

MS

# THE EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

**AND**

*Respondents*

Ms M O'Reilly

(1) British Broadcasting Corporation  
(2) Bristol Magazines Ltd

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT:** London Central

**ON:** 4-19 November 2010

**EMPLOYMENT JUDGE:** Mr J Tayler

**MEMBERS:** Lady A Sedley  
Mr J Carroll

### *Appearances*

**For the Claimant:** Ms H Williams, Queen's Counsel  
**For the Respondent:** Mr J Galbraith-Martin, Counsel

## JUDGMENT

The unanimous judgment of the Tribunal is that:

- (i) The First Respondent subjected the Claimant to direct age discrimination and age victimisation.
- (ii) The Second Respondent subjected the Claimant to age victimisation.

  
EMPLOYMENT JUDGE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON

10 January 2011

JUDGMENT SENT TO THE PARTIES ON

11 January 2011

AND ENTERED IN THE REGISTER

  
FOR SECRETARY OF THE TRIBUNALS

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## REASONS OF THE EMPLOYMENT TRIBUNAL

### Introduction

1. By a Claim Form received by the Employment Tribunal on 25 January 2010 the Claimant brought complaints of direct age discrimination, age victimisation, direct sex discrimination and sex victimisation against the First Respondent.
2. A Case Management Discussion was held on 12 April 2010. I granted permission for the Claimant to amend her claim against the First Respondent to include indirect age and indirect sex discrimination.
3. Subsequently, the parties agreed that any claim related to Countryfile Magazine should lie against the Second Respondent. On 3 November 2010 Employment Judge Lewzey ordered, by consent, that the Second Respondent be joined to the claim.
4. A finalised version of the list of issues was agreed between the parties, shortly before the hearing, which is attached as Annex 1.
5. At the outset of the hearing we granted permission for an amendment of the Response so that it be treated as made on behalf of both the first and second Respondents to deal with the allegation that the Claimant was not given any further work for Countryfile Magazine.

**Evidence**

6. The Claimant gave evidence to us from a primary witness statement and a supplementary witness statement. On her behalf she called Charlotte Smith, a former presenter on Countryfile and various BBC radio programs.
7. On behalf of the Respondent we heard from:
  - 7.1. Mohit Bakaya – Commissioning Editor, Specialist Factual, Radio 4
  - 7.2. Andrew Thorman – Head of Rural Affairs (Audio, Music and Factual) and Head of Audio and Music Production (Birmingham)
  - 7.3. Jay Hunt – Controller of BBC1 at the material times
  - 7.4. Liam Keelan – Controller, BBC Daytime
  - 7.5. Teresa Bogan – Series Producer – at the relevant time Series Producer for Countryfile
  - 7.6. Lucy Lunt – Senior Producer for Audio and Music Factual
  - 7.7. Amanda Queiroz – Production Executive for BBC Audio and Music Division
  - 7.8. Maggie Ayre – Producer for Radio 4, Audio and Music Division
  - 7.9. Stephen Peacock – Executive Producer for Audio and Music (Factual), Birmingham
  - 7.10. David Ross – Editor, Radio Current Affairs, Manchester
  - 7.11. Cavan Scott – Editor of Countryfile Magazine at the relevant time
  - 7.12. Mark Damazer – Formerly Controller of Radio 4 and Radio 7
8. The witnesses gave their evidence from written witness statements. They were subject to cross-examination, questioning by the Tribunal and, where appropriate, re-examination.
9. We were provided with an agreed bundle of documents, to which a number of additional documents were added by consent during the course of the hearing. References to page numbers in this Judgment are to the page numbers in the agreed bundle. In addition, we were provided with four DVDs which included extracts from the daytime and evening versions of Countryfile.

10. In this Judgment we start by setting out our primary findings of fact and then give our analysis of the law. When considering the application of the law to the facts we reach conclusions on certain disputed factual issues and draw inferences from our primary findings of fact where we consider it appropriate.

