EMPLOYMENT TRIBUNALS

Claimant: Dr M Reynolds

Respondents: 1) CLFIS (UK Limited)
2) The Canada Life Group (UK) Limited
3) Canada Life Limited

Heard at: Bristol **On:** 25, 26, 27 and 28 February 2013

Before: Employment Judge Mulvaney
Mr P Hemming
Mrs E Burlow

Representation
Claimant: Mr J Bowers, QC
Respondent: Mr D Tatton-Brown, Counsel

RESERVED JUDGMENT

The correct respondent to the claim is CLFIS (UK Limited) and the second and third respondent are dismissed from the proceedings.

The claimant's claim of discrimination on grounds of her age is dismissed.

REASONS

1. The claimant claimed unfair dismissal and age discrimination following the termination of a consultancy agreement on 31 December 2010. The claim of unfair dismissal was withdrawn following a Judgment at a Pre-Hearing Review which determined that the claimant was not an employee.

2. The tribunal concluded based on Ms Deeks' evidence, which was not challenged by the claimant, that the correct respondent in this case is CLFIS (UK Limited) and that the claims against the other respondents would be dismissed.

3. The respondent is the UK branch of the Canada Life Insurance Service and a provider of financial services. It employs 1,000 people in the UK. The claimant was engaged under a consultancy agreement dated 5 June 2006 as Chief Medical Officer and Underwriting Consultant to provide support to the respondent's claims and underwriting teams.

4. The tribunal heard evidence from the claimant and on her behalf from Mrs Karolyn Hallam and Mrs Antoinette Elenya, both formerly employed by the respondent as claims assessors. For the respondent the Employment Tribunal heard evidence from Mr Ian Gilmour, UK General Manager, Mr Steven Cameron, Head of Risk Management, and Ms Tracey Deeks, Executive Director of Corporate Resources.

5. The Tribunal also read the witness statement of Mr Ian McMullan, Managing Director, of the Group Insurance Division. Mr McMullan was unable to attend the hearing due to illness and this impacted on the weight that the Tribunal attached to his evidence.

6. **The issue to be determined by the Tribunal was:**

   - whether the 2006 consultancy agreement was terminated by the respondent on the 31 December 2010 on the grounds of the claimant's age.

7. The respondent did not raise a defence of justification. It contended simply that the reason for the termination of the agreement was not the claimant's age.

8. At the commencement of the hearing the following applications were made by the claimant:
   8.1. That unredacted copies of questionnaires contained in the bundle be provided to the claimant by the respondent. The Tribunal so ordered.
   8.2. That additional documents provided by the claimant be included in the bundle without consideration of the relevance of each document. The Tribunal so ordered.
   8.3. That Mr McMullan's evidence be excluded from consideration by the Tribunal and Mr Newcombe be called by the respondent to give evidence in Mr McMullan's place. The Tribunal did not make this Order, concluding that it is a matter for the parties to Tribunal proceedings to determine which witnesses they wish to call and it was in order for Mr McMullan's evidence to be presented and considered subject to the proviso that the weight attached to it may be impacted due to his non-attendance at the Hearing.

9. The Tribunal made the following findings of fact:

   9.1. The claimant was born on 2 July 1937. She joined Canada Life on 1 November 1968 and at the date of termination of the 2006 consultancy agreement on 31 December 2010 she was 73 years of age and had worked for Canada Life for a period of 42 years. The claimant had been Executive Director of Canada Life and then Chief Medical Officer (CMO). Having been made redundant by the respondent in 1992, she continued as CMO and underwriting consultant for the respondent on a self-employed basis under consultancy agreements from that date until 31 December 2010.

   9.2. The claimant was pre-eminent in the field of medical underwriting in the insurance industry and was highly regarded both by the respondent and in the wider medical insurance business. She had received an OBE for her work in

insurance and several insurance industry awards. Her skills and experience were also recognised and admired within the respondent company

9.3. The claimant's role as Chief Medical Officer was to be responsible for medical aspects of insurance claims in the respondent's business. This involved providing support to teams engaged in the areas of both individual and group underwriting and claims management. In practice the claimant provided a mixture of medical and underwriting expertise on complex and high value insurance claims, and, where necessary, referred specific medical queries to specialist consultants for their advice. The claimant had not been employed as a clinical practitioner for a number of years and was not a specialist in a defined field of clinical medicine. This is not to denigrate in any way the claimant's eminence as a doctor in the insurance industry combining uniquely as she did extensive experience as Chief Medical Officer and chief underwriter.

9.4. The respondent's business was divided into group and individual claims business. Individual claims were handled through the Potters Bar office in London and group business was handled in Bristol by the Group Insurance Division, having been moved there in 2003 after the takeover by the respondent of Royal & Sun Alliance Group business in 2002.

9.5. The claimant's evidence was that within any Insurance Company a CMO was required under BMA and ABI guidance to take responsibility for medical matters. However we found as a fact that the ABI guidance included in the claimant's additional bundle at page OF referred to a 'chief medical officer or other medical adviser' when discussing medical officer responsibilities which indicated that as long as a medical officer or adviser assumed responsibility where required, it was not necessary that this individual carry the title of chief medical officer.

9.6. It was not disputed that as CMO the claimant was operating in a line of work in which age was no barrier. The claimant's witness statement listed a number of CMOs and medical officers in other insurance companies whose ages ranged from 65-78. Indeed within the respondent's organisation a medical officer, Dr Towers, had continued to provide his services to the respondent into his 90th year.

9.7. A new consultancy agreement between the claimant and the respondent was signed on 5 June 2006. The agreement was terminable on three month's notice. The agreement provided that the claimant's services as CMO and underwriting consultant would be provided from her home in Caerleon, Newport, Wales. Although the agreement contained a provision allowing the respondent to require the claimant to attend meetings with managers at the respondent's offices, in practice all meetings with managers took place at the claimant's house in Wales. The respondent's evidence was that the claimant had not visited the Bristol office in the preceding ten years. The claimant's evidence was that she had not visited recently but had visited at least three times in the last decade, prior to the executing of the 2006 contract. The claimant was however unable to substantiate her evidence with an approximate date. We found as a fact that the claimant had not visited the Bristol office for at least five years prior to the termination of the 2006 agreement and that her visits prior to that had been very infrequent.

