EMPLOYMENT TRIBUNALS

Claimant: **Mr K Mughal**

Respondent: **Omnia Lifestyle Limited**

Heard at: **Reading** **On:** **27, 28, 29, 30 January 2026**

Before: **Employment Judge Gumbiti-Zimuto**
Members: Ms S Hughes and Ms C Whitehouse

Representation
Claimant: In person
Respondent: Ms Ritu Patel, solicitor

REASONS

Reasons for the judgment were provided at the hearing, written reasons have been provided at the request of the claimant.

1. Insofar as the claimant brought a claim against Francis Mirandah the claimant has failed to plead any cause of action which the employment tribunal has jurisdiction to consider.

2. In a claim form presented 1 March 2023 the claimant made complaints of unfair dismissal and age discrimination. In their response dated 24 April 2023 the respondent denied that the claimant was unfairly dismissed and contended that the claimant was fairly dismissed for conduct or alternatively capability.

3. The claimant has acted in person, he had previously been represented by solicitors. Despite clear directions from the employment tribunal the claimant failed to provide a witness statement in the time and manner directed as a result the claimant's evidence in chief was confined to the contents of his claim form. The claimant applied to present a witness statement however that application was refused.

Ruling on the Claimant's Application to Rely on a Witness Statement Submitted on 18 December 2025

4. The Tribunal considered an application by the claimant to rely on a witness statement served significantly outside the deadlines set by previous case management orders to provide his witness statement.

5. Employment Judge Cowen ordered the claimant to provide a witness statement containing all evidence he intended to give at the hearing by **30 January 2024**. The hearing, originally listed to start on **6 January 2025**, could not proceed because of multiple failures to comply with Tribunal orders, Employment Judge Reindorf KC relisted the matter to commence on **27 January 2026**. Her order made on **6 January 2025** required both parties to exchange full witness statements **by 4:00pm on 11 April 2025**, and it expressly stated that no additional witness evidence would be permitted without the Tribunal's permission. An **unless order** was also made stating that "*unless the claimant sends to the respondent written statements containing all of the evidence he and his witnesses intend to give at the final hearing, the claim will stand dismissed without further order.*"

6. Despite this, the claimant provided only witness statements from other witnesses and none from himself. This prompted the respondent's application to strike out the claim. Employment Judge Anstis considered that application in May 2025 and, in correspondence dated **16 June 2025** stated: "*On the question of the lack of any statement from the Claimant, I take this as meaning that he is not intending to give evidence at the final hearing. As for the other statements, there is no requirement for them to be in particular form and their significance (or otherwise) for the Claimant's claim will be a matter to be considered at the final hearing. The Claimant's claim has not been dismissed*."

7. The claimant now says he believed he could rely on his claim form instead of preparing a witness statement, and only realised otherwise after speaking to a friend in December 2025. The Tribunal find this explanation difficult to accept. The claimant had been repeatedly informed—on at least three separate occasions—that he was required to provide a witness statement. He was also aware from correspondence relating to the strike-out application that his failure to provide a statement was in issue.

8. The late service of the claimant's statement has caused prejudice to the respondent. This is a discrimination claim, and the respondent has had to address new issues raised only after the claimant had seen its witness statements. This has undermined the intended simultaneous exchange of evidence and deprived the respondent of parity in the preparation of the case. Such prejudice cannot be fully remedied at this stage.

9. The Tribunal also notes that the claimant is in clear and serious breach of multiple orders concerning witness statements. An alternative interpretation of Employment Judge Reindorf KC's unless order and the action taken by the

claimant might suggest that the claim should already have been struck out. However, because Employment Judge Anstis determined that the claimant did not intend to rely on a witness statement, he did not treat the claim as having been struck out, and the proceedings have continued on that basis.

10. Having considered all matters carefully, the Tribunal concludes that the fairest course is as follows:
    (1) The claimant **may not** rely on the witness statement submitted on **18 December 2025**. To allow him to do so would require the order made by Employment Judge Reindorf KC to be varied, having regard to the decision made by Employment Judge Anstis I consider that would be unfair on the respondent because there is no good explanation for the claimant's failure to comply with that order.
    (2) The claimant **may rely only on the contents of his claim form as his statement**, this is what the respondent has prepared their case to answer. There is no prejudice to the respondent in allowing the claimant to rely on this as his statement. The claimant in any event says this is what he thought would happen.
    (3) The order made by Employment Judge Reindorf KC is varied to the extent necessary to avoid treating the claim as automatically struck out.

11. The Tribunal is satisfied that a fair hearing remains possible on this basis. The claimant will not be prejudiced, as this outcome reflects the position he had maintained until mid-December 2025. The Tribunal do not consider that the claimant's misunderstanding was reasonable, particularly given that he was represented earlier in the proceedings by a reputable firm of solicitors and was repeatedly informed of his obligations by the employment tribunal.