### **Findings of Fact**

11. The Claimant commenced work for the BBC in 1982.
12. In 1989 the BBC began the broadcast of the television rural affairs magazine programme, Countryfile. It covers rural and farming issues; including journalistic and more light-hearted segments.
13. One of the original presenters was John Craven; who was well known for his role on the children's television news programme, Newsround.
14. In 1998 or 1999 Charlotte Smith started working on Countryfile.
15. In 2000 the Claimant started working on the early morning specialist farming programme on Radio 4, Farming Today.
16. In 2001 the Claimant, Ben Fogle and Adam Henson started working on Countryfile.
17. In 2004 the BBC broadcast an edition of Countryfile, presented by the Claimant, investigating over-fishing off the coast of West Africa. It won the Foreign Press Award, Royal Television Society Award and British Environment Media Award.
18. On 1 April 2004 the Claimant started working on the Radio 4 environmental documentary series, Costing the Earth. Initially, she presented one or two programmes in each six episode series.
19. On 7 March 2005 Mr Thorman sent an e-mail to the Claimant congratulating her on her programme titled Birds of a Feather, stating(p122):

"A big thank you for all your hard work, dedication and commitment which gave us a very strong UK exclusive angle on this running story. I heard and saw much of the coverage which was in no small part down to you."
20. This indicates the high regard in which the Claimant was held by Mr Thorman at the time.
21. In or about January or February 2006 Ms Ayre started working as Series Producer for Costing the Earth. The Claimant was presenting approximate three episodes per series.

22. On 20 June 2006 the Claimant presented her first episode of File on 4 on the subject of "Farmers". File on 4 is a highly prestigious radio documentary series. The team spend approximately one month investigating the stories.
23. On 24 March 2006 the editor of the Radio 4 early afternoon series Woman's Hour, Gill Burridge, sent an e-mail to Mr Thorman asking about the possible availability of the Claimant to cover for Jenni Murray; asking (p125):

"Would she take on board the broad range of subjects and tone we are looking for? Any advice gratefully received."
24. Mr Thorman responded:

"She'd be great".
25. On 5 July 2006 Mr Thorman wrote to Mr Peacock in relation to the "Milk bung" story; asking (p126):

"I can see if we can get a bit of extra dosh out of AQ to let Miriam loose",
26. This was a reference to the Claimant, and is further indication of the Mr Thorman's good opinion of her.
27. In August 2006 there were exchanges of e-mails between Mr Thorman and Mr Ross about the availability of the Claimant to present a further episode of File on 4, raising the concern that it would interfere with her work on Farming Today. The Claimant subsequently left Farming Today and concentrated her efforts on Countryfile.
28. In 2006 Juliette Morris started working for Countryfile.
29. On 12 October 2006 the Claimant was asked to present Woman's Hour for a number of weeks.
30. On 4 December 2006 Mr Thorman sent an e-mail to Chris Impey, who was then the Producer of Farming Today, asking (p129):

"How about entering Miriam for the Speech Broadcaster of the Year in this year's Sony's? She presents Farming Today This Week, Costing the Earth, Woman's Hour, File on Four and Pick of the Week ...

Could you have a look at the category and pull together an entry"

31. Mr Impey replied:
- "Will do. Some good CTE progs, the great File on Four, tenacious on FTTW and showing her versatility and warmth on Woman's Hour"
32. The Sony Awards are the most prestigious awards in Radio. The proposal to enter the Claimant as Speech Broadcaster of the Year showed that Mr Thorman thought very highly her.
33. From 2007 onward Ms Ayre had some concerns about the Claimant's availability and enthusiasm for Costing the Earth. The Claimant was unhappy with the time commitment and the relatively low fee that she received for the programme. However, having discussed the matter with the Claimant, Ms Ayre wrote to Mr Thorman on 14 June 2007 in the following terms (p263):
- "Just chatted to Miriam about CTE over the summer. She's wholly committed and also willing to do an extra programme to account for Tom's absence plus possibly using another presenter. I'd be happy with that option"
34. However, in August 2007 there was an occasion when the Claimant was unable to present an edition of Costing the Earth that she had been scheduled to do; as a result of which Ms Smith covered. Ms Ayre wrote to Mr Thorman on 13 August 2007 stating (p264):
- "I am not sure if Steve has mentioned to you – that we have had to use Charlotte Smith on one of the programmes to replace Miriam who was uncertain about availability. Charlotte is working with Anne-Marie on the flooding programme"
35. Mr Thorman replied (p264):
- "Hi, yes he did. I think we may have to revisit the question of presenters once this series is done and dusted. I am aware of how much of a headache this has been for you"
36. In the summer of 2007 there was some friction between Ms Ayre and the Claimant as to her availability for Costing the Earth. However, later in the summer a meeting took place between the Claimant, Ms Ayre and Mr Peacock at which it was agreed that the Claimant would reduce her commitment to two Costing the Earth programmes per series. The Claimant did this with the intention of ensuring that her engagements would not clash.
37. In October 2007 Countryfile Magazine was launched.

