Case Number: 2206122/2016

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Miss D Gopalakrishnan	**v**	(1) Brook Street (UK) Ltd (2) Government Legal Department

Heard at: **London Central** **On: 10, 11, 13 and 13 July 2017**

Before: **Employment Judge Wade**

Members: **Mr J F Noblemunn**
Mr D Schofield

Representation:

Claimant:	Mr D Mclean (friend)
For the costs hearing:	Mr Hopper (ELIPS Volunteer)
First Respondent:	Mr S Luximon (HR Business Partner)
Second Respondent:	Mr T Poole (Counsel)

REASONS

Introduction

1. The Claimant claims harassment and direct sex discrimination against the Second Respondent, the Government Legal Department. Against the First Respondent she claims victimisation.

2. The issues are set out in the Case Management Summary of 27 July 2016. It is recorded that they were written in discussion with the Claimant, who was present at the hearing, and following a draft List of Issues written by solicitors who had been advising her at the time, although they did not attend.

3. The Claimant makes four complaints about harassment. We have agreed to add a fifth complaint to that list which is that on 2 February 2016, her direct Line Manager Mr Seeruttun asked her out on a date.

4. We set out each of the allegations as a sub-heading in our findings of fact.

5. In relation to harassment, we have to decide whether the alleged perpetrator's conduct, Mr Seeruttun's in every case, was related to the Claimant's sex or was of a sexual nature.

6. If we decide that it was, we have to decide whether it had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. In considering whether the conduct had that effect, the Tribunal must take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

7. In this case, as will be clear from the findings of fact, where we have found that there was conduct which was potentially harassment, our conclusions have focused upon the effect of the conduct. The words in the Equality Act are strong and the higher courts have said on a number of occasions that it is vital that we do not ignore them. Harassment is not just every day behaviour which causes confusion or upset; it must violate dignity and create an intimidating environment etc.

8. We also have to decide whether the Claimant was dismissed because of her gender, and finally we have to decide whether she was victimised by the First Respondent. There are two elements to victimisation in the statutory sense of the word. The first is whether there was a protected act. This must be a complaint or allegation of discrimination. Although the precise wording of the Equality Act does not have to be quoted in the allegation, it must be clear that the Claimant is alleging that there has been a breach of the Equality Act however albeit in colloquial language.

9. The next question is whether the Respondent subjected the Claimant to a detriment because she had done a protected act. We set out the three allegations of victimisation in the findings of fact as we go through them.

10. Finally, there is a question of whether claims should be dismissed because some of them are out of time.

The Evidence

11. We heard evidence from the Claimant and read the witness statement of her union representative, Mr Tim Megone. He did not attend the hearing because he was on holiday. We explained that we would give his witness statement less weight because he was not there and could not be cross examined.

12. For the First Respondent, we heard from Ms Carrie Ward, Team Leader and from Mr Stephen Watkins, Business Manager.

13. For the Second Respondent, we heard from Mr Priyush Patel, Grade 6 Lawyer, Mr Avin Seeruttun, Executive Officer, currently on temporary promotion to Higher Executive Officer. Also, we heard from Mr Kevin De Souza formerly a Grade 6 Lawyer with the Second Respondent. Finally, we heard from Mr Brian Stanton, Deputy Director and Team Leader at the Government Legal Department.

14. We read the pages in the bundle to which we were referred.

The Facts

15. Having considered all the evidence, we find the following facts on a balance of probabilities.

16. The Claimant was an employee of the First Respondent, Brook Street. Whilst she worked for the Agency she was studying the legal practice course ("LPC") with the aim of qualifying as a lawyer, so she was familiar with legal concepts, for example causation.

17. On 2 November 2015, she was placed as an Administrative Officer ("AO") in the B2 Immigration Team of the Government Legal Department, the second respondent. This was her first paid employment in the legal sector. B2 is a busy team dealing with a high volume of sometimes urgent immigration work. The Claimant was employed to provide administrative support to a mini team within that division. Her Line Manager was Mr Seeruttun, an Executive Officer ("EO") newly promoted from AO, and this was his first management role.