9.8. The claimant's personal circumstances were that she was primary carer for her disabled sister. It was the respondent's evidence that this circumstance lay behind the claimant's wish to provide CMO services from her home as well as

her non-attendance at the Bristol office. The claimant's evidence was that there were business reasons for her working from home which related to the type of cases with which she was dealing. We found as a fact that although there may have been business reasons for the claimant providing her services remotely, it was not in the respondent's interest that all meetings took place at the claimant's home. We concluded that the fact that meetings only occurred at the claimant's home was based on the claimant's preference, due to her personal circumstances, that she remain at home, since it cannot have been convenient for the respondent's managers and staff to have to travel to Caerleon for meetings. From notes of a meeting on the 6 March 2007 it was apparent that Mr Newcombe intended that regular monthly face to face meetings between the claimant and himself, the claimant and Mr McMullan; and the claimant and members of the assessor team be held at the claimant's home.

9.9. Mr Gilmour's evidence was that he believed that the claimant could not attend the Bristol office on a regular basis because of her caring responsibilities. We accepted that this was a genuine belief held by Mr Gilmour and the respondent generally which was supported by documentary evidence from 2005 and afterwards. Various reports and emails referred to the claimant's personal circumstances preventing her from attending the office (eg. page 9 of the bundle). The factual evidence that the claimant did not and had not visited the Bristol office for at least five years supported the view that the claimant was not readily able to attend the respondent's offices.

9.10. The claimant gave evidence at the Tribunal that, had she been instructed to attend the Bristol office regularly, she would have done so. She said that she would have attended once per week and, although she would have queried the necessity for it, would even have attended twice per week. We were not satisfied that the claimant would have attended the Bristol office regularly even if asked. In a letter to the claimant dated 3 May 2006 following a meeting at her home, Mr McMullan stated that he looked forward to seeing her again '*in due course during 2006 in the Bristol office*' but the claimant did not attend the office that year or any year after it. It would have been apparent to the claimant that arranging for office based employees to travel to her home in Wales on a regular basis was costly and inefficient. Nevertheless the claimant did not voluntarily attend the office and gave no indication to the respondent at any stage that she would be able and willing to attend the office.

9.11. It was Mr Gilmour's evidence that there had been concerns raised by the Group claims section (Group) about the CMO service provision for some time prior to 2010. This evidence was supported by a series of documents included in the bundle dating from 2006 which showed a wide ranging concern that the CMO service was not meeting the respondent's needs. Matters identified in an email from Lyn Thomas to Mr MacMullan, (Managing Director of Group Insurance Division) dated 12 January 2006 included: the need for additional specialist Medical Officer resource to assist in the claims adjudication process, and the need for an on-site Medical Officer, a role which the claimant could not perform 'due to her personal circumstances and time constraints'. A 2005 report by Mr Newcombe, (Director, Claims Management Services, Group) on CMO use in 2005 and proposals for 2006 recorded:

> *'There has been no progress in Dr Reynolds being able to visit the Bristol office and the required building of relationships between the teams and Dr Mary has not developed. In addition, dialogue between myself and Dr Reynolds on matters of future CMO provision, including the recruitment of*

additional resource, has subsequently been limited to those occasions on which I have visited Dr Reynolds at her home in Caerleon.'

9.12. The report stated that there must be appropriate dialogue with Dr Reynolds to establish to what level the CMO requirements of the Bristol office could be met by the current resource. The report set out some proposed service standards and turn-around times for the CMO service. We found that this supported Mr MacMullan's evidence that these matters were discussed with the claimant at a meeting with her on the 28 April 2006 which was followed up with his letter to her of the 3 May 2006 and which stated:

'you recognise that we do, in fact, need a broad panel of medical officer specialists and that you would like to be involved in the recruitment of those. This would assist us in ensuring that we have specialist opinion covering specific illnesses whilst assessing a claim'

9.13. On the 4 September 2006, Ms Mooney, (Manager of Group Claims) produced a note setting out issues with the CMO service. Her first point was that Dr Reynold's *'skill when dealing with difficult cases is second to none. Her input in these circumstances is of the highest quality'* but it went on *'It's fair to say that there has been a reluctance to refer cases to Dr Reynolds due to poor service and lack of interaction....'* And later:

Dr Reynolds is reluctant to commit to service standards & turnaround times can be very poor. We have examples of cases taking 50 plus days, leading to difficulties in handling complaints. However some high profile cases have been handled within reasonable timescales.

Communication can be difficult, particularly when chasing outstanding decisions. Dr Reynolds can, on occasions, be curt and uncooperative with the team members.

All referrals must be sent by post but NOT by recorded delivery. On a couple of occasions, we have been told she does not have certain papers though we know they have been sent, leading to concerns over the whereabouts of confidential medical records.

As the CMO does not visit the Bristol team she provides no training or development. All assessors agree that they would relish the opportunity to interact face to face with a CMO, discussing difficult cases. Without doubt there would be more CMO referrals if this sort of discussion were possible.

Occasionally (1 – 2 per month) the team refers cases to a Bristol cardiologist, Professor Vann Jones. His usage is sanctioned by Dr Reynolds. Referrals are again by post but there is a prompt response time and the assessors view is that he provides a good insurance understanding.

There is no doubt that Dr Reynolds is a highly qualified and knowledgeable CMO. Her involvement on very high level complex cases is sound. However she cannot provide the day to day referral support required. A way forward would be to concentrate her efforts on those special cases needing her unique skills, whilst bringing in local CMOs to supply the ongoing support the team needs.

9.14. A significant requirement of the respondent was that the assessors should be able to refer cases direct to a relevant clinical specialist where necessary. As matters stood, apart from referrals to Professor Vann Jones, use of whom the claimant had approved, referrals to other specialists had to be made via the claimant. This added to the turn-around times and the potential for delay. Although there was discussion about the claimant being engaged in the

recruitment of other specialists, the situation did not change. We found that this was at least in part due to the claimant's reluctance to engage in the process of appointing other medical officers who could be approached directly by the assessors, preferring to maintain her own list of practitioners to whom she could refer cases.

9.15. Notwithstanding the difficulties identified, Mr Gilmour at the claimant's request reviewed her remuneration package in March 2006 and recommended doubling her annual retainer from £5,000 to £10,000 referring to her loyalty and pre-eminence in her field and indicating that particular cases needed to be referred to more specialized medical officers while her advice continued to be sought on less straightforward cases.

