EMPLOYMENT TRIBUNALS

Claimant: Ms L Thompson

First Respondent: L G Daniels Limited

Heard at: Nottingham Employment Tribunal (hybrid via CVP) **On:** 4-6 October 2021

Before: Employment Judge K Welch
Mrs J Bonser
Mr J Purkis

Representation

Claimant: Mr S Martins, Employment Lawyer
Respondent: Mr T Wood, Counsel

JUDGMENT

The unanimous decision of the Tribunal is that:

1. The Claimant's claims of direct age discrimination and direct sex discrimination under section 13 Equality Act 2010 and harassment relating to age and/or sex under section 26 Equality Act 2010 are not well founded and fail.

Employment Judge Welch

Date: 7 October 2021

JUDGMENT SENT TO THE PARTIES ON

.....

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FOR THE TRIBUNAL OFFICE

REASONS

1. Reasons were given orally during the hearing on 6 October 2021. The Claimant requested written reasons be sent to the parties.
2. The Claimant brought claims for direct sex and age discrimination and harassment related to sex and age by a claim form presented on 2 November 2019. The claim related to the Claimant's alleged treatment on 12 June 2019 and her subsequent dismissal on 27 June 2019.
3. The claim form followed a period of early conciliation from 25 September to 10 October 2019.
4. The claim form did not provide sufficient detail of the claimant's claims and therefore, following a case management preliminary hearing on 14 February 2020, the Claimant was ordered to provide further and better particulars of her claims, giving details of the acts of sex and age discrimination upon which she relied. These were provided on 26 February 2020 [pages 38 to 43] and related to incidents taking place on 12 June 2019 and the Claimant's dismissal on 27 June 2019.
5. The Respondent filed an amended response to the further and better particulars on 12 March 2020 [pages 44 to 48].
6. A further case management preliminary hearing was held on 26 March 2020 which listed the case for a final hearing in October 2020. Unfortunately, due to the illness of one of the representatives, the hearing was postponed until 4 October 2021.
7. Following a discussion at the beginning of the hearing, it was agreed that the issues for the Tribunal to decide were as follows

   Issues

   Direct Age Discrimination (Equality Act 2010 section 13)

8. The claimant's age discrimination is based on her being "over 40".
9. Whether LD conducted himself on 12 June 2019 as follows:

   9.1. told the Claimant that her hair looked disgusting;

   9.2. told the Claimant that her clothing was shabby;

9.3. told the Claimant that her facial appearance / make up was not appropriate for the business;

9.4. told the Claimant that she did not have the look of the Urban Angel?

10. It is accepted that the Claimant was dismissed by the Respondent on 27 June 2019.

11. Was that less favourable treatment/ conduct amounting to subjecting the Claimant to a detriment contrary to section 39(2)(d) Equality Act 2010 (EqA)?

12. 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.

13. 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.

14. Following a discussion with the parties, the Claimant agreed that her actual comparator for the direct sex discrimination complaint was AS. He was also a comparator for her direct age discrimination complaint, being 28 years old. The C also said that she relied upon NJ (aged 28), SB (aged 28) and HD (aged 20) for her direct age discrimination complaints.

15. If so, was it because of the Claimant's age and/or sex? [The Claimant identified her age group as 'over 40']

16. The Respondent did not rely upon justification under section 13(2) EqA.

Harassment section 26 EqA:

17. Whether LD subjected the Claimant to the following conduct on 12 June 2019:

17.1. called the Claimant into the kitchen and stood very close to her person;

17.2. made derogatory comments about the Claimant's appearance, dress sense and hairdo;

17.3. Gave the Claimant £100 to buy some clothes to wear for work; offered the Claimant a free hairdo;

17.4. Rubbed the Claimant's back whilst she was in the office with him?

18. It is agreed that the Claimant was dismissed on 27 June 2019.

19. If so, whether any of the above conduct was unwanted?

20. Whether any unwanted conducted related to age and/or sex?

21. Whether any age and/or sex related unwanted conduct had the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
22. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Time limits section 123 EqA:

23. In respect of the acts taking place on 12.6.2019:
    23.1. Whether they form part of conduct extending over a period ending with the act of dismissal?
    23.2. If not, whether it is just and equitable to extend time to 25.9.19 [the commencement of early conciliation?]