The Evidence

12. The claimant also relied on the witness statements of Mr Adolphus Charles John, Mr Arun Vijayan and Miss Cindy King. Cindy King did not attend to give live evidence as she was abroad, we have read the contents of her witness statement and we have given her statement such weight as we deemed appropriate bearing in mind the evidence given by the other witnesses and the documentary evidence put before us, in the all the circumstances of this case her evidence is of limited value in assisting us to reach a decision in this case.

13. The respondent relied on the evidence of Mr Francis Mirandah, Ms Sumana Halder, Mr Dr Palitha Serasinghe, Mr Wu Youzhong and Ms Georgina Raducia. Mr Francis Mirandah, Ms Sumana Halder and Ms Georgina Raducia attended the Tribunal and gave live evidence. Dr Palitha Serasinghe did not attend the Tribunal hearing, Mr Wu Youzhong did attend the Tribunal at some

point but was not called to give evidence when he was available to give evidence. He was unable o attend on other days of the hearing.

14. The parties also provided us with a trial bundle containing 480 pages of documents.

15. From these various sources the Tribunal has made the following findings of fact which we considered necessary to reach the conclusions we have set out below.

Findings of fact

16. The respondent provides treatment in respect of chronic and acute pain without the use of drugs or surgery. The respondent provides pain relief therapies, including Acupuncture, Ayurveda, Photo biomodulation, Compression Therapy and health screening to its clients to relieve their pain and provide holistic healing.

17. The claimant was employed as a Senior Therapist. The claimant's employment contract stated that the employee may be asked to do certain tasks beyond the tasks specified in the job description which included retaining established clients and seeking new sources of business.

18. The claimant's salary was £2655 per month (a gross figure before tax).

19. The claimant worked alongside other members of his team, including Mr Adolphus Charles John and Arun Vijayan.

20. The claimant, along with other members of the team, was placed on furlough on 20 March 2020 when the country went into 'lockdown' due to Covid-19 pandemic and the Coronavirus Job Retention Scheme was announced by the Chancellor of the Exchequer.

21. There is no evidence that before furlough that the claimant was set any specific targets of income that he was required to generate.

22. The evidence shows that by February 2022, after the furlough scheme had closed and the claimant had returned to work, that not only was the claimant not generating sufficient revenue to cover his salary cost, but his therapist colleagues also were doing generating sufficient revenue to cover their salary costs.

23. The claimant was invited to a meeting on 4 February 2022 where a number of concerns were raised with him: his punctuality and failure to fulfil his contractual working hours, poor team work and a lack of interest in improving billing performance, and poor individual billing performance. The concerns

expressed were set out in a letter of 7 February 2022 that cautioned the claimant that: *"Your performance will be under review and if found unsatisfactory again, you may be subject to a formal disciplinary action involving a 30-day performance improvement plan."* The letter also stated that the claimant had been repeatedly asked in an informal manner to increase his billing but had failed to do so.

24. Over the following months the claimant's billing did not improve, his income was as follows: February 2022 - £888, March 2022 - £203.50, April 2022 - £629, May 2022 - £506, June 2022 - £869.50. The income generated by the claimant was less than his monthly salary. This compared to this colleague Arun Vijayan who over the same period generated income of £912.50, £404.90, £896.90, £1,654, £594.70 and £704.10 and Adolphus Charles John who over the same period generated income of £235, £348.50, £677.60, £730, £216.75 and £170.50. The respondent was unable to sustain such large losses through one of its employees, however the fact is that all three therapists were not generating income to prevent the respondent sustaining a loss on their employment. All the employees were at some point placed on a Performance Improvement Plan (PIP) by the respondent.

25. On 28 June 2022 the claimant attended a meeting described as a performance appraisal meeting at which the claimant was set a number of "improvement objectives". These were a performance objective to achieve a monthly turnover of £2500 by the end of July 2022. Under aheading, "What action to be taken" was set out, "*To be achieve monthly turnover by Omnia Lifestyle Limited by 29 July 2022 by focusing on (1) interaction with prospective customers on a daily basis and (2) personally contacting our existing customers using the current updated database (3) or any other means /resources (without incurring any further cost) by which you think you can achieve your target*".

26. We observe that the oral evidence given by the respondent's witnesses and the claimant did not fill out the bare words that are set out in this appraisal meeting, it is not clear what was said to the claimant in respect of what was expected of him or what support might be provided to him by the respondent in order for him to meet the target of £2500.

