EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr J Walton	AND	GE Aviation Systems Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol **ON** 14 to 23 September 2020

EMPLOYMENT JUDGE J Bax

Representation

For the Claimant: Mr R Hignett (Counsel)
For the Respondent: Mr D Mitchell (Counsel)

JUDGMENT

The judgment of the tribunal is that

(1) The Respondent unfairly dismissed the Claimant.

(2) The claim of indirect age discrimination is dismissed upon its withdrawal by the Claimant.

(3) The claims of direct age discrimination are dismissed.

(4) Directions are given for remedy under a separate order.

REASONS

1. In this case the Claimant Mr Walton, claimed that he had been unfairly dismissed and that he was discriminated against due to his age. The Respondent contended that the reason for the dismissal was redundancy,

that the dismissal was fair and that it did not discriminate against the Claimant.

Procedural matters

2. The Claimant presented his claim on 13 June 2019. He notified ACAS of the dispute on 12 April 2019 and the certificate was issued on 15 May 2019.

3. On 28 August 2020, Employment Judge Fowell conducted a Telephone Case Management Preliminary Hearing, at which the Claimant confirmed in that in addition to unfair dismissal he bought claims of direct and indirect age discrimination. The Claimant alleged that his dismissal, failing to appoint him to the Account Team Leader role, and failing to include others in the pool of those at risk of redundancy were acts of direct discrimination. The Respondent confirmed that it did not rely upon a defence of justification for either discrimination claim.

4. At a further Telephone Case Management Preliminary Hearing on 28 August 2020, before Employment Judge Midgley, the parties confirmed that they consented to the claim being heard by a judge sitting alone. At the start of the final hearing the Judge spoke to Counsel for the Claimant in open court, with Counsel for the Respondent attending by telephone about the need for written consent to hear the case without lay members. Written consent was provided by both parties, by way of e-mails dated 14 September 2020 at 1042 and 1049, respectively. The issues were confirmed as being those identified by Employment Judge Fowell. It was clarified that the reference to discriminatory assumptions was not a separate allegation of age discrimination, but that they tended to show that the dismissal was discriminatory.

5. During the course of the hearing the Claimant confirmed that he relied upon the Power role for the purposes of the attempts that the Respondent should have made to find alternative employment for him. Further the Claimant, in relation to the pool of those at risk of redundancy, for the purposes of his direct discrimination and redundancy claim, said that only Mr Carlisle and Mr Backx should have been included or were relied upon as comparators. On the sixth day of the hearing the Claimant withdrew his claim of indirect discrimination and that claim was dismissed upon his withdrawal.

6. Shortly before closing submissions on liability, the Claimant applied to prevent the Respondent from arguing that the Claimant had fabricated the evidence of conversations between Mr Luley and Mr Cyr. The application was dismissed. The matters had been put in cross-examination, it was not a new legal argument and was a potential submission based on the facts. The veracity of the evidence was something that would be determined when I made findings of fact.

7. After the closing submissions, time was taken for deliberations and it was agreed with the parties that an oral Judgment would be given on 24 September 2020 by way of Cloud Video Platform.

The evidence

8. I heard from the Claimant in person, and from Mr Luley on his behalf via CVP. For the Respondent, I heard from Ms Helm (HR support for the redundancy process), Mr Anderson (grievance officer), Mr Evans (grievance appeal officer), Mr Moll (Claimant's line manager and redundancy consultation officer) via Microsoft Teams, Mr McKechnie (appeal against dismissal officer) and Mr Cyr (head of SMBD and Mr Moll's line manager) via Microsoft Teams. I was also provided with a bundle of approximately 700 pages, any reference within these reasons in square brackets is a reference to a page in the bundle.

The facts

9. There was a degree of conflict on the evidence. I heard the witnesses give their evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

10. The Respondent is a global supplier of integrated systems and services for civil and military aircraft and is part of the global General Electric group of companies. The Claimant's employment started on 25 October 2010 in the role of Executive Counsel, Government Relations. Latterly the Claimant was the leader of the European Customer Account Manager team as part of the Sales and Marketing department within the Respondent's Military Systems Operation ("MSO") Division. Within the Respondent there are three separate sales divisions: Military (MSO), Commercial Engines and Avionics. The MSO division employed people globally, including the United States of America, Europe, Asia, South America and the Middle East.

11. Within the Respondent are various role bands. The Executive Band role ("EB") is a senior role, which is normally reserved for people managing significant client accounts or significant areas of business with large teams. Above EB are the Senior Executive Band and Officer. Below EB is the Senior Professional Band ("SPB").

12. The Claimant's role was an executive band role and reported directly to the Executive Sales Director for the MSO division, who was also in an executive band role. The Claimant was based at Cheltenham. The Claimant was responsible for a team of Customer Account Managers, each of whom had

responsibility for a particular customer. The Claimant did not have customer account responsibility for any customer. The Claimant's principal responsibility was to manage the team and he also had a responsibility for government relations with the UK Ministry of Defence. The government relations aspect took up, on average, 20% of the Claimant's time.

13. At Cheltenham, the Respondent employed approximately 1,650 people and 4,500 people across the UK. The total number of UK employees employed by the GE group is approximately 12,000.

14. The Claimant received bonuses which were paid on an annual basis and were based on company and individual performance. In terms of individual performance, it was measured against the priorities set at the beginning of the year. In the years 2016, 2017 and 2018, Government Relations was not listed in the priorities set for the Claimant. The Claimant's salary, at the point of dismissal was in the region of £190,000. The new CAM Team Leader role, at SPB level, was paid a salary of £77,000.

15. The Respondent had a policy document called, 'The Spirit and the Letter'. It was incorporated into the Claimant's contract of employment and all employees agreed to uphold the practices within it. Under the document employees were required to "Make all employment related decisions and actions without regard to a person's … age ... or any other characteristic as protected by law." There was not a separate equal opportunities policy. The Respondent also did not have policies on redundancy pooling or reorganisation/restructuring. HR had access to an E&L portal on which there were PowerPoint displays with process flows and template letters in relation to the key points for restructuring and redundancy.

16. Some years before the Claimant's departure he found an image on his desk consisting of the cast of 'Dad's Army' onto which the Claimant's and his colleagues' faces had been superimposed. At the time the Claimant participated in general jocularity regarding the image. The image was later updated to include Ms Nicholas.

17. In July 2015, the Claimant discussed with Mr Wilking, General Manager of the MSO Sales, Marketing and Business Development organisation ("MSO SMBD"), concerns that he had that most of the team members were of a similar age and could potentially retire at about the same time, with a resultant loss of knowledge from the business.

18. In 2016 Mr Wilking considered that the Claimant's role had reduced in scope and started to no longer see it as an EB role. Mr Wilking informed the Claimant that when he had left the role, that they would look to replace the role with an SPB role unless something changed. Mr Wilking and the

Claimant agreed that the most likely successor to the team leader role would be Mr Keating. The Claimant supported and mentored Mr Keating.

19. At the end of 2016/beginning of 2017, Mr Mattis, Vice President of MSO, informed his staff that MSO needed to be restructured and that the cost needed to be brought down. Mr Wilking started considering how overall cost could be reduced in MSO SMBD. At this stage there 58.5 employees within the MSO division globally. It became clear that reduction of cost was the primary focus. At this time there was discussion as to whether the Claimant's role was truly an EB role and how much government relations work he did. Mr Wilking proposed to reduce headcount to 45. As of January 2017, the Claimant lead a team of 5.5, Ms Nicholas was counted as a half because her services were shared. The other members of the team were Mr Bahir, Mr Davis, Mr Hanson, Mr Keating and Mr White.

20. In June 2017 Mr Luley became the Claimant's line manager. By this stage it had become clear that a particular organisational desire was to co-locate CAMs with the customers, in other words putting the person responsible for managing the client relationship in the same physical location as them, preferably on the client's premises. The intention was that this would help to build and strengthen the relationship with the client.

21. In August 2017, Mr Cyr was appointed as the General Manager of the MSO Marketing and Business Development Organisation ("MSO MBDO". By this time, the headcount within MSO had reduced by 5.

22. As of 24 August 2017, the Claimant reported to Mr Luley. Mr Davis (a similar age to the Claimant), Mr Hanson (a similar age to the Claimant), Mr Keating (younger than the Claimant) and Mr White (a similar age to the Claimant), Avi Bahir, (aged 69) and Ms Nicholas (mid 40's and undertaking a half role), reported to the Claimant. Mr Bahir and Ms Nicholas were proposed to be removed in 2018 [p151]. A further proposed reorganisation from April 2017 was still under consideration [p152] which removed a level of EB supervision and reorganised the division into four continental regions and commercial operations. Of those 5 each sub-division was led by an EB employee. In the case of Europe, it was led by an EB to whom there would be direct reports in respect of the accounts with Saab, BAE, Leonardo, Airbus and the MoD. That EB reported directly to the General manager. I accepted Mr Moll's evidence that this proposal split his role up among EBs responsible for each region. A further proposal was made in August 2017 [p153] that Mr Keating lead the European Airframers team and had responsibility for Saab and that Mr Davis and Mr Hanson reported to him, having responsibility for Airbus, Leonardo and BAE. The Claimant, Mr White, Mr Bahir and Ms Nicholas were proposed to be removed.

