



EMPLOYMENT TRIBUNALS

Claimant: Mr K. Maloney

Respondent: AAAtraq Limited

Heard at: London Central ET, via CVP

On: 11, 12, 13, and 14 August 2025

Before: Employment Judge: Mr G. King

Representation

Claimant: In person

Respondent: Mr R. Pal – Litigation consultant

RESERVED JUDGMENT

1. The Claimant's application for the Respondent's case to be struck out is dismissed.
2. The Claimant's claim of direct discrimination because of race (section 13 Equality Act 2010) is not well founded and is dismissed.
3. The Claimant's claim of harassment due to race (section 26 Equality Act 2010) succeeds in part.
4. The Claimant's claim of unfair dismissal succeeds on procedural grounds. The Claimant would have been dismissed in any event two weeks later.

REASONS

5. By a Claim Form dated 11 December 2023, the Claimant brought claims relating unfair dismissal, direct race discrimination, direct age discrimination, harassment relating to race, harassment due to age and unlawful deductions from wages. Early conciliation started on 4 October 2023 and ended on 15 November 2023. The claim form was presented on 11 December 2023

6. The Tribunal was assisted by a bundle prepared in advance of the hearing and sent to the Tribunal in three parts. Pages from this bundle are noted in square brackets, with volume and page number, e.g. [Vol1 p1].
7. The Tribunal heard live witness evidence from the Claimant and Andy Ryan in support of the Claimant; and from Laura Shilstone, Lawrence Shaw and Martin Parker on behalf of the Respondent.
8. The Tribunal heard considerable evidence regarding the background of this case. The Tribunal made findings of fact, and findings on how the law applies to those facts, only in relation to the matters that the Tribunal had to decide, as per the List of Issues, as set out below.
9. References to witness statements are designated as witness initial followed by paragraph number, e.g. [KM 1] for the Claimant's witness statement, paragraph one. The exception to this is when the statement of Mr Shaw is referred to. As both he and Ms Shilstone have the same initials, his statement is referred to using [Shaw 1]. No discourtesy is intended.
10. Both parties made oral submissions on the final day of the hearing. Both parties were afforded an opportunity to reply if they so wished.

Strike-out Application

11. The Claimant made an application, dated 4 August 2025, to strike out the response to the unfair dismissal claim. This application was heard at the commencement of the final hearing. The Claimant application was based on eight points. These are summarised below:
 - 11.1. The Respondent admitted that a fair procedure was not followed;
 - 11.2. The redundancy was not genuine;
 - 11.3. The Claimant's £6,000.00 commission was already accounted for and taxed;
 - 11.4. The Respondent has commenced proceedings in the County Court in relation to this £6,000.00 payment;
 - 11.5. There is no documentation in relation to this £6,000.00 payment;
 - 11.6. The Respondent has admitted to internal confusion with their procedures;
 - 11.7. The Respondent only provided an agreed bundle on 24 July 2025, when previous Tribunal orders had stipulated that this should be provided by 30 January 2025.
 - 11.8. Serious prejudice in that the Claimant lost his new job.
12. The application was refused for the following reasons. In relation to points one and two, these are matters to be determined on evidence. They are not sufficient to strike out the response. Points three, four and five are not relevant to the claim of unfair dismissal. Point six is similar to point one; it is a matter for the final hearing what impact this would have on the overall fairness of the dismissal. In relation to point seven, non-compliance with Tribunal rules and directions is a reason for a claim or respond to potentially be struck out. The Tribunal will, however, assess the seriousness of the breach and whether a fair hearing is still possible. The bundles have now been provided and were sent the Claimant well

in advance of this hearing. The Tribunal is satisfied there is minimal prejudice to the Claimant and a fair hearing can still take place. The breach is not sufficient to justify the response to the unfair dismissal claim being struck out. With regards to point eight, while the Tribunal understands that bringing Tribunal proceedings can be stressful, the effects of that stress are not sufficient to justify striking out all or part of a claim or response. There is no prejudice in terms of being able to deal with the case fairly.

13. The Claimant's strike-out application included the phrase *"And as a direct result of all this pressure, I've lost further employment, suffered serious stress, and been forced to defend myself — alone — in two overlapping legal proceedings"*. While this may be correct in respect of the County Court proceedings, in relation to this Employment Tribunal claim the Claimant is the one bringing the case. He does not have to defend himself against anything and it is entirely his choice if he wished to continue with the case or not. The Respondent has not done anything that requires the Claimant to *"defend himself"* in these proceedings.

The Issues

14. The agreed issues in the case are:

1. Unfair dismissal

1.1 Was the Claimant dismissed?

1.2 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy.

1.3 If the reason was redundancy, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

1.3.1 The Respondent adequately warned and consulted the Claimant;

1.3.2 The Respondent adopted a reasonable selection decision, including its approach to a selection pool;

1.3.3 The Respondent took reasonable steps to find the Claimant suitable alternative employment;

1.3.4 Dismissal was within the range of reasonable responses.

2. Remedy for unfair dismissal

2.1 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.1.1 What financial losses has the dismissal caused the Claimant?

2.1.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

2.1.3 If not, for what period of loss should the Claimant be compensated?

2.1.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.1.5 Does the statutory cap of fifty-two weeks' pay apply?

2.2 What basic award is payable to the Claimant, if any?

3. Direct race discrimination (Equality Act 2010 section 13)

3.1 The Claimant is of Black Caribbean ethnicity.

3.2 Did the Respondent do the following things:

3.2.1 Lawrence Shaw imitate a Caribbean accent on a Teams call in the presence of Laura Shilstone and Martin Parker and when discussing out of work issues hypothetical comparator);

3.2.2 Lawrence Shaw issue the Claimant with a formal notice for improper use of the CRM software (Comparator: Laura Shilstone);

3.2.3 On 22 August 2023, Lawrence Shaw criticised the Claimant regarding a prospect although the Claimant was correct (hypothetical comparator);

3.2.4 On 22 August 2023, Lawrence Shaw replying aggressively to an email including a video presentation (hypothetical comparator);

3.2.5 Lawrence Shaw write in an email of 23 August 2023 'It will be alright attitude you believe you know what to do' (hypothetical comparator);

3.2.6 In a series of email on 1 and 2 September 2023, criticise the Claimant's performance (hypothetical comparator);

3.2.7 In a text message on 22 September 2023, refer to the Claimant saying 'but he is Bajan and one has to remember that' (hypothetical comparator);

3.2.8 Calculate his commission incorrectly and demand repayment of commission (Comparator: Andy Ryan)?

3.3 Was that less favourable treatment?

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

3.4 If so, was it because of race?

4. Direct age discrimination (Equality Act 2010 section 13)

4.1 The Claimant's age group is 25-30 and they compare their treatment with older people.

4.2 Did the Respondent do the following things:

4.2.1 Lawrence Shaw call the Claimant a 'schoolboy not a £175k a year salesperson' in the presence of James Walton on 11 August 2023;

4.2.2 Lawrence Shaw refer to the Claimant as 'schoolboy', 'Junior' and 'kid' in relation to the Alliant account between July and September 2023 and on 4 August 2023 in an email to James Walton;

4.2.3 In September 2023, Lawrence Shaw refer to the Claimant as 'Junior Salesperson' instead of 'Strategic Account Manager'?