9.16. We found as a fact that the respondent was not happy with aspects of the CMO service provided by the claimant at this time and that it had sought in a diplomatic way to address those issues with the claimant. By introducing other specialist medical officers it was hoped that dependence on the claimant would be reduced, turn-around times improved, and the opportunity for more interaction between medical officers and the assessors facilitated. This represented a workaround. The respondent was reluctant to tackle the problems head on with the claimant and we accepted Mr Gilmour's evidence that this was due in large measure to him being slow to act despite concerns being raised. His evidence was that he was reluctant to act because of the long association the claimant had had with the respondent, her pre-eminence and the expertise she showed in advising on complex cases.

9.17. An independent audit of Group carried out by Swiss Re in 2007 identified that there were difficulties in access to the CMO and delays in response times which resulted in assessment delays and, potentially, to customer dissatisfaction. The tribunal did not accept the claimant's contention that any delays in her performance were caused by problems with the work of the assessors which were also identified by Swiss Re. The report clearly noted delays by the CMO as well as separate issues with the work of the assessors. We found as a fact that there were issues with the CMO service which were being considered prior to 2010.

9.18. The claimant's evidence was that these matters had not been raised with her. We found from the documentary evidence that service issues were raised with her although there appeared to be an element of diffidence in the approach taken, probably out of deference and consideration for the claimant's long association with the respondent and the high regard in which she was held. An example of evidence that matters were raised is contained in the notes of a meeting which took place between the claimant and Mr Newcombe on 6 March 2007 which indicated that the claimant had been made aware of the respondent's wish to improve turnaround times and its desire to 'build relationships between the team and the claimant '*through adding regular face to face discussions to the current practice of telephone discussions, which lacked the required degree of interpersonal contact*'. The notes record '*Dr Mary has expressed the view that this is all within her capability.*'

9.19. On 2 February 2010 Mr McMullan made a presentation which included consideration of the CMO service within the Group Insurance Division. In the introduction to the presentation the following was identified: It noted the fact that the Potters Bar (individual claims) office had had first call on Dr Reynolds and that despite Dr Reynolds being receptive to claims referrals from Bristol '*the*

speed of response needed has not always met that which commercial pressures increasingly demand'. It went on to record its recognition of the valued contribution made by Dr Reynolds and then stated that:

> *'along side this entrusted specialist input however Group Division has increasingly recognised the growing need for the additional input and value from CMO resource which would come from regular meetings in head office with the team, detailed discussion of cases on a personal basis and the building of working relationships that can only come from face to face contact. With such diversity of claims assessment skills and development have brought a growing need for a wider provision of CMO skills and support that unless recognised and remedied will leave CLGI in a position of weakness in comparison to competitors. More fundamentally, meeting the increasing service standards that now demand more prompt claims assessment amidst ever stricter time constraints, could leave CLGI exposed to a greater number of adverse decisions being made under the commercial pressures which now prevail'.*

9.20. In the body of the report after an assessment of turn-around times relating to referrals to the claimant the following statement was included.

> *'The team has been canvassed confidentially to provide feedback on their views and perception of overall CMO service provision and the speed of service provided. The following comments are the most significant:*
>
> *Service is poor overall with many chases required to follow up cases.*
> *This is not commensurate with modern day claims handling needs where commercial pressure is greater.*
> *Conversations are too long and lacking focus for the duration.*
> *No written summaries are provided nor drafting or signing off of letters under CMO title.*

9.21. The report compared the CMO provision within the respondent's group insurance offices with that of competitor's group insurance offices and concluded that the respondent was under-resourced in terms of CMO support and expertise because it had no head office CMO presence and no specialist input available apart from for cardiology cases. It commented that the current CMO resource left the business exposed in terms of risk of having no succession planning in place and stated the following:-

> *'all cases referred for CMO attention should be returned with written response and recommendations – for retention on file. This mitigates the risks inherent with telephone conversations and the possibility of wrong interpretation of advice/actions needed, as proposed by the CMO. We have only a limited and informal written response service with Dr Reynolds.*
> **Professor Vann Jones always responds fully in writing (faxed reports on every case with a summary and opinions)'.** (emphasis in the original)

9.22. Dr Gilmour attended Mr McMullan's presentation and it was his evidence that whilst there was not a clear steer from the presentation that the claimant should be replaced it was clear to him that the current CMO provision was not meeting the respondent's needs and that the situation had to be addressed. The presentation made clear that the group business was not happy with the current model of service provision from the CMO. Mr Gilmour's evidence was that

having listened to the presentation he made up his mind that the claimant was not delivering the service the group needed and could no longer be lead CMO. In his witness statement he said that he '*formed the view that she was not someone who would be able to help the respondent in the journey to becoming a more modern business with up to date and secure communications, training and coaching case managers on site, and increasing the market share within the group as the individual business work was diminishing*'.

9.23. Although the report did not go so far as to recommend dispensing with Dr Reynold's services, we accepted that this was the understanding Mr Gilmour took from the presentation and it was confirmed by Ms Deeks in her evidence that she had discussions with Mr McMullan and Mr Newcombe following the presentation in which they confirmed that ideally rather than continuing to work around the deficiencies of the current provision it would be preferable if a complete change could be effected by the termination of the claimant's contract.

9.24. Mr Gilmour decided that he would bring the respondent's relationship with the claimant to an end. He said that in view of her long association with the company and her unique position within it he would give her a 'soft landing' by retaining her services on a reduced level gradually reducing her commitment down over the course of three years. The claimant had made it clear on a number of occasions to the respondent that she was struggling financially. She considered that she had been harshly treated in 1992 when she was made redundant and considered that the respondent had an ongoing responsibility to continue to provide her with an income or to augment her pension going forward. Mr Gilmour had had this in mind in 2006 when he increased the claimant's retainer and it continued to be a consideration when he was deciding on bringing the consultancy to an end.

9.25. It was Mr Gilmour's evidence that the claimant's age did not influence his decision to terminate the CMO consultancy agreement. The decision was based on the fact that the claimant was not providing the service required by the respondent in the following respects: she did not attend the Bristol office which meant that she had limited input into staff training and development and that face to face discussions had to be conducted at her house in Wales; she did not use e-mail; she required that papers were received by fax or post but not recorded delivery (as she did not wish to have to leave the house to collect mail if she was out when it was delivered); she was not prompt in her turnaround times; did not provide her advice in writing, preferring to dictate it over the phone to the assessors; she was resistant to the engagement of a wider panel of medical experts. These were all factors which led him to conclude that she must be replaced.

9.26. Mr Gilmour did not consider whether the claimant should be given an opportunity to address the deficiencies in the service she provided and on being asked at the hearing why he did not, his evidence was that he believed that she would not have changed, that she would have filibustered and that in any event there was no need to raise concerns with her about her performance because she was a self employed consultant and that there was no obligation on the respondent to give her an opportunity to improve.