18. His manager was Mr Patel, a Grade 6 Lawyer, who ran the mini team in which the Claimant worked. When three new AOs who were recruited to B2 he was responsible for recruiting her and placing her in his mini team because he thought that she showed promise. Mr Seeruttun was also on the interview panel but he had no input into which team she went to. Mr Patel stressed to her at that time that this was an administrative job only and although she was studying the LPC there was no opportunity for her to do legal work. Mr Patel's Manager was Mr Brian Stanton.

19. The mini team consisted of seven men and four women, although the personnel changed over time there was no glaring gender imbalance. The Claimant was offered and given induction training and we have seen the training schedule which she was given. The idea was that the three new AOs would be trained together in the first induction phase and then there would be training on the job from their specific Line Manager. The Claimant says that she was not given enough training. The Second Respondent demonstrated to us that there was a considerable amount of induction training and says that managers were open to providing on the job training on specifics and that where she was unsure the Claimant had a responsibility to ask; we agree with that position.

20. Only three weeks into the role, on 27 November 2015, Mr Seeruttun provided good feedback about the Claimant. He raised a few points to her which was not unusual in the first weeks and said, "Deepa is performing really well in her role as AO". As I have already said, he was a new manager and it was in his interests for her to succeed. Around this time, the Claimant told Mr Seeruttun that she had taken her previous employer to a Tribunal and that she was, in his words, "not a person to be messed with". The Claimant did not deny this or cross examine him on that point. Therefore, it appears to us that she is not inherently someone who is scared of complaining.

Harassment allegation 7.1.1: Mr Seeruttun touching the claimant's things

21. The Claimant says that Mr Seeruttun touched personal things on her desk and that this took place from the very beginning and was ongoing until the end of her employment. Our finding is that this did not happen, or if it did it was not at a level of actionable harassment. If anything, the Claimant found Mr Seeruttun to be nosey and I should emphasis at this point that the definition of harassment is of conduct which violates dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment, in other words conduct that is far worse than just being nosey.

22. Our reasons for this finding are:

    1. That although in cross examination the Claimant said that this conduct happened all the time, in her witness statement she says that when she moved desks to be near Mr Stanton after about three weeks it happened less. Her Union Representative's statement corroborates that this was what she told him when she first met him in February 2016. Therefore, the Claimant's account is inconsistent.

    2. Mr Stanton, who was sitting near the Claimant after three weeks, said he witnessed nothing.

    3. Mr Seeruttun denies the allegation and the Claimant had no questions for him on this point in cross examination. He brought his denial off the page by volunteering that he is the sort of person who in fact would even ask if he can touch somebody's keyboard, let alone their personal items.

    4. The Claimant hot desked within her team, but on the 11th floor and Mr Seeruttun was usually on floor 10, so the opportunities for casual contact were limited.

    5. The Claimant herself said that Mr Seeruttun was nosey rather than harassing although she did make allegations in relation to the other claims of harassment of stalking.

    6. The Claimant says that he even touched her watch and ring whilst she was wearing them. This is seriously odd behaviour but it was not in the particulars of claim or earlier documents and was raised for the first time in cross examination. Therefore, this allegation is not credible; it would have been brought to the forefront far earlier had the Claimant experienced this.

    7. The Claimant said she felt uneasy but did not say anything because she was worried for job yet even after her employment terminated she said nothing for six weeks until mentioning it on 11 April. There is no contemporaneous evidence of concern at all, there are no emails and it was not reported to her agency, Brook Street. She says that she did tell Ms Assenova and Mr Tawiah, who were recruited as Administrative Officers at the same time as she was, but they did not attend this Tribunal to give evidence of what she told them.

8. Finally, we know that the Claimant is capable of complaining. We already understand, as we have said, that she took her previous employer to an Employment Tribunal and we have seen in the bundle an email complaining that she felt humiliated written as early as 17 November.