4.3 Was that less favourable treatment?

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

The Claimant has not named anyone in particular who they say was treated better than they were.

4.4 If so, was it because of age?

4.5 Was the treatment a proportionate means of achieving a legitimate aim?

4.6 The Tribunal will decide in particular:

4.6.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

4.6.2 could something less discriminatory have been done instead;

4.6.3 how should the needs of the Claimant and the Respondent be balanced?

5. Harassment related to race (Equality Act 2010 section 26)

5.1 Did the Respondent do the following things:

5.1.1 Lawrence Shaw imitate a Caribbean accent on a Teams call in the presence of Laura Shilstone and Martin Parker and when discussing out of work issues;

5.1.2 Lawrence Shaw issue the Claimant with a formal notice for improper use of the CRM software;

5.1.3 On 22 August 2023, Lawrence Shaw criticised the Claimant regarding a prospect although the Claimant was correct;

5.1.4 On 22 August 2023, Lawrence Shaw replying aggressively to an email including a video presentation (hypothetical comparator);

5.1.5 Lawrence Shaw write in an email of 23 August 2023 'It will be alright attitude you believe you know what to do';

5.1.6 In a series of email on 1 and 2 September 2023, criticise the Claimant's performance;

5.1.7 In a text message on 22 September 2023, refer to the Claimant saying 'but he is Bajan and one has to remember that';

5.1.8 Calculate his commission incorrectly and demand repayment of commission?

5.2 If so, was that unwanted conduct?

5.3 Did it relate to race?

5.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

5.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6. Harassment related to age (Equality Act 2010 section 26)

6.1 Did the Respondent do the following things:

6.1.1 Lawrence Shaw call the Claimant a 'schoolboy not a £175k a year salesperson' in the presence of James Walton on 11 August 2023;

6.1.2 Lawrence Shaw refer to the Claimant as 'schoolboy', 'Junior' and 'kid' in relation to the Alliant account between July and September 2023 and on 4 August 2023 in an email to James Walton;

6.1.3 In September 2023, Lawrence Shaw refer to the Claimant as 'Junior Salesperson' instead of 'Strategic Account Manager'?

6.2 If so, was that unwanted conduct?

6.3 Did it relate to age?

6.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

6.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

7. Remedy for discrimination

7.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

7.2 What financial losses has the discrimination caused the Claimant?

7.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

7.4 If not, for what period of loss should the Claimant be compensated?

7.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

7.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

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

7.8 Should interest be awarded? How much?

8. Unauthorised deductions

8.1 Were the wages paid to the Claimant on 28 September 2023 less than the wages they should have been paid?

8.2 Was any deduction required or authorised by statute?

8.3 Was any deduction required or authorised by a written term of the contract?

8.4 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

8.5 Did the Claimant agree in writing to the deduction before it was made?

8.6 How much is the Claimant owed?

15. It was agreed that this hearing would be concerned with liability only. A separate remedy hearing would be held if the Claimant's was successful in relation to any of his claims.

Background

16. The below is an agreed factual background. The Tribunal made further findings of fact in relation to each of the allegation in the List of Issues; these are set out below in relation to the individual issues. The Tribunal has only made findings of fact where they are relevant to the issues in dispute.
17. The Claimant's employment commenced on 1 September 2021 [141]. The Claimant began full-time employment with AAAtraq Ltd as a Strategic Account Manager, working remotely and reporting to Rob Andrews.
18. There was a change in the Claimant's line management in May 2023. The Claimant began reporting directly to CEO Lawrence Shaw after Rob Andrews' departure.

On 4 September 2023, the Claimant received a Formal Notice regarding CRM usage, which forms the basis of 5.1.2 and 3.2.2. On 12 September, the Claimant stated that he would reply to the Formal Notice on his return from the US, where he was attending the CAJPA 2023 conference in the US, where he was networking for the Respondent. He returned from the US conference on 18 September 2023.

19. It is agreed that the Claimant was dismissed with immediate effect by email at 07:11 on 20 September 2023. He was instructed to complete a handover that same day.
20. There was an attempt at reaching a settlement agreement with the Claimant, which was conducted by Mr James Walton, on behalf of the Respondent. No agreement was reached. The parties have agreed to waive any without prejudice status in relation to the existence of these settlement negotiations.

Relevant Law

21. The law relevant to the issues before the Tribunal is set out below.

Unfair Dismissal

22. Section 139 (1)(b) of the Employment Rights Act sets out the legal test for a redundancy situation:

“139 Redundancy.

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

...

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, ...have ceased or diminished or are expected to cease or diminish.”

23. If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under s98(4) Employment Rights Act 1996. In doing so, the Employment Tribunal applies a neutral burden of proof.

24. The legal test for fair dismissal by reason of redundancy is as set out at s.98(1)(b) of the Employment Rights Act 1996:

“98 General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

...

(c) is that the employee was redundant.”

25. The final relevant element of this test is set out at section 98(4) of the Employment Rights Act 1996 which is summarised as follows:

“(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee...”

26. Williams v Compair Maxam Ltd [1982] IRLR 83 sets out principles which guide Tribunals in determining the fairness of a redundancy dismissal. The basic requirements of a fair redundancy dismissal are fair selection of pool, fair selection criteria, fair application of criteria and seeking alternative employment, and consultation, including consultation on these matters.

27. In Langston v Cranfield University [1998] IRLR 172, the EAT (Judge Peter Clark presiding) held that so fundamental are the requirements of selection, consultation and seeking alternative employment in a redundancy case, they will be treated as being in issue in every redundancy unfair dismissal case.

28. “Fair consultation” means consultation when the proposals are still at the formative stage, adequate information, adequate time in which to respond, and conscientious consideration of the response, R v British Coal Corporation ex parte Price [1994] IRLR 72, Div Ct per Glidewell LJ, applied by the EAT in Rowell v Hubbard Group Services Limited [1995] IRLR 195, EAT; Pinewood Repro Ltd t/a County Print v Page [2011] ICR 508.