23. Mr Moll gave evidence, which I accepted, that there were general discussions about the age demographic of the whole of the MSO division, including Cheltenham.

24. Mr Luley then looked at further proposals.

25. The Claimant alleged that on 27, 28 and 29 November 2017, Mr Luley had a series of conversations with Mr Cyr, in which Mr Cyr specifically asked questions about the Clamant and some of his reports as set out at paragraph 10 of the Grounds of Claim. They related to how old the Claimant was, how close he was to retirement and when he would be likely to pull the trigger in relation to retirement. He also expressed an opinion that the Claimant and some of his team members were long in tooth. Further that he wanted the Europe Military Account team to have fresh blood, have a younger age profile, have more motivation and have more runway (a longer period of service before retirement). The content of these conversations was denied by Mr Cyr. My findings of fact on these conversations are set out after considering further matters below.

26. On 27 November 2017, a proposed structure [p161] had the Claimant as Europe Lead, with Mr Davis, Mr Hanson and Mr Keating reporting to him. It was noted that the Claimant would be replaced with an SPB upon retirement. Across the whole division it was proposed to reduce the number of EBs by two, with a phased transition to SPB [p164], at this stage it did not affect the Claimant's, role.

27. As of January 2018, the Claimant reported to Mr Luley and had responsibility for Mr Davis, Mr Hanson, Mr Keating, Mr White and Ms Nicholas [p182]. Mr Bahir had moved to a different part of the Respondent's organisation where he remained until his retirement in July 2020 at the age of 72.

28. The Claimant alleged that on 14 February 2018 he was referred to as young man by Mr Cyr. This was not put to Mr Cyr in cross-examination. Mr Cyr, in his witness statement could not recall saying it to the Claimant, but said that he did sometimes use the phase in a collegial setting and used it regardless of the person's age. It was likely that he used the phrase, however I otherwise accepted Mr Cyr's evidence on this issue.

29. On 7 March 2018, Mr Luley attended a meeting with Mr Cyr and his other direct reports about a review of their team members. Mr Luley had included the Claimant. The purpose of the meeting was to discuss the SPBs and those SPBs that were considered to have good potential to becoming EBs. Mr Luley was informed that the EBs were to be taken as part of a separate conversation.

30. On 21 and 22 March 2018, Mr Luley discussed the proposed changes with Mr Caslavka and Mr Mottier, despite being told by Mr Cyr not to. Mr Cyr discovered this, and his relationship with Mr Luley broke down, to the extent that a new position was found for Mr Luley. Mr Cyr considered that Mr Luley had been untruthful in his actions.

31. Mr Luley alleged that, at a meeting on 23 March 2018, Mr Cyr had told him to get rid of the Claimant by eliminating his role and that he should 'figure a way round this with HR and make it happen'. He alleged that Mr Moll and Mr Wolfe were also in attendance. Mr Moll was not in attendance and he was working in the Czech Republic that week. Mr Wolfe, in his statement as part of the grievance appeal said he had never heard Mr Cyr make a remark about getting the Claimant out. My finding on what was said will be set out after considering the other facts in the case.

32. In March 2018 it was proposed that the Europe CAMs team consisted of 3 SPBs only, with one of them assuming the role of team leader [p183].

33. Mr Moll replaced Mr Luley as the Claimant's line manager from April 2018. Mr Cyr tasked Mr Moll to implement a reorganisation. Mr Moll attended a number of meetings which discussed the proposed restructure. At this stage, the Claimant reported to Mr Moll and had five people reporting to him [p212]. In the proposed organisation chart for April 2018 four SPBs reported to Mr Moll and the team leader role was recorded against the Saab account. At this time, Mr Keating had responsibility for Saab, Mr Hanson responsibility for Airbus, Mr White responsibility for UK MoD and Mr Davis responsibility for BAE and Leonardo. I accepted the Respondent's evidence that Saab was a big account in Europe and that it bought many engines from the Respondent, which was why that account was allied to the team lead role.

34. On 7 June 2018, Mr Moll, Ms Baker (external legal adviser) and the Claimant had eaten dinner together and were travelling a car in the Cotswolds. As part of the conversation Ms Baker referred to the number of people who retired to the area. Mr Moll spoke about his retirement plans and the Claimant said he was thinking about retiring in the area. I accepted Mr Moll's evidence that he wanted to know when the Claimant was planning to retire, but that he did not ask such a question, on the basis that doing so was not acceptable in the United States. After this incident, the Claimant was happy for Mr Moll to conduct the subsequent consultation process.

35. By July 2018, the proposed structure was to remove the Claimant's role and four SPB roles would report directly to Mr Moll and that one of the SPBs would be team leader [p221-222]. By this stage Ms Nicholas was not part of the team.

36. In early July 2018, Mr Cyr asked Mr Moll to place the Claimant at risk of redundancy. Mr Moll prepared an initial business case [p422], in which he said that ongoing RTS pressure within MSO required an analysis of resource allocation. Sales resources would be aligned with airframe customers to better support a regional vs country specific strategy. The current European Military Accounts Team was set out as one EB manager, 4 SPBs and an administrative associate. The proposed structure was one SPB team leader with a key account and 3 key account SPBs and that the current EB responsibilities would be assumed by the international executive sales director, at that time Mr Moll.

37. On 25 and 30 July 2018, Mr Moll spoke to Mr Luley and expressed his discomfort about having to make a decision in relation to the Claimant. I accepted Mr Moll's evidence that he did not like impacting on people's personal lives. In Mr Luley's witness statement he said that Mr Moll agreed that Mr Cyr's decision was flimsy and it would across as ageism. In Mr Moll's witness statement, he denied that he said anything of that type. Neither witness was cross-examined on this point. On assessing the evidence, I preferred Mr Moll's account in relation to this issue.

38. On 31 July 2018, Mr Moll informed the Claimant that he was at risk of redundancy. A letter of the same date [p232-233] confirmed that the proposed future structure of the European Military Account Team would consist of 1 SPB Global and Key Accounts Director/Team lead (a new role) and 3 Global and key Account Directors. The EB level responsibilities would be assumed by the International Executive Sales Director, at that time Mr Moll. No decision had been taken and a period of consultation was proposed, during which alternative proposals would be considered, proposals for conducting the redundancy selection process and potential alternative employment. Ms Helm provided HR support for the redundancy process.

39. The Claimant was placed in a pool of one. Ms Helm considered that the Claimant's role was unique. The Claimant's case was that he should have been pooled with Mr Carlisle, aged 40, who had an EB role in the Avionics Division and worked at the Cheltenham site and Mr Backx, aged 52, who was in an EB role in Regional Sales based in London and was in the commercial engines division. Ms Helm was not aware of Mr Backx at the time the consultation started. Ms Helm did not have an up to date job description for the Claimant and relied upon past conversations with him; she did not create an up to date one with him. Privately Ms Helm considered Mr Carlisle's job description, which under desired characteristics included a master's degree in Engineering or Business Administration was preferred or its equivalent and prior experience in the Avionics Industry. She understood that Mr Carlisle's role had a technical element and that its pay structure was incentivised so that he had to meet targets to gain pay

increments. She considered that technical expertise in a sales role was important. Ms Helm considered that the roles were different and it would not make sense to pool them together. There was no evidence that the Avionics and Civil Engines divisions were undergoing restructuring at the time. The budget and headcount for other divisions was also allocated elsewhere in the business. Mr Moll was not involved in the decision on pooling and relied upon the advice of Ms Helm that it was not appropriate to pool because of the uniqueness of the role.

40. In conversations on 1 and 2 August 2018, Mr Moll told the Claimant that the new SPB team leader role was a career development opportunity as to leading people. This was also said in an e-mail. Mr Moll also said that he did not want the reorganisation to impact additional jobs in the team and that his preference was that someone from the current team was appointed and that he had a strong voice in the decision as he was the hiring manager for the position. On 2 August 2018, the Claimant alleged that Mr Moll said, in relation to the new appointment, with a determined and meaningful emphasis “and I know what I want.” Mr Moll could not recall during the grievance process whether he had said this and it was not challenged during cross-examination of the Claimant. I therefore accepted the Claimant’s evidence on this point.

41. On 2 August 2018, the Claimant attended a consultation meeting. He was told that the restructure was to address cost and that his performance was not an issue in any way. The Claimant asked whether the redundancy encompassed the MSO role and the government relations role he undertook. The Claimant was given a copy of the business plan [p422] and proposed and current CAM structure [p234].

42. On 6 August 2018, the Claimant provided information about government relations activities he was undertaking. On 13 August 2018, Mr Moll confirmed to the Claimant that the whole of his role, including government relations, was at risk of redundancy.

