have got the job. As I have indicated, I was impressed by Councillor Penson's

analysis of the claimant's application. It was, in my judgement, entirely reasonable to be concerned about the claimant taking a career break only 8 months after he had obtained the job at Christchurch Council and it was not necessary to invite him to an interview to ask him for further explanation. It was also reasonable to take the view that the supporting statement for the application was somewhat general. I must be careful in reaching this conclusion because I have only heard detailed evidence from Councillor Penson, when the meeting was also attended by Councillors Davies and McCarthy. However Councillor Davies refers to other candidates having a multitude of different skills and Councillor Pennington refers to the three candidates who went for interview having knowledge of what the respondent required at that time due to the work allocation that the Town Council was undergoing. Of course, I have not seen the application forms of the other candidates, but the claimant has been in possession of them overnight and has not asked me to look at them. In those circumstances and where that part of the evidence of Councillors McCarthy and Davies was not challenged, I accept their evidence.

57. I asked Ms Young what the difference was, in terms of an acceptable candidate, between somebody who had 10 year's management experience in a senior position and someone who had, say five years, experience. She told me that with hindsight it may have been possible to word the criteria differently, it was intended simply to require someone who had an extensive period of management. Ms Young gave that evidence honestly and openly and I accept it.
58. I find that it was reasonable for the respondent to view the role of CEO/Town Clerk as a senior role and a difficult role. The post holder had to be able to manage not only the council's own staff but liaise with councillors and with members of the public. They also had to be able to deal with the income streams referred to and, therefore, have business acumen. The council's budget was significant. In those circumstances it was entirely reasonable for the respondent to want to appoint the best candidate. It is likely that such a person would have significant experience and it was reasonable for the respondent to want a candidate with significant experience. It was also reasonable for the respondent to want the post-holder to have a degree. Possession of a degree indicates that a person is able to undertake learning to a high level, analyse information and satisfy examiners that they are worthy of a degree. It is indicative of a certain set of qualities. That is not say that people who do not have a degree do not have those qualities, they may or may not do, but the requirement for a degree is a way of letting a person prove that they have those qualities. It is, in terms of concept, no different to requiring somebody to have a grade 4 or above in GCSE English. A candidate may or may not be able to write and speak English well, but the requirement to have a GCSE (or equivalent) qualification is a way of proving to the employer that they have those skills.

Conclusions

59. I will give my conclusions by reference to the list of issues.

Direct Age Discrimination

60. In respect of direct age discrimination, issue 1.3 requires me to consider whether the claimant was treated worse than other candidates for the role of CEO/ Town Clerk who were in the older age group. I am required to compare the claimant with somebody in the older age group who, like him, did not have a degree and 10 years' experience in the direct management of employees at a senior level.
61. The claimant does not point to an actual comparator and therefore I consider a hypothetical one.
62. There is no evidence from which I could conclude that somebody who was older than the claimant but who did not have a degree and 10 years' experience as required would have been treated any differently to the claimant. Indeed, the evidence is that the respondent sought to assist the claimant to some extent. As stated above, on 16 February 2024, Ms Butler wrote to the claimant asking if he had any more history to pass on and also referring to the person specification as requiring a degree or equivalent level and asking him if he was able to show evidence of that. The claimant says, with justification, that it would be obvious that he was reasonably young from his application form because of his dates of education. Notwithstanding that, the respondent was, through Ms Butler, seeking to give the claimant another opportunity to show that he fulfilled the selection criteria. There is nothing to suggest that an older person would have been treated any more favourably.
63. In those circumstances the claim of direct age discrimination fails because there is nothing to suggest that an older person would have been treated more favourably than the claimant was.
64. It is not necessary, therefore, to consider issues 1.5-1.7.

Indirect Age Discrimination

65. The lists of issues (2.1) states that it is not in dispute that the respondent had the PCPs of requiring at least 10 years management experience and degree level education. Although at times during her evidence Ms Young suggested that an equivalent to degree level education would be acceptable, that is not what is set out in the job specification and I prefer the job specification as setting out the accurate picture.
66. There is no dispute that the respondent applied those PCPs to the claimant (issue 2.2). However, the evidence shows that they were applied when, on 1 March 2024, Ms Butler wrote to the claimant stating that his application would not be progressed. When the claimant then objected, in his call to Ms Young

on 5 March 2024, Ms Young reversed the decision. His application was put forward to the councillors. At that point, I find that the PCPs stopped being applied. Not only were they not applied in that his application was put before the councillors, I am also satisfied that the councillors did not apply a PCP of requiring at least 10 years management experience of employees at a senior level. They applied a different PCP, namely requiring substantial experience and appointing to the role the candidate who appeared to the councillors to be best suited to the job.