Harassment allegation 7.1.2: Mr Seeruttun's sexual innuendos

23. The second allegation is that Mr Seeruttun used sexual innuendos when in conversation with the Claimant. The Claimant alleges that approximately three weeks before Christmas (so this would be out of time) Mr Seeruttun used sexual innuendo about a woman's sexual organs when discussing honey. The Claimant says that Mr Seeruttun said to her and to Mr De Souza "you do know the other meaning of honey?". Our conclusion is that this conversation did not happen, or if it did it was not to the level of actionable harassment and our reasons are:-

    1. Mr Seeruttun and Mr De Souza were both involved in the conversation and they both deny sexual innuendo. Mr De Souza no longer works for the Second Respondent, so he is independent; he is empowered to say what he really experienced without perceived threat of sanction from his employer.

    2. Everyone, including the Claimant, agreed that Mr Seeruttun was indeed unwell with a cold and so a conversation about honey could be entirely innocent. Mr De Souza says that he offered Mr Seeruttun some Manuka Honey as he had a nasty cold, and that was it.

    3. The allegation is not in the ET1 under the heading of harassment. As we have already said, the Claimant was studying for the LPC and she had legal advice when issuing her claim; the particulars of claim were well ordered and yet this does not appear under the heading of harassment.

    4. There has been a discussion about whether the term "honey" is capable of being a sexual innuendo or rather just a term of endearment. The answer is not entirely clear but both Mr Seeruttun and Mr De Souza said that not only was there no innuendo, they did not personally recognise the term honey as being about a woman's vagina.

    5. Mr De Souza said that he does not recall the Claimant's presence in this discussion and his most likely explanation is that this was because it was an innocuous conversation.

    6. If this happened, it was a very serious incident. Sexual innuendo is conduct of a sexual nature and given the alleged meaning of honey it was related to gender, but it was not mentioned to anyone except allegedly to the Claimant's peers although this was not said until cross examination. It is not mentioned until the particulars of claim, it is not even mentioned in a complaint that the Claimant made post employment on 11 April and given the seriousness of the incident, we do not find it to be credible that the incident was as alleged.

    7. From what the Union Representative says in his statement, he was not told about the incident at the time.

8. The Claimant says that the reason she did not mention it was that she was worried for her job, but she did not report the incident to Brook Street who could have advised or interceded because they were her agency and as we know the Claimant is capable of complaining.

9. The Claimant had no questions for Mr Seeruttun on this important issue in cross examination which was surprising to say the least.

Harassment allegation 7.1.3: Mr Seeruttun's inappropriate questioning

24. Moving on to the third allegation of harassment, this is recorded as Mr Seeruttun asked unwanted questions about the Claimant's personal relationships having seen her at Wetherspoons with an unknown man. It should be noted that the Claimant says this incident happened over the Christmas period 2015, rather than in January 2016 as stated in the Claim Form.

25. This is an incident where the Claimant says that after he had spotted her in Wetherspoons having a drink, Mr Seeruttun inappropriately asked her who she had been out with. His account is very different. Whilst there was clearly a conversation about Mr Seeruttun spotting the Claimant in Wetherspoons, we find that this was not actionable harassment. Our reasons are:-

    1. The date on which this happened was unclear. Later in the hearing the Claimant again said that it was in January because she was out to celebrate her financial advisor's birthday; she had never said this at all until cross examination. The Respondent says that this took place in December as does the ET1. This calls into question the credibility of the Claimant's memory about this incident.

    2. The incident was not mentioned until the particulars of claim, not before, and since the particulars of claim, the allegation has grown and grown. It has moved from nosey enquiry to whispering in the Claimant's ear to the Claimant being made to feel that he was stalking her. It is not credible that if the Claimant felt stalked at the time she did not mention it until the particulars of claim. She will have had the chance to make some record or complaint of this incident, after all this was a Government Department with an obligation as well as a desire to take equal opportunities and harassment very seriously and to deal with it appropriately.

    3. Mr Seeruttun's account cogently shows that what happened was innocent. He had seen her in Wetherspoons with a man and did not want to intrude, but mentioned this the next working day out of courtesy; he says that when he spoke to the Claimant she replied that she was meeting her financial advisor and that he should have come over.

    4. Again, this incident is not in the ET1 in the harassment section. The Claimant said that it did not occur to her put it under the harassment section as she was so distressed, but given the ET1 was not filed until May, we do not find that to be a good reason.