9.27. Mr Gilmour had known the claimant for a long period of time having worked with her since 1998. He was satisfied that the issue of the claimant attending the Bristol office had been raised on previous occasions and although not raised as a requirement, nevertheless the claimant had not seen fit to attend

the office at all in the previous five years. The claimant did not have access to e-mail or the technical skills to use it. Her method of providing her reports to the assessors in the Bristol office was to dictate them to them over the phone which could lead to mistakes. There was an issue with the delivery of mail to the claimant since she did not wish to be provided with recorded delivery items as she did not wish to have to collect them from the local sorting office. This gave rise to data protection concerns if post containing confidential medical information was to go missing. Although fax was employed, there was little flexibility shown by the claimant in relation to communication. It was evident that at meetings with the claimant the respondent's business requirements had been raised and we concluded on the facts that the claimant was aware that the respondent would prefer the regular presence of a CMO in Bristol, that service standards were on the agenda, and that the respondent had identified a need for extending the base of medical officers. Despite these issues being raised over a period of years there was no evidence that the claimant had voluntarily suggested or even considered changing her method of service to address any of the respondent's concerns.

9.28. We found that the respondent fell shy of issuing direct instructions to the claimant but the evidence suggested that the claimant would not have been quick to agree to new working practices. The claimant's evidence in the Employment Tribunal when she was asked about what her response would have been had she been asked to comply with service standards was that she would challenge such a request on the basis that some referrals took an extremely long time to complete. In response to cross examination the claimant said that, had she been instructed to attend the Bristol office on a regular basis, she would have been prepared to attend once per week although twice a week she would have queried the need for. However the fact that she had not been there for at least five years lead the tribunal to conclude that she would not willingly attend on a regular basis due to her personal circumstances. When asked in 2011 by Mr Gilmour to attend a meeting with him within four weeks, the claimant asked that the meeting be held in six weeks because of other constraints on her time and also asked that the meeting take place at Celtic Manor Hotel, a place convenient to her home. Mr Gilmour expressed the view that he would not expect the claimant to be able to change in an e-mail to Tracey Deeks, referring (we assumed, because the email did not make it clear) to options Ms Deeks had proposed for continuing to engage the claimant:

'the woman is not capable, in my view, of providing the level of support we require and so I would think we just delay the inevitable by offering it and then watch painfully as she fails to comply'.

9.29. We found that Mr Gilmour genuinely held the view that the claimant was not providing the level of support required and would not make the necessary changes to enable her to do so.

9.30. In early 2010 Mr Gilmour and Ms Deeks discussed how to broach the decision to gradually reduce the claimant's commitment under her contract. They agreed to initially ask the claimant to attend a meeting at which Mr Gilmour would set out the proposed change.

9.31. They agreed to use a subterfuge initially to get the claimant to attend the meeting. They agreed to refer to a (fictitious) requirement by the FSA for succession planning to be adopted in relation to her position as well as other senior roles. It was accepted by Mr Gilmour and Ms Deeks that this was untrue

and misleading since there was no succession planning requirement by the FSA in relation to the claimant's CMO role.

9.32. Mr Gilmour's evidence was that he believed that the claimant would be reluctant to attend a meeting were she to be informed of the true reason for it; that is that she was no longer delivering the service that the respondent required. He referred to the claimant as being very difficult to deal with. There were a number of references to difficulties experienced with the claimant in face to face discussions and the tribunal found that when giving her evidence to the tribunal the claimant was inclined to stray from the point in order to make the points that she wished to make and was often reluctant to be drawn back to focus on the specific question posed. We accepted that discussions with the claimant were likely to be protracted and difficult where there was a difference of opinion although there was no evidence that the claimant had not met with the respondent when she had been asked to.

9.33. Mr Gilmour telephoned the claimant on the 4 March 2010 and spoke to her about the 'FSA requirement' for succession planning. The call was an extremely lengthy one which the claimant tape recorded without informing Mr Gilmour. The transcript of the telephone conversation in the bundle showed numerous references to age made by Mr Gilmour in relation to succession planning but we did not find the references conclusive about whether age was in truth a factor behind the decision to bring the claimant's contract to an end. We accepted Mr Gilmour's evidence that having decided to bring the claimant's relationship with the respondent to an end, he wished to do so in as *'dignified a way as possible because of her long association with Canada Life and because of what was, frankly, her unique position.* His evidence was:

> *'I wanted to give her the opportunity of reducing her income fees and pension of £90,000 (in 2009), to £60,000, and then ultimately to reliance on her pension of £30,000 over a couple of years, i.e. a 'soft landing'. After listening to Group's concerns, I could have simply given three month's written notice to terminate her consultancy agreement but I did not want to do that out of respect for what she had done for Canada Life....I thought it was necessary to terminate the arrangement whereby she was the sole CMO for Group and reduce the amount of work given to her.'*

9.34. The transcript of the telephone conversation indicated that this was what Mr Gilmour was trying to say to the claimant and that he was using succession planning to persuade the claimant that it was time to consider the future CMO provision without having to talk to her about the specific problems that had been identified with her service. In doing so he fell into the trap of making references to her age and the possibility that she might be ready to, for example: *'hang up her boots'*. We found that this was a consequence of the subterfuge adopted and had Mr Gilmour addressed the issue head on he may have avoided the pitfalls of his approach, although the discussion was likely to have been significantly more difficult.

9.35. The claimant also employed subterfuge in covertly taping the telephone conversation and the subsequent meeting. It was the claimant's evidence that she was anxious following a telephone conversation with Mr Gilmour's secretary who had been ringing to set up the phone call. She had asked the claimant if *'she was tired, doing the same thing every day and doesn't the clock go around slowly'*. The respondent produced no evidence to dispute the claimant's evidence about this phone call and the tribunal accepted the claimant's evidence

as to what was said. Nevertheless we were not satisfied that it excused the surreptitious tape recording. We did not accept, as contended by the claimant's representative, that had the recording not been made, the respondent's subterfuge about the FSA requirements would not have been revealed. The e-mail correspondence disclosed by the respondent made it clear that Mr Gilmour and Ms Deeks had agreed on the ruse to be adopted to ensure the claimant's attendance at the proposed meeting and to introduce the proposal that her commitment to the respondent be reduced.

9.36. A meeting took place on the 10 May 2010 at Celtic Manor some six weeks after the phone call as requested by the claimant. Mr Gilmour and Ms Deeks both attended the meeting and the claimant brought her sister without having notified the respondent in advance that she would be doing so.