38. In November 2007 an episode of Countryfile was presented by the Claimant which included a feature on the endangered Bluefin Tuna. This episode was runner up for the Foreign Press Award.
39. In November 2007 the Claimant commenced writing for Countryfile Magazine; producing a series on Green Heroes that ran for approximately a year.
40. On 11 March 2008 Ms Ayre sent an e-mail to Mr Thorman asking if he had spoken to the Claimant about her availability/willingness to do the next series of Costing the Earth. Mr Thorman replied (p265):

"I had a long chat with her post wind. She was very receptive (and supportive of you) and up for doing more so feel free to ask. I just hope she took on board everything I said. I am sure she will I'd say 60/40 split with Tom.. But if she can't or isn't available or not interested then at least we have asked and I would be happy for Tom to do as many as poss."
41. This indicates that there was some continuing concern about the Claimant's commitment to Costing the Earth, but that she was to remain as one of the main presenters.
42. In the spring of 2008 a decision was taken to increase the number of episodes of Costing the Earth from 6 to 8 per series, with effect from April 2009.
43. In May 2008 Ms Hunt returned to the BBC, after a short period working for Channel 5, in the role of Controller of BBC1.
44. In the summer of 2008 Mr Thorman and Ms Hunt had a number of telephone conversations, and a meeting in London, during which they considered the possibility of moving Countryfile from its daytime slot on Sunday to an early evening slot on Sunday, during primetime. The viewing figures for Countryfile were extremely good and it was hoped that it might move successfully to a primetime slot and attract a substantially larger audience. The key factual issues in this case turn on when, by whom and on what grounds the decision was taken as to who would be the presenters of the new peak time programme.
45. In outline, it is the Respondents' contention that a set of criteria were devised and then applied to the existing presenters, as a result of which the Claimant and a number of her colleagues did not "move forward" to the new primetime programme. The Respondent contends that the principal criterion was that the presenter must have network experience so as to make him or her familiar to a primetime audience. It is the Claimant's case that no such criteria were applied and that decisions were taken on an impressionistic basis. We shall return in our analysis to when, by whom, and on what basis the decision was taken.
46. In deciding to move Countryfile from a daytime to evening slot, a decision was also taken that the daytime slot should be filled by a new programme that would

include archive footage from Countryfile, linked together by new pieces. This was eventually called Country Tracks.

47. On 4 September 2008 Costing the Earth won the IVCA Clarion Award for best Radio Environment Programme; as a result of which Mr Thorman sent an e-mail setting out his congratulations (p267):

"Congratulations to Costing the Earth and especially Maggie Ayre, Tom Heap and Miriam O'Reilly but also to the team support they received for chalking up yet another top environmental award"
48. On 26 September 2008 Helen Foulkes, Executive Producer, Daytime and Factual Formats, sent a proposal for the replacement programme for the daytime slot for Countryfile that was then called Countryfile Tracks. She referred to the fact that Mr Keelan the Controller of BBC1 daytime, liked the proposal. She suggested presenters including Ben Fogle, Tom Heap and Ellie Harrison.
49. On 9 October 2008 the BBC expenses policy was amended, which clarified that the channel would not pay for Christmas gifts or champagne under any circumstances. This explains why the Claimant was not thereafter sent such gifts by Mr Thorman (p191C-E and p138A).
50. On the same day, Tom Heap, who was now the primary presenter for Costing the Earth, sent an e-mail to Ms Ayre suggesting a programme on Biomass Heating (p267A-B + p281).
51. In October 2008 Mr Bakaya commissioned a File on 4 programme, that was to be presented by the Claimant, called Trading on HIV.
52. On 20 October 2008 Helen Foulkes sent an e-mail to Mr Thorman raising the question of presenters for the replacement programme for the daytime slot previously filled by Countryfile. The programme was now called Country Tracks. She suggested that Mr Fogle was likely to be the main presenter and that Adam Henson might be used as an occasional substitute. It is clear that by early November 2008 a decision had been taken to replace a number of the presenters of Countryfile.
53. On 7 November 2008 Mr Thorman sent an e-mail to Teresa Bogan, under the subject heading Countryfile presenters, stating(p140):