The hearing

24. The hearing was a hybrid hearing with most parties, including the panel, attending in person. Two of the witnesses attended using the Cloud Video Platform ("CVP"). Whilst there were some difficulties in the remote witnesses hearing the questions being asked of them in cross-examination, this was overcome, and the hearing went ahead without other difficulties and the evidence and submissions were able to be completed within the listing.
25. The Tribunal ensured that members of the public could attend and observe the hearing. Whilst there were observers to the hearing, no other members of the public attended. The parties were told that it was an offence to record the proceedings. The parties were able to hear what the Tribunal heard and see the witnesses as seen by the Tribunal. The Tribunal ensured that the two witnesses who attended remotely, and who were in different locations, had access to relevant unmarked written materials. The panel was satisfied that the witnesses were not coached or assisted by any unseen third party while giving evidence.

26. The parties had agreed a bundle of documents of some 140 pages and references to page numbers in this judgment relate to documents within that bundle.

27. The Tribunal heard evidence from:

    27.1. the Claimant; and

    27.2. DC, a client of the Claimant's;

    27.3. LD, owner of the Respondent; and

    27.4. NT, Salon Manager for the Respondent.

28. All of the witnesses had provided written statements as their evidence in chief, although leave was given for a few supplemental questions. The witnesses were subject to cross-examination and questions from the panel.

29. The Tribunal ensured that appropriate breaks were given and asked the parties to request any additional breaks if they were required.

Findings of fact

30. The Claimant was employed by the Respondent as a Creative Stylist in its hair studio, trading under the name Urban Angels. She was employed from 31 March 2018 until her dismissal on 27 June 2019. She was paid in lieu of her notice.

31. At the time of the incidents complained of, the Respondent had four employees, including the Claimant. Whilst there were other stylists in the salon, these worked on a self-employed basis and were not subject to the same terms and conditions as the employed stylists, although they were expected to adhere to standards of appropriate dress and appearance.

32. On joining, each employee or stylist was asked to create a four digit access code to the Respondent's computer system. This is a personal and individual login. There was no policy in place concerning the use of access codes. Therefore, there was nothing in writing which said that employees or stylists should not share their access codes. However, we accept that employees should know not to use other people's access codes without their knowledge or consent.

33. The Claimant's computer access code did not allow her to reduce prices or apply a discount code to her clients which had been agreed when she commenced employment with the Respondent. She therefore had been using other employees' codes, mainly another stylist's, in order to be able to do this. Neither LD nor the salon manager, NT, were aware of this and we accept their evidence in this regard.
34. The Respondent has a staff handbook [pages 54-95]. This contains a dress code at page 71 which states, "During the course of your employment you may come into contact with customers / clients and/or visitors to the premises. It is important that you present a professional image having regard to appearance and standards of dress. It is a requirement of the Organisation that you wear clothes and footwear that are appropriate for the work that you perform and which present a neat, clean and professional appearance."
35. It does not, however, state that there is a need to look like an 'Urban Angel'. The Respondent gave evidence that Urban Angel is a trading name of the Respondent's business and we are satisfied that, whilst the Respondent wanted its staff to be smart and professional looking, there was not an 'Urban Angel' look. We also accepted the Respondent's evidence that the stylists were not referred to as "Urban Angels".
36. The Claimant's contract of employment [pages 96 – 103] confirmed that the Claimant had read the staff handbook and she signed to acknowledge receipt of the same.
37. The Claimant worked for the Respondent for approximately 16 months without any incidents occurring. The Claimant confirmed in cross-examination that, whilst there had been a couple of arguments during this time, she had never been criticised for her appearance or make up and that nothing had happened during this time giving rise to a complaint. We accept this to be the case.
38. On 12 June 2019, the Claimant attended work despite having injured her foot outside of work following a fall. The Claimant's evidence, which was supported by her witness, was that she was

dressed as normal for work, had her hair pulled back in a pony tail and had her usual make-up on. She was wearing sliders (referred to as flip flops by LD) due to having an injured foot.