43. A second consultation meeting took place on 21 August 2018. It was explained that the government relations element of the Claimant’s role would be divided between Dowty and Cheltenham. It was explained to the Claimant that he could put forward ideas to minimise or avoid redundancy. The Claimant said that he wanted to focus on securing the EB Power Leader role. The Claimant queried the reference to a selection process in the at-risk letter, when he was in a pool of one, and requested a new letter. He also provided a document in which he said that his main concerns were age discrimination, breach of his contract and the government relations role.

44. After the meeting, the Claimant was given an amended version of the ‘at risk’ letter.

45. On 22 August 2018, the Claimant raised a grievance. The Claimant complained of an age inappropriate remark by Mr Cyr on 14 February 2018, namely addressing him as 'young man'. He also referred to Mr Moll asking if he was considering retirement on 7 June 2018. He believed that the aim of the restructure was to give his role to a younger employee, Scott Keating and relied on references to the role being a career development opportunity and Mr Moll having said that he knew what he wanted on 2 August 2018. He said he was the only person considered for redundancy and there were three other EB Sales Leaders in the UK, who were younger than him and should have been included in the pool of those at risk.

46. On 5 September 2018, the Claimant put forward an alternative proposal, that a new MoD and UK Government unit was created and he would take leadership of MSO current and emerging MoD business and continue to lead the Aviation Government Relations team.

47. On 6 September 2018, the Claimant raised a second grievance, in which he said the consultation process was not in line with the Respondent's code of conduct, that the consultation process was perfunctory, and that there had been a perfunctory consideration of the government relations element of his role. He also complained that his initial at-risk letter had been inaccurately worded.

48. A third consultation meeting took place on 11 September 2018. The Claimant conformed that he had applied for the Power role. The Claimant was asked to look at COS for alternative roles and also given a list of possible alternative roles he could apply for. The Claimant was told that his alternative proposal did not improve on the need to increase focus on the efforts of the organisation or the need of the customer and it did not reduce headcount or cost. The Claimant was informed that the MSO team leader role was going to be posted and although he had the right to post for the role he had made statements that he was not interested, but if he had a change of heart he could still post for it. The Claimant also raised the health of Mr White, which Mr Moll acknowledged and said he would investigate separately.

49. This was followed up by an e-mail [p267-269], in which it was confirmed that the Claimant said that he was only interested in EB roles and not SP roles. He was reminded that COS was designed to enable him to search for vacancies within the parameters he was interested in. The Claimant was reminded that he had been told about the intention to advertise the SP Team Leader role and he had confirmed that he was not intending to apply for it or any other SP role. It was confirmed that the Claimant's proposal increased the complexity of the organisation and it did not reduce headcount or cost.

50. On 12 September 2018, the Claimant attended a grievance meeting with Mr Anderson. He referred to age discrimination and the remarks made by Mr Cyr and Mr Moll. The Claimant said that he did not believe the reason for his redundancy was genuine and that the principle of it was to promote younger employee and referred to the discussions with Mr Moll in August. He also said that there were three other EB roles which were interchangeable. He said that he had applied for the power role and had four interviews, which had gone well, but “it remained a long putt for me.”

51. After the meeting Mr Anderson spoke to nine witnesses, including Mr Luley, Mr Moll and Mr Cyr. Mr Anderson only took notes of his discussions with Mr Wolfe, Mr Haenan and Ms Sylvie. In relation to Mr Luley, Mr Anderson had three conversations with him, no notes were taken of the first conversation, manuscript notes were recorded on Mr Luley’s timeline in the second conversation and short notes were taken of the third conversation.

52. The first conversation between Mr Anderson and Mr Luley took place on 25 September 2018, Mr Anderson did not take any notes. In cross examination it was put to Mr Anderson that he was informed of the matters raised in paragraph 10 of the Grounds of claim at that meeting. His initial evidence was that those matters were raised then. He later said that the first conversation was relatively short and that he was not sure all of the detail in paragraph 10 was included, but that Mr Luley was concerned about the motivation, that it was an age discrimination issue and that he had a lot of information. He further said that the exact words at paragraph 10 were not used, but Mr Luley expressed those issues. His explanation for the change of evidence was that he had not understood the chronology. In re-examination Mr Anderson said that there was an element of discussion about age discrimination, it was a bad situation and Mr Luley had spoken to Mr Cyr on many occasions. At the end of the discussion it was agreed that Mr Luley would send Mr Anderson a timeline. My conclusion on what was said will be set out after considering the other facts in the case.

53. On 28 September 2018, Mr Luley sent Mr Anderson the timeline [p311-312H]. The matters referred to in paragraph 10 of the grounds of claim were not mentioned. The timeline referred to the following matters. On 27 November 2017 there was a discussion when Mr Luley was specifically asked to get rid of the Claimant and that the following day he was asked to provide a further proposed structure with the Claimant as part of the headcount reduction. On 7 March 2018, in relation to the people review, there was reference to not including the Claimant on the slide. On 23 March 2018 he was told to get rid of the Claimant by eliminating the EB position but keeping all activities/responsibilities the same and have JM assume them.

54. Following receipt of the timeline, Mr Anderson spoke to Mr Luley about it. Mr Anderson made manuscript notes of the conversation on the timeline. There was no reference to the matters raised in paragraph 10 of the Grounds of Claim. Mr Luley confirmed that age discrimination was not directly raised in the timeline or in the 29 files of evidence in support.

55. A third conversation took place between Mr Luley and Mr Anderson on 8 October 2018 [p336A]. Mr Anderson recorded "… although I am listening to the narrative, I can't see the related evidence in the e-mails/ppt that he has sent. He responded that he did not – just what he has already sent/said. He doesn't have a smoking gun and he hasn't recorded the conversations when he was asked about people's ages and how close they were to retirement, esp the UK team."

56. On 27 September 2018, Mr Anderson spoke to Mr Cyr. No notes of the conversation were taken. Mr Cyr was not questioned about Mr Luley's timeline.

57. On 2 October 2018, Mr Anderson spoke to Mr Wolfe. In answer to a question about the presentation drafts not including the Claimant or Mr White, he said that there were no plans for individuals in this process and he had never heard Mr Cyr bring up age.

58. Mr Anderson interviewed Ms Helm, although he did not take notes. She informed him that no interchangeable roles existed for the CAM leader role and that she had made the final pooling recommendations based on the role description.

59. The Claimant applied for the EB power role. The Job Description [p647] said that it was a role to provide leadership for approximately 40 employees and was responsible for the delivering the P&L for Power Distribution and Management busines and directing the programme management function. It would involve managing a portfolio of products. The qualification requirements included a bachelor's degree or equivalent knowledge and experience, significant progressive leadership experience and significant experience in product management/an equivalent commercial role and experience at operating at the Executive Band level (or equivalent). The Claimant attended at least two interviews. I accepted Ms Helm's evidence that if at the end of the interview process a candidate who was at risk of redundancy was scored the same as a candidate who was not at risk, that priority would be given to the at risk candidate. The Claimant was unsuccessful in obtaining the role, the feedback he received on 3 October 2018, was that relative to the other candidates he had good commercial experience, but not as much program and operational experience and less familiarity with the technology. The successful candidate was Mr Haigh, who was in his early 50s. Mr Haigh's previous role had been project director for

the Boeing 777X, which was one of the Respondent's most significant projects. Mr Haigh had undertaken his previous role at SPB level, but had experience operating at a senior level. There was no evidence as to what experience would be equivalent to operating at EB band. In her evidence Ms Helm conceded that the Claimant met the qualification requirements for the role. She also gave evidence that Ms Cummings, who worked for her, would have told the interviewer that the Claimant was at risk; I did not accept this evidence, the evidence was confused and Ms Helm came across as unsure and there was no documentary evidence to support the assertion. The only document in the bundle in relation to the interview process related to one round of interviews, however there was no indication of scoring or ranking of the candidates or where it fit into the structure of interviews.

60. A fourth consultation meeting took place on 11 October 2018. It was explained that there had had been a target to reduce headcount from 58 to 44 and that they had had retirements and two overseas members of the team had left and not been replaced. The Claimant confirmed that he was looking into a possible government relations role.

61. On 15 October 2018, the Claimant submitted a third grievance. The Claimant said that headcount reduction in Mr Cyr's team had not been raised before. He said that he was being discriminated against on the basis of his race and he had not been offered early retirement.

62. On 25 October 2018, Mr Anderson held a grievance outcome meeting and went through the points in his outcome letter in which the grievances were not upheld. In the meeting the Claimant nodded when it was suggested that Ms Baker had brought up the conversation regarding retirement in June.

63. In the outcome letter Mr Anderson provided a combined response to the first and second grievances, namely:
   (a) Mr Cyr did not recall saying 'young man' to the Claimant, but that he used the expression when talking to colleagues, irrespective of their age.
   (b) Regarding Mr Moll's reference to retirement, the Claimant had not considered that the conversation was significant at the time. Mr Moll had said that it was a friendly conversation and was irrelevant to the restructuring. It was concluded that this was not inappropriate questioning.
   (c) There was no reference to evidence of Mr Luley or his timeline. This was despite the evidence causing Mr Anderson concern. Mr Anderson's evidence was he considered that other witnesses contradicted Mr Luley's account. It was concluded that the proposed redundancy was driven by cost saving measures and was not motivated by a desire to replace the Claimant with a particular person.
   (d) The new team leader role would be different, the executive oversight would be carried out by Mr Moll. None of the people the Claimant

suggested should have been in the pool carried out similar work to him. Mr Anderson spoke to Ms Helm, who considered that no interchangeable roles existed. He also relied upon the table at p372 and noted that the differences between a customer account manager (CAM) and Sales Director were that a sales director was expected to provide more product line expertise and generally operate the technical side of the sales business. The Claimant was the only EB in MSO. It was recommended that the Claimant was provided with a more detailed business case.