29. In Taymech v Ryan [1994] EAT/663/94, Mummery P said, “There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind the problem.”
30. In order to act fairly in a redundancy dismissal case, the employer should take reasonable steps to find the employee alternative employment, Quinton Hazell Ltd v Earl [1976] IRLR 296, [1976] ICR 296; British United Shoe Machinery Co Ltd v Clarke [1977] IRLR 297, [1978] ICR 70.
31. In all these matters, the employer must only act reasonably and there is a broad band of reasonable responses open to a reasonable employer.
32. A Tribunal must have regard to the principles set out in Iceland Frozen Foods Ltd v Jones 1983 ICR 17, EAT:
- “We consider that the authorities establish that in law the correct approach for the... Tribunal to adopt in answering the question posed by [S.98(4)] is as follows:
- (1) the starting point should always be the words of [S.98(4)] themselves;
- (2) in applying the section [a] Tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (the members of the... Tribunal) consider the dismissal to be fair;
- (3) in judging the reasonableness of the employer’s conduct [a] Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;
- (4) in many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, another quite reasonably take another;
- (5) the function of the... Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.”
33. It is generally not open to an employee to claim that his dismissal is unfair because the employer acted unreasonably in choosing to make workers redundant, Moon v Homeworthy Furniture (Northern) Ltd [1976] IRLR 298, James W Cook & Co (Wivenhoe) Ltd v Tipper [1990] IRLR 6. Courts can question the genuineness of the decision, and they should be satisfied that it is made on the basis of reasonable information, reasonably acquired, Orr v Vaughan [1981] IRLR 63.
34. The House of Lords’ decision in Polkey v AE Dayton Services Ltd 1988 ICR 142, HL establishes procedural fairness as an integral part of the reasonableness test under S.98(4). In Polkey, it was held that whether the employee suffered injustice and whether the employer acted unreasonably should not be confused. The former is not a necessary ingredient to examine unfair dismissal and will only be

considered when determining compensation. The latter is a necessary ingredient in a claim for unfair dismissal. When examining whether the employer acted unreasonably, a Tribunal must consider the facts known to the employer at the time of the dismissal. Should a Tribunal conclude that taking the appropriate procedural steps would not have avoided the employee's dismissal, this does not defeat a claim of unfair dismissal but can be reflected by reducing the amount of compensation.

Direct Discrimination

35. Section 13 of the Equality Act 2010 provides:

S. 13.

(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.

36. In considering claims of direct discrimination, the Tribunal will focus on the 'reasons why' the Respondent had acted (or failed to act) as it did. That is because, other than in cases of obvious discrimination, the Tribunals will want to consider the mental processes of the alleged discriminator(s): Nagarajan v London Regional Transport [1999] ICR 877.
37. The Tribunal further explained to the Claimant that in order to succeed in any complaints of direct discrimination, a Claimant must do more than simply establish that her or she has a protected characteristic and was treated unfavourably: Madarassy v Nomura International plc [2007] IRLR 246. There must be facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Claimant was discriminated against. This reflects the statutory burden of proof in section 136 of the Equality Act 2010, but also long-established legal guidance, including by the Court of Appeal in Igen v Wong [2005] ICR 931. It has been referred to as something "*more*", though equally it has been said that it need not be a great deal more: Sedley LJ in Deman v Commission for Equality and Human Rights [2010] EWCA Civ 1279. A Claimant is not required to adduce positive evidence that a difference in treatment was on the protected ground in order to establish a *prima facie* case.
38. The grounds of any treatment often have to be deduced, or inferred, from the surrounding circumstances and in order to justify an inference one must first make findings of primary fact from which the inference could properly be drawn.
39. This is generally done by a Claimant placing before the Tribunal evidential material from which an inference can be drawn that he or she was were treated less favourably than he or she would have been treated if they had not been a particular race, gender, religion etc: Shamoon v RUC [2003] ICR337. 'Comparators', provide evidential material. But ultimately, they are no more than tools which may or may not justify an inference of discrimination on the relevant protected ground, in this case race. The usefulness of any comparator will, in any particular case, depend upon the extent to which the comparator's circumstances are the same as the Claimant's. The more significant the difference or differences the less cogent will be the case for drawing an inference.

40. In the absence of an actual comparator whose treatment can be contrasted with the Claimant's, the Tribunal can have regard to how the employer would have treated a hypothetical comparator. Otherwise, some other material must be identified that is capable of supporting the requisite inference of discrimination. This may include a relevant statutory code of practice. Discriminatory comments made by the alleged discriminator about the Claimant might, in some cases, also suffice.
41. Unconvincing denials of a discriminatory intent given by the alleged discriminator, coupled with unconvincing assertions of other reasons for the allegedly discriminatory decision, might in some case suffice. Discrimination may be inferred if there is no explanation for unreasonable / unfair treatment. This is not an inference from unreasonable / unfair treatment itself but from the absence of any explanation for it.
42. It is only once a prima facie case is established that the burden of proof moves to the Respondent to prove that it has not committed any act of unlawful discrimination, so that the absence of an adequate explanation of the differential treatment becomes relevant: Madarassy v Nomura [2007] EWCA Civ 33.
43. In the Tribunal's deliberation regarding the Claimant's direct discrimination complaints, the Tribunal is ultimately concerned with the reasons why each of the alleged perpetrators acted as they did in relation to the Claimant.

Harassment

44. Harassment is defined in section 26 of the Equality Act 2010 as follows:
 - (1) A person (A) harasses another (B) if –
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of –
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. ...
 - (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect."
45. In Richmond Pharmacology v Dhaliwal UKEAT/0458/08/CEA, the EAT provided guidance to the effect that an Employment Tribunal deciding harassment claims should consider in turn:
 - 45.1. the alleged conduct,
 - 45.2. whether it was unwanted,
 - 45.3. its purpose or effect and
 - 45.4. whether it related to a protected characteristic.

As to effect in particular, at paragraph 15, the EAT made clear the importance of the element of reasonableness, having regard to all of the relevant circumstances, including context and in appropriate cases whether the conduct was intended to have that effect.

46. In Pemberton v Inwood [2018] EWCA Civ 564, Underhill LJ revisited Dhaliwal in light of the introduction of s.26 and the difference in language to the predecessor harassment legislative provisions. Underhill LJ made clear that in considering whether conduct had the proscribed effect, the Tribunal must consider both the subjective perception of the complainant and whether it was objectively reasonable for that conduct to be regarded as having that effect taking into account all other circumstances.
47. In Tees Esk and Wear Valley NHS Foundation Trust v Aslam [2020] IRLR 495, the EAT held that section 26 does not apply to on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be. There must be some part of the factual matrix which properly leads to the conclusion that the conduct is related to the particular characteristic.
48. The type of harassment complained of by the Claimant is “*related to a... protected characteristic*”. The phrase is relatively wide. It allows for a looser connection between the conduct and the protected characteristic than the “*because of*” test in direct discrimination. It is not necessary to consider whether the alleged perpetrator would have treated someone without the relevant protected characteristic in the same way.

Unlawful Deductions

49. Section 13 of the Employment Rights Act 1996 provides as follows:
- (1) An employer shall not make a deduction from wages of a worker employed by him unless—
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
 - (2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—
 - (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question

[...]
 - (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
50. S.14 of the ERA 1996 provides as follows:
- (1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—
 - (a) an overpayment of wages.

51. A student loan repayment is a deduction which is required by virtue of a statutory provision (see part 4 of the Education (Student Loans) (Repayment) Regulations 2009).
52. A Tribunal can construe the terms of an employment contract governing remuneration for the purposes of an unauthorised deduction claim in order to determine whether wages are properly payable (Agarwal v Cardiff University and Anor [2018] EWCA Civ 2084)
53. Section 23 ERA gives a worker the right to complain to an Employment Tribunal of an unauthorised deduction from wages. Where a Tribunal finds a complaint under section 23 ERA well founded it shall make a declaration to that effect and shall order the employer to pay the worker the amount of any deductions made in contravention of section 13 ERA (s24(1)(a) ERA).
54. The essential characteristic of wages is that they are consideration for work done: Delaney v Staples [1992] IRLR 191.