9.37. Prior to the meeting Mr Gilmour asked Ms Deeks to assist him by putting together something to help him with what he was to say to the claimant. It was clear from that email that Mr Gilmour and Ms Deeks were still intending to use the FSA as a cloak for their conclusion that the claimant's contract should be brought to an end.

9.38. Ms Deeks' evidence supported that given by Mr Gilmour that the reasons for the subterfuge at the point at which they were inviting the claimant for a meeting was to ensure that she would attend the meeting, and because of their wish to treat the claimant with dignity by not informing her of the perceived deficiencies in her performance. They thought that by identifying a common enemy in the FSA it would make the decision to terminate her contract less personal. It would also protect Mr McMullan and Mr Newcombe who would have a continuing relationship with the claimant during the proposed run off contract.

9.39. We considered that their approach was ill thought out, and underhand. It was also disrespectful and self protective. We accepted that they adopted the approach in order to reduce animosity and protect the claimant's dignity, but we also found that there was a less altruistic reason for it, which was wanting to avoid having to face the inevitable difficulty of telling the claimant the real reasons for bringing the relationship to an end. The subterfuge they adopted brought its own difficulties, the claimant being sharp enough to see through Mr Gilmour's pretence. Although an honest approach may have also resulted in conflict, it would ultimately have been more respectful to the claimant. Both Mr Gilmour and Ms Deeks said that they regretted having adopted this approach in hindsight but that they had done it with good intention.

9.40. The meeting at Celtic Manor on 10 May 2010 took place over lunch. There were different accounts from the parties of what took place. Mr Gilmour's and Ms Deek's evidence was that the claimant held forth and did not allow much input from them but that Mr Gilmour did inform her that 'Group' would no longer require her services. It was not disputed that the claimant informed Mr Gilmour that she had contacted the FSA and had found out that the FSA had made no stipulations about succession planning for her role. Neither was it disputed that the claimant made a number of criticisms of the way that the business was being run at Bristol. Mr Gilmour left the meeting saying that he would reflect on what had been said. The claimant also surreptitiously recorded this meeting. The transcription of the recording was not agreed but notes of the meeting were made by all the attendees and although differing in some details, the significant points of the meeting were not in dispute. Although the meeting had been

relatively amicable, Mr Gilmour and Ms Deeks were concerned that the claimant had not been receptive to, or heard what they had said about her role.

9.41. On the 11 May 2010 Mr Gilmour e-mailed Ian McMullan and expressed concern about the possibility of legal action by the claimant although he did not mention a potential age discrimination claim. Mr Gilmour in the e-mail stated that an audit of the group business was to be undertaken in the light of the claimant's criticisms of the operation of the business and also to find out what the claims adjudicators and underwriters thought of the claimant's service.

9.42. The e-mail made clear that Mr Gilmour's intention was that the claimant would continue to be referred difficult cases by Group and would be used fully for individual claims by the Potters Bar office. Mr Gilmour said that he was happy for Mr McMullan and Mr Skinner to move forward with their plans and that a suitable panel of physicians should be created to support the business. He stated:

> *'Please be aware that Dr Mary has been told that you, Ian, are unhappy with the service she provides. I tried my best to insulate you (unsuccessfully) and Mike (successfully) from the issue, but her insistence over four and a half hours and her revelation that she had contacted the FSA gave me no option.*
>
> *She attempted to take a path towards you to 'sort things out'. I advised her that the matter was out of your hands, that it was my decision that, for the good of our group business and a harmoniously working team, we had to move on.*
>
> *She did not accept any of this'.*

9.43. On 13 May 2010 Mr Skinner sent an e-mail to the group team informing them that a decision had been taken by the Canada Life senior management team to scale down the use of the claimant's services. Although the e-mail did not suggest that no further referrals should be made to the claimant, it was clearly interpreted as such by the adjudicators.

9.44. Mr Cameron was instructed to conduct the survey of the adjudicators and underwriters at the group office as a result of the claimant's criticisms of the operation and also in order to find out how the claimant's service was viewed by them. The survey was conducted through May and June 2010 and its conclusion confirmed the views already expressed by Mr Newcombe and Mr McMullan in the 2010 presentation. The survey was severely criticised by the claimant as showing bias against the claimant and a lack of rigour. It was contended that as the adjudicators had been told prior to the survey that they should not use the claimant for referrals of any new cases that this must reflect a concern about the service offered and would therefore encourage the adjudicators to criticise the claimant's service. In addition it was contended that the summary of the surveys produced by Mr Cameron gave more detail about the negative points made about the claimant's service and less about the positive points indicating that the survey had been undertaken with the purpose of obtaining a negative outcome.

9.45. We accepted that criticisms could be made of the conduct of the survey and the analysis of it. It was not a forensic exercise. Nevertheless it was clear from reading the surveys that supportive comments were made about the

claimant as well as negative ones and that there was some consistency in the criticisms made of the provision offered by the claimant in respect of non attendance at the office, not putting her opinions in writing and turn-around times. Mr Cameron's evidence was that he was instructed to undertake the survey by Mr McIntosh, (Head of Internal Audit) and not by Mr Gilmour although Mr Gilmour had asked for the survey to be carried out because he wanted to know what the claims adjudicators thought of the CMO service. We accepted Mr Cameron's evidence that he was not privy to Mr Gilmour's and Ms Deek's discussions with the claimant. He had not met the claimant and was not aware of her age. We were satisfied that the survey was carried out objectively by Mr Cameron and was not a sham process intended to produce the outcome that it did. The survey was commissioned after Mr Gilmour had taken the decision to terminate the 2006 agreement and therefore did not impact upon his decision, although he may have wished to hear the views of those working directly with the claimant to see if they corroborated or not the views of the service expressed by the managers.

9.46. It was clear from the evidence that the respondent still considered that the claimant's experience and technical knowledge was extremely useful in relation to complex cases. In addition, Richard Hellyer, the chief underwriter, based in Potters Bar was still happy with the claimant's service and it was intended that the claimant should still be used in relation to referrals from the individual claims side of the service, although that business had significantly reduced. The tribunal heard evidence from two former adjudicators employed in the Potters Bar operation who gave strong evidence as to their respect for the claimant and their view of the quality of the service that she provided. We found as a fact that the claimant was still highly regarded by the respondent in relation to her work for Potters Bar and on complex referrals and this was evident in the intention that her services would continue to be used for a further period after the ending of her current contract by the respondent.