5. Again, the Claimant did not complain at the time. When we asked her why she gave a very unclear answer. At the end of the answer she said she could only trust Mr Shah, who was Mr Seeruttun's Line Manager, or one of his managers. The Claimant said that she was going to raise the problem with Mr Shah, but she was dismissed before she could. It is not clear why, if that was the case, she would wait until late February 2016 to raise it.

6. The Claimant says she did not email a manager or HR because her Union Representative said she should try and resolve the matter internally, but this is not recorded by the Representative in his witness statement or that this was reported to him at the time. The Claimant did not report this to Brook Street either which she could have done.

7. The Claimant did not ask any questions about this in cross examination.

Harassment allegation 7.1.4: Mr Seeruttun's contact on the claimant's personal mobile phone

26. In the List of Issues it says Mr Seeruttun contacted the Claimant on her personal mobile phone for non work related reasons. Whilst there was contact on the personal mobile phone, we do not find that to be actionable harassment for the following reasons:-

    1. The Claimant agrees that personal numbers are shared within the team as part of the business continuity plan, but says they should only be used for emergencies. However, we saw evidence in the bundle that the Claimant contacted Mr Seeruttun by personal phone or text, as well he her, about work which was not an emergency and we have been seen a friendly text message which she sent to him on 19 January 2016.

    2. The Claimant said that on 1 February, Mr Seeruttun harassed her by making a purely personal call to her. Having looked at the telephone log we see that there were a number of missed calls which are best explained by reception difficulties, but then there was a conversation of 3.5 minutes. The Claimant says that Mr Seeruttun just rang her and asked, in a rather strange way, whether she was alright. However, given that the conversation was 3.5 minutes long there must have been more to it than that and looking at the contemporaneous documentation, it seems likely that the conversation was about a bundle of documents which was being prepared. We are disappointed that in the face of the documentary evidence the Claimant still denies that the conversations were about work.

    3. This allegation of harassment was not mentioned until the 11th April, there was no complaint at the time and the claimant is capable of complaining.

    4. The Claimant again did not ask any questions about this alleged harassment in the cross examination.

Harassment allegation 5: Mr Seeruttun asking the claimant out on a date

27. There is a fifth allegation of harassment which is not in the List of Issues, but was in the particulars of claim and which it has been agreed we should consider the allegation that Mr Seeruttun asked her out on a date on 2 February 2016. This is

an important allegation in that the Claimant says that this was the cause of the deteriorating relationship between her and the Respondent. Our conclusion is that this did not happen and even if it had happened it would not have been actionable harassment. Our reasons are as follows:-

1. Even by the Claimant's own account, all that Mr Seeruttun said was "hey Deepa do you think we should go on a date". The Claimant said that when she said no and that she wanted to keep their relationship strictly professional, he did not ask again. By any stretch of the imagination this is not unwanted conducted creating a hostile environment. Although we agree that such a suggestion could be embarrassing, and if repeated it could become unwanted, it falls very far below the threshold of the definition of harassment in the Equality Act.

2. Mr Seeruttun denies that he asked the Claimant out on a date and he brought this denial off the page by saying that he had never tried to get to known the Claimant personally by going out for lunch or for a coffee or suggesting that at all. He then went on to say that he did not see the Claimant in the way she alleges; he politely explained that she is just not his type.

3. Mr Seeruttun has admitted to the little personal contact that did take place. He did ask her how she was after she had volunteered to him that she had split up with her partner the previous weekend and says that on the internal messaging system he said that he had had the same experience and that work had helped him. He said that he did this to show that he was a caring manager.

4. Again, we note that Mr Seeruttun was on the 10th floor and the Claimant was on the 11th. There is evidence that on 2 February he spoke with her three times both before and after the alleged date request, but from the evidence we can see that nothing changed once she had allegedly rejected him. Indeed, he remained supportive and continued to offer help.

5. It is also interesting that about half an hour after the alleged incident, which was said to have taken place at noon, she emailed him asking him to come to her desk to collect a file. Firstly, she was inviting him into her personal workspace and secondly, she was instructing her manager to walk down and pick up a file, so there appears to be no sign of fear or upset.