27. The document also set out that a further improvement objective was "feedback from both clients and colleagues". The PIP stated that the claimant was to obtain was "satisfactory patient feedback". There is a section which is headed 'agreed controls' and that read "*patients who are taking treatments from you should give satisfactory feedback which should be an indicator of the quality of treatment you provide and how effective it is in terms of cure and timely and efficient patient-centered delivery which will lead to patient retention, repeat visits and referrals*". There was also reference to satisfactory peer/colleague feedback and it was stated that "*An employee feedback*

survey will be conducted to derive a report from your colleagues with whom you work every day." Again there is a lack of specificity as to what the expectations were except in the very broad terms set out in the document, oral evidence given by the witnesses did not expand on what was set out in the document.

28. The Respondent contends that these objectives were agreed, the claimant does not accept that they were agreed. While the Tribunal does not accept the claimant's evidence that he objected to the turnover target of £2500 we do not consider that the claimant agreed but rather the terms of the PIP were imposed on the claimant, but he did not expressly demur.

29. The respondent states that the objectives were reasonable in particular the income target of £2500, however the Tribunal note that none of the therapists had achieved anything like that in the period for which we have been provided figures with the closest at that time being "£1654" and over the whole period for which we have been provided figures the largest figure was "£2134.75", this was less than the claimant's target, with all of the remaining figures being under a £1000 and in four months under a £100.

30. The claimant achieved in the month of July £55 and in the month of August £407.

31. The claimant attended a meeting on 19 August 2022 to review progress on the performance improvement plan. It was noted that the claimant achieved £55 in July and had achieved £223.50 as at 15 August 2022. There was a discussion about this which was noted in the following terms:

> *4.3 KM gave reasons for his recent shortcomings such as his colleagues taking clients away from him to pace them under their own care. Further more, there was little evidence of meaningful efforts in addressing the severe shortfall in revenue since he joined Omnia almost 3 years ago. FM pointed out that he could have for example, discussed with the company on working flexible hours such as weekends and extended opening hours to attract more clients. KM made no attempt to seek support from FM or SH on his billings leading to the inevitable conclusion that he was not worried about his performance.*
> *4.4 On Employee feedback, a total of 10 people participated in the survey. …*
> *4.5 On client feedback, KM only collected 2 anonymous reviews and only made them available in the meeting. There was no way of determining the veracity of the reviews. It was pointed out to KM that he should have obtained more*

feedback which would have enabled a more balanced and accurate assessment.
5.1 FM pointed out that KM's performance has been consistently poor since joining on 24 September 2019. …
6.1 KM has made no progress towards achieving a mutually agreed target that was scaled down from previous targets and based on covering his own monthly salary. He was not able to convince the review team that he made meaningful efforts to achieve progress in the 3 areas that were the subjects of the PIP. In the opinion of the review team, he paid little or no attention to the seriousness of the position.
6.2 KM was given until 5:00 pm on Monday 22 August to reflect on the results of the review and either resign or face disciplinary process leading to termination.

32. Having heard the evidence about these matters we consider that these notes are for reading on a future occasion, rather than recording any meaningful discussion taking place about ways to improve the claimant's performance.

33. The claimant was then invited to attend a further meeting on the 26 August 2022.

34. The claimant was not at work on the 25 August 2022, taking time off in lieu (TOIL) and he was not in work on 26 August 2022 having requested annual leave. Both these absences resulted in the claimant being invited to a disciplinary meeting on 1 September 2022 to discuss an allegation that the claimant had failed to follow the correct absence reporting process and taken unauthorised annual leave and failed to communicate effectively with his colleagues. The meeting took place as scheduled and resulted in the claimant being given a written warning. The claimant was informed of his right to appeal the decision but he did not appeal.

35. During the hearing, some enquiry was made as to whether the claimant had in fact requested leave on 26 August. It is clear that he did. What is less clear is whether that leave was authorised. The claimant stated that he believed it had been, whereas the respondent's evidence was that, on examining the document produced, it was plainly not authorised because the request still showed a dotted line, which would have been removed had approval been given. In our view, resolving this point is unlikely to materially assist in determining the case, and we have therefore not sought to reach a conclusion on it.

36. The claimant's achieved revenue figure of £99.50 in September 2022.

37. The claimant was invited to a further review of performance improvement plan on 4 October 2022. It was put to the claimant that he had failed to achieve

monthly billing targets that had been set by the respondent. The claimant's explanation was that there were no booking appointments, and the old clients were not coming back and that there were hardly any walk-ins (i.e. clients coming in without appointments).

38. The respondent criticises the claimant stating that the explanation was unsatisfactory as other members of staff were managing to increase their income and billings. However, this is not a complete picture because at this point Arun Vijayan had left the respondent's employment and the total of the claimant and Mr John's income combined for September 2022 was down by over £2000 on the figures for August 2022 when Arun Vijayan remained in employment.

39. The claimant was found by the respondent to be failing in the PIP.

40. The respondent offered the claimant the option of resigning; the opportunity to work as a consultant; and termination of his contract. The claimant was asked to get back to Francis Mirandah on these options by no later than 5 October 2022.