"Here is a shortlist of possibles I have been able to pull together. Let me know what you think. I must respond by Monday pm Any others?"
54. The e-mail set out a number of possible presenters. Mr Thorman did not suggest that the proposed presenters had been picked by the application of any particular criteria. Ms Bogan, in her oral evidence, stated that she had not been



told that specific criteria had been applied. Ms Bogan responded that day stating (p140):

"Can I get back to you on Monday morning? I know some of them but not all – and I am on my own today. I can probably think of a few others but need to do a bit of research"

55. Ms Bogan returned to the subject in an e-mail to Mr Thorman on 10 November 2008, in which she stated (p140A):

"Here are some thoughts on some additional ethnic talent.

Re: the list you sent over to me – I am familiar with some of them but not all so I'd need to order up some of their stuff to get a proper feel (several of the internet show reels aren't working at the moment). Do you want me to do that or would I be wasting my time (ie is Jay just gonna pick someone)????"

56. It is clear that Ms Bogan had either been told, or had inferred from the ethnic origins of the possible presenters on the list put forward by Mr Thorman, that they were seeking new presenters who were of an ethnic minority. It is also clear that she did not know of some of the names that had been put forward by Mr Thorman and was not familiar with their work as a result of any primetime profile that they might already have. In her e-mail she does not make reference to any criteria that she had applied in making her proposals. She was under the impression that Ms Hunt would play a significant role in choosing the new presenters.
57. On 13 November 2008 Mr Thorman sent an e-mail to Michaela Strachan, who was an occasional presenter on Countryfile, informing her of changes to the presenter line up. Ms Strachan, whose date of birth is 7 April 1966, was at that time 42. In the e-mail Mr Thorman said (p145):

"Hi Michaela,

I was hoping to see you in person to let you know that some pretty major changes are being considered by the controller of BBC One – Jay Hunt – for Countryfile.

Nothing has been agreed yet but if it goes ahead then it will have an impact on our relationship. You have had a long and very productive relationship with us and, although I would like to consider continuing to use you, there may be fewer opportunities – if any – going forward.

Jay is keen to build a more regular team of faces who would become much more associated with the brand than you have been able to be.

At this stage nothing is being made public – for the simply reason that nothing has been signed off by Jay. If it does happen it won't be until April next year.”

58. It is clear that Mr Thorman was placing emphasis on the extent of the involvement of Ms Hunt in selecting presenters for Countryfile. Ms Strachan was only an occasional presenter for Countryfile, by this time having moved to live in South Africa, and was only available to present the programme on visits to the United Kingdom. She spent the majority of her time presenting wildlife programmes in South Africa.
59. On the same day, or thereabout, Mr Thorman informed Ben Fogle, another presenter on Countryfile, that he would not be used in the future, but that he would have the opportunity to present Country Tracks. Mr Fogle's date of birth is 3 November 1973; he was 35 at this time.
60. On 13 November 2008 Mr Thorman sent an e-mail to Ms Hunt updating her on the conversation with Mr Fogle, stating (p141):

“I have – after several attempts – managed to speak to Ben Fogle. I had already agreed and discussed what I was going to say with his agent Hilary.

I told him that we were having to build a much more regular team to front the proposition and that, while we loved him to bits, this hadn't been his preferred option to date. However here was an opportunity to become the face of the new daytime show. It would require less of a commitment but would provide much more exposure than he was currently getting or committing to with Countryfile.

Hilary then rang to say he felt devastated but she also told me that I couldn't have said anything else and was perfectly understanding.

Moving on – I have said much the same to Michaela Strachan (tho only by e-mail as she's been in SA) and have kept JC fully in the loop. He says there's a lot for him to consider. He does get it though.