The grievances were not upheld

64. On 31 October 2018, a fifth consultation meeting took place [p389-397]. The business case was shared with the Claimant in detail. It was confirmed that the main drivers were 'cost out' and a desire to get the customer facing organisation aligned and geographically located with that customer. The Claimant agreed that he was not aligned to a customer, but was doing a management role. It was explained that the Claimant was not aligned with key accounts. Discussion took place about a potential EB roll at Lockheed Martin, but checks were needed to ascertain whether the Claimant would have security clearance. The Claimant raised that he had asked for details of the Voluntary Retirement Incentive Programme ("VRIP"). It was confirmed that there had been a VRIP in the USA in 2017 for SPB level and below. It was confirmed that there was also less people in Japan, Latin America and Korea, one had moved to an SP role in a different part of the business and the other two had left and not been replaced. After discussing the VRIP, Mr Moll said "you can retire tomorrow if you want. To clarify again. There was a VRIP package to the US for SP band and below, not EB. No other packages were offered." The Claimant said that retirement had never been offered to him and he was not in the GE pension. Ms Helm said, "regarding retirement, nothing stops you making the decision to retire if that is what you wish to do – that is a personal choice available for you to make."

65. On 1 November 2018, Mr Moll e-mailed the Claimant with the business case [p410-411 & 381-388]. In 2017 the General Electric business was facing significant costs pressures. Reducing cost was a primary focus. It was considered that costs savings could be achieved in MSO to reorganise to better align resources to the customers and deliver an overall reduction in employee numbers. The Claimant did not have customer account responsibilities and his primary role was to lead a very experienced team. It was considered that the team needed a nominal amount of support, the executive leader responsibilities could be absorbed by Mr Moll and the government relations aspects could be covered by numerous members of Cheltenham staff. The EB Leader in Europe role could be removed because the regional sales volume did not warrant it, customer accounts did not necessitate it and the Claimant's leadership role in the organisation was an anomaly. It also set out that the US airframer accounts produced sales of

$700,000,000, whereas the European airframer accounts produced sales of $133,000,000 and that the Boeing account had a team leader at SPB level. I accepted that the aims stated in the business case were genuine.

66. The Claimant did not accept that his role was an anomaly and referred to John Lancia. Mr Lancia worked in the Middle East in a very active market, which had higher sales numbers than Europe and lower resources. At the time, the EB level was considered justified. At the end of 2019 Mr Lancia moved to the USA into a SPB role. The role that he vacated in the middle east was also changed to an SPB role.

67. On 9 November 2018, a sixth consultation meeting took place at which the background was explained again to the Claimant. The Claimant said that he believed the decision was a foregone conclusion.

68. On 14 November 2018, the Claimant contacted Mr Luley and spoke about his being put at risk of redundancy. Mr Luley suggested that there might be an age discriminatory element. No notes were provided of the conversation.

69. On 14 November 2018, at a meeting with Mr Moll, it was confirmed that the Claimant's role would be made redundant, which was followed by a letter dated 21 November 2018. The Claimant was informed that his proposals did not meet the business objectives. It was confirmed that the Claimant's role was redundant, but that did not mean as an employee he was redundant and that they would work with him to try and identify alternative positions. The Respondent was prepared to post the new SPB team leader role.

70. On 28 November 2018, a seventh consultation meeting took place, at which there was discussion about alternative roles. It was confirmed that if an alternative role could not be found that the Respondent would look to terminate the Claimant's employment on 31 December 2018. The Claimant was interested in two potential roles

71. On 30 November 2018, the Claimant spoke to Mr Luley. The Claimant provided handwritten notes [p649-650]. The first part appeared to be a note of a conversation and did not appear to suggest that Mr Luley made reference to the matters in paragraph 10 of the Grounds of Claim. The second part appeared to be the Claimant's notes on what he thought about the process and noted that Mr Cyr asked Mr Luley about his age and retirement. He also recorded that Mr Cyr had called him young man and Mr Moll asked him about his retirement plans, neither of which was information likely to have come from Mr Luley. It was most likely that the second part of the notes was the Claimant's thoughts on the process, rather than a record of what he was told.

72. On 5 December 2018, an eighth consultation meeting took place. It was confirmed that the Claimant would not be eligible for the Lockheed Martin role, as he did not have US security clearance. The XLP role had reopened and the Claimant would be updated. The Claimant said that only SBP role he would be interested in would be to a potential Government Relations role, but there was no guarantee that that role would be created. He also confirmed that he was almost 100% sure that he would not apply for the SBP role in the CAM team. I accepted the Claimant’s evidence that he was not considering the SP CAM team role, because Mr Moll, by implication, had given the impression that it was earmarked for Mr Keating.

73. On 6 December 2018, the Claimant was informed that his third grievance (discrimination on the ground of nationality) was not upheld.

74. On 7 December 2018, Sarah Helm, informed the Claimant that the XLP leader role was at SPB level. On 19 December 2018, Ms Helm e-mailed the Claimant and said that the role was actually an EB role. The Claimant did not apply for the role.

75. On 12 December 2018, the Claimant appealed against all of the grievance outcomes.

76. On 14 December 2018, the Claimant submitted a fourth grievance. He said that he had been targeted because of his age, the business case had been constructed retrospectively. There was no reference to the matters in paragraph 10 of the Grounds of Claim or conversations with Mr Luley.

77. On 20 December 2018, the Claimant attended a ninth consultation meeting. It was considered that all available alternative roles had been exhausted. It was confirmed that the redundancy would be going ahead at the end of the year, but that a final decision would take place after his grievance appeal.

78. On 21 December 2018, the Claimant’s appeal regarding the first three grievances was heard by Mr Evans. The Claimant referred to Mr Luley as having access to documents relating to him being a victim of age discrimination. The Claimant referred to Mr Cyr asking Mr Luley how old he was in November 2017. The Claimant referred to the Dad’s Army image and said that came in the office a few months ago and he had been clearing his drawer and found it again. Other matters discussed, included the pool for selection and that in relation to the SPB role it was clear that it was intended for Mr Keating.

79. After the meeting Mr Evans interviewed several people including Mr Cyr, Mr Moll and Mr Luley. Ms Perez (HR Manager) and Mr Wolfe (HR manager) both referred to it being considered that an EB role was not required in Europe. Mr Wolfe said that there was friction between Mr Luley and Mr Cyr

after Mr Luley had spoken to other people, rather than Mr Cyr and that the relationship was toxic. Mr Wolfe did not recall Mr Luley raising any concerns with him about age discrimination. Mr Luley said that he had heard Mr Cyr say that the team was aged, apart from Scott, and it needed fresh blood or words to that effect. He was clear that Mr Cyr wanted rid of the Claimant. There were conversations about how old the Claimant was and whether they could give him a package. Mr Luley said he had a raised his own grievance after being force out of military engines.

80. Mr Cyr, when questioned by Mr Evans, denied making comments about an older team, rather that it needed to be focused on getting closer to customers. He said that "Jonathon was not someone you could ask to do that, and he stands out because he didn't do a lot… the rest of the team are very good and fresh blood implies wholesale changes, which wasn't and still isn't the intent." It was denied that the decision to eliminate the role was age related. Mr Evans accepted that he did not ask Mr Cyr questions about Mr Luley's timeline and that he did not look at the team leader job description. I accepted Mr Cyr's oral evidence that he was referring to the Claimant's role as an EB in relation to getting closer to customers and that the Claimant was managing the people who had the direct contact.

81. Mr Wilking, when questioned by Mr Evans, said that the Claimant's role would be replaced with an SPB role when he retired or moved, unless something changed. He was then told by Mr Mattis that they had to restructure and get cost down. He thought that if he tried to eliminate the Claimant's role he would get into challenges. He decided not to action elimination of the Claimant's role, because he had been involved in winning a big contract with Mr White.

82. On 24 December 2018, the Claimant was notified that his employment would be extended.

83. On 9 January 2019, the Claimant attended a grievance appeal outcome meeting at which he was informed that it had not been upheld. An outcome letter dated 4 March 2019 followed. Mr Evans concluded that Mr Cyr had inherited the situation and sought to implement the cost out proposals and that Mr Wilking had identified the EB role was no longer required and the Claimant could have been placed at risk of redundancy earlier. It was not accepted that age discrimination was behind the reason for redundancy. The Dad's Army image was not considered discriminatory and the onus was on the Claimant to address inappropriate material and to suggest that it reflected a discriminatory culture was disingenuous.