Findings and Deliberation

55. The same facts are relied upon for the claims of direct discrimination and harassment due to race. The Tribunal therefore assesses the claim simultaneously, as they rely on the same facts. The law is such that if a claim succeeds as direct discrimination it cannot also be harassment, and vice versa. The allegations can be one or the other, or neither, but not both. The same also applies for the claims of direct age discrimination and harassment due to age.
56. Applying the law to the relevant facts, the Tribunal makes the following findings in relation to the List of Issues.

Unfair Dismissal

57. It is accepted that the Claimant was dismissed.
58. The Claimant's case is that there was no real redundancy situation, however he has not offered any convincing evidence to support this. The Claimant relies on a message sent by Mr Shaw on 22 September 2023, which says:

"I have to say KM does have grit / resourcefulness – where I was going to introduce he could have really developed. Imagine the good, where things could be with all this energy and what will now be a lot of money could have done".
59. The Claimant's case is that this message shows regret and recognition of the Claimant's value to the Respondent. The Claimant argues that this raises doubt over the true motivation behind his dismissal. The Tribunal rejects that argument. The Tribunal does agree that the message conveyed a tone of admiration for the Claimant's potential and regret that he and the Respondent will no longer be working together. The Tribunal is satisfied that this is entirely consistent with a redundancy situation where, reluctantly, the Respondent has had to bring a role to an end.

60. The Claimant did accept, in cross examination, that at the time of his dismissal there were only two employees in the company. One was himself, and the other was Mr Shaw, the owner and director.

61. Mr Shaw's evidence was that the role that the Claimant was employed in was not going to continue. Mr Shaw says:

"In September 2023 I decided that the role in which the Claimant was employed was no longer required, and the company therefore gave the Claimant notice on 20th September 2023 that their employment would finish on 19th October 2023" [Shaw 4].

"At the time that this happened, the company had only two employees, myself and the Claimant. There were also a few contractors involved with the company, none of whom were in sales roles. There were no other employees or contractors in roles at all similar to the Claimant's, so it was neither necessary nor possible to make any decisions relating to which employee(s) the redundancy would apply to. To this date we have still not employed anyone else, or hired any contractors, in a similar role to the Claimant" [Shaw 5].

62. The Tribunal accepts that the direction of the company was at Mr Shaw's discretion, as he was the sole owner and director. It was up to him whether or not to continue the sales role that the Claimant was in. Mr Shaw gave convincing evidence that the Respondent was not looking to enter a multi-sales market. He had done 20 months of research and a 14 – 16-week deeper look at the market and concluded that there was no future in the Respondent operating within that market.

63. The Tribunal accepts Mr Shaw's evidence that the role the Claimant was in did cease and that the Respondent has not employed anyone in a role similar to the Claimant role since that role became redundant. The Tribunal therefore is satisfied that there was a genuine redundancy situation.

64. The Respondent has conceded that the process for making the Claimant redundant could have been better. There was minimal consultation and there was no appeal process. Given this concession, the Tribunal finds that the Claimant's dismissal was procedurally unfair.

65. The Tribunal does, however, accept the Respondent arguments in relation to a Polkey contribution. The Tribunal is satisfied that the Claimant role no longer existed and there were no alternative roles available within the company, which is supported by contemporaneous documents [Vol2 p88]. If a fair process had been followed, the Claimant would have remained an employment for longer, but the use of a fair process would not stave off the inevitable. The Claimant would have been dismissed in any event. Submissions were heard in relation to the Polkey argument and the Respondent argued that the Claimant's dismissal would have happened in any event one or two weeks later. The Tribunal found this to be convincing and finds that the Claimant employment would have come to an end two weeks later than it did.

66. In his witness statement, the Claimant says *"my dismissal from AAAtraq was not only procedurally and substantively unfair, but also tainted by discrimination on the grounds of my race and age"*. It is important for the Tribunal to make the

distinction that the Claimant's claim of unfair dismissal has never been pleaded as one of race discrimination or age discrimination. The List of Issues clearly set out this is an 'ordinary' unfair dismissal claim based on a redundancy situation. The List of Issues was agreed between the parties and the Claimant cannot introduce claims of race or age discrimination at a later date. The Tribunal has not considered the Claimant's dismissal in the context of race or age discrimination as this was never how the claim was pleaded.

Allegations in relation to race

67. The first question for the Tribunal is "Did the Respondent do the following things?" in relation to the allegations at 3.2.1 – 3.2.8, and 5.1.1 – 5.1.8 of the List of Issues (the same factual allegations in both lists). If, as a matter of fact, the things did happen, the Tribunal then go on to consider if this was unwanted conduct, and if it related to race, in respect of the harassment claims. Alternatively, if the things did happen, the Tribunal must consider if this was less favourable treatment, and if it was because of the Claimant race, in respect of the direct discrimination claim. As noted above, allegations can be proved to be a case of direct discrimination or harassment, but cannot be both.
68. The Tribunal has assessed each of the allegations in turn.
69. **3.2.1 Lawrence Shaw imitate a Caribbean accent on a Teams call in the presence of Laura Shilstone and Martin Parker and when discussing out of work issues hypothetical comparator);**
70. The Claimant's case is that *"During a Teams meeting on 21st August 2023, Lawrence Shaw made a comment attempting to imitate a Caribbean accent while discussing marketing material. He said, "No worries, it will be alright," imitating a Caribbean accent"* [KM 26]. The Claimant further says *"On 19th September 2023, Martin Parker, a colleague from a completely different department, raised the issue of Lawrence Shaw's discriminatory comment with me. Martin shared that he had spoken to Laura Shilstone about the comment, as he felt uncomfortable with what had been said"* [KM 28].
71. The evidence of Mr Shaw was that he had not attempted a Caribbean accent in a company meeting or call at any time [Shaw 8].
72. The evidence of Ms Shilstone was that this remark had never been made by Mr Shaw [LS 7]. She also denied that any conversation regarding this remark took place between her and Mr Parker [LS 9] and was consistent with this during cross examination. This was supported by the evidence of Mr Parker, who said that the comment was not made by Mr Shaw [MP 3] and that no conversation between him and Ms Shilstone took place regarding any such comment [MP 2].
73. The Tribunal found the Respondent's evidence in relation to this to be clear, consistent and supporting. The weight of evidence from the Respondent's witnesses, who were all credible, is such that the Tribunal finds that this allegation did not happen. Mr Shaw did not say *"No worries, it will be alright,"* imitating a Caribbean accent in a meeting on 21 August 2023.