9.47. The claimant contended that comments made by Mr Gilmour in emails suggested that the decisions that he took were because of the claimant's age and not for any other stated reason. In an e-mail on 30 March 2006 Mr Gilmour, writing to Chris Trainier about the claimant's remuneration package, made the comment that the claimant was *'not getting any younger'*. However this comment came at the end of a passage where he was pressing for the increase of the retainer paid to the claimant, which he considered would benefit both the claimant and the respondent by continuing their association and reducing financial pressure on the claimant. It was not a comment on her capabilities as a person in her 70's.

9.48. In the course of the telephone call between the claimant and Mr Gilmour on 4 March 2010, Mr Gilmour said *'just as you cannot go on forever and I cannot go on forever...'* This remark was made in the context of Mr Gilmour talking to the claimant about a gradual reduction in her role in the context of succession planning. There were numerous references to the claimant's age in this telephone call of which this was one. We found this reference was not indicative that Mr Gilmour's decision was taken on the basis of the claimant's age. As we have found, the reference to succession planning was a subterfuge and not the true reason for reducing the claimant's commitment. In any event it is self-evidently true that people do not go on for ever and that employers need to have given some thought to the departure of key workers particularly where it is anticipated that that departure might occur sooner rather than later, for instance due to illness, maternity, retirement, career progression etc. .

9.49. In an e-mail dated 28 April 2010 from Ian Gilmour to Ms Deeks regarding the conduct of the forthcoming meeting at Celtic Manor with the claimant Mr Gilmour stated:

> *'and she needs to hear her rights from you with your HR hat on. (i.e. three months notice, Jim, and that's it so shut up and listen and be nice to me or I walk out of here and play a round of golf instead)'.*

9.50. This is a remark made between Mr Gilmour and Ms Deeks and reflects their anticipation of a difficult response from the claimant when she was told about the proposal to terminate of the agreement. Although disrespectful in tone we found no indication that that tone related to the claimant's age.

9.51. On 13 April 2010 Mr Gilmour had e-mailed Ms Deeks setting out the planned reduction in the claimant's services he stated:

> *'my understanding is that our goal is we want a new CMO appointed and Mike thinks there is scope out there to do so.*
>
> *Then I think we need to let Dr Mary down gently with little or no animosity.*
>
> *Ideally what I am looking for is some form of non contentious overlap; i.e. appoint a new CMO in H2 and Dr Mary does specialist claims for us till mid 2011 and possibly longer if Mike's recruitment doesn't materialise. So that's the goal.*
>
> *Step 1 is a face to face meeting with Dr Mary to spell this out. That's down to me with your support. If we terminate her too soon and Mike doesn't find the right person then we are exposed. That is the flaw in the plan so far. It feels to me as if it's saying* ***ditch Mary*** (emphasis not in the original) *and rely on Mike's judgment to find someone and the right one at that. I prefer a more softly softly approach.*

The context of this comment shows that Mr Gilmour is not advocating 'ditching' the claimant, rather the opposite and again is no indication that her age was a factor in his approach.

9.52. On 7 June 2010 in an e-mail to Ms Deeks Mr Gilmour commented that the claimant:

> *'would need to buy some clothes for a start. And shoes, instead of those carpet slippers she wears…'*

Mr Gilmour's evidence was that this was a reference to the claimant's appearance at the meeting at the Celtic Manor Hotel, which, on his and Ms Deek's evidence, had not been appropriate for a professional meeting. The claimant contended that she was wearing suitable clothing to that meeting. We found as a fact that this comment related to the claimant's appearance at the Celtic Manor meeting and on balance of probability was reflective of Mr Gilmour's view of what she wore on that day. The remark is not an age related one and in seeking to show that it was, the claimant and her representative felt the need to introduce extra wording to bolster it. For example they referred to the comment as being about an 'old lady in carpet slippers' or about 'shuffling around in carpet slippers'; words which were not in the original. The words on their own do not have the connotation suggested by the claimant and her representative.

9.53. On 11 June 2010 Mr Gilmour wrote to the claimant and set out in clear terms the decision that the role of chief medical officer was to change going forward and that she was to be served notice on the current agreement. The notice period was three months but was extended to six months to expire at the end of December 2010. The reason given in the letter for the change to the medical support provision was that it had been decided that they required:

- Access to a range of medical experts with specific conditions
- On site face to face contact on a regular basis with a range of medical experts
- The potential for face to face contact with case managers and rehabilitation consultants if required
- Regular on site training sessions for claims management professionals in our Bristol office.

9.54. Mr Gilmour informed the claimant that he would like her to continue to be the CMO on the individual claims portfolio for the remainder of 2010 and into 2011 although there was no guarantee that her services would be required beyond the end of 2011. On 9 July 2010 Mr Gilmour sent the claimant a copy of the proposed consultancy agreement to follow the ending of the 2006 agreement. This provided for the claimant to continue as CMO for Individual Business and to provide support to the Claims team members in respect of individual claims portfolio. The claimant did not respond until the 15 November 2010 when she wrote to Mr Gilmour asking if they could meet again. Mr Gilmour responded on 22 November 2010 stating that he did not think that anything useful would be served by another meeting and urging her to agree to the new contract. On 8 December 2010 the claimant wrote to Mr Gilmour again requesting a meeting. Mr Gilmour referred her to Ms Deeks in his reply to her of 15 December 2010 and the claimant sent in the signed new contract on the 29 December 2010.

9.55. Following the termination of the claimant's role as CMO for Group, the respondent has not appointed a new CMO. In late 2010, the respondent appointed two medical officers, Dr Batten, a psychotherapist and Consultant Psychiatrist, and Dr Williams, a Consultant Rheumatologist. Professor Vann-Jones, also continues to take cardiology referrals. The respondent's evidence was that the arrangements are working well and that it had not been necessary to appoint a CMO in the claimant's place. Dr Batten was in her 60's and Dr Williams in his 70's when they were recruited at the end of 2010. Professor Vann-Jones is also in his 60's.

10. Conclusions

11. In reaching its conclusions the tribunal considered all of the evidence that it heard and the documents to which it was referred and which it regarded as relevant. It also had regard to the submissions of the parties.

12. It was agreed between the parties that because of the date of the claimant's complaint the relevant legal provisions are those contained in the Employment Equality (Age) Regulations 2006. These provide that direct discrimination occurs where on grounds of D's age, A treats B less favourably than he treats or would treat other persons and A cannot show the treatment to be a proportionate means of achieving a legitimate aim. (Regulation 3(1)(a) of the 2006 Regulations).