84. On 30 January 2019, the Claimant's employment was terminated [p555-556]. The Claimant was informed of his right to appeal against the decision.

85. On 6 February 2019, the Claimant appealed against the decision to dismiss him [p547-551]. The Claimant said that he had been discriminated on the grounds of his age.

86. On 7 February 2019, the Claimant spoke to Mr Luley. The handwritten notes provided included: “people reviews do not include me”.

87. On about 2 March 2019, it was announced that Scott Keating had been appointed to the Europe Military Accounts Team Leader role.

88. On 9 April 2019, the Claimant attended a redundancy appeal meeting held by Mr McKechnie. Prior to the hearing Mr McKechnie considered the notes of the consultation meetings, the grievance letters and outcomes and the statements from the grievance appeal process. He did not see Mr Luley’s timeline. At the meeting, the Claimant said Mr Luley had told him that he had been targeted by Mr Cyr. He referred to the Mr Cyr referring to him as young man and the conversation with Mr Moll in June 2018. The Claimant said that he had received the Dad’s Army image one to two years ago and had put it aside and he had found it again when clearing out his desk. In relation to the power role the Claimant said that the feedback he had received was that the other candidates had more product knowledge and programme manager training.

89. Following the meeting, Mr McKechnie obtained additional documents, including the at-risk letter and commentary around the power role. On 17 April 2019 he spoke to Mr Cyr. At the start of the conversation he told Mr Cyr that he did not think there was merit in the suggestion that the young man comment was discriminatory. Mr Cyr said that the Claimant had a lot to offer and was very capable, it was not personal to the Claimant, it was that the business could not afford the luxury of an EB role in the UK. Even if it were an SPB role headcount would still need to be reduced.

90. Mr McKechnie spoke to Mr Moll on 25 April 2019. He said that Mr Keating had been identified and supported as a successor with the Claimant. The Claimant definitely knew this and agreed.

91. Mr McKechnie spoke to Mr Luley on 29 April 2019. Mr Luley told him that he had numerous conversations about the age profile of the team and he was told to make the Claimant’s role redundant. He also said, “my manager’s perspective was some were long in the tooth, he wanted to see a younger age profile that had more runway”. He had been told to remove the Claimant from a 9blocker in March 2018. He had been told figure a way round this with HR and make it happen. Mr McKechnie did not ask Mr Cyr any questions about what Mr Luley told him.

92. By letter dated 10 May 2019, the Clamant was informed that his appeal against dismissal had been rejected. It was concluded there was a clear business rationale to eliminate the EB level role. The references by Mr Luley to ‘long in the tooth’ was language used in normal succession planning, but such comments were clumsy. The Claimant had been aware of the Dad’s Army image and joined in the joke. The Claimant had not been aware of the second image and it was this that was left on his desk. The Claimant had condoned and took part in behaviour he claimed to be discriminatory. The pooling process had been considered with genuine business motives and there was no evidence of discrimination. In relation to the power role the Claimant lacked the necessary technical domain and depth.

93. In oral evidence Mr Cyr said that there was precedent for keeping pay the same if an EB is moved to an SPB role and this also applied to the UK. He also said that if the Claimant had been appointed in the SPB CAM role his salary probably would have remained the same, but over a period of time his bonus would have been affected. I accepted this evidence. The Claimant was not informed at any stage that his salary could be ringfenced. The Claimant gave evidence, which I accepted, that he considered the team leader role should have been given to him, with his EB terms and conditions ring-fenced.

94. The Dad’s army image was updated to include Ms Nicholas. The Claimant said that he received the image in a Christmas card from Mr White, but that his wife had opened the card and put the image to one side and it was not until April 2019 that she brought it to his attention. It was likely that the Claimant received a copy of the image from Mr White at about Christmas but that he did not appreciate it had been altered until much later. The Claimant was otherwise mistaken in his recollection.

95. Between April 2017 and 5 February 2019, when the Claimant’s employment ended, 14 people including the Claimant, either ceased working for the Respondent in the division or had moved to another area of the business. The average age of people leaving or whose roles changed was 51.6.

Conclusions on the conversations between Mr Luley and Mr Cyr

96. A strange feature of the evidence was that the Claimant did not refer to the conversations with Mr Luley during the various meetings in any particular detail. Further Mr Luley’s timeline did not refer to the matters at paragraph 10 of the Grounds of Claim, however in the third conversation with Mr Anderson, Mr Anderson recorded that Mr Luley was asked about people’s ages and how close they were to retirement, especially the UK team. Mr Moll accepted that the demographic of the team was also discussed. On the balance of probabilities, discussions were held between Mr Cyr and Mr Luley about the age and proximity to retirement of the team members and

it is likely that Mr Cyr made enquiries about everybody in the team and asked specifically about the Claimant's age and proximity to retirement and whether his intentions were known. The note taken on 8 October 2018 appeared to refer back to earlier conversations and Mr Anderson's evidence was inconsistent as to when he had discussions with Mr Luley. It was likely that Mr Luley told Mr Anderson about those discussions, to the extent identified above, during his first meeting.

97. In the notes taken by the Claimant of the conversations with Mr Luley, there was no reference to 'fresh blood', 'younger age profile' or more runway. Mr Luley referred to 'fresh blood' during the grievance appeal, but caveated it with 'words to that effect'. In the appeal against dismissal, Mr Luley did not say that Mr Cyr had said the team was long in the tooth, that he wanted a younger age profile with more runway, rather that was his perspective. I was not satisfied that Mr Cyr used the words alleged. However, the discussions were taking place within a background of concern about succession planning and it is likely that this was the perception that Mr Luley held.

98. The Respondent was looking at reducing headcount and the Claimant's role had been identified as one which could be eliminated, it was therefore likely that Mr Cyr asked Mr Luley to remove the Claimant's role from the proposed restructure. It is also likely that it was suggested that Mr Luley spoke to HR, however it is unlikely that he was told to figure a way round this with HR and make it happen.

The Law

99. The reason for the dismissal was redundancy which is a potentially fair reason for dismissal under section 98 (2) (c) of the Employment Rights Act 1996 ("the Act").

100. The statutory definition of redundancy is at section 139 of the Act. This provides that an employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (section 139(1)(b)) "the fact that the requirements of (the employer's) business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish"

101. I considered section 98 (4) of the Act which provides "…. 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, and – (b) shall

be determined in accordance with equity and the substantial merits of the case”.

102. There was also a claim alleging discrimination on the grounds of a protected characteristic under the provisions of the Equality Act 2010 (“the EqA”). The Claimant complains that the Respondent has contravened a provision of part 5 (work) of the EqA. The Claimant alleged direct discrimination. The protected characteristic relied upon was age, as set out in section 5 of the EqA.

103. As for the claim for direct discrimination, under section 13(1) of the EqA 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.

104. I also took into account the ACAS code of practice on Disciplinary and Grievance procedures 2015 and the ACAS guide on Age Discrimination 2019.

Redundancy

105. The simplest type of redundancy situation arises where the business requires fewer employees of whatever kind. Sutton v Revlon Overseas Corpn Ltd [1973] IRLR 173, NIRC: The chief accountant was sacked and his work re-allocated amongst three former colleagues. The firm still needed the same amount of accounting work, but they now needed only three employees to do it instead of four. Therefore, there was a redundancy situation.

106. The assessment of whether there has been a diminution in the requirements of the business for employees to carry out work of a particular kind is always a question of fact for a tribunal to decide. The tribunal should not determine the issue by reference to the employee's contract or, exclusively, his or her function. The parties’ intentions or beliefs do not determine the issue either. The existence of a redundancy situation is a legal construct.

107. As was made clear by the House of Lords in Murray v Foyle Meats [1999] ICR 827, two simple questions of fact arose;

(i) Whether there exists one or other of the various states of economic affairs mentioned in the section. In other words, whether the requirements of the business for employees to carry out work of a particular kind ceased or diminished, and it did not matter that it was necessarily the kind of work undertaken by the Claimant which needed to have ceased or diminished (*Packman-v-Fauchon* [2012] ICR 1362, EAT);

(ii) Whether, as a matter of causation, the dismissal was wholly or mainly attributable to that state of affairs, i.e. the diminution of the need for employees generally to carry out work of a particular kind.

108. The test removed the need to consider exactly what the employee did or was required to do under his contract and it put an end to the tension between what were known as the competing 'function' and 'contract' tests of redundancy.

109. Where, for example, an employer's business needed fewer employees to do the same amount of work, those who were dismissed would clearly have been redundant.

110. Changes to terms and conditions do not necessarily indicate the existence of redundancy situation, although they may be relevant to the fairness of the dismissal.

111. Redundancy and reorganisation are not necessarily mutually exclusive. A reorganisation may involve redundancies, or it may not. It simply depends upon whether the definition for a redundancy is met; whether the requirements of the business for employees to carry out work of a particular kind ceases or diminishes.

112. In Williams v Compair Maxam Ltd [1982] IRLR 83, the EAT set out the standards which should guide tribunals in determining whether a dismissal for redundancy is fair under s 98(4). Browne-Wilkinson J, giving judgment for the tribunal, expressed the position as follows: '... there is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:

(1) The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.