6. The Respondent suggests that she made up the allegation of being invited out on a date to distract from a major problem that had arisen that day, which we describe below, and given the serious concerns that arose about her performance on that day, this is perfectly possible.

7. The Claimant says that Mr Seeruttun would never ask a man to go on a date, but of course he could have done.

8. The Claimant did not complain or report this at the time. It is first raised by her on 1 March after she was dismissed and after she had been told that the reason for her dismissal had been her poor performance.

9. She said she did not complain because she was worried about losing her job. However, as well as the email of 17 November complaining about conduct of a manager, there is also an assertive email from her after the alleged incident on 8 February. She was critical of Mr Seeruttun and in the context of his trying to assist her said "I would appreciate if you could provide me with clear instructions in future". The Claimant did not raise a problem with Brook Street either, although she said in cross examination that she made a call but it was not picked up so that is not relevant to the point. If she did try to raise it she did not persist to the point where she actually did so.

10. The Union Representative was also not told about this incident at the time, but was told after the dismissal.

11. When the Mr Patel saw the particulars of claim, he immediately asked Mr Seeruttun whether the allegation was true and he told him "if you did any of these things, tell me", but Mr Seeruttun denied all. He had had an invitation to admit, he has admitted the personal contact that he did have and he has consistently denied the rest.

12. The Claimant did not ask any questions about this crucial event in cross examination which was very strange. The Claimant was very persistent in challenging the Second Respondent's view of her performance. Her failure to challenge in respect of the harassment leads us to be concerned that her purpose in coming here was to challenge the assessment of her performance through discrimination and harassment claim.

So it can be seen, in conclusion, that as with all of the Claimant's allegations, there is nothing to corroborate what she says and that the weight of any contemporaneous evidence is against her.

Performance issues arise on 2 February

28. Picking up the narrative, on 2 February when the final act of harassment allegedly took place, a major problem regarding a Court of Appeal cost statement arose. On 13 January, the Claimant had offered to do a cost statement and from that time onwards did not say that she did not have the time, the training or the skills to complete it. She says that she *did* say some of those things but there is no evidence of it and as we have already noted at paragraph 27.9, the Claimant was perfectly able to write to her manager saying that she required clear instructions.

29. The Claimant knew that this cost statement was important and that the Court of Appeal hearing was on 3 February, but did not progress it or ask for help so when her managers realised that it had not been done the day before, 2 February, Mr Seeruttun asked her to prioritise it and then came to talk to her. We have found that he was talking about this problem and not asking her out on a date. The Claimant says that she knew she would be in trouble if she got it wrong, but when she was questioned she protested that she did not have the training although she did accept that she had forgotten to diarise this important piece of work. So, even at the time, the Claimant did not really apologise for her

error which is quite extraordinary given that failing to do a cost statement in a Court of Appeal case is serious.

30. For Mr Patel, who was responsible for this particular case, this was a fatal error and we are not surprised. In the end, the cost statement was lodged but it was lodged late, Counsel was unhappy and the Respondent had put itself in a very precarious position. This is not how the Government Legal Department should have behaved in high level litigation and they were lucky that they were allowed to put the statement in late.

31. What had changed for the Respondent on 2 February was not a change of attitude by a jilted suitor but a revaluation of the Claimant's abilities following this serious mistake. It is notable that the Claimant must have had some awareness because she started to blame Mr Seeruttun for errors rather than accept responsibility. She told us that he had abandoned her, threatened and abused her and told her to "just wrap it up"; she also complained to us about the way he looked at her. The evidence, however, does not support this characterisation. We have seen a helpful email from Mr Seeruttun on 3 February in which he was trying to show the Claimant what to do and on 4 February he showed her how to triage a case and ended his email saying "any questions – ask". So there is no evidence that he abandoned his helpful approach. Of course, as a new manager, it was firmly in his interests to pull the situation around and for her to succeed.