41. It is important to note that Francis Mirandah was present at this meeting on 4 October when the claimant was told that he would be dismissed if he did not resign or take up the option of being a consultant.

42. It is not clear if the claimant expressly rejected the proposal or simply did not respond.

43. The claimant was invited to a further meeting on 7 October 2022, when he was told that the "*purpose of the meeting is to allow you the opportunity demonstrate too us that you can still turn things around by setting up a fresh target for a limited period.*" The view of the Tribunal is that looking at what was happening and the history of the matter, this sentence was written to be read after the event rather than to reflecting the true position because in reality there was no meaningful opportunity to demonstrate he could turn things around.

44. The claimant was also sent a further letter dated 7 October 2022 that stated that the claimant was being given a final written warning because "*allegations of non-performance made against you are substantiated*". The claimant was given a target to be achieved by 21 October which would lead to dismissal if it was not achieved. This letter of 7 October was referring to exactly the same matters as had been discussed in the PIP.

45. The claimant was invited to a Capability Hearing on 26 October 2022. In the notes of that meeting it reads:

> *1.1 On 7th October KM was given a Final Warning letter, with he following improvements in his performance:*
>
> - *Achieve a turnover of £1250 by 21 October 2022 (2 week period). This amount is your own target. Performance tracking using TM3 CRM.*
> - *You will provide services to at least 10 clients excluding SD/Omnia staff during this period.*
> - *You will provide evidence of client satisfaction by obtaining satisfaction feedback from at least 5 clients excluing SD/Omnia staff.*
>
> *…*
>
> *3.2 KM Mentioned that it was quiet, as there is no marketing and the online booking system doesn't work. SH checked immediately, and the website was working. SH has accepted that there are no marketing activities, however, when there was a Marketing Executive, the company had a bigger target to achieve, while recently, there was a humble target t reach (£1,250), amount that doesn't entirely cover the expenses of the company.*

The claimant and the respondent do not agree about this the claimant says that the reference to the online booking system in one thing where as the website is another. However the respondent says that the reference to the online booking system and the website is a reference to the same thing. This is not something we have been able to resolve however resolving it has not been necessary for our decision. There is reference to a target of £1250, this is a reference to a target that was set in August 2022 and it was set at that figure because it was to cover a period of 2 weeks. This position was to be confirmed by the evidence given by Francis Mirandah during this hearing. The note continues:

> *3.4 It was pointed out that all PIPs issued until now have been unsuccessful, KM has been consistently non-performing and hence it is not possible to sustain the business because the monthly target was to cover minimum over head cost.*

This appears to contradict what was said at 3.4.

> *4.1 SH will inform KM about the outcome of this meeting once this situation is discussed with the CEO and the company's employment lawyers.*

During the course of this meeting on 26 October 2022, Sumana Halder was present with Ramona Radu and Linsa Mathew (HR Executive), but Francis Mirandah was not present at this meeting. He had been present at all the

other meetings. The notes also indicate that the outcome meeting was to be notified to the claimant after there had been discussion with Mr Mirandah.

46. The claimant was written to in a letter dated 28 October 2022 that was hand delivered on that date and informing him that he was dismissed with one month notice.

47. The respondent has moved offices from Guilford to London. The claimant contends that what was really happening here was a redundancy but he has not been dismissed for redundancy. The respondent expressly denies that the claimant was dismissed on the grounds of redundancy.

48. The respondent states that the claimant was capable of achieving his targets so he was not offered a position in the respondent's London operation because he was unable to meet his targets and cover his own salary.

49. Francis Mirandah said that the respondent would have been willing to offer the claimant a role as a consultant on an employed basis or a self employed basis.

50. The claimant appealed against his dismissal. The appeal meeting took place with Francis Mirandah. The claimant's appeal was dismissed.

51. In the course of his evidence to the Tribunal Francis Mirandah told the Tribunal that the failure to meet revenue targets was not critical to the decision to dismiss the claimant. What was critical was the fact that the claimant had failed to demonstrate that he could work with his colleagues. The Tribunal note that the claimant's employment commenced in 24 September 2019 and he was dismissed on 28 November 2022, he was employed for three years. According to Franis Mirandah the claimant had over this period been continually failing, yet also it was Francis Mirandah's evidence that the claimant had been able to earn his respect because of his skill and ability. While holding the two positions is not necessarily in conflict it is noted that throughout the PIP process the issue was to be about generating income and work not working with others.

52. It is denied by the claimant that the targets set were achievable. The respondent states that the targets were achievable and that when the targets were set the claimant did not object but agreed that they were achievable. Our conclusion as set out earlier is that the targets were imposed rather than agreed.