74. As the Tribunal finds that the facts of this allegation did not actually happen, it cannot succeed as a claim of direct race discrimination or as a claim of harassment relating to race.
75. **3.2.2 Lawrence Shaw issue the Claimant with a formal notice for improper use of the CRM software (Comparator: Laura Shilstone);**
76. It is not a matter of contention between the parties that this did happen and the evidence for it can be seen in the bundle at [Vol2 p71].
77. In relation to a claim of direct discrimination, the Claimant compares himself to Ms Shilstone. He says that he was criticised for not using the CRM software in the way that Mr Shaw wanted it to be used, but Ms Shilstone was not using it in that way either, yet she was not criticised.
78. Mr Shaw and Ms Shilstone both gave corroborating and convincing evidence that Ms Shilstone's role was not commensurate with that of the Claimant. Mr Shaw described her as "*my EA*", and when he was asked if she was involved in sales he was clear that she was not. Mr Shaw did accept that he had said in an email [Vol2 p39] to Ms Shilstone on 21 August 2023 "*it probably makes sense for you to also be on the AAAtraq CRM?*" but he explained in cross examination that this was a proposal and it was subsequently decided that she didn't need to be involved with the CRM system.
79. Ms Shilstone's evidence was that, while she has a background in sales, that is not the role that she fulfilled at the Respondent. She said her role was (and still is) to manage Mr Shaw's diary and ensure things were "*done as Mr Shaw likes*". Her role is now classified as "*chief of staff*" but this was not her title during the time the Claimant was employed with the Respondent. She said in cross examination, however, that her role is still very similar, just with a more senior title. She said that she could also be referred to as "*general dogsbody*" and that her role is to make things run smoothly.
80. The Tribunal found Ms Shilstone to be a convincing and credible witness and accepts her evidence on this point, which is supported by that of Mr Shaw. The Tribunal finds that she did not use the CRM software in the same way that the Claimant was expected to and therefore she would not have been criticised for not doing so.
81. The Tribunal therefore concludes that the issue of a formal notice to the Claimant was not less favourable treatment. Ms Shilstone is not the appropriate comparator; the appropriate comparator would be a hypothetical comparator fulfilling the same role as the Claimant and who, in the view of Mr Shaw at least, was not using the CRM software as Mr Shaw wished it should be used. The Tribunal is satisfied that any such person would have been sent a formal notice by Mr Shaw, regardless of their race. The claim of direct race discrimination in relation to this allegation therefore fails.
82. In the broader context of the harassment claim, the test is "*is this unwanted conduct?*", and if so "*is it related to race?*". The Tribunal is satisfied that the issuing of a formal notice is likely to be unwanted, but the Respondent's reason for doing so is clear and a believable one. There is no evidence to link the issue

of this formal notice to the Claimant race. The claim of harassment in relation to this allegation therefore also fails.

83. **3.2.3 On 22 August 2023, Lawrence Shaw criticised the Claimant regarding a prospect although the Claimant was correct (hypothetical comparator);**
84. The Tribunal accepts that there was a difference of opinion between Claimant and Mr Shaw. This related to the approach being taken in marketing. Contemporaneous text and WhatsApp messages from James Watson and Laura Shilstone suggested that Mr Shaw could be single-minded. He was described as *"being a bully"* by Mr Watson and *"in bully mode"* by Ms Shilstone in one WhatsApp message exchange.
85. Laura Shilstone confirmed in cross-examination, in relation to Mr Shaw, that *"he is the boss"* and that decisions made regarding the running of the company were *"ultimately his decision"*.
86. The Claimant has raised allegations of bullying in relation to Mr Shaw. This is not a claim that the Employment Tribunal has any jurisdiction over, so the Tribunal does not need to make any determination of whether this was bullying behaviour or just and outspoken difference of opinion between two people in the workspace.
87. In the view the Tribunal, however, it is likely that Mr Shaw would have criticised anyone regarding a prospect that was contrary to how he wanted his company to be run. The evidence would suggest that this was indicative of his management style. Such criticism was, therefore, not less favourable treatment, as any hypothetical comparator would have been treated the same, regardless of race.
88. In the broader context of the harassment claim, the Tribunal again considered *"is this unwanted conduct?"*, and if so *"is it related to race?"*. The Tribunal is satisfied that criticism is likely to be unwanted, but there is no evidence to link this to the Claimant race. The allegations of direct discrimination due to race and harassment relating to race therefore fail.
89. **3.2.4 On 22 August 2023, Lawrence Shaw replying aggressively to an email including a video presentation (hypothetical comparator);**
90. The email in question is in the bundle at [Vol2 p55], and also [Vol2 p50]. The date of email is in fact 23 August 2023, but the Tribunal is satisfied that this does not impact on the claim. The Tribunal is satisfied that the tone of the email could be interpreted as aggressive.
91. The Tribunal makes a similar finding in relation to the allegation 3.2.2 above. The Tribunal's conclusion is that Mr Shaw was not satisfied with how arrangements had been made for the video presentation that was due to be made to a prospective client. Mr Shaw said in cross-examination that there were *"a number of issues with the webinar"*. He expressed his thoughts on this via a forthright email to the Claimant and to Ms Shilstone and Mr Watson.
92. The Tribunal does not need to make findings on whether Mr Shaw or the Claimant were correct in what they said in their respective emails, nor in relation

to how the video presentation should have been conducted. What the Tribunal is concerned about is whether this was less favourable treatment when compared to hypothetical comparator not sharing the same protected characteristic as the Claimant in relation to race. The Tribunal is satisfied that an email on the same terms would have been sent to anyone who Mr Shaw had felt had fallen short of his view on how their job should be done.

93. The Tribunal accepts that the Claimant objected to the tone of the email however, even if this was unwanted conduct, there is no evidence to say this related to the Claimant race. An assertion or suspicion of the part of the Claimant is not sufficient; There must be some part of the factual matrix which properly leads to the conclusion that the conduct is related to the particular characteristic (Tees Esk and Wear Valley NHS Foundation Trust v Aslam [2020] IRLR 495). The Tribunal is satisfied that the conduct does not relate to race, and therefore the claim of harassment in relation to this allegation fails.
94. The Tribunal is further satisfied that this is not less favourable treatment, as it is likely that an email of the same tone, which appears habitual to Mr Shaw, would have been sent to a hypothetical comparator in the same circumstances as related to the Claimant at the time, regardless of the hypothetical comparator's race. The Claimant direct discrimination therefore fails.
95. **3.2.5 Lawrence Shaw write in an email of 23 August 2023 'It will be alright attitude you believe you know what to do' (hypothetical comparator);**
96. In relation to the same email above [Vol2 p55], Mr Shaw wrote "*It will be alright' attitude, you believe you know what to do and easy to convince those that don't understand the detail how well you are doing*". This sentence appears as the fifth of six subparagraphs/sentences which appear under the sentence "*I've spent considerable time with you for you to what evidence shows as you paying lip service;*". The email is full of short, abrupt sentences and is very hard to read. The overall impression is that Mr Shaw is not satisfied with the Claimant's approach to his work.
97. In cross-examination, Mr Shaw said that "*it will be all right*" was a phrase that the Claimant commonly used. This Shaw went on to say that, in his view, the Claimant "*never did the actions*".
98. The Tribunal accepted that the Claimant found the criticism and tone of this email to be unwanted. It is objectively reasonable that this could create a hostile or offensive environment for the Claimant. It was, however, never put to Mr Shaw in cross-examination that him saying "*It will be alright' attitude, you believe you know what to do...*" had anything to do with the Claimant's race. As per Aslam, there must be some part of the factual matrix which properly leads to the conclusion that the conduct is related to the particular characteristic, in this instance, race. It is clear that the relationship between Claimant and Mr Shaw was strained at this point, and Mr Shaw's brusque and critical email did nothing to help the situation. The Tribunal finds, however, that the criticism he levelled at the Claimant, including the phrase that is the subject of this allegation, were related to the Claimant attitude to work. His quoting this phrase was due to something that (in Mr Shaw's view) the Claimant commonly said. It was not related to the Claimant's race.