32. On 8 February, the Claimant was critical of Mr Seeruttun in an email as we have already recorded and also on that day Mr Stanton got more involved because he did not like the way the Claimant had addressed her internal clients as "Hi all". He also did not like the way the email had been misdirected and the clients wrongly named. The Claimant of course said that she had been given the wrong instructions and did not take responsibility. It is important to note that the criticism was not coming from Mr Seeruttun, but from more senior managers.

33. As a result of this incident, Mr Stanton instructed that the particular piece of work could not stay with the Claimant. She says he was overly critical in respect of a small incident, but there is clear evidence that as far as the senior chain of command was concerned, the Claimant was failing.

34. The Respondent's position is that the Claimant was deflecting responsibility and confused the situation by starting to ask for an interim appraisal. It appears that this was because of advice from her Union Representative who she had contacted when she realised that there were some difficulties. The upshot of the advice was that she became inappropriately demanding about a procedure to which she was not entitled. The question of whether she was entitled to an internal appraisal is not relevant to the issues that we have to decide, but we record in passing that any failure to give her a premature internal appraisal would not be discrimination. Further, Mr Seeruttun did not dismiss her request out of hand but he told her that she was not due an interim appraisal having taken advice from HR.

35. Another problem then arose which upset Mr Patel. He found that the Claimant taken on some casework called "CART" without permission and had taken steps

to exclude Mr Seeruttun from involvement, although he nonetheless tried to help her with showing her how to triage. When things did not go well she blamed him. He was surprised at how hostile the Claimant had become, but he did not escalate the problems because he hoped to resolve them. However, her attempt to run case work on her own and for herself, was a great concern to Mr Patel. Having instructed her at the very beginning that legal work was not her role, he considered that it showed not just lack of ability but also arrogance.

36. His view was compounded when, on 9 February, the Claimant went on a training course and no one in her team knew where she was. It may be that the training course was mandatory, but she should still have told her colleagues where she was going.

37. Things finally came to a head when, on 22 February, the Claimant committed a further error which in Mr Patel's view was again fatal. What she did was send internal litigation correspondence to the other side. The Claimant perhaps rather predictably said that she had not been trained not to and also that there was nothing sensitive in the material, so she could not really be criticised. This upset Mr Patel and he said at the time "I would expect anyone working in a legal organisation with the ambition to be a lawyer not to adopt such a risky approach".

38. It is a basic feature of litigation that you do not share internal correspondence with your opponent and his view was not only that the Claimant should not be running litigation in the first place, but also that having taken on this role she had got it very wrong. Although the material was not sensitive, it was looked very unprofessional to disclose internal correspondence which is not a good position to be in; also, even mundane material like the names and contact numbers of the internal clients should not have been exposed to the opposition.

39. In the light of this second fatal action, and because rather than put her head down and try to improve, the Claimant had approached a very senior lawyer to ask for work experience thus skipping protocol and the normal hierarchy, Mr Patel decided that he would need to move towards termination.

40. Before he took further action, however, he decided to seek the views of the lawyers in his team. The Claimant says that whilst she may have made some errors because of poor training, he was biased and malicious to say that she had made a number of errors especially when they had not been raised with her. We saw no evidence at all that Mr Patel's approach was biased, and of course saw plenty of evidence of the errors. Mr Patel was extensively cross examined and had a cogent explanation for all his decisions, which did not raise concern that gender was a reason.

41. The feedback was bad, apart from the feedback from Mr Shah, and he was particularly disappointed to discover that some of the lawyers had decided they did not want the Claimant to work for them because of her poor capability. This supported the view that Mr Patel had already formed. Of course it was his job as the leader to ensure that his team ran well and it is also important to remember that the Claimant had been there a short time, and was a temp, so he was not obliged to consult or discuss his concerns with her before he reached his decision.

42. A reason why Mr Patel did not discuss his concerns with the Claimant was because he considered the problems to be fatal. Mr Patel also doubted the wisdom of a discussion since she was perceived as confrontational and he thought that the more he said the more likely she was to pick up points and argue back. He recruited her in November 2015 regardless of gender and in February 2016 he was now moving to dismissal regardless of gender.