39. LD's evidence was that he observed the Claimant chewing gum whilst working and was gossiping/whispering with her client about her former employer, although he could not recollect any actual derogatory comments when cross-examined. It was accepted by the Claimant and her client DC, who attended as a witness at the Tribunal, that they were talking about employees at her former salon, but that they were not making derogatory comments. Whether or not the Claimant was actually doing these things, we accept that LD believed she was doing so. This is supported by the Claimant's evidence, namely that she and her client were talking about individuals who had worked for her previous employer, who were known to them both. It is therefore accepted that LD spoke with the Claimant in the kitchen, whilst she was making her client a drink.
40. The Claimant's evidence was that LD approached her to say "we're too good here for that" and went on to say about the Claimant "bitching and gossiping" about her previous workplace. The Claimant also accepted that LD accused her of chewing gum. LD's evidence was that he had observed the Claimant chewing gum and making derogatory comments, but could not recall exactly what had been said. He gave evidence that the Claimant's appearance was "rather untidy", with unwashed hair which had been scraped back, leggings, no make up, flip flops/ sliders and a bobbly long black cardigan.
41. There was, however, a difference in evidence between what was said to the Claimant, in addition to the allegations of chewing gum and making derogatory comments, during this first conversation on 12 June 2019.
42. The Claimant's versions of what was said differed slightly between the grievance she subsequently raised on 11 September 2019 [pages 125-128], the further and better particulars provided by the Claimant in support of her claim and her claim form. However, we do not find

the discrepancies materially affected the credibility of the Claimant, who we found to be a credible witness.

43. The Claimant's evidence, as contained in her statement, was that LD yelled at her, "who do you think you are stood there looking like you do with your hair scraped back like that." And that the Claimant should book a meeting with LD and NT. Her evidence in the Tribunal was not that LD said that her hair was disgusting, but that he looked at her in a disgusted way.
44. LD's evidence was that he spoke in a professional way to the Claimant to make her aware of his concerns with the image she was presenting by chewing gum, making derogatory comments about other salons and her untidy appearance.
45. LD denied saying that the Claimant's hair was disgusting, her clothing was shabby or that her facial appearance/ make up was not appropriate for their business.
46. The Claimant's client, DC, did not hear any of this discussion, although she noticed that the Claimant was upset on her return to bring her a drink.
47. We accept that LD was dissatisfied with the Claimant's behaviour and appearance on 12 June 2019, and that he did not consider that she was presenting an appropriate image for his salon.
48. On balance, we prefer the evidence of LD. The Claimant was clearly upset by his comments, which we accept were difficult for her to hear.
49. We accept that no one raised concerns with the Claimant about her appearance prior to 12 June 2019. However, Ms Townsend confirmed in cross examination that, prior to the incident on 12 June, the Claimant had not been as smart as when she initially commenced employment with the Respondent.
50. The Claimant was naturally extremely upset by the comments made by LD. She spoke to the salon manager, NT, about this. NT told the Claimant to apologise to LD on his return to the salon.
51. On LD's return to the salon, later on 12 June, the Claimant was invited to a meeting in the office with LD and NT. It was clear that the office was a small office with the Claimant and NT sitting and LD standing. The Claimant's evidence was that LD stood over the Claimant, but we accept

the evidence of NT that this was not the case, although appreciate that she may have felt that, as the room was small.