53. The claimant states that the respondent failed to follow the ACAS code while it is denied by the respondent that it failed to follow the ACAS code. The claimant's appeal was conducted by Francis Mirandah who had been integral to the PIP process and was party to the meeting on 4 October when the

claimant was given the option to resign or be dismissed, he was consulted before the letter to dismiss the claimant was sent to the claimant on 28 October.

54. The claimant although making a claim for age discrimination. He has made unspecific allegations of words or phrases being used in meetings principally by Francis Mirandah but also sometimes by others. The claimant says that such words and phrases were implying that he was 'old' and that his age was being held against him. The claimant's evidence in this regard is entirely inadequate in so far as addressing the question of discrimination on the grounds of the claimant's age. We note that the claimant gave some further particulars relating to age and that these included an allegation that in meetings between the claimant, the CEO and Sumana Halder, the claimant was told that he was seen as aloof, and slow, not able to blend into teams quicky because of the 'age factor'.

55. The evidence that we have heard did not substantiate the contention that someone said something about the age factor. Such evidence that we have heard suggested that comments had been made about the claimant being aloof and slow and that he inferred that it was to do with his age. It is not clear from the evidence that we heard whether the claimant heard all these comments or that they were matters reported to him by others such as Adolphus John and Arun Vijayan.

56. The claimant also stated that in one meeting Sumana Halder had said that some of the staff find the claimant absent minded and again this could be the age factor, arising out of age. The claimant said he was unable to understand this because at the time he had actively helped move around heavy machines and that he had never shied away from heavy work when required to do so.

57. It seems to us that this allegation of age discrimination appears to relate to reports to the claimant about things being said to him about comments made about him. There is no indication from the evidence that Samana Halder was in fact making a discriminatory comment to the claimant or that Francis Mirandah did either.

58. The issues that the tribunal has had to consider in this case are as follows:
    (1) Whether the claimant's complaint of age discrimination was made in time?
    (2) Whether the claimant's complaint of unfair dismissal was made in time? The claimant was dismissed on 22 November 2022.
    (3) What was the reason for the claimant's dismissal? The respondent says that it was capability and/or a conduct reason.
    (4) Was the claimant's dismissal unfair?
    (5) If the claimant was unfairly dismissed what remedy is he entitled to?

(6) Was the claimant's employment terminated because (or in part because) of his age?
(7) Whether the following things happened:
    a. In a meeting between the claimant, Francis Miranda and Sumana Halder the claimant was told that he was seen as aloof and slow, and not able to blend into teams quickly because of the age factor.
    b. Sumana Halder in one meeting in the presence Francis Miranda said that some of the staff find the claimant absent-minded and this could be the age factor and arising out of his age.
(8) If the matters set out in (7) occurred, was it less favourable treatment?
(9) If the matters set out in (7) occurred, was it because of the claimant's age?
(10) If the matters set out in (7) occurred because of the claimant's age was it a detriment?
(11) Was the treatment a proportionate means of achieving a legitimate aim?
(12) What, if any, remedy is the claimant entitled to in respect of the age discrimination?

Law

59. Unfair Dismissal is defined under section 98 Employment Rights Act 1996. It is for the respondent to show the reason for dismissal. The respondent relies on capability and/or conduct.

60. The question for the Tribunal is whether the respondent acted reasonably or unreasonably in all the circumstances in treating this as a sufficient reason for dismissing the claimant, having regard to equity and the substantial merits of the case (s98(4) ERA).

61. The test for capability dismissals set down in Alidair Ltd v Taylor 1978 ICR 445, CA is whether the employer honestly believes the employee is incompetent or unsuitable for the job, and whether the grounds for that belief are reasonable. This means there has to be some evidence of poor performance. The burden is on the respondent to show that it was the real reason for dismissal.

62. It is for the respondent to set the standards asked of employees - tribunals should not substitute their own view of an employee's competence. Furthermore, standards of performance are 'not static and are liable to change as the business or role evolves'.

63. The Tribunal must then ask itself whether dismissal was in the range of reasonable responses of a reasonable employer. Again, it is not for the Tribunal to substitute its own view.

64. In a conduct dismissal the respondent must show that: (a) it believed the claimant was guilty of misconduct; (b) it had reasonable grounds upon which to sustain the belief; (c) at the stage which it formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances of the case.

65. It is not necessary that the tribunal itself would have shared the same view of those circumstances.

66. After considering the investigatory and disciplinary process, the tribunal has to consider the reasonableness of the employer's decision to dismiss and (not substituting our own decision as to what was the right course to adopt for that of the employer) must decide whether the Claimant's dismissal "fell within a 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". The burden is neutral at this stage: the Tribunal has to make its decision based upon the evidence of the claimant and respondent with neither having the burden of proving reasonableness.