The claimant is dismissed

43. On 26 February 2016, the Claimant was told by Mr Patel in a short meeting that her contract was being ended. Mr Seeruttun was at that meeting to take notes only; he has no hiring or firing powers. Mr Patel was clear to us that he was not open to informal pressure from Mr Seeruttun and there is no evidence that Mr Seeruttun tried to exercise any. Mr Seeruttun had kept on trying to help the Claimant by doing aspects of her job and offering training. We find that Mr Patel's decision was his and his alone and that there is no evidence of Mr Seeruttun wanting to have the Claimant dismissed; he had no motive to want her dismissed and this was a failure for him as a manager.

44. On 26 February, Mr Seeruttun told Carrie Ward, Team Leader at Brook Street that they had terminated the Claimant's contract in line with their normal protocol with the agency. At no point has he said that this was his decision. The Claimant then spoke to Carrie Ward and said that she was upset, which is not surprising, and since she did not know the reason for her dismissal Ms Ward said she would find out so she emailed Mr Seeruttun.

The alleged first protected act

45. After the weekend, on 29 February, the Claimant emailed Ms Ward saying "I have no idea as to the reasons why I was dismissed". She wanted to know the reason and repeated in evidence that she had no idea why she had been dismissed and did not at that stage allege that she had been discriminated against or harassed. The email of 29 February therefore could not be a protected act for the purposes of a victimisation claim. In her evidence the Claimant said she suspected that she had been dismissed because she had refused to go out on a date with Mr Seeruttun and thought she had mentioned this to someone at Brook Street. There is no evidence to support this and so we do not accept that the Claimant mentioned concerns about discrimination either in writing or orally on 29 February.

The second alleged protected act

46. The same day, Mr Seeruttun responded to Ms Ward and said that the reason for the dismissal was "inadequate performance in a fast-moving litigation team". Ms Ward passed this information to the Claimant on 1 March and, based upon the reasons given, said she could not place the Claimant in the Government Legal Department again but that she could consider her for similar roles within the Government Sector. This was of course not surprising given Brook Street's duty of care to the client and their desire to keep it happy. The Claimant responded to Ms Ward on 1 March suggesting that there was a link between the dismissal and "my manager asked me out on a date and I refused it, the next thing I find out is I have been dismissed, this matter needs to be fully investigated."

47. The Claimant says that this email from her was both a protected act and a grievance. The Respondent says that this allegation was made in retaliation against the reason for the dismissal and the end of her chance to work in the Government Legal Department. Given what the Claimant said, we find that this was not a protected act; a refusal of an individual to go out on a date with another individual is gender neutral. For harassment purposes the Claimant has to show humiliation or violation and on her own evidence what Mr Seeruttun did was no such thing so what she alleged on 1 March was not one either expressly or impliedly linked to the definition of harassment in the Equality Act.

The first allegation of victimisation, 9.2.3

48. We move now to the allegations against the First Respondent, Brook Street, of victimisation and in chronological terms the first is that the First Respondent failed to investigate the Claimant's grievance of 1 March until the point when the Claimant wrote to Mr Watkins in or around 11 April.

49. It is correct that the Claimant did not receive a reply to her email to Ms Ward of 1 March. Ms Ward says that this was because she missed the email and she is very sorry that she only found it in July when she was asked to search her emails in relation to the Claimant's grievance. After 1 March, Ms Ward in fact had no further dealings with the Claimant and thought that the matter had closed; her role was to offer work and to place the Claimant if she was interested and she was not aware that there was an ongoing concern. We find that Ms Ward did not hold off investigating the Claimant's concerns because she was upset by a complaint; it is difficult to express this because of course we have found that any complaint was not a protected act. Our reasons are:-

    1. It is indeed hard to tell that what the Claimant had said in her brief email of 1 March was a grievance.

    2. From our experience of the agency world, for Brook Street and their employees such as Ms Ward, bookings come and go routinely and so she would not be alert to requests for an investigation.

    3. Ms Ward was very upset when she found the email; she gave credible evidence to us of her upset and of the fact that it had been an oversight.