52. Again, there was a difference in evidence between what the Claimant alleged to have been said in the meeting and the evidence from the Respondent's witnesses. Despite the Claimant's oral evidence that she had not raised any personal issues affecting her on 12 June, we are satisfied that there was a discussion over external factors affecting the Claimant, including issues with her family and financial difficulties. NT's evidence was clear on this, and we found her to be a credible witness. Also, the Claimant's statement supports this, where it says at paragraph 19, "[NT] told me to tell him what I had told her regarding other things going on in my life."
53. The Claimant went on to allege that she was told, "Right then Lisa, not to come across as being nasty but you're not exactly the look of Urban Angels." She stated that she was told that her hair was a mess and needed sorting. LD denied that he had said this and also that he called his stylists Urban Angels. Instead, he gave evidence that 'Urban Angel' was a haircut. We accept that the Claimant believed that salon staff were called "Urban Angels". We also accept that LD was clear about the image he expected his staff to maintain whilst working in the salon. We do not, however, find that LD referred to the Claimant as an Urban Angel, but that he informed the Claimant that she was not presenting herself in accordance with the Urban Angel image.
54. Both parties accepted that the Claimant was given £100 to buy work clothes. The Claimant considered this to be humiliating and insulting and thought that this was because LD recognised that he had overstepped the mark. However, the Respondent's witnesses considered that this had been offered to try and support the Claimant, as she had indicated that she was feeling down and was in financial difficulties. We accept that the offer of money (which was accepted and signed for by the Claimant on 12 June 2019) was made in a supportive way.
55. The Claimant was also offered an expensive hair treatment (retailing at approximately £150) to enhance the appearance of her hair. There are text messages confirming this [pages 122 to 124].

56. Both parties agreed that the Claimant was given a glass of water by LD, as she had got upset during the meeting. The Claimant alleged that LD rubbed her back when giving her the water which made her feel horrible. This was denied by both of the Respondent's witnesses. We do not accept that LD rubbed the Claimant's back during this meeting.
57. The Respondent's evidence was that this was a supportive meeting to try and help the Claimant through the difficult time in which she found herself. The Respondent's witnesses both gave evidence that the Claimant raised personal problems and was having a hard time with her mum, that she was feeling down about herself and was struggling financially. NT's evidence, which we accepted, was that LD was trying to be supportive to the Claimant in offering an expensive hair procedure and by giving her £100 to spend on work clothes.
58. Following the meeting, the Claimant continued to work until she had completed her appointments. On 13 June 2019 the Claimant went off sick. Her fit note [page 118] signed her off as unfit to work for two weeks from 13 June to 26 June 2019 for, "right foot injury, stress/anxiety".
59. LD removed the Claimant's computer access whilst she was off sick. He gave evidence that he would do this for any employee who was off sick for a period of time, but we do not accept that to be the case. Rather, we consider that he knew that the Claimant was disgruntled by the meetings on 12 June and knew that he had upset her.
60. The Claimant had tried to arrange a hair appointment prior to her return to work on 21 June 2019. She telephoned the salon requesting a particular time for her appointment, which meant that she must have accessed the salon's computer system, despite her access being removed.
61. LD was on holiday at this time, and, on becoming aware that the Claimant had been logging into the computer system, carried out an investigation, which showed the Claimant to have logged into the computer system as him on a number of occasions [page 119].

62. The Claimant had used LD's four digit access code. LD had not given the Claimant this code and was clearly concerned about the data that the Claimant could access on the computer system, which included financial and sensitive information relating to the Respondent's business.
63. A return to work/welfare meeting had already been arranged for 28 June 2019, but in light of the concerns over the Claimant's use of the salon computer system, she was asked to attend a meeting on 27 June. She was not made aware that the meeting would discuss her access of the salon computer system and had no idea that this may result in her dismissal.
64. At the meeting, the Claimant was asked about whether she had accessed the computer system using LD's code and immediately admitted that she had. She was honest in her evidence, in that she had not been given the code, but had seen LD logging in whilst standing next to him. We were satisfied that the code had not been given to her and that she was not authorised to use it.
65. In the meeting on 27 June 2019, there was no discussion about the matters discussed on 12 June. The Claimant was dismissed in this meeting and was told that she would be paid a week's notice in lieu. The Claimant handed back the £100 she had been given to purchase new clothes, calling it "an insult". The Claimant in her statement said that that a few words "were exchanged", but confirmed in evidence that this related to the payments that she would receive following her termination.
66. No letter of dismissal was sent, and no right of appeal was given. Clearly, the ACAS code of practice was not followed in connection with the Claimant's dismissal. Neither was the Respondent's own disciplinary procedure followed, which was contained within the staff handbook [page 62].
67. On 11 September 2019, the Claimant sent a grievance letter to the Respondent [pages 125-128]**.** This was on the advice of ACAS, and it was clear to the panel that she had been in touch with ACAS to obtain advice prior to presenting her grievance.
68. No substantive response was received in respect of the grievance.