67. The Equality Act 2010 at section 13 (1) provides that: “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.” By section 4, age is a protected characteristic. By section 13 (2) the Equality Act 2010 provides that: “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.”

68. The burden of proof in such cases is governed by section136 Equality Act 2010. It is for the claimant to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an act of discrimination against the claimant. If the claimant does not prove such facts he will fail.

69. It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of discrimination. The outcome at this stage of the analysis by the Tribunal will usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal, the Tribunal does not yet have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. The Tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

70. In considering what inferences or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.

71. If the claimant has proved facts from which conclusions could be drawn that the respondent has treated him less favourably on grounds of a protected characteristic he advances as a reason for the treatment, then the burden of proof moves to the respondent.

72. It is then for the respondent to prove that it did not commit, or is not to be treated as having committed, that act. To discharge that burden, it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic in question.

73. That requires the Tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the protected characteristic was not a ground for the treatment in question. The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the respondent treated the claimant unreasonably.

The respondent's submissions

74. The respondent contends that the steps taken were consistent with the relevant policies, codes of practice, and the principles of fairness set out in the Employment Rights Act 1996. The process adopted was transparent, reasonable and considerate, and the claimant was given every opportunity to respond to the concerns raised. The Tribunal was invited to find that the respondent acted within the band of reasonable responses open to a reasonable employer, and that the dismissal was fair both substantively and procedurally.

75. In respect of the age discrimination claim, the respondent stated that the claimant's witnesses referred to comments allegedly made during staff meetings. However, there is no evidence that any such comments were related to the claimant's age. The context in which the remarks were said to have been made—namely, staff meetings in which performance and operational matters were discussed—strongly suggests that, if made at all, they were directed at ongoing performance issues rather than age.

76. Furthermore, the witness evidence relates to comments said to have been made outside the relevant time period for this claim. Arun Vijayan referred to comments he witnessed before he left the organisation, which would be out of time. Adolphus John was unable to recall when any such comments were

made. The lack of specificity as to the alleged comments and actions, and the absence of clear, reliable evidence, further undermines the claimant's case.

77. The respondent states that the Tribunal could not reasonably find that any alleged comments were age-related, which is strongly denied. The evidence also indicates that any such incidents would in any event be out of time. The Tribunal was invited to find that the claimant has not established that he was subjected to less favourable treatment because of his age, and that the claim should be dismissed.

The claimant's submissions

78. The claimant submits that the respondent's conduct amounted to a fundamental breach of the implied term of trust and confidence. After the claimant raised a wage discrepancy on 3 March 2022, he was falsely accused of aggression. This allegation was made without witnesses, without investigation and without adherence to any proper procedure. Shortly thereafter, the claimant's access to the time-keeping system was withdrawn following his concerns regarding its inaccuracy.

79. The claimant was subjected to scrutiny that younger colleagues did not face.

80. The claimant maintains that the allegation of aggression was fabricated and was raised immediately after he queried his pay, appearing to function as a means of silencing him rather than addressing the substance of his concern. He was scrutinised over time-keeping and other restrictive matters in a way younger colleagues were not, and he was treated as less adaptable to the future direction of the business. His experience and qualifications were minimised. The claimant states that he was treated as less adaptable and less suitable for the future of the business. This consistent difference in treatment underpins the claimant's belief that age was a factor.

81. Despite his repeated attempts to raise concerns, the Chief Executive Officer, declined to investigate the grievance unless the claimant apologised for an incident he maintains did not occur. In these circumstances, the claimant had no confidence that any grievance process would be conducted fairly.

82. No confirmed role, no contract or terms were offered to the claimant. The proposal put to him required that he resign first, and therefore did not amount to a genuine offer of continued employment.

83. The claimant experienced unwanted and persistent harassment, which he submits undermined his dignity and created a hostile environment affecting both his confidence and his health.

84. The claimant stands by his evidence and submits that he has given his account truthfully. He also maintains that no proper redundancy procedure was followed and that the respondent's conduct, particularly from the start of the pandemic, was to get rid of him.

Conclusions

Unfair dismissal

Capability

85. If the reason was capability, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will decide, in particular, whether: (1) The respondent adequately warned the claimant and gave the claimant a chance to improve; (2) Dismissal was within the range of reasonable responses.

86. The Tribunal do not accept that the capability was the reason for the claimant's dismissal. Capability in relation to an employee means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality.

87. In this case the reason for the claimant's dismissal was because the claimant was not generating income to cover his salary. The evidence that we have heard has not shown the reason for the shortfall was based on the claimant's skill, or aptitude or health or any other physical or mental quality.

88. That it is not capability is demonstrated by the fact that the respondent was willing to offer the claimant employment as a consultant in the new London operation. Francis Mirandah in his own evidence stated that the revenue targets were not critical the critical reason for dismissing the claimant was that the claimant had failed to demonstrate that he could work with his colleagues, had he done so he would not have been dismissed.