I am seeing Katie Knapman next week along with Sanjida”

61. In both the e-mail about the conversation with Mr Fogle and that sent to Ms Strachan, Mr Thorman referred to building a much more regular team, rather than the application of criterion which required network experience that would make the presenters familiar to a primetime audience.
62. Katie Knapman was under consideration as a new presenter for Countryfile. She subsequently joined the show. Ms Knapman had experience presenting the Holiday Programme and Tomorrow's World, but had been living in Hong Kong

for the previous three years bringing up her children and did not have current network exposure that would make her familiar to a primetime audience. Ms Knapman was born on 22 October 1972, she was 36.

63. The reference to Sanjida was to Dr Sanjida O'Connell who was considered for Countryfile, but not chosen. Ms Hunt responded (p141):
- "Thanks for this. I am very grateful to you for handling it so well"
64. To which Mr Thorman replied (p141):
- "I still think they'll winge to you!
- Re Elle – not sure – but definitely worth a closer look. Also Emma Masingale (from the same stable, so to speak) less TV experience tho. I'll do some digging.
- Julia B keeps texting me but her sister (her agent) wants silly money. Will get there if she is genuinely keen.
65. The reference to Ellie was to Ellie Harrison who had some experience as a contributor to the One Show but did not have the level of network exposure that would make her familiar to a primetime audience. Her date of birth was 17 November 1977; she was 30.
66. The reference to Julia B was to Julia Bradbury who had extensive primetime, experience having presented Watchdog, Wainwright's Walks and a number of other network programmes. Her date of birth was 24 July 1970, she was 38. Subsequently, she was to become one of the two main presenters for evening Countryfile.
67. On 14 November 2008 Mr Thorman had a conversation with the Claimant in which he informed her that she was no longer going to be one of the presenters of Countryfile. The Claimant was born on 19 February 1957; she was 51 at that date.
68. In the ET3 Response the matter is dealt with at paragraph 14 as follows (p23):
- "It is acknowledged that in November 2008 Mr Thorman informed the Claimant that Countryfile was moving to a primetime viewing slot in the broadcast schedule. The announcement was not made to the Claimant alone but to all of the Countryfile production team and its presenters and reporters. All of the Countryfile presenters were told that the programme would be losing some of its best known and well loved faces."

69. It was not suggested that the Claimant was informed that particular criteria had been applied to her.
70. Mr Thorman, in his witness statement, deals with the matter differently. At paragraph 46 he states:

"In November 2008 I explained individually to each of the Countryfile team members (including Miriam) that the programme was moving to a new primetime slot. Miriam knew that I had been championing this for a while and it did not come as a surprise to her. I explained to her that the programme was moving and that I was sorry to say that she would not be moving along with the show, as the channel wanted us to use presenters who had more experience of presenting on network television shows and who had bigger profiles."

71. This requirement for experience at presenting on network television shows and for big profiles is not one referred to in the ET3 Response or in the contemporaneous e-mail exchanges.
72. The Claimant, by contrast, says this of the conversation, at paragraph 35 of her witness statement:

"Andrew Thorman did not explain why I was not going to be working on the new show, except to say that the Network wanted to 'refresh' the presenter line-up. I asked who else was being dropped, and he said we would be losing some familiar and well loved faces, but he would not give me the names."

73. Two aspects of the account are similar. The Claimant refers to the use of the word Network and Mr Thorman to the word Channel. We consider that this is a reference to Ms Hunt as controller of BBC1. Both the accounts refer to the loss of familiar and well loved faces. We prefer the account of the Claimant and accept that reference was made to refreshing the presenter line up, rather than to a requirement for presenters who had experience of presenting on network television shows and had bigger profiles. That fits with the lack of any reference to the criteria in the contemporaneous documents.
74. That day, the Claimant and Ms Bogan exchanged e-mails about her removal from Countryfile. The Claimant stated (p142):

"I saw Andrew before I left this morning and he told me about the changes to CF. I just wanted to say because it will be difficult in a busy office, how much I have enjoyed working on the prog. I am sure CF will continue to be loved – it is a great show."