Submissions

69. In brief, the Respondent said that the Claimant was not a credible witness due to the discrepancies in the versions of events provided by her during the Tribunal process. The actual comparator used by the Claimant, namely Mr AS, was not an appropriate comparator as he was not an employee. There was no link between the Claimant's gender and /or age and the treatment she complained of, much of which had not been substantiated in evidence. Finally, that the claims were out of time.

70. The Claimant's representative helpfully provided outline written submissions which were expanded upon orally. In brief, they were that no issues were raised with the Claimant prior to 12 June 2019, so what was different on this day? These were binary acts. There was clear discrimination, and the Tribunal should exercise its discretion to allow the claims to continue on a just and equitable basis if they are found to have been presented out of time.

LAW

Burden of Proof and discrimination claims

71. The Tribunal had regard to the burden of proof in discrimination claims. This lies with the Claimant. However, if there are facts from which a Tribunal could decide in the absence of another explanation that the employer contravened the provisions of the EqA, the Tribunal must hold that the contravention occurred by virtue of section 136 (2) EqA. Igen Ltd and ors v Wong [2005] ICR 931.

72. Section 13 (1) EqA 2010 direct discrimination provides:

"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."

73. It is therefore necessary to consider whether the Claimant was being treated less favourably because of her age and/or sex. The approach to be adopted in direct discrimination cases is as

set out in **Law Society v Bahl [2003] IRLR 640** where the EAT provided at paragraph 91: "It is trite but true that the starting point of all Tribunals is that they must remember that they are concerned with the rooting out of certain forms of discriminatory treatment. If they forget that fundamental fact, then they are likely to slip into error".

74. It is not possible to infer discrimination merely from the fact that an employer has acted unreasonably (**Glasgow City Council v Zafar [1998] ICR120**). Tribunals should not punish employers by finding discrimination when their procedure or practices are unsatisfactory or where commitment to equality is poor (**Seldon v Clarkson, Wright and Jakes [2009] IRLR 267**). However, the Tribunal was clear that direct discrimination need not be consciously motivated.
75. The Claimant's age and/or sex does not need to be the only reason for the treatment in order to succeed in a direct discrimination complaint, however it must be an "effective cause" (**O'Neill v Governors of St Thomas More (Roman Catholic Voluntary Aided Upper School And Another [1997] IRC33**).
76. The Claimant must show that she has been treated less favourably than a real or hypothetical comparator, whose circumstances are not materially different to her as set out in section 23(1) and (2) EqA which states: "On a comparison of cases for the purposes of section 13….there must be no material difference between the circumstances relating to each case".
77. The EHRC code confirms at paragraph 3.23 that "it is not necessary for the circumstances of the two people that is (the worker and the comparator) to be identical in every way; what matters is that the circumstances which are relevant to the treatment of the worker are the same or nearly the same for the worker and the comparator".
78. Finally, the Tribunal reminded itself that direct discrimination is not capable of justification when the claim is for sex discrimination, but whilst this is possible for direct age discrimination, this was not relied upon by the Respondent.

Harassment: S26 EqA

79. (1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

80. It is therefore necessary to consider whether the conduct is unwanted and related to age and/or sex. The conduct itself can be of any type, provided its purpose or effect is to violate the victim's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. Hence the conduct, viewed in the abstract, might be completely innocuous in nature.

81. In **Nazir and Aslam v Asim and Nottinghamshire Black Partnership UKEAT/0332/09/RN, [2010] EqLR 142**, the EAT emphasised the importance of the question of whether the conduct related to one of the prohibited grounds. The EAT in **Nazir** found that when a Tribunal is considering whether facts have been proved, from which a Tribunal could conclude that harassment was on a prohibited ground, it was always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on that ground. That context may in fact point strongly towards or against a conclusion that it was related to any protected characteristic and should not be left for consideration only as part of the explanation at the second stage.