99. In relation to any finding less favourable treatment, the Tribunal is satisfied that Mr Shaw would likely have treated a hypothetical comparator of a different race in the same way. The use of the phrase was not because of the Claimant's race.
100. The claims of harassment and direct discrimination therefore fail.
101. **3.2.6 In a series of email on 1 and 2 September 2023, criticise the Claimant's performance (hypothetical comparator);**
102. The emails between Mr Shaw and the Claimant dated 1 September 2023 are in the bundle at [Vol2 p74 – 76]. One email from 2 September 2023 is at [Vol2 p68]. Only this one is actually from Mr Shaw and refers to the Claimant directly. It is unclear from the copy provided who this was sent to.

"Suggest see what / how Kensley answers this one.

Relationship, talking about the dog or football great reason to be my friend (but we are selling a product not consultative ideas) but answer to this one would be related to 'have them sign up to the service' and system will guide them, or yes we can do this and assist with contract (not the core business – going away from what we do again) but circa \$5-7k.

I'm not going to waste time talking to him about this" [Vol2 p68].

This is the only email of the Tribunal considers could be read as being critical of the Claimant's performance, but there is no evidence that this relates to the Claimant's race. As noted above, the Claimant and Mr Shaw had different personalities and different ideas on how work should be done. This does not, however, necessarily mean this is therefore related to race or because of the Claimant's race.

103. Very little was put to Mr Shaw in relation to this allegation and it fell to the Judge to put the Claimant's case to Mr Shaw in a neutral way for him to comment on. Mr Shaw explained that he did have issues with how the Claimant worked but that had nothing to do with the Claimant's race. The Tribunal found that evidence to be credible and there are no facts from which the Tribunal could conclude that discrimination had occurred.
104. This allegation therefore fails as both a claim of direct discrimination and as a claim of harassment.
105. **3.2.7 In a text message on 22 September 2023, refer to the Claimant saying 'but he is Bajan and one has to remember that' (hypothetical comparator);**
106. The screenshot of the message at [Vol 3 p9] confirms that this comment was said by James Watson in a WhatsApp conversation with Mr Shaw.
107. The term "*Bajan*" is used to describe someone from Barbados. The Claimant gave evidence that the term is not of itself racist or discriminatory. The Claimant said that it could be, depending on the context in which it was used. The Tribunal accepts this argument. Any term relating to race or nationality that expresses negative or derogatory connotations in relation to that term is likely to be an act of discrimination or harassment.

108. The message from Mr Watson starts off complementary in relation to the Claimant, but then goes on to say *“but one has to remember he is Bajan”*. The fact that there is a complementary phrase followed by the word *“but”* shows that whatever follows the *“but”* is viewed by Mr Watson as something negative. The Tribunal is therefore satisfied that the phrase *“but one has to remember he is Bajan”* is a negative comment and it is based on the Claimant’s nationality.
109. The Tribunal is satisfied that this unwanted conduct, and it relates to race.
110. Mr Shaw said that he spoke to Mr Walton in relation to this message after he had received it. He said he did not challenge the use of the word *“Bajan”* as he did not know what it meant. He said he did not understand the reference to cricket, as he knew that the Claimant played football and not cricket. The focus of the call was in relation to Mr Walton continue proposal that there should be a new venture based in Reading, which Mr Shaw had already vetoed. Mr Shaw’s evidence was that the conversation centred on this, as he considered the argument regarding a Reading office had already been dealt with and resolved and he did not want to go over it again. Mr Shaw was credible when he explained that this was the focus of the conversation and that he did not query the beginning part of the message because he was concentrating on the argument regarding the Reading office. The Tribunal is satisfied that Mr Shaw’s failure to challenge this comment by Mr Walton is understandable and reasonable given the content of their conversation. The Tribunal is satisfied that Mr Shaw was not in agreement with the negative comments that Mr Walton had made and in fact did not understand it.
111. The Respondent’s submissions on this point largely centred around the fact that it was not Mr Shaw who said this but Mr Watson. That is evident from the WhatsApp message. It appears the Respondent has missed the point in relation to this message. The Respondent’s representative was invited to make any submissions they wanted to in relation to agency, but none were made. There has been no statutory defence pleaded.
112. The Tribunal has considered the statutory provision under section s.109(2) of the Equality Act and has considered the correct test as identified in Anderson v CAE Crewing Services Limited [2024] EAT 78. The EAT pointed out that *“agency may best be seen, not as a status, but as a description of a person while exercising the authority conferred by the principal to act on the principal’s behalf”*.
113. Mr Shaw said in evidence that there was no formal relationship between the Respondent company and James Watson, but a formal relationship is not necessary following the test in Anderson. Ms Shilstone confirmed that Mr Watson had been involved with the Respondent since 2019. Mr Parker and Ms Shilstone both gave evidence which supported the Claimant’s evidence that Mr Watson was involved in restructuring of the roles within the company (such as the role of the Claimant, who was an employee). Mr Watson continued to be given important tasks within the company after this message was sent, such as attempting to negotiate a settlement with the Claimant. Mr Watson was clearly acting with the authority of the Respondent. The Respondent is therefore liable for his acts of discrimination or harassment.

114. This part of the Claimant's claim of harassment therefore succeeds. As the allegation succeeds as a claim of harassment, it cannot also be direct discrimination.

115. 3.2.8 Calculate his commission incorrectly and demand repayment of commission (Comparator: Andy Ryan)?

116. There was considerable confusion around the payment of the Claimant commission, and the Tribunal understand that this is also subject to County Court proceedings. It was discussed at the beginning of the hearing whether the case should be adjourned to allow the conclusion of the County Court proceedings. Neither party wished for this to happen, as both parties were keen for the employment Tribunal claim to be adjudicated upon. The Tribunal therefore makes it clear that any findings in relation to the commission payments to the Claimant do not impact on any County Court claim. The issue before the employment Tribunal is not "was the Claimant's commission incorrectly calculated?" (and therefore, by extension, whether or not he is required to return some or all of the payment). The issue could be approached by, assuming there was a miscalculation of the Claimant commission, addressing the question of "was this unwanted conduct and was it related to race?" (in respect of harassment) and "was this less favourable treatment and was it because of the Claimant's race" (in respect of direct discrimination).

117. It is agreed that the Respondent paid the Claimant £6,000.00. This appears to be by way of a direct payment, and the Claimant did not pay any tax or National Insurance on this payment. There is no paperwork relating to this payment. It was described by Mr Shaw as a "personal loan" [KM 39] and an "interest-free loan" [KM 61] according to the Claimant.