Conduct

89. Did the respondent genuinely believe the claimant had committed misconduct?

90. The respondent did consider that the claimant had committed misconduct in respect of the failure to attend the PIP review meeting that he had been called to attend on the 26 August 2022, however that was not the reason that the claimant was dismissed. That conduct resulted in the claimant being given a written warning.

91. To the extent that the claimant was considered by the respondent, in respect of his failure to comply with the requirements of the PIP, to have been guilty of a conduct reason the respondent did not dismiss the claimant because of it.

92. The claimant was sent the letter of 7 October 2022 that stated that the claimant was being given a final written warning because "allegations of non-performance made against you are substantiated". The claimant was given a target to be achieved by 21 October which would lead to dismissal if it was not achieved. However it is clear that it was not the reason that the claimant was dismissed on 28 October 2022.

93. In the letter inviting the claimant to meeting on 26 October it was expressly stated that the meeting was not about conduct.

Some other substantial reason

94. The Tribunal is however satisfied that there was some other substantial reason justifying the dismissal of the claimant, namely that the claimant had notbeen able to generate sufficient revenue to cover his salary.

Reasonableness of the dismissal

95. Did the respondent act reasonably, in all the circumstances, in treating the fact that the claimant was not generating his sufficient revenue to cover his salary as a reason to dismiss the claimant? The Tribunal will decide, in particular, whether: (1) there were reasonable grounds for that belief (which we consider that there clearly were); (2) the respondent had acted in a procedurally fair manner; (3) dismissal was within the range of reasonable responses of a reasonable employer. The latter two matters are the ones that give us concern in this case.

Failure to follow the ACAS procedure.

96. Does the ACAS code apply to this case? We are satisfied that the Code does apply as this is a case because the Code applies to dismissal based on conduct and also on capability.

97. The ACAS code provides that an appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case. In this case the claimant was dismissed by Sumana Halder but that was in respect of a process in which Francis Mirandah had been involved throughout. Francis Mirandah had been involved in the decision to dismiss the claimant and in the event that the claimant did not accept the offer to resign or to take on the consultancy role in the new London operations. The respondent is an organisation with a number of staff, there is a General Manager and HR operation, the respondent also employed the services of

Peninsula Business Services. The respondent was part of a larger organisation which included SDC Limited. The respondent could have provided the claimant with an appeal by someone who had not been involved in the decision to dismiss. There was a breach of the ACAS code relating to disciplinary and grievance procedures (see paragraph 27).

98. We recognise that having regard to all the circumstances in this case at some point, the claimant's dismissal would have been within the range of responses of a reasonable employer. A reasonable employer could reasonably conclude that an revenue generating employee who does not generate sufficient revenue to cover his salary cost cannot be sustained in employment. We also are of the view that in this case a reasonable employer might have arrived at that point in the claimant's case at the same time as the respondent did.

99. However, dismissal for SOSR has to be justified in the particular case and also to be reasonable in all the circumstances. The circumstances in this case are that the claimant was being assessed in a PIP process, in our view that must involve providing a process in which the claimant employee has an opportunity to improve, if that is possible, before he is dismissed for failing performance.

100. The process in this case was, in our view, flawed and unreasonable in its three limbs.

101. The targets were unattainable. While we do not know what the targets were for the other therapists, we can see that set against the claimant's target No other employee attained the target set for the claimant. Even if considered as an aspirational target, we consider the target was unreasonable because we have no way of assessing whether the target could have been achieved with better performance by the claimant. The evidence presented to the Tribunal did not show the respondent providing the tools to the claimant, who was employed in a clinical role not a marketing role, that were sufficient for him to go out and increase his revenue to meet the target. The Target which seen from the claimant's starting point was at first sight unreasonably high. We consider that this was unfair.

102. The second feature of this PIP process, which is flawed, is the fact that the claimant was being measured on client feedback in circumstances where there was next to nothing in terms of such feedback. The claimant gave evidence that he did what was required of him in terms of getting client feedback. However, the claimant stated that he could not make clients give feedback. There is nothing in the way of evidence to suggest that the claimant could have done more but didn't do it. The claimant was in effect criticised for something entirely out of his control in circumstances where he had carried out such actions as he was able to.

103. We recognise that the claimant's feedback from colleagues was poor, however, it was not the main focus of the capability process. Had it been so, we would have expected to see it being made clear to the claimant the points where he was failing in this respect. What ever they were, they were not highlighted to him.