82. In **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT noted harassment does have its boundaries: "*We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt*

that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase." Whilst this case relates to harassment on grounds of race, it is equally appropriate for harassment on grounds of sex or age.

83. A claim based on 'purpose' requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the Tribunal to draw inferences as to what that true motive or intent actually was: the person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift, as it does in other areas of discrimination law.

84. Where the Claimant simply relies on the 'effect' of the conduct in question, the perpetrator's motive or intention, even if entirely innocent, does not in itself afford a defence. The test in this regard has both subjective and objective elements to it. The assessment requires the Tribunal to consider the effect of the conduct from the complainant's point of view: the subjective element. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that effect: the objective element. The fact that the Claimant is peculiarly sensitive to the treatment does not necessarily mean that harassment will be shown to exist.

85. The requirement to take into account the complainant's perception in deciding whether what has taken place could reasonably be considered to have caused offence reflects guidance given by the EAT in **Driskel v Peninsula Business Services Ltd [2000] IRLR 151**. The EAT held that although the ultimate judgment as to whether conduct amounts to unlawful harassment involves an objective assessment by the Tribunal of all the facts, the Claimant's subjective perception of the conduct in question must also be considered.

Time limits

86. Section 123 EqA provides that "… Proceedings on a complaint within section 120 may not be brought after the end of-

(a) the period of three months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable…

(3) For the purposes of this section-

(a) conduct extending over a period is to be treated as done at the end of that period…".

87. We noted that this is a wide discretion. From the caselaw, there is no principle of law which dictates how generously or sparingly the power to extend time is to be exercised.

87.1. In considering the 'balance of prejudice' and whether a fair trial would still be possible if time was extended, the Tribunal may take into account:

87.1.1. the length of and reasons for the delay

87.1.2. the extent to which the cogency of the evidence is likely to be affected by the delay;

87.1.3. the extent to which the respondent cooperated with any requests for information;

87.1.4. the promptness with which the Claimant acted once she knew of the facts giving rise to the claim;

87.1.5. the steps taken by the Claimant to obtain appropriate professional advice once she knew of the possibility of taking action.

87.2. As set out in paragraph 5.103 of the IDS Employment Law Handbook (Employment Tribunal Practice and Procedure):- "*While Employment Tribunals have a wide discretion to allow an extension of time under the "just and equitable" test in section 123, it does not necessarily follow that exercise of the discretion is a forgone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA, that when Employment Tribunals consider exercising the discretion under what is now section 123(1)(b) Equality Act, "There is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a*

tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule."

Conclusion

88. We accept that the reason for the Claimant's dismissal was her accessing the Respondent's computer system using the owner's four digit access code without authority or consent. We do not consider that the events of 12 June 2019 had any effect on that decision.

89. We do not consider that the burden of proof had shifted to the Respondent in relation to her dismissal, as we did not consider that the Claimant had raised factors from which the panel could decide, in the absence of another explanation, that the Respondent had contravened the EqA.

90. In this case, the Claimant had readily admitted to accessing the Respondent's computer system using the owner's code, which she also admitted she had not been given or authorised to use. We are satisfied that this could have had serious consequences for the Respondent, who was worried about the data that could have been accessed. We accept that this was the only reason that the Claimant was dismissed.

91. In any event, we consider that a hypothetical comparator, being an employed stylist who had accessed the Respondent's computer system using the owner's access code without authority, with similar levels of service and seniority to the Claimant, but being either male or under 40 would also have been dismissed in these circumstances. We therefore do not accept that the dismissal of the Claimant was tainted in any way by the Claimant's sex and/or age and therefore this cannot form the basis for the Claimant's direct discrimination or harassment complaints.

92. This means that the last act of alleged discrimination was 12 June 2019, and that her claims for discrimination were therefore presented out of time unless the tribunal exercises its discretion to extend time on the grounds that it was just and equitable to do so. We have to consider all of the facts of the case in deciding whether to exercise our discretion.