(2) The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.

(3) Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for

selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.

(4) The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.

(5) The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment."

113. It has been stressed that not all these factors are present in every case since circumstances may prevent one or more of them being given effect to. However, if they are to be departed from one would expect a good reason for doing so. The basic approach is that, in the unfortunate circumstances that necessarily requires redundancies, as much as is reasonably possible should be done to mitigate the impact on the work force and to satisfy them that the selection has been made fairly and not on the basis of personal whim.

114. In Langston v Cranfield University [1998] IRLR 172, the EAT 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. Accordingly, even if not raised specifically by the Claimant, the employment tribunal will be expected to consider them. Moreover, the employer will be expected to lead evidence on each of these issues.

115. Pool: the case law has rendered it difficult for an employee to challenge the manner in which an employer draws a selection pool. If an employer has genuinely applied his mind to the question, a tribunal is not obliged to consider the reasoning of the employer in greater detail. The question for the tribunal is whether the pool was one which a reasonable employer could have chosen (Taymech v Ryan [1994] UKEAT/663/94 and Hartshead v Byard [2012] ICR 1256).

116. Often, in the case where one role is being made redundant, an employer assumes that the post holder is self-selected without considering other employees for the pool. An employer may be held to have acted unfairly if it failed to at least consider whether others should also be placed in the pool (Fulcrum Pharma v Bonassera [2010] UKEAT/0198/10). When considering whether to include others, an employer should account for factors such as the availability of other vacancies, the differences in the jobs, the differences in pay and the relative length of service and qualifications of each employee. There nevertheless remain cases where the higher courts have been happy for the tribunal to have allowed an employer to focus upon a single employee during a redundancy process

(Wrexham Golf Club v Ingham [2012] UKEAT/0190/12) and this approach underlines the fact sensitive nature of the exercise.

117. Selection: It is now well established that tribunals cannot substitute their own principles of selection for those of the employer. They can interfere only if the criteria adopted are such that no reasonable employer could have adopted them or applied them in the way in which the employer did. However, as the EAT made clear in the Williams v Compair Maxam case, it is important that the criteria chosen for determining the selection should not depend solely upon the subjective opinion of a particular manager but should be capable of at least some objective assessment.

118. In Morgan v Welsh Rugby Union [2011] IRLR, the EAT held that the factors set out in Williams do not seek to address the process by which such roles are to be filled. Where an employer has to decide which employees from a pool of existing employees are to be made redundant, the criteria will reflect a known job, performed by known employees over a period. Where, however, an employer has to appoint to new roles after a re-organisation, the employer's decision must of necessity be forward-looking. It is likely to centre upon an assessment of the ability of the individual to perform in the new role. Whereas Williams-type selection will involve consultation and a meeting, appointment to a new role is likely to involve something much more like an interview process. A tribunal considering the fairness of such a process must apply s.98(4) of the 1996 Act. A tribunal is entitled to consider, as part of its deliberations, how far an interview process was objective, but it should keep carefully in mind that an employer's assessment of which candidate will best perform in a new role is likely to involve a substantial element of judgment. A tribunal is entitled to take into account how far the employer established and followed through procedures when making an appointment, and whether they were fair.

119. It is now more common that employers adopt a system of selection which relies upon a manager's assessment of an employee's ability and performance, in conjunction with more objective criteria although it has been said that a purely subjective judgement by a line manager is unlikely to be a fair selection method (Watkins v Crouch [2011] IRLR 382).

120. A tribunal will not usually review the marks employees received through a scoring process. It will generally be sufficient for an employer to show that a reasonable system for selection was established and fairly administered. The tribunal may assess the fairness of the system, the criteria and the method of marking, but it should not embark upon a detailed analysis of the individual scores unless there has been a glaring inconsistency or bad faith is alleged.

121. Consultation: Consultation is one of the basic tenets of good industrial relations practice. Where unions are recognised, consultation will generally be with the trade unions, although this does not normally eliminate the obligation to consult in addition with individual employees. Consultation with individuals will generally arise once they have been at least provisionally selected, and will be for the purpose of explaining their own personal situations, or to give them an opportunity to comment on their assessments.

122. The EAT, in Mugford v Midland Bank [1997] IRLR 208 summarised the state of the law as follows:

> (1) Where no consultation about redundancy has taken place with either the trade union or the employee the dismissal will normally be unfair, unless the [employment] tribunal finds that a reasonable employer would have concluded that consultation would be an utterly futile exercise in the particular circumstances of the case.
>
> (2) Consultation with the trade union over selection criteria does not of itself release the employer from considering with the employee individually his being identified for redundancy.
>
> (3) It will be a question of fact and degree for the [employment] tribunal to consider whether consultation with the individual and/or his union was so inadequate as to render the dismissal unfair. A lack of consultation in any particular respect will not automatically lead to that result. The overall picture must be viewed by the tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy.

123. It has to be remembered that warning and consultation are two different things. Consultation generally requires an employee being given a fair and proper opportunity to discuss the reasons behind the employer's decision and to express his views on them with the employer, thereafter, properly and genuinely considering them. An employee clearly needs to be given sufficient information so that he can understand the reasons behind the decision which is threatened by his employer (Davies v Farnborough College [2008] IRLR 14). Even when there has been consultation with the trade union, a dismissal may still be unfair if there has been no individual consultation with employees. Whilst each case will depend upon its facts and whilst, in some circumstances, it may not be strictly necessary to have individual consultation, employees must nevertheless have the opportunity to contest their selection and express their views.

124. Search for alternative employment: In order to act fairly in a redundancy situation an employer is obliged to look for alternative work and satisfy himself that it is not available before dismissing for redundancy (with

the same employer or elsewhere in a group of associated employers, if appropriate). It has been emphasised by the case law that the duty on the employer is only to take reasonable steps, not to take every conceivable step possible to find the employee alternative employment.

125. In Thomas and Betts Manufacturing Co v Harding [1980] IRLR 255*, CA*, the Court of Appeal ruled that an employer should do what it can so far as is reasonable to seek alternative work. This does not mean, however, as the EAT pointed out in MDH Ltd v Sussex [1986] IRLR 123, EAT, that an employer is obliged by law to enquire about job opportunities elsewhere and a failure to do so will not necessarily render a dismissal unfair.

126. The decision in Polkey v AE Dayton Services [1988] ICR 142 introduced an approach which requires a tribunal to reduce compensation if it finds that there was a possibility that the employee would still have been dismissed even if a fair procedure had been adopted. Compensation can be reduced to reflect the percentage chance of that possibility. Alternatively, a tribunal might conclude that a fair of procedure would have delayed the dismissal, in which case compensation can be tailored to reflect the likely delay. A tribunal had to consider whether a fair procedure would have made a difference, but also what that difference might have been, if any (Singh v Glass Express Midlands Ltd UKEAT/0071/18/DM).

127. In Software 2000 Ltd v Andrews [2007] IRLR 568 the EAT reviewed the authorities and gave the following guidance regarding the correct approach to 'Polkey' and in particular the difficulties inherent in what is a predictive exercise:

'(1) In assessing compensation the task of the Tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal.

(2) If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the Tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future.)

(3) However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with

uncertainty that no sensible prediction based on that evidence can properly be made.

(4) Whether that is the position is a matter of impression and judgment for the Tribunal. But in reaching that decision the Tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

(5) An appellate court must be wary about interfering with the Tribunal's assessment that the exercise is too speculative. However, it must interfere if the Tribunal has not directed itself properly and has taken too narrow a view of its role".

128. In certain circumstances a tribunal may properly find that even though the dismissal would have taken place, adherence to fair procedures would have delayed its implementation. This is the approach sanctioned by the House of Lords in Polkey v A E Dayton Services Ltd [1987] IRLR 503, [1988] ICR 142, HL. In these circumstances compensation should be awarded for the additional period of time for which the employee would have been employed had the dismissal been fair (see Mining Supplies (Longwall) Ltd v Baker [1988] IRLR 417, [1988] ICR 676, where a dismissal was held to be unfair for lack of consultation and the EAT held that had a reasonable period for consultation occurred the dismissal would have been delayed by a week).

129. In some cases, it is difficult to be certain whether the dismissal would have occurred had the employer acted fairly.

Direct Discrimination

130. With regard to the claim for direct discrimination, the claim will fail unless the Claimant has been treated less favourably on the ground of his age than an actual or hypothetical comparator was or would have been treated in circumstances which are the same or not materially different. The Claimant needs to prove some evidential basis upon which it could be said that this comparator would not have suffered the same allegedly less favourable treatment as the Claimant.

131. In Madarassy v Nomura International Plc [2007] EWCA Civ 33 Mummery LJ stated: "The Court in Igen v Wong expressly rejected the argument that it was sufficient for the Claimant simply to prove facts from which the tribunal could conclude that the Respondent "could have"

committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the Respondent had committed an act of discrimination". The decision in Igen Ltd and Ors v Wong [2005] IRLR 258 CA was also approved by the Supreme Court in Hewage v Grampian Health Board [2012] IRLR 870. The Court of Appeal has also confirmed that Igen Ltd and Ors v Wong and Madarassy v Nomura International Plc remain binding authority in both Ayodele v Citylink Ltd [2018] ICR 748 and Royal Mail Group Ltd v Efobi [2019] EWCA Civ 18.