75. Ms Bogan responded (p142):
- “I’m really, really, really sorry. I can assure you with my hand on my heart, it was nothing to do with me. I know and appreciate just how much you have given to Countryfile and I don’t know how we will manage without you (and I am serious about that). I’m really sad about it all. I can’t call you now for various reasons but if you want to talk about it please call me whenever it suits you.”
76. Ms Bogan’s wish to distance herself from the decision is notable; as is her expression of the high regard in which she held the Claimant.
77. On the same day, Charlotte Smith was informed that she would not be moving to the evening show. Ms Smith was born in 1964, she was 44. In addition Juliette Morris was informed that she would not continue as a presenter. Her date of birth was 26 April 1965; she was 43. Tom Heap was also informed that he was not to remain on Countryfile as one of the major presenters; although he did return at a later date. His date of birth was 6 January 1965; he was 43.
78. On 14 November 2008 Ms Strachan exchanged e-mails with Mr Thorman stating how sad she was that she would be not to be involved in the programme any more. Mr Thorman responded (p144):
- “As I say, it has been terrific working with you all these years and I guess there was always going to be a time when the channel would want to make changes”
79. On 14 November 2008 Mr Bogan sent an e-mail to Mr Thorman with some details about Ms Harrison (p141A).
80. On 17 November 2008 the Claimant flew to Kenya to make a film on the Bush Meat Trade for the Born Free Foundation. She was provided with recording equipment by Mr Peacock and Ms Ayre to obtain material that might be used subsequently in a Costing the Earth programme.
81. On 19 November 2008 (p143A) Dr O’Connell’s agent sent Mr Thorman a copy of her profile, noting that they had met the day before. Dr O’Connell did not have a significant network profile that would have made her familiar to prime time audiences. She was born in 1970; she was 38.
82. On or about 19 November 2008 the Claimant learned that Charlotte Smith, Juliette Morris and Michaela Strachan were not going to continue presenting the Countryfile when it moved to primetime. The Claimant felt that this was an example of older women being removed from television and felt that she and her colleagues were being subject to age and sex discrimination. She made this view known amongst her colleagues in the production team of Countryfile.

83. On 26 November 2008, Mr Thorman sent an e-mail to Mr Scott, the Editor of Countryfile Magazine, stating (p146):

"It has been confirmed that the show is moving in April – but the budget hasn't been signed off and so no new talent has been contracted yet!

Sadly it does mean that we will be saying au revoir if not goodbye to some familiar faces. Michaela Strachan. Juliette Morris. Charlotte Smith and Miriam O'Reilly. Ben has been offered the job as presenter of the new proposed replacement show at 11.00 which has a working title "Country Tracks". For information about this show please liaise with Executive Producer – Helen Foulkes.

Adam and JC will remain with Countryfile to be joined by a number of new faces, all of whom have been contacted but not, as I say, contracted! No problem talking to JC – he is in the picture.

I'd rather you didn't mention or discuss the position with other individuals who may feel rather sensitive. However, if they mention it to you, then obviously that's fine."

84. The reference to JC was to John Craven. His date of birth is 16 August 1940; he was 68 at the time. The reference to Adam was to Adam Henson who was a presenter who had joined Countryfile after a talent search seeking a farmer for the programme. In the agreed cast list he is stated to be in his early to mid 40s.
85. Mr Thorman did not suggest that new presenters were picked for their network profile or familiarity to primetime audiences.
86. On 27 November 2008 (p148) Mr Thorman sent an e-mail to Ms Hunt (p148) as follows:
- "Hi – glad to say we have done the deal with Julia.
- Telegraph Sat?"
87. The reference to Julia was to Julia Bradbury, who had been contracted to be one of the main presenters for the evening Countryfile. The reference to the Telegraph was to the fact that Ms Hunt was to be interviewed for a major article in the Telegraph that Saturday dealing with a number of changes she was to introduce in her role as controller of BBC1.
88. On 28 November 2008 Ms Hunt sent an e-mail to Mr Thorman in response, stating (p147):

"This is great. Just wanted to make sure we have the comms around this right before it breaks in the paper. Telegraph will say that the show will be fronted by Julia and Matt, but John will still be involved. There will be a new diverse team of other presenters alongside them."

89. Ms Hunt went on to ask a number of questions that were answered, by insertion into the text, by Mr Thorman, who made reference to Tom Heap being a useful backstop and stated:

"We are still to conclude negotiations with Jules Hudson, James Wong and Katie Knapman, all of whom are keen to be involved."