118. Mr Golley of the Respondent dealt with the Claimant's complaint in relation to his final payslip. In an email to the Claimant [provided separately to the bundle], Mr Golley said:

"1. Nature of the £6,000 Payment

As previously outlined, the £6,000 payment was made to you as an advance against future commission earnings, not as confirmed or earned commission at the time of payment. This was subject to the expectation that it would be reconciled upon receipt of a valid commission claim form or otherwise repaid. No such claim was submitted, and the commission entitlement ultimately confirmed (£635.51) fell substantially short of the amount advanced.

2. PAYE Processing

In the absence of repayment or a substantiated claim, and in line with HMRC requirements, the £6,000 had to be processed through payroll before your departure to ensure correct application of Income Tax and National Insurance. This payroll action was not a repayment or cancellation of the outstanding amount, but rather a compliance step to reflect the income for tax purposes. The corresponding deduction ensured that no duplicate payment was made, but it does not extinguish the company's right to recover the overpaid sum."

119. In a meeting with the Claimant on 31 July 2024, the Claimant and Mr Golley discussed the commission and the October payslip. A transcript of the meeting was provided to the Tribunal separately to the bundle. Mr Golley states:

L: It just doesn't make sense at all.

(1:58)

L: What I need to check — and what I will check, mate — is that you're right: When they paid you in September, they should have paid you for—don't forget—any commission and all the rest of that. They should have paid you for the full month because you worked the full month.

(2:16)

L: And they didn't. And they realised that. So what they did — and this is what I had to get to the bottom of — When they paid you in October, the salary payments in October were up to the day you stopped employment, which was the 19th October.

(2:36)

L: And the balance of the pay in September — they hadn't paid you. So that's why the figure for October is higher. That bit they've demonstrated to me.

(2:46)

L: But you're absolutely right — the more I look at this now, and I can see the termination, which is non-tax — I understand what that is. That's a redundancy payment.

(2:57)

L: But what I don't understand is the rest of the detail.

120. The witness statements of Mr Shaw, Ms Shilstone and Mr Parker are all silent on this issue. In cross-examination, when Mr Shaw was asked why there was no paperwork for this £6,000.00 payment, his reply was *"because we're nice"*. Mr Shaw denied that it was an *"interest-free loan"* and stated that the Claimant had led the Respondent believe that there would be other deals. No further deals (which would have generated a commission payment) went through, however. Mr Shaw did not know how much any of these deals would have been worth or what the commission would have been.

121. It is clear that there was considerable confusion on the part of the Respondent as to what this payment was even for. The Claimant's case, however, is that this was done by the Respondent because of his race. The Tribunal finds that to be implausible. There are no facts from which the Tribunal could conclude that discrimination had occurred. The Claimant's comparator, Mr Ryan, did not work on the same sort of contract that the Claimant did and was paid a commission in a different way, which Mr Ryan accepted in cross-examination. The Tribunal is satisfied that he is not an appropriate comparator.

122. The second part of this allegation is that the demand for repayment is an act of race discrimination. The Tribunal finds that this is also implausible. There are no facts that would reverse the burden of proof. The Respondent does not seem to know why it paid the Claimant £6,000.00 or what this was for, but upon deciding that it had been paid in error, the Respondent then demanded its return. The reason why the Respondent is asking for the return of the money is therefore because the Respondent believed it had been paid in error. The reason is not because of the Claimant's race, nor does it relate to race. This allegation therefore fails both as a claim of direct discrimination and as a claim of harassment.

Allegations in relation to age

123. As with the allegations in relation to race above, the first question for the Tribunal is “Did the Respondent do the following things?” in relation to the allegations at 4.2.1 – 4.2.3, and 6.1.1 – 6.1.3 of the List of Issues (the same factual allegations in both lists). If, as a matter of fact, the things did happen, the Tribunal then go on to consider if this was unwanted conduct, and if it related to age, in respect of the harassment claims. Alternatively, if the things did happen, the Tribunal must consider if this was less favourable treatment, and if it was because of the Claimant age, in respect of the direct discrimination claim. A further step is, if it was because of age, was the treatment a proportionate means of achieving a legitimate aim? The Tribunal repeats that allegations can be proved to be a case of direct discrimination or harassment, but cannot be both.
124. **4.2.1 Lawrence Shaw call the Claimant a ‘schoolboy not a £175k a year salesperson’ in the presence of James Walton on 11 August 2023;**
125. The Claimant’s case is that, during a meeting regarding a sales presentation he had arranged with a top-tier insurance company, Mr Shaw said to him “*You are a schoolboy, not a £175k a year salesperson*” [KM 47].
126. This was put Mr Shaw in cross examination who denied using the word “*schoolboy*”. Mr Shaw did accept that he is said “*not a £175k a year salesperson*”. Mr Shaw explained that he had approximately a thousand emails in response to disclosure requests for these Tribunal proceedings, and the word “*schoolboy*” was found only seven times, all of which related to one email from 24 August 2023 [Vol2 p 58]. This email had been sent to Mr Walton, who had disseminated it to Ms Shilstone and the Claimant. Within the email, there was the line “*Issues above undermining the value of the Brand, and schoolboy errors cannot happen*”.
127. Mr Shaw’s evidence was this is the only time he has used the word “*schoolboy*”. He said it was not aware that he would use to describe a person, and the one time it was used in his email actually describes “*schoolboy errors*”; by which he said he meant simple mistakes which experienced staff should not be making.
128. The Tribunal found his evidence credible on this point. The reference of schoolboy errors is not directed at the Claimant in particular and the email is sent to at least three people. The Tribunal finds that the use of the word “*schoolboy*” was in relation to “*schoolboy errors*” and this is a common phrase. The Tribunal is satisfied that the use of this phrase in this context is not unwanted conduct, nor does it create an intimidating, hostile, degrading, humiliating or offensive environment.
129. In relation to the second part of the phrase, which Mr Shaw accepts he did use, Mr Shaw said that this was factual. The Claimant’s role was not a £175 year role. The Claimant accepted in cross examination that he did not earn this much and had not done so previously. The Tribunal is satisfied that this is not unwanted conduct. Even if the Tribunal is wrong in respect of that and the Claimant subjectively found that it created an intimidating, hostile, degrading, humiliating or offensive environment, the Tribunal is satisfied that it was not objectively reasonable for him to think so. The Tribunal is further satisfied that the comment “*not a £175k a year salesperson*” is not related to the protected characteristic of

age. The Claimant's claim of harassment therefore fails. The Tribunal is further satisfied that the common was not said because of the Claimant age. It was said because it was a reasonable description of what the Claimant's role was.