132. "Could conclude" must mean that "a reasonable Tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the Claimant in support of the allegations of discrimination. It would also include evidence adduced by the Respondent contesting the complaint.

133. The test within s. 136 encouraged me to ignore the Respondent's explanation for any poor treatment until the second stage of the exercise. I was permitted to take into account its factual evidence at the first stage, but ignore explanations or evidence as to motive within it (see Madarassy-v-Nomura International plc and Osoba-v-Chief Constable of Hertfordshire [2013] EqLR 1072). At that second stage, the Respondent's task would always have been somewhat dependent upon the strength of the inference that fell to be rebutted (Network Rail-v-Griffiths-Henry [2006] IRLR 856, EAT).

134. I needed to consider all the evidence relevant to the discrimination complaint, that is (i) whether the act complained of occurred at all; (ii) evidence as to the actual comparator(s) relied on by the Claimant to prove less favourable treatment; (iii) evidence as to whether the comparisons being made by the Claimant were of like with like; and (iv) available evidence of the reasons for the differential treatment.

135. The Claimant did not need to have to find positive evidence that the treatment had been on the alleged prohibited ground; evidence from which reasonable inferences could be drawn might suffice. Unreasonable treatment of itself was generally of little helpful relevance when considering the test. The treatment ought to have been connected to the protected characteristic. What I was looking for was whether there was evidence from which we could see, either directly or by reasonable inference, that the Claimant had been treated less favourably than others in a younger age group because of his age.

136. The circumstances of the comparator must be the same, or not materially different to the Claimant circumstances. If there is any material difference between the circumstances of the Claimant and the circumstances of the comparator, the statutory definition of comparator is not being applied (Shamoon-v-Royal Ulster Constabulary [2003] UKHL 11). It is for the Claimant to show that the hypothetical comparator in the same situation as the Claimant would have been treated more favourably. It is still a matter for the Claimant to ensure that the Tribunal is given the primary evidence from which the necessary inferences may be drawn (Balamoody v UK Central Council for Nursing Midwifery and Health Visiting [2002] IRLR 288).

137. When dealing with a multitude of discrimination allegations, a tribunal was permitted to go beyond the first stage of the burden of proof test and step back to look at the issue holistically and look at 'the reasons why' something happened (see Fraser-v-Leicester University UKEAT/0155/13/DM). In Shamoon-v-Royal Ulster Constabulary, the House of Lords considered that, in an appropriate case, it might have been appropriate to consider ‘the reason why’ something happened first, in other words, before addressing the treatment itself.

138. As to the treatment itself, I had to remember that the legislation did not protect against unfavourable treatment per se but less favourable treatment. Whether the treatment was less favourable was an objective question. Unreasonable treatment could not, of itself, found an inference of discrimination, but the worse the treatment, particularly if unexplained, the more possible it may have been for such an inference to have been drawn (Law Society-v-Bahl [2004] EWCA Civ 1070).

139. The Tribunal is required to identify the factual criteria applied by the Respondent as the basis for the alleged discrimination. The motive for discriminating is not relevant. Where the factual criteria which influenced the discriminator to act are not plain, it is necessary to explore the mental processes, conscious or unconscious, of the discriminator in order to discover what facts led him/her to discriminate. (R (on the application of E) v Governing Body of JFS and the Admissions Panel of JFS [2010] IRLR 136).

140. I reminded myself of Sedley LJ’s well-known judgment in the case of Anya-v-University of Oxford [2001] ICR 847 which encouraged reasoned conclusions to be reached from factual findings, unless they had been rendered otiose by those findings. A single finding in respect of credibility did not, it was said, necessarily make other issues otiose.

Conclusions

Redundancy

Was there a genuine redundancy situation?

141. The Claimant disputed that there was a genuine redundancy situation and said that it was contrived in order to remove him. The MSO division originally consisted of 58.5 employees. The Respondent needed to reduce its costs and reduce headcount. Between the initiation of the headcount reduction programme and the Claimant's departure, headcount had been reduced by 14. The Claimant submitted that the new team leader role consisted of the same tasks as undertaken by the Claimant and relied upon the lack of an updated job description and lack of comparative exercise. I did not accept that submission. A redundancy situation exists where fewer employees are required to undertake the same work. In this case the Respondent concluded that it did not require the Claimant's tier of management. His role was split between the new team leader for general management of the team and the Executive Band functions were subsumed by Mr Moll. Taking into account that headcount had also actually been reduced I was satisfied that there was a genuine redundancy situation. Further, there had been discussions of how to reduce headcount and it had already started to be reduced before the Claimant was put at risk of redundancy. The original business case and the more detailed business case provided to the Claimant were consistent with each other and the earlier discussions. The redundancy situation was not contrived.

What was the principal reason for the dismissal? And was it a potentially fair one?

142. The principal reason for dismissal was redundancy, which is a potentially fair reason.

Was the pool for selection one which a reasonable employer could have adopted?

143. The selection of the pool of those at risk is a matter for the employer. Ms Helm considered the pool and whether Mr Carlisle should be included. She considered that Mr Carlisle's role had a technical element and that technical expertise in sales roles was important. Further Mr Carlisle and Mr Backx were employed in different divisions and there was no evidence that they were undergoing restructuring at that time. The Claimant's pay was structured differently; in that he did not have targets to reach in order to gain an increment in pay. The Claimant's role was unique within his division. I was satisfied that Ms Helm applied her mind to the question of the pool and that a reasonable employer could have concluded that a pool of one was appropriate.

Did the Respondent sufficiently consult with the Claimant about the proposed redundancy?

144. The Claimant attended 9 consultation meetings and also grievance hearings which ran alongside the redundancy process. The Claimant put forward an alternative proposal, which the Respondent did not consider would sufficiently reduce headcount. The Claimant submitted that his proposal could not be properly considered without specific cost saving targets. I rejected that submission. The Claimant's salary was in the region of £190,000 per year plus bonus. The new team leader role was paid £77,000 per year. The Claimant was paid almost 2.5 times that of the SPB role. An employer, after having considered the proposals and knowing the levels of pay between the different bands, could have reasonably concluded that the Claimant's proposal would not have reduced cost sufficiently. The consultation meetings also considered alternative roles.

145. The Claimant also disputed whether his role was an anomaly and referred to Mr Lancia's position, which was the only other EB role that reported to another EB. Mr Lancia was in a different situation and was operating in a different market in a smaller team which produced a greater amount of revenue. It was important to recognise that Mr Lancia's role was also changed in an SPB role and that he returned to the United States to an SPB role. I was satisfied that the Respondent could have reasonably concluded that the Claimant's role was an anomaly and unusual within the Respondent's organisation.

146. However, the Respondent did not inform the Claimant of the possibility of ring-fencing and explore such options with the Claimant, which coupled with the conversations with Mr Moll on 1 and 2 August 2018 discouraged the Claimant from applying for the new Team Leader roll. This was a significant omission and as a consequence the Respondent failed to sufficiently consult with the Claimant.

Did the Respondent fail to reasonably seek alternative work for the Claimant by not appointing him to the Executive Band Power role?

147. There was a dispute as to whether the Claimant was sufficiently qualified for the role. The Claimant met the qualification requirements in the job description in that he had a bachelor's degree, the leadership experience and experience at operating at EB level. It was accepted that if the Claimant scored equally as highly as any other candidate who was not at risk of redundancy that he would be given priority. I was not satisfied that the Claimant's at-risk status was communicated to the interviewers. The Claimant attended a number of interviews, which tends to support that he met the general qualification requirements. The successful candidate was younger than the Claimant and the Claimant says that Mr Haigh did not meet the qualification requirement because he had been working at SPB level. I accepted Ms Helm's evidence that Mr Haigh had been leading the

Boeing 777X project, which was one of the Respondent's most significant projects at the time and that the position had a high level of seniority. The feedback the Claimant received was that there were better candidates. The Claimant's reference in the grievance meeting on 12 September 2018, that even after attending the interviews that it remained a long putt for him, led me to conclude that he thought there were potentially better candidates than him. However, there was no evidence of how the individual candidates were scored, or any evidence from the decision maker as to why Mr Haigh was appointed and the Claimant was not, or whether Mr Haigh met the qualification requirements. I was mindful that an employer's assessment of the suitability of a candidate is likely to involve a substantial element of Judgment and that a Tribunal will not normally review the marks an employee receives in the scoring process. However, the Respondent must also show that a reasonable system of selection was adopted and that it was fairly administered. The Respondent had a published job description and conducted a series of interviews. Although there was no evidence that the decision maker was aware that the Claimant was at risk of redundancy, the Claimant was not scored equally as highly to the successful candidate, as demonstrated by the feedback and the Claimant's remark that it was a long putt. The process was rigorous in that several interviews were conducted and there was no evidence to suggest that Mr Haigh had not operated at an equivalent to EB level. The feedback received by the Claimant demonstrated that proper consideration was given to his and the other candidate's applications. I was not satisfied that the Respondent failed to follow a reasonable selection process or that it conducted it unfairly. I was therefore not satisfied that the Respondent had failed to reasonably seek alternative work for the Claimant in this respect.