90. It is notable that in Ms Hunt's e-mail that she makes reference to a "new diverse team" when referring to those other than the two main presenters; who were to be Julia Bradbury and Matt Baker. There is no reference to the new team having particular network experience or primetime familiarity.
91. Matt Baker who was to be the main presenter alongside Julia Bradbury had a significant network profile, particularly from Blue Peter. Mr Baker was born on 23 December 1977; he was 30 at the time.
92. The principal experience of one of the new team members, Jules Hudson, was on the BBC2 programme Escape to the Country, which had on three occasions been broadcast in primetime. It was thought by Mr Thorman and Ms Hunt that he had additional primetime experience on Time Team, Battlefields, The Iron Duke and Rebels and Redcoats. This was an error resulting from a profile produced by his agents which lead them to believe he presented the programmes whereas, in fact, he had been involved in the production team. Mr Hudson was born on 9 January 1970; he was 38 at the time. James Wong is an Ethnobotanist, who was shortly to make a programme for BBC2 called Grow Your Own Drugs. In the agreed cast list his date of birth is given as 1982; he was 26, or thereabouts, at the time.
93. On 28 November 2008 Mr Thorman was informed that Richard Evans would join the series as a "co-exec". This was to assist in updating the visual image of the programme as it moved to its primetime slot.
94. On 28 November 2008 an article appeared in the on-line version of the Guardian (p149) stating:
- "The BBC is to move Sunday morning rural affairs show Countryfile to a peak-time slot but without any of its current roster of middle-aged female presenters, sparking accusations of ageism."
95. This on-line article was not subsequently repeated in the print version of the Guardian.

96. Towards the end of November, or early part of December, the Claimant informed Ms Bogan that she would not be returning to work on Countryfile after Christmas.
97. On 8 December 2008 an article appeared in The Mirror suggesting the Countryfile decision was ageist (p151). An article appeared in the Telegraph on 9 December 2008 again alleging ageism (p152). At about this time, the Claimant was informed by Louise Pyne, a colleague who had formerly worked on Countryfile, that Dawn Mears, a film editor on Countryfile, had said that while she was working in an editing suite Mr Thorman had commented on one of the press articles and suggested it was the Claimant who had leaked the information to the press. Initially, the Claimant thought that this conversation had happened at the end of November, and resulted from the Guardian article. However, during her evidence she recalled that she had been told that a copy of a newspaper had been open in the editing suite. As the Guardian article had not been published in the paper, but only online, she accepted that it could not have been the Guardian article, and must have been one of the articles that was published in December.
98. Mr Thorman denied that he had ever suggested that the Claimant was responsible for the leak. Mr Thorman suggested that the stories that had been published alleging ageism were of little concern to him. We do not accept that is the case. We do not find his evidence credible in this regard. The movement of Countryfile from its morning slot to an evening primetime slot was a matter of major significance for BBC1 generally and, in particular, for Mr Thorman, for whom it would be the first primetime programme that he was responsible for.
99. Ms Hunt told us, on a number of occasions, how significant she considered this move; and how determined she was that it should be a success. What is more, diversity is an issue of great importance within the BBC. We find it incredible, in the circumstances of such a significant move, that Mr Thorman would have been so unconcerned about allegations that the move was ageist. This causes us to doubt his evidence in this regard. We prefer the evidence of the Claimant, even though it comes as second hand hearsay, that such a discussion did take place and Mr Thorman did suggest that he believed the Claimant was responsible for the leaks. Were the allegation made up it would be unlikely to involve such a tortuous route in which the information came to the Claimant, involving two individuals who could have been challenged or brought forward as witnesses by the BBC to contradict her story. In addition, this chimes with the evidence of Ms Bogan who told us that there was a general belief in the office that the Claimant had been responsible for leaking the stories.
100. The Claimant telephoned Mr Thorman to tell him that she was not the source of the leaks. She contends that he said words to the effect that as she was leaving the show after Christmas what was he to think. Mr Thorman denied this. We prefer the evidence of the Claimant, which fits with our view of what had been said in the editing suite. The Claimant also alleges that, in this conversation, Mr Thorman said words to the effect "one day someone will tell me I am too old to do this job and shuffle me off to retirement" (Claimant paragraph 66). Mr



Thorman denies that he said this, although he accepts that in some later conversation he said words to the effect that, because he had been responsible for the programme for many years, and because BBC1 was looking at a different line up of presenters, it would not surprise him if the channel also wanted different involvement at his level (Mr Thorman paragraph 50). While we do not think it is likely, in the light of his concern about the articles that had been published alleging ageism, that he would have spoken of being moved because he was too old, we think that it is likely that there was mention of him being moved because of his long involvement with the programme, which the Claimant interpreted as inferring a link with his age. During the discussion the Claimant stated that she was prepared to return to Countryfile after Christmas.