104. The evidence that we have heard about shortcomings in his conduct or attitude towards colleagues in our view would not justify a conduct dismissal. The respondent effectively stated that in the correspondence to the claimant. There is also an aspect of unfairness in respect of this element of the PIP criteria, in that the evidence of Francis Mirandah suggested that this was a critical criteria which if the claimant had met, dismissal could have been avoided. The failure to make that clear to the claimant in the process followed, in our view, makes the process unfair. In our view the process was also unfair because it's focus was on the revenue targets when in fact there were other matters of importance.

105. Taking everything into account, we consider that the dismissal was unfair. However, we are of the view that had a fair process been followed, the claimant could have been fairly dismissed. A fair process would have involved addressing the shortcomings in the PIP process which were identified by the claimant, alternatively informing the claimant of the true position, namely that his employment could not be sustained because he wasn't generating revenue to meet his salary, with consideration then being given to the process to be followed in those circumstances.

Age discrimination:

106. We deal with the claim of age discrimination briefly.

107. The further particulars provided by the claimant in respect of his age discrimination claim were as follows:

> 4. Age is a protected characteristic under section 4 of the Equality Act of 2010. The Claimant contends that his employment was terminated In part due to his age for the reasons/ evidence given in paragraphs 5 and 6 below. As a result of this he was subject to direct discrimination arising out of his dismissal and also harassment due to his age.
> 5. In meetings between the Claimant the CEO of the Respondent Mr Francis Miranda) and Sumana the HR representative, the Claimant was told that he was seen as aloof and slow and not able to blend into teams quickly because of the age factor.
> 6. Sumana in one meeting in the presence of CEO (Mr. Francis Miranda) had said that some of the staff find the

> Claimant absent- minded and again this could be the age factor and arising out of his age. The Claimant was unable to understand this at the time and responded that he had actively and physically helped staff in moving around various heavy machines (NovoThor) and plinths and have never shied away from physical work when required to do so.
> 7. The Claimed has claimed in para 9.2 of the ET1 damages for injury to feelings arising out of mental, physical and emotional losses which is what he meant when he ticked the box that stated he was claiming age discrimination.

108. The claimant has not called evidence from which we could conclude that he was discriminated against because of his age. The claimant makes an assertion of discrimination and provides unspecific allegations of comments being made which the claimant considers to be related to his age. The evidence before us simply does not allow us to conclude that there is evidence from which we could conclude that the claimant was discriminated against because of his age.

109. The conclusion of the Tribunal is that the claim for age discrimination is dismissed. The complaint of unfair dismissal is well founded and succeeds. The respondent failed to comply with the ACAS code of practise in respect of the appeal.

Remedy

110. We invited the parties to make submissions on whether this is an appropriate case to increase the award of compensation pursuant to the provisions of section 207A Trade Union and Labour Relations (Consolidation) Act 1992. The Tribunal then decided that there should be a 15% uplift on the compensatory award.

111. The claimant is entitled to a basic award (4 ½ x £571) **£ 2569.50.**

112. Our conclusion of fact would limit the claimant's award of compensation. Our view is that the dismissal of the claimant could have taken place within a month had a fair process been followed. We would therefore limit the award of compensation accordingly. We make an award of compensation in the sum of £2655 (1 month of pay)

113. The claimant is entitled to recover a sum for loss of statutory rights which we assess at £500.

114. We made the following award.
Compensatory award:
1 month pay x £2655

Loss of statutory rights £500
ACAS uplift at 15% £473.25
£3628.25 compensatory award

£2569.50 basic award
Award for unfair dismissal £6197.75

Costs application

115. The respondent made an application for costs. The respondent pointed out the manner in which the claimant had conducted the proceedings, pointing out a number of failures by the claimant to comply with the orders made by the employment tribunal in a timely manner. The respondent states that they made several offers to settle the proceedings which did not meet what was awarded by the employment tribunal. The respondent states that the claimant has failed to engage in any potential settlement discussions save that the claimant made a settlement proposal in the sum of £35,000.

116. The claimant states that the respondent made some insulting offers of settlement of the proceedings. The claimant pointed out that there were also failures by the respondent to comply with the orders of the employment tribunal in a timely manner. The claimant stated that the failure to provide a statement has resulted in him not being allowed to present evidence set out in his statement.

117. Having heard the submissions of the parties the respondent's application was refused. The Tribunal did not consider that this was an appropriate case for an order for costs. Employment Tribunal proceedings are not a forum in which costs follow the event. For an order for costs to be made there has to be a trigger as set out in the Employment Tribunal Rule of Procedure 2024 such as a failure to comply with the Tribunals' order (rule 74(3)) or where there has been unreasonable conduct of the proceedings (rule 74(2)(a). There have been failings on both sides and the claimant was successful in respect of his claim. We reject the application for costs.

Approved by:

Employment Judge Gumbiti-Zimuto

17 March 2026

JUDGMENT SENT TO THE PARTIES ON
25 March 2026
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FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/