13. The respondent did not seek to justify its actions so the only question to be addressed by the Tribunal was whether the claimant was treated less favourably on the grounds of her age. The approach to be followed determining a claim of direct discrimination was summarised by Underhill P in the case of ***Amnesty International v Amhed [2009] IRLR 884*** at paragraphs 32-36 to which we were referred by the respondent's representative. The distinction is drawn between cases where the grounds for the treatment complained of is inherently discriminatory considering the act itself. The example given is where an owner of a premises puts up a sign saying 'no blacks admitted'. Here race is necessarily the ground on which the person is excluded. This is to be compared with other cases where the act itself is not discriminatory but rendered discriminatory because of the mental processes of the person alleged to be carrying out the discrimination. Underhill P sets out the ultimate question in both types of case to be *'What was the ground of the treatment complained of (or - if you prefer – the reason why it occurred)'.* What is not relevant as was made clear in the case of ***R (E) v JFS [2010] IRLR 136*** is the motivation of the discriminator once it is established that the cause of the treatment was discriminatory: per Lady Hale *'it matters not that his intention may have been benign'.*

14. It was contended by the claimant that for a number of reasons, the tribunal should find that the claimant had established a prima facie case that the actions of the respondent were discriminatory on the grounds of age. It was submitted that treatment based on a stereotypical approach to an individual with a protected characteristic (to use the Equality Act phraseology) is in itself discriminatory. We were referred to the case of ***R (Euro Roma Rights Centre) v Immigration Officer [2005] IRLR 115*** a case in which Immigration Officers treated Roma applicants for entry to the UK with more scepticism because they were Roma. This was itself discriminatory. It was contended that in this case the respondent had adopted a stereotypical approach to the claimant, because assumptions had been made based on her age about her ability to change and adapt to new ideas.

15. It was submitted that because Mr Gilmour had lied about the reason for terminating the claimant's contract and because of inconsistencies in his evidence, the tribunal should consider carefully whether this dishonesty was an indication of a need to cover up an unlawful discriminatory reason for terminating the claimant's contract.

16. The respondent did not pursue an argument that succession planning is on its face inevitably age related and the tribunal concluded that whilst age may be a reason for succession planning it is by no means the only reason as was accepted by the claimant herself in her evidence.

17. We concluded that the less favourable treatment complained of by the claimant i.e. the termination of the 2006 consultancy agreement was not inherently age based. We concluded that the respondent did consider that the claimant was unlikely to change and adapt to the new ways of working that the respondent wished to put in place for the CMO or its equivalent. We accepted that this view could have been based on a stereotypical assumption about someone of the claimant's age, but that it was necessary to consider the circumstances and the respondent's thought processes before reaching the conclusion that it was. We were critical of the fact that Mr Gilmour had lied to the claimant about the reason for the meeting and for the proposed termination of the 2006 contract. He acknowledged in his evidence to the Tribunal that he had misled the claimant and expressed his regret at having done so. He gave his reasons for having approached what he anticipated would be a difficult conversation in the way that he did. We did not consider that Mr Gilmour's evidence

should be discounted as a whole because his integrity had been impugned in this one respect.

18. In view of our finding that there was nothing inherently discriminatory in the decision taken to terminate the claimant's contract, it was therefore necessary to consider Mr Gilmour's mental processes to assess whether the termination of the contract was on the grounds of the claimant's age or not.

19. We considered the burden of proof set out at Regulation 37 Employment Equality (Age) Regulations 2006 which provides that where the claimant proves facts from which the tribunal could, in the absence of an adequate explanation, conclude that the respondent has discriminated against the claimant, the tribunal must uphold the complaint unless the respondent proves that he did not commit the discriminatory act. We concluded that the claimant had done enough on the evidence that we heard to discharge the burden of proof and to shift the burden to the respondent to establish an explanation for the less favourable treatment that was not an unlawful one. The reasons that we considered that the burden of proof had been discharged by the claimant were that the claimant's work was very highly regarded as was evidenced by most of the witnesses at the tribunal; the fact that Mr Gilmour, who was responsible for the decision to terminate the contract, carried out that decision in a covert and underhand way (which inevitably led us to scrutinise more closely his reasons for taking that decision). There were also references made by Mr Gilmour to the claimant's age, particularly in the phone call of the 4 March 2010 during which Mr Gilmour had made references to the need for succession planning. Finally we were concerned about the fact that the respondent made no attempt to ask the claimant to address the deficiencies in her performance or to adapt to the changes that were required in the service provision and considered that this may have been based on a stereotypical assumption that, as an older person, she would be unable to change or adapt to the new approach that they required.

20. These factors led us to infer that the reason that the respondent terminated the claimant's contract may have been on the grounds of her age.

21. We then turned to consider the explanation given by the respondent for the termination of the contract. We were referred to the case of ***Gay v Sophos Plc UKEAT/0452/10/LA*** as authority for the principle that the respondent does not have to identify a single reason for the treatment in question. If none of the reasons identified either by the respondent or by the Tribunal are to do with age, the claim will fail. Equally if any part of the reason is to do with age the defense will fail. We were also referred to the case of ***Live Nation (Venues) Ltd v Hussain UKEAT/0234/08/RN*** which illustrates the proposition that the issue 'is not whether the reason [for the action in question] is unsatisfactory or unreasonable but rather whether the employer satisfied [the tribunal] that there was a reason genuinely held by them, which caused them to dismiss the employee, and was not age'.

22. We concluded that the principal reason for the termination of the contract was that the respondent was unhappy with the service provided by the claimant under the 2006 consultancy agreement. It was clear from the documentation as well as the respondent's evidence that despite their high regard for the claimant's experience and abilities, the manner in which the service was provided did not meet their requirements and had not done so for a considerable period of time. The deficiencies in the service were identified in the Group Directors' presentation of the 2 February 2010 and we found no direct link between those deficiencies and the claimant's age. Mr Gilmour, having been present at the presentation, was left in no doubt that there was a need to replace the Chief Medical Officer service provided by

the claimant. The documentary evidence contained in the bundle, dated both before and after the decision to terminate the relationship was communicated to the claimant, supported the respondent's evidence that despite the claimant's skills and experience and the regard in which she was held, the respondent, for sound business reasons, wished to change the CMO proposition for the future. The aspects of the current provision which were identified as deficient were the lack of face to face contact, the slow turn-around of referrals, the lack of written responses, the desirability of direct referrals to specialist clinical consultants, and the requirement for greater involvement with the training and development of the assessors.