101. On 8 December 2008 Ms Strachan sent an e-mail to Mr Thorman stating under the subject heading "we are too old!! (p161):

"Hi Andrew, well I guess its been made public!! Got an e-mail from a friend today saying it had been in the press, googled it and all I found was a Daily Mirror cutting saying that the Countryfile girls had been dumped for Julia Bradbury and it was seen as an ageist thing!! I am not even much older than Julia Bradbury! Did Jay need to make it quite so brutal? Surely she could have just said that Countryfile was going to go prime time with new presenters not name us all and say we are being dumped. Oh it's a cruel harsh world! Hope to see you in the new year, I'll try and do some more Countryfiles before the changes come into place and we are pushed aside for younger models!!"

102. Although Ms Strachan's tone was jocular Mr Thorman cannot but have been concerned as to her real reaction; and that of others. Mr Thorman responded on 9 December stating (p161):

"Jay was interviewed by the Telegraph in which she mentioned (briefly) Countryfile move. She didn't name anyone in the current team and didn't talk about any reasons other than the fact that the show was doing very well, but someone then briefed the media Guardian about the ageist thing which was neither accurate nor helpful. They pulled their story."

103. Ms Strachan responded that day, stating (p161):

"Well I'll bring my zimmer next time I come to Birmingham!! Actually the whole thing made me chuckle!"

104. On 10 December 2008 articles appeared in The Mail and People alleging ageism in respect of the Countryfile decision (pp154-156 and 157). On 11 December 2008 an article appeared in The Times under the heading "No Country for Old Women" referring to the Countryfile decision (pp191F-G). That day Mr Thorman and Ms Foulkes exchanged e-mails about presenters for Country Tracks noting that Ben Fogle had been agreed and suggesting that Ellie Harrison might be a possibility (p158).

105. On 12 December, shortly after their conversation, Mr Thorman sent an e-mail to the Claimant, as follows(p160):
- “A brief line to thank you for your understanding and to apologise for the fallout from this as a result of some pretty lousy reporting. As I have told the team, I would be happy to use you post-April if and when the opportunity arises. You have been a loyal and committed member of the team and I hope we will continue to enjoy a professional relationship built up over many years”
106. This was the first time that any suggestion had been made that the Claimant might be used in future episodes of Countryfile; as we shall return to in our analysis. The same day Mr Thorman sent e-mails to Ms Smith and Ms Strachan raising the possibility of further work on Countryfile should the opportunity arise. In these e-mails, as in the previous conversations in which they had been informed that they would not be continuing with Countryfile, it was not stated that the reason for the discontinuance was their lack of network experience that would make them familiar to primetime audiences.
107. On 12 December Juliette Morris sent an e-mail to Ms Bogan seeking to make it clear that it was not her who had spoken to the journalists. In response Ms Bogan replied(p163):
- “There has been a bit of a kerfuffle which was probably inevitable given the Selina Scott thing. We didn't for one moment think that you were behind any of it. Andrew seems quite relaxed about it all and is of the view that any publicity is good publicity”
108. We do not accept that Mr Thorman was so relaxed, but consider that he was involved in the “kerfuffle” that had arisen.
109. In around December 2008 the Claimant was informed that she would be presenting two of the six Costing the Earth programmes for the next series; they were subsequently broadcast on 26 January 2009 and 9 February 2009 (p281).
110. On 18 December 2008 Ms Foulkes sent an e-mail to Gerald Melling with new details of the proposed Country Tracks programme, suggesting that Ellie Harrison would join as a presenter along with Ben Fogle.
111. At the beginning of January 2009 the Claimant had conversations with Mr Peacock about the possibility of a Costing the Earth programme using her material on Bush Meat, perhaps linked to a section based in the UK.
112. On 10 January 2009 the Claimant returned to work on Countryfile. On 14 January 2009 her mother died, limiting her availability for work in that period.