93. The claim was presented on 2 November 2019, and the time limits were not extended by the ACAS early conciliation period, since it commenced on 25 September 2019, after the expiry of the time limit on 11 September 2019.
94. Having considered the case as presented by the Claimant, we do not consider that there was sufficient evidence before us to explain the reasons why the claim was presented out of time by some approximately eight weeks.
95. Whilst we accept that the Claimant was signed off sick from 13 to 26 June 2019 with 'right foot injury, anxiety/stress', and the Claimant's representative relied upon this, there was no additional medical evidence provided to support the assertion that the Claimant may have been too ill to present her claim within time. Whilst the Claimant's statement said that she had suffered with "anxiety, depression, stress, distress and worry", this was to support a claim for injury to feelings and provided no information as to how this may have affected her ability to present a claim within time.
96. It was clear that the Claimant had contacted ACAS during the time limit and had followed their advice in presenting a grievance, which formed the basis for her claim form, on the day that the time limit expired. We therefore consider that the Claimant could have presented her claim within the necessary time limit, and that any illness had not prevented her from doing so. We were given no other reasons why the Claimant was late in presenting her claim for us to consider extending time on a just and equitable basis.
97. There will obviously be prejudice to the Claimant if time is not extended as she will lose the opportunity to present her claims. Equally, the Respondent would be prejudiced by extending time in having to defend itself against claims which had not been presented sooner.
98. Having balanced these and considered all of the factors of this case, we do not consider it appropriate to extend time in order to consider the Claimant's complaints of age and/or sex discrimination. We consider that the balance of hardship rests with the Respondent. Therefore,

we do not have jurisdiction to consider the Claimant's claims relating to the incidents on 12 June 2019.

99. For completeness, however, and if we are wrong in failing to exercise our discretion in favour of the Claimant, we would not have found that the Respondent had discriminated against the Claimant on the grounds of her age and/or sex for the reasons that follow.

100. Firstly, when considering the agreed list of issues, our findings of fact do not support the Claimant's claims of direct sex and/or age discrimination, since we do not find that LD told the Claimant that her hair looked disgusting or that her clothes were shabby. Whilst the Claimant may have felt that his comments insinuated this, we do not find that to be the case.

101. Further, whilst we accept that the Claimant was told that her appearance was not appropriate for the salon's image, we do not find that she was told that she did not have the look of "an Urban Angel".

102. Therefore, the only finding which could have been considered for her direct discrimination complaints was the Claimant being told that her appearance was not appropriate for the salon's image. However, we consider that any other employee (or even a self-employed stylist) would have been treated in a similar way, had they behaved and presented in the way the Claimant did on 12 June 2019, regardless of their age and/or sex. We therefore do not consider that the reason for any less favourable treatment was the Claimant's age and/or sex.

103. Turning to the Claimant's claims of harassment, we do not find that LD stood very close to the Claimant in either of the meetings on 12 June 2019, nor that he rubbed her back. We accept that LD made comments about the Claimant's appearance, including her hair and behaviour in the salon on 12 June 2019, and that he gave her £100 to buy work clothes and offered her a free hairdo. We further accept that this conduct was unwanted. However, we do not consider that the conduct was related in any way to age and/or sex.

104. Therefore, the harassment claim also fails.

105. As a general point, the panel found no evidence that the incidents or treatment of the Claimant were in any way related to her sex and/or age. Whilst we understand that the Claimant was upset by the events on 12 June, as no one would want to be told that they were not behaving appropriately, nor that their appearance was at an unacceptable standard, we do not believe that this was linked to the Claimant's sex and/or age. We believe that a male and/or aged under 40 employee or stylist, with the Claimant's level of service and seniority, behaving and presenting as the Claimant did on 12 June would have been treated similarly to the Claimant in these circumstances.

106. The Claimant's own evidence, when asked by a panel member why she considered the treatment was related to her age or sex, replied that this was because she 'stood up for herself', which the Respondent did not like. That was not because of her sex or age.

107. We therefore do not consider that the complaints of sex and age discrimination are well founded and are therefore dismissed.

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