67. In respect of issues 2.3, there is no dispute that, to the extent the respondent applied the PCP of requiring at least 10 years management experience and degree level education, it applied it to everyone, whatever their age.
68. In respect of issue 2.4, I find that the combination of the PCP that candidates must have at least 10 years management experience of employees at a senior level and degree level education did put people aged 31 or under at a particular disadvantage compared with people older than that. It is much more difficult (even if it is theoretically possible) to have obtained a degree and 10 years relevant experience by the age of 31 than, say, by the age of 41. It is unusual (though not impossible) for somebody to leave university at the age of 21 and go straight into a role where they are managing employees at a senior level.
69. The next question (issue 2.5) is whether, when the PCP was applied to the claimant, it put him at a disadvantage. It was applied on 1 March 2024. The claimant was clearly put at a disadvantage, he could not satisfy the criteria and his application was no longer progressed.
70. Issue 2.6, is whether the PCP was a proportionate means of achieving a legitimate aim. The respondent says that its aim was to find the right candidate for the role.
71. I find that was a legitimate aim for the respondent, if not somewhat broadly stated. I accept, as counsel for the respondent submitted, that it is important to get the right candidate for the role, because of the cost of re-interviewing if the candidate does not stay in the role. However, perhaps more significantly, any business will want to appoint to the role of CEO, the person with the knowledge and skills necessary for them to perform it competently.
72. The difficulty for the respondent is that it has produced no evidence from which I could conclude that it was reasonably necessary for a candidate to have 10 years' experience as required, rather than say, eight years' experience. Ms Young accepted that it was difficult to explain why that length of experience was reasonably necessary. The burden of proof is on the respondent in this respect. Whilst the respondent has persuaded me that it was necessary to appoint somebody with substantial experience to the role, it has not persuaded me that 10 years' experience is anything other than an arbitrary figure. My view is fortified by the fact that other person specifications for similar roles to which I have been referred do not require 10 years' experience. The length of

experience required clearly discriminates against younger people as I have set out above. I am not persuaded that the needs of the respondent justify the discrimination created.

73. Thus, I find that there was indirect discrimination on the grounds of age when the claimant's application was rejected on 1 March 2024. However, that discrimination ceased on 6 March 2024 when the claimant was told that his application would be considered by the staffing subcommittee. From that point onwards the respondent was not applying the discriminatory PCP.
74. For the sake of clarity (although this is not necessary for my judgment) there is no evidence that the councillors who formed the subcommittee were influenced at all by the claimant's age. At risk of straying from the issues, I would have been prepared to accept that the councillors applied a PCP of requiring the successful candidate to have substantial experience. I would also be willing to accept that such a PCP placed people aged 31 or under at a disadvantage compared to people over the age of 31. Again, it is more difficult to gain substantial experience at a younger age. People tend to obtain such experience later in their careers when they are older. However, a requirement for substantial experience is, in my judgment, a proportionate means of achieving the respondent's aim. Given the nature of the role as I have set out above, it was reasonably necessary, to appoint somebody who had substantial experience in managing people at a senior level. The role as described to me is not a role that could be readily done by somebody who lacked that experience.

Remedy

75. The claimant claims damages for loss of earnings and loss of pension because he did not get the job. The difficulty in respect of that claim is that I have found that the discrimination ceased on 6 March 2024. The reason that the claimant did not get shortlisted for interview was not because of the essential selection criteria, it was because his application form was, put simply, not as good as others for this job. This is not a loss of chance case. The essential criteria did not stop the claimant having a chance of getting the job once the decision had been reversed on 6 March 2024. The discrimination in this case did not cause the loss of earnings and therefore I can award nothing in relation to them.
76. The general principles in relation to the appropriate award for injury to feelings are set down in *Prison Service v Johnson* [1997] IRLR 162 and include that;
- i. awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator.
 - ii. Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen

to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches.

- iii. Awards should bear some broader general similarity to the range of awards in personal injury cases – not to any particular type of personal injury but the whole range of such awards.
 - iv. Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or by reference to earnings.
 - v. Tribunals should bear in mind the need for public respect for the level of awards made.
77. I have considered the bands of compensation set down by the Court of Appeal in *Vento v Chief Constable West Yorkshire* [2003] IRLR 102 and the updated awards set down in the 7th addendum to “*Presidential Guidance: Employment Tribunal Awards for injury to Feelings and Psychiatric Injury Following De Souza v Vinci*”.
78. In respect of the lower band, awards of between £1200 and £11,700 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.
79. I have considered the latest edition of the Judicial College Guidelines in respect of personal injury awards. In respect of post-traumatic stress disorder for a less severe case where a virtually full recovery would be made within one to 2 years and only minor symptoms would persist over any longer period an award of £4820–9980 is appropriate. I also considered the guidance in respect of whiplash injuries and noted that in respect of neck injuries where a full recovery takes place within 3 months and a year the appropriate bracket is £2990 and 5310.
80. In determining the correct level of award in this case, I have taken account of the fact that the period of discrimination was brief and was, in my view, unintentional. I have, therefore, initially considered whether I should make any award under section 124 Equality Act 2010, but in my judgement a declaration will not assist the claimant given the judgment which he has obtained and a recommendation would not obviate the adverse effect of the discrimination. The respondent suggested that it could be ordered to apologise to the claimant but the claimant has expressly said that an apology at this stage would not help him. I can understand why, he will be left with the suspicion that the apology was only offered to limit the amount of damages which would be awarded to him.
81. I accept that the claimant already felt that he was discriminated against because of his young age and, therefore, his injury to feelings may well be greater than another person’s may have been. However, the respondent has to take the claimant as it finds him. The claimant said that it took him a while

to get a sense of proportion again, the issue “really, really” upset him because he loved being a town clerk. However, he also told me that the effect on his life of the discrimination was that he bored his husband to death talking about it but other than that there was no direct effect on his personal relationships. He told me that he regained his sense of perspective after the summer and after a couple of months he stopped excessively thinking about it. It does seem to me, however, that what happened to the claimant would be upsetting for him. I consider that the appropriate award is one of £2500.

82. In addition I consider that it is appropriate that the claimant should be awarded interest in this case. From the date the proceedings were issued until today’s date is 533 days. The rate of interest is 8% and on £2500 the appropriate amount of interest is, therefore, £292.

Employment Judge Dawson

Date 7 October 2025

JUDGMENT SENT TO THE PARTIES ON
28 October 2025

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the

Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

Recoupment

The recoupment provisions do not apply to this judgment.