Did the Respondent fail to reasonably seek alternative work for the Claimant in the way that it approached the new CAM Team Leader role?

148. The Claimant and Respondent's witnesses agreed that there was a succession problem, in that many of the employees were approaching an age when they might retire. It was agreed that the most likely successor was Mr Keating and the Claimant mentored him to that extent. The Claimant's role had been identified at an early stage as not being necessary going forward and that the new role should not attract EB status. The organisational charts leading up to the Claimant being put at risk either identified Mr Keating as the proposed team leader, or the Saab account role as team leader, which was accepted to be Mr Keating's account. Mr Cyr said that it was likely that if the Claimant had been appointed to the new team leader role his pay would have been ringfenced. The Claimant said in his evidence that he should have been given the role and his EB terms and conditions ringfenced. The Claimant was never informed of that possibility. The conversations with Mr Moll on 1 and 2 August were significant. Mr Moll told the Claimant that the new team leader role was a career development

opportunity as to leading people, which he also confirmed in an e-mail. The Claimant was in a senior leadership role and was effectively being told that the new team leader role would be a step down. Further, the Claimant and Mr Moll's knowledge that Mr Keating was the Claimant's likely successor and Mr Moll telling him that he knew what he wanted and that he was the hiring manager and the failure to mention any possibility of ringfencing was discouragement from applying for the role. The lack of mention of ring fencing was significant due to the difference in the cost of the Claimant's salary in comparison to the salary of the SPB role, in that it was 2.5 times higher. Although the Claimant said to the Respondent that he did not want to apply for SPB roles, he was never given the opportunity to consider the new team role in conjunction with ring fencing. It has been emphasised by the case law that the duty on the employer is only to take reasonable steps, not take every conceivable step possible to find an employee new employment. In this case the Respondent did not inform the Claimant that his terms and conditions could be ringfenced if he were appointed to the role and sought to discourage him from applying for it. A reasonable employer would have discussed with the Claimant, that his terms and conditions could be ringfenced if he applied for the role, as this would be an important consideration for him. The Claimant was not provided with full information about his options in relation to the role. By failing to do this the Respondent failed to properly consider possible alternative employment for the Claimant in respect of this role.

Was the decision to dismiss pre-determined?

149. The expected succession plan was that Mr Keating would succeed the Claimant as team leader. The organisational charts showed either Mr Keating or the Saab account as being team leader. Mr Keating was the CAM with responsibility for Saab. Taking into account that the Claimant was discouraged from applying for the Team Leader role and that he was not informed that his terms and conditions were ring-fenced it was more likely than not that the decision to dismiss the Claimant was pre-determined.

Was dismissal within the range of reasonable responses?

150. The Respondent's failure in relation to informing the Claimant about the possibility of ring fencing was significant for the reasons set out above. In all the circumstances of the case the Respondent did not treat redundancy as a sufficient reason to dismiss the Claimant.

Did the Respondent adopt a fair procedure?

151. By failing to inform the Claimant of the possibility of ringfencing his terms and conditions or even considering it, the Respondent embarked on a process without providing the Claimant with the full facts. The possibility

of ring-fencing influences decisions that an employee makes in relation to redeployment options. The Claimant's evidence in relation to ring fencing demonstrated that he would otherwise have applied for the role. The basis of the consultation and search for alternative employment, rendered the procedure unfair.

If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

152. The Respondent failed to inform the Claimant that his terms and conditions could be ring-fenced. I took into account that the Claimant had been leading the team for many years. No evidence was adduced that if the Claimant had applied for the new Team Leader role that he would not have been appointed. There was no evidence as to why Mr Keating would have been preferred to the Claimant. In the present case such an assessment would be wholly speculative and had so much uncertainty that it was not possible to sensibly predict the chance that the Claimant would have been fairly dismissed in any event. Therefore, I was not satisfied that if a fair procedure had been followed that the Claimant would have been fairly dismissed or that there was such a chance of fair dismissal.

Direct discrimination

Did the Respondent carry out the following treatment and was it less favourable than the Claimant's comparator was treated?

By failing to appoint the Claimant to the role of Account Team Leader

Did the Claimant prove primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

153. The appropriate hypothetical comparator would be someone in the same role as the Claimant, but of a younger age in the region of 40 to 50. It is therefore necessary to consider whether that younger person would have been appointed to the team leader role.

154. The Respondent had been considering issues involving succession for a number of years and discussions had taken place with the Claimant that Scott Keating was a likely successor to the Claimant. When consideration was being given to possible future structures there were discussions between Mr Luley and Mr Cyr, in which Mr Cyr made enquiries as to the age and proximity to retirement of the Clamant and the wider team. The team, with the exception of Mr Keating who was younger, were of a similar age. Mr Luley was asked to remove the Claimant from the proposed

future structure. It was likely that if the Claimant had been appointed to the role that his salary would have been ring-fenced, however he was not informed that it could be. The proposed re-organisation chart from August 2017 [p153] showed Mr Keating as Team Leader with Mr Davis and Mr Hanson reporting to him. Thereafter the proposed reorganisation charts did not show names in the positions, but that the team leader would also have responsibility for Saab and at those times Mr Keating had responsibility for that client. Mr Moll's conversations with the Claimant on 1 and 2 August 2018, that the new team leader role would be a career development opportunity, are suggestive that it was designed to be a step up rather than a step down. Mr Moll's emphasised that he was the hiring manager and that he knew what he wanted, which discouraged the Claimant from applying for the new team leader role. The Claimant therefore proved primary facts from which it could be concluded that the difference in treatment was because of his age.

If so, what was the Respondent's explanation? Did it prove a non-discriminatory reason?

155. The Claimant was paid in the region of £190,000 a year and the new role was paid £77,000 a year. The Claimant's salary was almost 2.5 times the new role. There was a need to reduce cost within the MSO division and a need to reduce headcount. The Respondent relied upon the business case, which I accepted was genuine. The business case remained consistent since the start of the process, albeit that greater detail has been furnished. The Respondent was seeking to reduce cost and headcount. It had concluded that there was no need for the EB role within the MSO CAM and that the role was anomaly and that it cost £190,000 per year. The Claimant suggested that it was not an anomaly and referred to Mr Lancia's position. Mr Lancia was in a different situation and was operating in a different market in a smaller team that produced a greater amount of revenue. It was important to recognise that Mr Lancia's role was also changed to an SPB role and that he returned to the United States to a role at that level. I was therefore satisfied that the Respondent genuinely considered that an EB role was not required. The Claimant also relied upon the change in the proposal that his role was downgraded after his retirement or move to another part of the business, to that of removing his role. This was one of a number of options under consideration and was concluded not to meet the need to reduce cost or headcount sufficiently and I was satisfied that age played no part in this decision. Mr Cyr said that it was probable that the Claimant would be ringfenced as reductions from EB to SPB usually are. There was a context of succession planning and reorganisation. In relation to succession planning it is necessary to understand when employees are likely to leave a business, similarly if someone is likely to leave in the near future that will have an impact on any potential reorganisation. The background with which the Respondent was

concerned was cost reduction, of which a significant part was a reduction of headcount. If the comparator is analysed the Respondent will have the same consideration that an employee who is paid £190,000 for role that is unnecessary. If a younger person's terms and conditions were ringfenced the exposure of increased cost would be increased for the Respondent. Although the Respondent made enquiries about age, I was satisfied that age played no part in the Respondent's decision and that the reason was cost.

Dismissed the Claimant

Did the Claimant prove primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

156. The same matters referred to above are sufficient to shift the burden onto the Respondent.

If so, what is the Respondent's explanation? Did it prove a non-discriminatory reason?

157. As set out above the Respondent's reason to remove the Claimant's role was the cost to the business. The Claimant was paid almost 2.5 times that of the new team leader role and in financial terms is the equivalent of 2.5 employees. I accepted that the business case was genuine and that age played no part in the Respondent's decision.

Failed to include Alastair Backx and Andrew Carlisle in the pool of those at risk of redundancy

Did the Claimant prove primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

158. The Claimant relied on similarities between his role and his comparators. There was no evidence that the comparator's roles were at risk of redundancy. There were also differences in the way in which their pay was structured and the sales role required different technical expertise. Further the comparators were also part of separate divisions to that of the Claimant. Ms Helm advised on the correct pool and there was no evidence to suggest that age formed any part of her decision. In the circumstances the Claimant failed to adduce facts from which it could be concluded that the decision was due to the Claimant's age and he failed to discharge the initial burden of proof

159. Therefore, the Claimant succeeded in his claim of unfair dismissal and the claim of direct age discrimination was dismissed. Directions were then given for a remedy hearing by way of a separate order.

Employment Judge J Bax
Dated 13 November 2020