130. This allegation therefore fails as a claim of direct age discrimination or discrimination due to age.

131. **4.2.2 Lawrence Shaw refer to the Claimant as 'schoolboy', 'Junior' and 'kid' in relation to the Alliant account between July and September 2023 and on 4 August 2023 in an email to James Walton;**

132. As noted above, there is only one mention in an email [Vol2 p58] of the word "*schoolboy*" and it is in relation to "*schoolboy errors*". The parties accept that there is an error in the List of Issues and the date referred to in the List of Issues should be 24 August 2023 not 4 August 2023. The Tribunal is satisfied that this is the only email that contains that word and, as defined above, it is not directed at the Claimant. The Tribunal accepts the evidence of Mr Shaw that he did not use this term verbally between July and September in relation to the Claimant.

133. The emails in relation to the Alliant account are in Volume 2 of the bundle. The word "*junior*" does not appear in any of those emails. It only appears later in relation to emails concerning the Claimant's dismissal. Nor can the word "*kid*" be found in any of the email exchanges between either Mr Shaw and the Claimant or Mr Shaw and Mr Walton.

134. The Claimant's case is that he "*was constantly referred to as 'junior' in a condescending manner [sic]*" [Vol1 p35], but no specific examples of when this was said have been given and there is no corroborating evidence of when this was said or even who is alleged to have said it. There is no record that this had been raised at the time by way of a grievance and all the allegations in relation to this only materialised after the Claimant was dismissed. The Tribunal finds that it was likely that, if the Claimant was experiencing this behaviour, he would have raised it at the time by way of a grievance. He did not do so, and therefore the Tribunal finds that it is more likely that the Claimant was not referred to as "*junior*" or "*kid*" by anyone at the Respondent.

135. The Tribunal is satisfied that, as a matter of fact, Mr Shaw did not refer to the Claimant as "*schoolboy*", "*junior*", or "*kid*" in relation to the Alliant account. The Tribunal repeats the findings above in relation to the word "*schoolboy*" and why this was used. The Tribunal is satisfied that this allegation is factually not made out and cannot succeed as a claim of direct discrimination nor as a claim of harassment.

136. **4.2.3 In September 2023, Lawrence Shaw refer to the Claimant as 'Junior Salesperson' instead of 'Strategic Account Manager'?**

137. In an email of 25 September 2025 [Vol2 p99] from the Claimant to Mr Shaw, the Claimant makes many references to Mr Shaw calling the Claimant a "*junior salesperson*".

138. It is unclear when the Claimant says that this comment was made about him. If it was verbally, that was not put to Mr Shaw nor is there any corroborating evidence that this is something Mr Shaw said. If it is in relation to Mr Shaw's email of 24 September 2025 [Vol2 p100], the word "*junior*" only appears twice in

that email; once in the sentence *“There are no junior sales roles”* and then in the sentence *“the company has no junior roles available”*.

139. The Claimant accepted in cross examination that it is common in a sales environment for job titles to be aggrandised. The Tribunal does not need to make findings on what a junior sales role is or whether the Claimant was in such a role. The Tribunal is concerned with what was in the mind of Mr Shaw when he referred to the Claimant as a *“Junior Salesperson”* instead of *“Strategic Account Manager”*.
140. Mr Shaw’s email of 24 September 2025 says *“There are no junior sales roles; (regardless of 'local' title, your role was based on defined capabilities and responsibilities) those where there is a need for day-to-day management; discipline, attendance need to monitored have been removed”* [Vol2 p88]. Mr Shaw elaborated on this during cross examination. He explained that the Respondent is a small company, with one director, which is himself. The only other employee at the time was the Claimant. The Respondent had self-employed contractors acting in the role of managers. There were other sales staff who reported to, and were managed by, the managers. Mr Shaw said in his view that anyone who reported to a manager was a junior member of staff. The managers were senior members of staff, and he was the director. This was a simple but credible view of how he saw the company hierarchy.
141. The Tribunal is not satisfied that Mr Shaw did call the Claimant a *“junior salesperson”*. Any reference to *“junior salesperson”* or *“junior sales roles”* were in relation to the role being performed, not the Claimant directly. As noted above, the Claimant did not raise any grievance at the time in relation to age discrimination. The Tribunal finds this means it is likely that the Claimant was not described as *“junior”* during his time at the Respondent. This, in turn, makes it more likely that the reference to *“junior”* related to the role that the Claimant was in, not to the Claimant’s age.
142. The Tribunal is satisfied that the comments relate to the role, and therefore not related to the Claimant’s age. The Tribunal is further satisfied that the comments were not said because of the Claimant’s age. The claims of direct age discrimination and harassment relating to age in respect of this allegation therefore fail.

Unauthorised Deductions

143. In his final payslip, the amount of £6,000.00 was recorded as being paid to the Claimant under the label of “commission advance” and the same amount was then deducted with the same label. This resulted in the Claimant paying approximately four times the amount of tax and nearly double the amount of National Insurance than he normally would have done, as well as £624.00 in respect of student loan payments, when his normal deduction for this was £84.00. The overall effect was to reduce his net pay to £1,761.02, when in all previous full months that he had worked he had received £2,433.08 as net pay.
144. This amount also included a non-taxable redundancy pay of £1,286.00. If it had not been for this amount being included, the increased deductions and tax, National Insurance and student loan repayment would have resulted in the Claimant receiving a net pay of £475.02.

145. The Tribunal appreciates why the Claimant is dissatisfied with his net pay for this month. The reason for the lower amount, however, is due to the vastly increased tax and student loan repayments that arose because of the inclusion and then deduction of the £6,000.00 in his wages. Whilst the Claimant disputed the amount of these deductions, the deductions themselves are authorised by statute. There is no requirement for the Claimant to have given consent to such deductions prior to them being made from his pay, and as such, these fall outside the scope of a claim for unlawful deductions from wages.
146. In any event, the tax paid by the Claimant in his final payslip puts the Claimant in the position that he should have been in if the payment of £6,000.00 had been processed properly in the first place. If it really was commission, then the Claimant should have paid tax and National Insurance on it, and his student loan repayment contributions would have increased. It appears that the Respondent, for some reason, paid this sum directly to him without any tax being paid. The tax being deducted at the end of the Claimant's employment rectifies this situation.
147. The Tribunal is satisfied that there is no unlawful deduction from wages and so this claim fails.

Conclusion

148. Due to the findings above, the Claimant's claims succeed in part.
149. The Tribunal made findings in respect of the unfair dismissal claim that the Claimant's employment would have been brought to an end two weeks later than it did. Any compensation in relation unfair dismissal should be limited based on this finding.
150. The one element of the harassment claim that succeed concerned a single text message which was not sent to the Claimant that he became aware of it later. This is likely to attract an award for injury to feelings in the lower Vento band.
151. Settlement of these issues should be capable of agreement between the parties. The parties must contact the Tribunal if a remedy hearing is required. If a remedy hearing, which will involve considerable time and resources on the part of the Tribunal, is required because one party is being unreasonable when it comes to the issue of compensation, the Tribunal reminds the parties that unreasonable conduct can have costs implications. The parties are encouraged to agree compensation based on the findings above without further involvement of the Tribunal.

Approved by Employment Judge G. King

Date: 21 November 2025

RESERVED JUDGMENT &
REASONS SENT TO THE PARTIES ON

12 December 2025

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FOR THE TRIBUNAL OFFICE

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