23. It was to be regretted that Mr Gilmour and Ms Deeks muddied the waters by addressing the issue with the claimant in an indirect and misleading way. The use of the subterfuge of an FSA requirement for succession planning led to a lack of clarity and damaged the integrity of those individuals. However we were satisfied that succession planning was not the true reason for the termination of the claimant's contract and we concluded that Mr Gilmour's reasons for suggesting that it was, were his wish to avoid confrontation if possible and to preserve a working relationship going forward. The evidence of Mr McMullan, supported by documentation in the bundle showed that there had been concerns about the CMO provision for some years. The Swiss Re audit report for 2008 highlighted difficulties in access to the CMO resource and delays in the response. The report prepared by Mr McMullan and Mr Newcombe in 2010 containing a proposal for the future provision of CMO services and presented to Mr Gilmour set out in detail the risks and resources deficiencies in the current CMO support.

24. The e-mail correspondence between Mr Gilmour and Ms Deeks on 28 April 2010 showed that Ms Deeks and Mr Gilmour were working together to find a way to deliver the decision to the claimant. There were many references in Mr Gilmour's e-mail correspondence to preferring a softly softly approach. The fact that he was prepared to retain the claimant's services for 2010 and into 2011 on a reduced basis supported his evidence that he was concerned to give her a 'soft landing' and did not consider that she was incapable of doing work for the Individual Claims business or of advising on complex cases. The claimant was critical of Mr Gilmour stating that the candid and disrespectful comments that he made about the claimant in e-mails contradicted his assertion that he had a soft spot for her.

25. We concluded that Mr Gilmour did have a soft spot for the claimant although he also found interaction with her frustrating and difficult, hence the unguarded comments made about her in emails to Ms Deeks. The disrespectful comments made in the emails did not lead us to infer that Mr Gilmour was discriminatory. He was not discourteous to the claimant directly and had been supportive of her in the past. He did nevertheless find her difficult to deal with and we concluded that his emails reflected his frustration with that aspect of the relationship rather than any disrespect for her which related to her age. In fact, given the candour with which he expressed himself to Ms Deeks about the claimant, had the claimant's age been a factor, it was likely to have been revealed in his emails.

26. Mr Gilmour and others at the respondent appeared to be somewhat in awe, if not in fear, of the claimant and mindful of her very significant and loyal contribution to the business. It was apparent that the claimant was not an easy person to deal with and that she did have an expectation that the respondent would look after her financially until such time as she decided that she could for reasons of health no longer work for it. Mr Gilmour anticipated that dealing with the concerns head on with the claimant would lead to conflict and animosity. If the claimant believed that the FSA was

responsible for the decision to replace her, the relationship between the respondent and the claimant might remain amicable. We concluded that all of these factors led Mr Gilmour to seek to address the claimant's termination in the deceptive manner that he did. We concluded that none of these factors related to the claimant's age. Mr Gilmour's approach may have been misguided, reprehensible even, but this did not make it discriminatory.

27. It was significant and supportive of the respondent's contention that its decision was not age-related that the respondent engaged the services of medical officers who were within the same age range as the claimant notably Dr Trowers who was retained until his 90th year and Professor Van Jones who is in his 60s. Following the termination of the claimant's contract it also recruited consultants in a similar age-range to the claimant, Dr Batten in her 60's, and Dr Williams who like the claimant is in his 70s. It also wished to retain the claimant's services after the termination of the 2006 contract.

28. The fact that the respondent did not seek to immediately terminate the claimant's contract and wished to retain her services both for the individual business and for a run off period was not consistent with the claimant's contention that the respondent wished to 'dispense with the services of a 70 year old'. It was clear that Mr Hellyer and those working in Potters Bar were not dissatisfied with the claimant's services and wished to continue to use them. The same was not true however of the Group business in Bristol.

29. We were concerned about the fact that the respondent had not sought to engage with the claimant by informing her of the changes that they wished to make to the service and allowing her an opportunity to adapt to meet those requirements. The claimant contended that this indicated a stereotypical assumption that an older person would not be able to respond to new ideas, be modern or to change. Mr Gilmour was of the view that the claimant would not change in the manner required. It was his evidence that the claimant would not be able to attend the Bristol office because she was sole carer for her sister who was disabled. It was clear that the claimant did not have IT skills and there was no indication that she intended or wished to acquire them. The claimant would not accept recorded delivery mail and lacked flexibility in her methods of communication. It was clear from her evidence to the tribunal that the claimant believed that the manner in which she provided the services was appropriate and adequate and she indicated that she would challenge requests to do things differently if she did not agree with the reasons given for the request. The claimant had not given any indication that she was willing to find a way of addressing the respondent's expressed preference for more face to face meetings and attendance at the Bristol office, a preference which we were satisfied that the claimant was aware of. It was telling that the claimant had not seen fit to make any visits to the Bristol office in at least five years to meet staff in person with whom she had regular telephone contact.

30. Mr Gilmour had known the claimant for many years and had worked with her. He knew of her personal circumstances and her devotion to the personal care of her disabled sister. We were satisfied that he genuinely believed from his knowledge of the claimant that she was unlikely to change to adapt to the new requirements of the respondent. Whilst a reluctance to embrace change may be a characteristic that is attributed to older people, and an assumption in any particular case that that characteristic must be present because of the individual's age would be discriminatory, we concluded that there was no such assumption in this case. Mr Gilmour's view of her capacity to change was based on his knowledge of the claimant and was, we concluded, a genuine view held by him.

31. We considered whether had the claimant been a significantly younger person who provided the identical service, i.e. unable to use e-mail, unwilling to provide written reports, declining to visit the Bristol office, taking too long to turn around cases, reluctant to engage in discussions about widening the pool of medical specialists, and showing no willingness to adapt and change, would that person have been treated in the same way. We concluded that it was likely that such a person would have been treated in the same way.

32. For these reasons we concluded that the reason that the respondent terminated the 2006 agreement was not in any sense related to the claimant's age. It was because of the respondent's genuine belief that the claimant was not providing the CMO service in the manner it required. It was not under an obligation to give the claimant an opportunity to change as she was a self-employed consultant and in any event it held a genuine view that the claimant would not meet the new requirements, a belief which itself was based on its own knowledge of the claimant and was not anything to do with her age.

33. For these reasons the claimant's complaint of age discrimination did not succeed and was dismissed.

Employment Judge Mulvaney

Date: 4/4/13

RESERVED JUDGMENT SENT TO THE PARTIES ON

4/4/13

R. Israel

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS