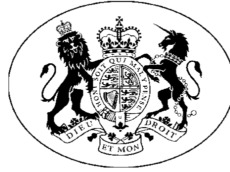

EMPLOYMENT TRIBUNALS

Claimant: **Ms S Atlas**

Respondent: **Travelers Insurance Company Limited**

Heard at: **East London Hearing Centre**

On: **19 and 20 January 2023**

Before: **Employment Judge Heath**

Members: **Ms S Harwood**
Mr S Woodhouse

Representation
Claimant: In person
Respondent: Mr F Currie

RESERVED JUDGMENT

The Claimant's claims of direct and indirect race discrimination, and direct and indirect age discrimination are not well-founded and are dismissed.

REASONS

Introduction

1. The Claimant claims direct and indirect race discrimination and direct and indirect age discrimination in relation to her failure to be shortlisted for interview for a role with the Respondent.

Procedure and Issues

2. A Case Management Preliminary Hearing took place on 10 October 2022 before Employment Judge Elgot, who listed the matter for a final hearing over two days to consider liability and, if appropriate, remedy.

3. EJ Elgot set out the Claimant claims in the Case Summary.

    a. The Claimant contends that she was treated less favourably than others were or would have been treated by not being shortlisted for the role of Desktop Services 2nd Line Support ("the role") because of her race and age.

b. The Claimant also contends that she was the subject of indirect age and race discrimination because the Respondent had a provision, criterion or practice ("PCP") that it would not employ British Pakistanis or employees in the age group 45-60 in the role.

4. There was some discussion of the issues at the beginning of the hearing and they were agreed to be as follows:

Direct age discrimination

5. The Claimant's age group is 45-60 and she compares herself with people in the age group ?

6. Did the Respondent do the following things:

    a. Not shortlist the Claimant for the role of Desktop Services 2nd Line Support Officer?

7. Was that less favourable treatment?

    The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

    If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

    The Claimant says she was treated worse than Sarah Evans, or in the alternative a hypothetical comparator.

8. If so, was it because of age?

9. Was the treatment a proportionate means of achieving a legitimate aim? The Respondent confirmed that it was not advancing any justification but simply denied the application of such a PCP.

Direct race discrimination

10. The Claimant's race is Asian or Asian British - Pakistani and she compares herself with people not of that race?

    a. Did the Respondent do the following things:

        i. Not shortlist the Claimant for the role of Desktop Services 2nd Line Support Officer?

    b. Was that less favourable treatment?

        The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The Claimant says she was treated worse than Sarah Evans, or in the alternative a hypothetical comparator.

c. If so, was it because of race?

Indirect discrimination

d. Did the Respondent have the following PCP:

   i. It would not employ British Pakistanis or employees in the age group 45-60 in Second Line Support

e. Did the Respondent apply the PCP to the Claimant?

f. Did the Respondent apply the PCP to persons with whom the Claimant does not share the characteristic, or would it have done so?

g. Did the PCP put persons with whom the Claimant shares the characteristic at a particular disadvantage when compared with persons with whom the Claimant does not share the characteristic?

h. Did the PCP put the Claimant at that disadvantage?

i. Was the PCP a proportionate means of achieving a legitimate aim? The Respondent did not advance any justification, but simply denied the application of such a PCP.

11. The Claimant provided a witness statement and gave evidence on her own behalf.

12. The following provided witness statements and gave evidence on behalf of the Respondent:

    a. Mr Adam Hartigan, Desktop Services Manager;

    b. Ms Laura Baxter, Senior Recruiter.

13. We were provided with a 117 page bundle. To this the Respondent added an email containing a summary of what was referred to during the hearing as the “personal information” of the shortlisted applicants for the role. This was referred to as R1. Additionally, the Claimant provided by email a table corresponding to the table at page 117 of the bundle (a table with names and personal characteristics of Mr Hartigan’s team) to which she added further information. This was referred to as C1.

14. The evidence was completed on the first day of the hearing. The Claimant provided written submissions at the start of the second day of the hearing. Both she and Mr Currie made oral closing submissions. The tribunal retired

to deliberate, in the hope of giving the parties an oral decision on the afternoon of the second day.

15. At 11.38 am the Claimant emailed the clerk (cc'd to the Respondent's solicitors) as follows:

    "I hope you don't mind but I would like to add one more thing...

    I think the judge said I cannot use sex discrimination in the case now as I had not mentioned it previously, but I don't think I can avoid the elephant in the room.

    From analysing the situation, I believe that Mr Hartigan has a preference for young white women to older pakistani women, but older men to older women.

    I don't think the issue is just black and white and as things become more apparent, I think its only fair to take them on board. Is there no point in law that will allow amendments to be made to earlier submissions as more information comes to light?"

16. This email was forwarded to the tribunal shortly afterwards. During the Claimant's closing submissions, the Judge had indicated that the Tribunal would be adjudicating on the pleaded age and race discrimination cases and could not consider any other case without an application for amendment. It occurred to the Tribunal that the Claimant's email indicated that she might be seeking to make such an application. The Tribunal therefore asked for the parties to be brought back into the CVP room.

17. The Judge and the Claimant further discussed the issues raised in the email. Initially the Claimant indicated she would like to amend her claim to add a claim of sex discrimination. The Judge explained to the Claimant how a Tribunal would approach an application to amend, and the factors it would consider in deciding on such an application. In particular, the Judge explained that the Tribunal would consider whether the amendment was substantial or otherwise, whether any time limit issues arose, the timing and manner of the application and the balance of hardship between the parties. He further explained that if the Claimant made such an application, the Respondent would be given the opportunity to oppose it. He further indicated that if the Claimant's application was successful an adjournment was likely so that further evidence could be adduced.

18. At the end of this discussion the Claimant confirmed that she did not wish to make an application to amend. She was asked again if this was genuinely how she wished to take the matter forward, and she confirmed that it was.

19. The Tribunal then continued its deliberations. It became rapidly apparent, however, that the delay caused by the consideration of a possible amendment meant that the Tribunal could not complete its deliberations. The parties were informed by the clerk that the Tribunal would be reserving its decision.

The facts

20. The Respondent is a US-based insurance group with offices in the UK where it employs around 600 staff. It has a Desktop Services Team to provide IT support to staff. From April 2019 Mr Hartigan was the head of this team, with the title ISC Director.

21. In December 2021 a team member, Mr Walker, a Desktop Services – Second Line Support left the business. Mr Walker was a black man in his 50s who had been recruited into the team by Mr Hartigan a few years previously.

22. The Respondent undertook a recruitment process to find Mr Walker's replacement.

23. The Respondent advertised on a number of recruitment websites and on its own company website. Applicants could apply through a variety of means. As part of candidate's application, they were invited to fill out what was termed during the hearing as self-identification data. This included gender and race. It was not clear whether age was included.

24. The Respondent operates a computerised applicant management system called Workday. This system allows for the uploading of job descriptions, collation of applications and for data and information to be collected. It has different access levels open to different users. While self-identification data is collected, the recruiting manager and members of its talent acquisition team do not have access to this data in the Workday system. The system can also generate rejection emails.

25. The Claimant applied for a role of Desktop Services – Second Line Support on 17 November 2021. A friend of hers, called Ms Evans, also applied.

26. Ms Baxter is a Talent Acquisition Consultant within the Respondent organisation. She became involved in the recruitment exercise for Desktop Services – second Line Support. In November 2021 Ms Baxter discussed the role with Mr Hartigan in a telephone conversation. The discussion covered information about desired skills and experience, and keywords to look out for in CVs. Ms Baxter added the job vacancy to various recruitment websites and to LinkedIn.

27. After applications were received, Ms Baxter carried out an initial screening of applications in order to filter out any which were obviously unsuitable. Mr Hartigan was made aware of the applications on the Workday system, and on 23 November 2021 he emailed Ms Baxter to say he had looked through some CVs which he thought were good. That same day Ms Baxter emailed Mr Hartigan to ask him to send a list of names for her to contact. In an email exchange Mr Hartigan said that he would like to move forward with some of the applications and asked how to remove unsuitable ones in Workday. On 1 December 2021 Ms Baxter suggested that Mr Hartigan should indicate to her the names he was interested in moving forward with.

28. There had been 16 applications, which is an average number for the particular recruitment exercise, and Mr Hartigan on 2 December 2021 sent a list of 12 names to be declined. The Claimant's name was on that list. In a

further email on 7 December 2021 Mr Hartigan asked if he could move on with the applications of a Mr Order, a Mr Chughtai, Ms Evans and Mr Pinto. In applicant self-identification data Mr order described himself as male and white British (United Kingdom). Mr Chughtai described himself as male and Asian/Asian British-Pakistani (United Kingdom). Ms Evans described herself as female and white British (United Kingdom). Mr Pinto described himself as male and Asian/Asian British (United Kingdom). The Claimant described herself as female Asian/Asian British – Pakistani (United Kingdom).

29. We find as a fact that neither Mr Hartigan nor Ms Baxter had sight of any of the self-identification information described in the paragraph above.

30. On 7 December 2021 Ms Baxter emailed to say that she had reached out to all of these candidates. She had had a telephone conversation with Mr Chughtai. He was expecting a salary of £55,000, which was around £15,000 higher than the salary of the role. She had tried to contact Ms Evans and Mr Pinto to no avail. She had spoken to Mr Order, commenting that he was a referral from a colleague called Mr Bryan. Ms Baxter subsequently made contact with Ms Evans, who indicated on 14 December 2021 that she no longer wished to progress her application. Mr Pinto never responded to attempts to contact him.

31. During the course of the hearing, we were taken to the Claimant's application and those of the four applicants who were shortlisted. We would observe that we are not experts in the IT field and can obviously not give an expert analysis of the respective strengths of these applications. We have considered the evidence about them put forward by the parties.

32. Mr Hartigan gave evidence that he was looking for a "broad skill set within the CV". He pointed out that the "big thing is trust, someone who is going to commit to Travellers and to IT". He said he was looking for experience of ITIL, Airwatch, VM and Citrix. He also indicated that he found big corporate experience desirable as the structure and business needs of these organisations tend to be similar to those required at the Respondent.

33. When cross-examined by the Claimant, Mr Hartigan accepted, in terms of evidence of the experience of ITIL, Airwatch, VM and Citrix on the shortlisted applicants CVs:

    a. None of these were apparent on Mr Order's application;

    b. Two of these appeared on Mr Chughtai's application;

    c. Two of these appeared on Ms Evans's application;

    d. None of these appeared on Mr Pinto's application; and

    e. Three of these appeared on the Claimant's application.

34. Mr Hartigan also gave evidence, which we accept, that Mr Order came with a "glowing recommendation" from a colleague, Mr Bryan. Mr Order worked in the hospitality industry between 2015 and 2020 before working as a technical

support analyst between January 2020 in September 2021, and an IT technician from September 2021 to the date of application. He had completed his GCSEs in 2011. Mr Hartigan was also candid about the fact that, without this recommendation, Mr Order would have been unlikely to be shortlisted on the strength of his written application. We have little difficulty accepting this evidence.

35. Mr Chughtai had been in his role as IT support specialist from October 2019 to the date of application. Before that he had been in an IT support role from August 2016 to October 2019. His previous roles, also in the IT field, were between one and two years from 2010 onwards.

36. Ms Evans had been in her role as an IT service desk analyst from February 2019 to the date of application. Before that she had been a service desk analyst working for the NHS from June 2017 to February 2019. She had two previous jobs in the IT field before that, for just over a year and just under a year. She completed university education in 2012, having finished at college in 2008.

37. Mr Pinto had been in his role of IT desktop support from June 2016 to the date of application. His previous job, as a desktop support engineer in India, lasted just over a year. Before that he worked as an IT technical field engineer role in India for a shade under 10 years. The first job which appears on his application began in 2003.

38. The Claimant's career history in her application showed that she had been in her current role as a second line service desk analyst from April 2019 to the date of application. Prior to that she had been service desk analyst for 13 months. Between September 2015 and March 2018, she had taken a career break to obtain a PGCE qualification. Her role before that was just over five years in an IT role. From March 2002 to November 2008 she had three jobs in IT lasting a year, just under two years, and nine or so months. She had finished university in 2000 and taken her A-levels in 1997.

39. In early December 2021 the Claimant had a conversation with Ms Evans and found out that she had been shortlisted. The Claimant was surprised, taking the view that she herself was as worthy of being shortlisted as Ms Evans. On 14 December 2021 the Claimant emailed the Respondent indicating that she felt there had been discrimination.

40. On a date unknown Mr Order was interviewed by Mr Hartigan and another member of staff. He was offered and accepted the role.

41. On 20 January 2021 Ms Sykes, a HR director at the Respondent, responded by email to the Claimant's complaint. The response was in three sections, which the Claimant agreed reflected the structure of her complaint. Ms Sykes dealt with the rejection of the Claimant's job application. She indicated that the hiring manager had given clear reasons why the Claimant's CV was not shortlisted, namely lack of time/experience in any one role during recent years; lack of relevant desktop service experience and other candidates with more relevant experience. She pointed out that the hiring manager has a

diverse team and selected diverse candidates to put through to the next stage. She pointed out that the hiring manager and the recruiter were not aware of the Claimant's ethnicity as it would not have been visible on the system. She indicated that the Claimant had been refused feedback because that was the standard policy of the Respondent. She also addressed an allegation that a white candidate with less experience was asked to discuss the role. She said that the hiring manager had provided a clear rationale as to why Ms Evans had more relevant experience in that she had been with her current employer since 2019, her time spent in the NHS working on large-scale projects and similar to those which successful candidates would likely to be involved with at the Respondent and that Ms Evans personal statement was of a better quality. She also indicated that the hiring manager confirmed that the Claimant's CompTIA Network experience was not relevant to the role.

42. Page 117 of the bundle shows the ages and ethnicities of the members of Mr Hartigan's team. We will use their initials:

    a. AH was 40 with no stated ethnicity;

    b. CE was 23 with no stated ethnicity;

    c. EA was 60 and was Black/Black British – African;

    d. Mr Order was 27 and white – British;

    e. JN was 43 with no stated ethnicity;

    f. MN was 48 and white - British;

    g. ST was 58 with no stated ethnicity;

    h. DC was 36 and white British.

43. It became clear during the hearing that page 117 was a snapshot of the team as it very recently was. Mr Hartigan referred in his witness statement to AW, who was appointed on 12 December 2022, and who is in his 40s. As set out above, the role that was the subject matter of this recruitment exercise was occupied by Mr Walker who had been recruited by Mr Hartigan some three years previously. Also, not in the table was a Mr Ibrahim, a man of Pakistani heritage, who had applied for a role in Mr Hartigan's team from a different team within the Respondent organisation, who was given a role by Mr Hartigan some four to five years ago. Mr Hartigan had also assisted Mr Ibrahim when he applied for a further promotion within the Respondent organisation.

44. We accept the evidence given by Mr Hartigan that he had interviewed ST for a role when he was in his mid-50s. He was initially an independent contractor, but his employment was made permanent.

The law

Direct discrimination

45. In respect of direct discrimination, Section 13(1) of the Equality Act provides as follows:

    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.

46. Section 23(1) of the Equality Act deals with comparisons, and provides:-

    On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

47. The burden of proof provisions (also applicable to harassment and victimisation) are set out in section 136 Equality Act 2010:-

    (1) This section applies to any proceedings relating to a contravention of this Act.

    (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

    (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

48. When considering direct discrimination, the tribunal must examine the "reason why" the alleged discriminator acted as they did. This will involve a consideration of the mental processes, whether conscious or unconscious, of the individual concerned (*Amnesty International v Ahmed [2009] IRLR 884*). The protected characteristic need not be the only reason why the individual acted as they did, the question is whether it was an "effective cause" (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor [1996] IRLR 37*2).

49. Guidance on the application of the burden of proof provisions of the Sex Discrimination Act 1975 (which is applicable to the Equality Act 2010) were given by the Court of Appeal in *Igen v Wong [2005] IRLR 258*:

    "(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

    (2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases, the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word "could" in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

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

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

50. Tribunals are cautioned against taking too mechanistic an approach to the burden of proof provisions, and that the tribunal's focus should be on whether it can properly and fairly infer discrimination (*Laing v Manchester City Council [2006] ICR 1519*). The Supreme Court has observed that provisions "*will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence, one way or the other*" (*Hewage v Grampion Health Board [2012] UKSC 37*).

51. The Court of Appeal has emphasised that "*The bare facts of a difference in treatment, without more, sufficient material from which the tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination"* (*Madarassy v Nomura International plc [2007] IRLR 246*). "Something more" is needed for the burden to shift. Unreasonable behaviour without more is insufficient, though if it is unexplained then that might suffice (*Bahl v Law Society [2003] IRLR 640*).

Indirect discrimination

52. Section 19 of the Equality Act 2010 provides:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

53. A one-off decision *could* amount to a provision, criterion or practice, but it is not necessarily one, and PCP carries a connotation of a state of affairs indicating how a similar case would be treated if it occurred again *Ishola v Transport for London* [2020] IRLR 368.

Conclusions

Direct race discrimination

54. During the course of her oral evidence the Claimant clarified the basis on which she says that she was less favourably treated by reason of race and age. In cross examination she was asked if Mr Hartigan has a problem with people of colour, and she clarified that he has a problem with people of a Pakistani background.

55. She said that her assumption was that Mr Hartigan would have concluded her racial background from her name. She said that Atlas was not a common surname, and not a specifically Pakistani name, but a Muslim name that might "cross borders". She said Shazia is a common Pakistani name "the equivalent of Sharon".

56. The Claimant gave evidence that Chughtai was not a common Pakistani name, and that Mr Chughtai's first name, Omair looked like an Arabic name. A similar Pakistani name would be Umar.

57. In terms of the direct age discrimination claim, her case was that it was a simple task, from looking through the career history and education history set out in her application, to conclude that she was an applicant in her mid-40s. In contrast, Mr Order's career and educational history put him in his mid 20s; Mr Chughtai set out career but not educational history which would probably put him in his early 30s; Ms Evans' career and educational history would put her in her early 30s; and Mr Pinto's career history would put him in his late 30s.

58. Dealing first with direct race discrimination, and reiterating that the conscious or unconscious mental processes of the alleged discriminator are under scrutiny, the Claimant's case appears to be that Mr Hartigan recognised that the Claimant's name was a Pakistani name and that he did not shortlist her, armed with this knowledge, because she was from a Pakistani background. The fact that Mr Hartigan actually did shortlist someone from a Pakistani background complicates things. For the Claimant's narrative to hold up Mr Hartigan must have recognised that the Claimant's name was a Pakistani one but that Mr Chughtai's was not. Given that the Claimant's surname, on her own evidence, is not a specifically Pakistani name, the narrative must be that Mr Hartigan drew his conclusions from her first name.

59. This issue was not something the Claimant explored with Mr Hartigan in cross examination. We make no criticism of this, she is of course a litigant in person. The Tribunal explored the issue with Mr Hartigan, and his evidence was that he did not specifically make anything of the name Shazia Atlas.

60. Another factor which we look at in assessing the reason why the Claimant was not shortlisted is the relative strengths of the shortlisted applications as against the Claimant's.

61. In terms of experience of specific programs or applications, the Claimant's application ticks three of the four boxes, which is more than the successful applicants. However, we accept Mr Hartigan's evidence that the shortlisting

decision was made on a variety of reasons. We also note his concession during the hearing, that the Claimant's application and Ms Evans's application were probably on a par.

62. One factor that Mr Hartigan did take account of was the Claimant's career break between 2015 and 2018 during which she studied for a teacher training qualification. He took the view that this might indicate that teaching was her long-term aspiration.

63. On paper, the application which stands out is Mr Order's. We do, however, except that the reason why Mr order was shortlisted was that he came with a glowing recommendation from somebody within the Respondent company. Mr Hartigan was frank that without this, and on the strength of the application alone, Mr Order would have been unlikely to have been shortlisted. The Claimant suggested that her career break to gain a teacher training qualification counted against her, whereas Mr Order's career break to work in the hospitality industry did not count against him. Again, the recommendation is what got Mr Order through, and not his application form. We can also see the distinction between taking three years out to gain a university qualification in a profession and working in bars and cafés. The former might give a stronger impression of longer term career aspirations.

64. The impression we form of Mr Hartigan's shortlisting process is of a rather rough-and-ready and rather impressionistic exercise. It appears to have been a reasonably swift sift, rather than a painstaking analysis of the applications. In some senses it is not surprising that when applications are subjected to a more rigorous analysis in the tribunal, flaws in the process can emerge. Mr Hartigan himself conceded in evidence that the Claimant's application was comparable to Ms Evans'. Also, somebody getting an advantage by having an inside track, like Mr Order, can seem like an unfair advantage.

65. Our focus, however, is whether we can properly infer discrimination. Putting everything together, we find that the Claimant's name had no more and no less impact on Mr Hartigan than Mr Chughtai's name. We do not find that Mr Hartigan correctly deduced that the Claimant was from a Pakistani background, but wrongly concluded that Mr Chughtai was not. We find the likelihood is that, on a fairly impressionistic basis, he felt that three applicants had stronger CVs and one came highly recommended by a colleague. The likelihood is that, on seeing the Claimant's career break for teacher training, he formed the impression (quite possibly wrongly) that the Claimant was not "*someone who is going to commit to Travellers and to IT*". A belief about the Claimant's racial background was not the reason why he did not shortlist her.

66. We find that the fact that Mr Hartigan recruited a Pakistani member of staff (Mr Ibrahim) into his team lends additional support to our conclusion on this issue.

67. The Claimant's claim for direct race discrimination is not upheld and is dismissed.

Direct age discrimination

68. We turn now to direct age discrimination. The Claimant's case rests on her assumption that Mr Hartigan pieced together a conclusion about the Claimant's age from her career and educational history in her application and made conclusions about the successfully shortlisted candidates.

69. We can see how it is certainly possible to reach conclusions about age from the details appearing in an application. Our focus is on whether Mr Hartigan actually did this.

70. Page 117 of the bundle showed the breakdown of the team at one point in time. In particular, EA was 60, MN was 48 and ST 58. This is in a team of eight and includes Mr Order. The Claimant, in C1, points to the date when individuals actually were hired. Further evidence confirmed that the date of hire in C1 was the date the individual was hired by the Respondent as a whole, and not necessarily the date they were recruited into Mr Hartigan's team. In C1 it would appear that EA was recruited when he was 25, MN when he was 23 and ST when he was 56. According to the Claimant, ST is an outlier and a trend is shown of the Respondent recruiting younger people.

71. Mr Hartigan's evidence, which we accept, is that he recruited ST when he was in his 50s. He recruited DT when she was 36. He recruited Mr Walker when he was in his 50s. He also recruited AW in December, a man in his 40s. The Claimant appeared to be hinting that AW's recruitment, post dating her tribunal claim, was some sort of ploy to make it look as though age was not an issue for the Respondent. We put that directly to Mr Hartigan, and he denied it. We accept his explanation.

72. The evidence we have heard does not suggest that age was an issue that Mr Hartigan took any account of in his recruitment decisions. There is nothing from which we can infer that age played a part in the recruitment process in which the Claimant was involved. The reason why the Claimant's application was not shortlisted is the same as our conclusion relating to direct race discrimination, and we do not find that the Claimant's age played any part.

73. The Claimant's claim for direct age discrimination is not upheld and is dismissed.

<u>Indirect race and age discrimination</u>

74. For reasons which will become clear, we deal with indirect race and age discrimination together.

75. The Claimant relies, for both claims, on the Respondent having the PCP that it would not employ British Pakistanis or employees in the age group 45-60 in Second Line Support. Our findings and conclusions do not support the existence of this PCP.

76. The Respondent actually did employ Mr Ibrahim in such a role, which militates against any conclusion that it would not employ British Pakistanis in the role. The only evidence put forward in support of the existence of such a PCP (in terms of that racial aspect of the PCP) is the Claimant's failure to be

shortlisted. We have concluded above that the reason why she was not shortlisted was nothing to do with her race.

77. In terms of the age aspect of the PCP, again, the Respondent actually did employ people of the requisite age group in Second Line Support, and there is nothing to support the existence of this aspect of the PCP. The only supporting evidence advanced by the Claimant is her own unsuccessful application, which we have found had nothing to do with her age.

78. In the circumstances, the claims for indirect race discrimination and indirect age discrimination are not upheld and are dismissed.

Employment Judge Heath
Date: 10 February 2023