    4. The Claimant herself did not chase or mention the grievance that she said she made on 1 March. In fact, she did not even chase when she made contact with the First Respondent on 7 April and so there was no trigger after 1 March for Brook Street to look at the email and see it as a grievance. It is perfectly possible, therefore, that this short email was missed.

The second allegation of victimisation, 9.2.1

50. The next allegation is that Stephen Watkins of the First Respondent told the Claimant that he would put her forward for an administrative role in one of the Courts in Holborn but did not do so. However, as is clear from the documentation, on 1 March Mr Watkins put the Claimant forward to the Ministry of Justice as the only candidate for a role in the Court of Protection which is one of the Courts in Holborn. He considered her to be an adequately suitable candidate and did not need to put forward any others. However, when he told the

MoJ the reason why her contract with the Second Respondent had been terminated, the MoJ asked to see other candidates. Mr Watkins provided this information because he was asked for it, but he put it very delicately and he emphasised to his client that the Claimant was "definitely competent". In his view an AO role in the Courts is different from such a role at the Government Legal Office; no legal knowledge is needed and it is a less fast moving environment.

51. When Mr Watkins was asked for other candidates, of course he had to provide alternatives and the MoJ appointed one of them. It is therefore quite wrong to say that Mr Watkins did not put the Claimant forward and indeed he did his very best to get her appointed. The Claimant accepts that she was put forward for a Court in Holborn, but when asked whether she would like to withdraw this allegation she said that she would not withdraw, which we found rather confusing.

52. It is also instructive that at this point in early March the Claimant discussed neither her concerns about discrimination nor the termination of her contract with Mr Watkins even though he is senior to Ms Ward, therefore no alarm bells rang. We again observe that as a temp the ending of her contract with one client and the attempt find her work with another was not usual for Mr Watkins to be in.

The third allegation of victimisation, 9.2.2

53. The final allegation of victimisation is that the First Respondent sent the Claimant a letter indicating that her employment with the First Respondent would terminate in four weeks' time. It was agreed at the time of the Case Management Discussion that the Claimant's employment did not in fact terminate.

54. On 31 March, Brook Street wrote to the Claimant to tell her that her employment would be ending. This was a standard letter generated automatically when an employee has not been in contact or accepted an assignment for four weeks. The purpose is to generate the P45 if needed or to nudge the employee into action, which was in fact the effect of this letter.

55. The issuing of such a letter is further indication that the First Respondent was not aware of an ongoing issue in relation to the 1st March alleged grievance. The Claimant says this cannot be right and it must be victimisation that the letter was written because when there was a period of inactivity in August 2015, a similar letter was not generated. The Claimant's contract makes it clear that it did not in fact start until she took up her first assignment which was with the Second Respondent in November 2015 so the period of inactivity was not comparable. However, in the face of evidence in the bundle the Claimant still did not accept this distinction. We find that this letter was not personal to the Claimant, it was an automated communication and in any event, as we know, the employment was not terminated and so there was no detriment.

56. The Claimant responded to the letter of 31 March on 7 April saying "as you can appreciate I am dismayed and distraught to have been summarily dismissed and now Brook Street has terminated my contract of employment for no apparent reason. This matter now has to be taken seriously by Brook Street as there are issues of sexual discrimination, sexual harassment, bullying and victimisation." As we have already said, she did not refer back to her email/complaint of 1st

March and said that she assumed that they knew about. This was the first time that the Claimant explicitly raised Equality Act issues was after the alleged acts of victimisation had taken place.

57. On 8 April, so he responded quickly, Mr Watkins clarified on the telephone to the Claimant that the 31 March letter was an error; he repeated that in writing on 19 April. He asked her for details of her concerns and this was the first time that there was a possibility that Brook Street could be aware of them. Thereafter a grievance process ensued which we do not make findings on because it is not raised in the List of Issues, but as we have already said no detriment arose from the letter of 31 March and therefore allegation 9.2.2 cannot succeed.

58. On 11 April, the Claimant provided details to Mr Watkins and said she had no alternative but to make a claim for discrimination in the Employment Tribunal. It is interesting that, again, she does not complain that Ms Ward had failed to respond to her email of 1 March and this is evidence that any perceived delay was not perceived to be a detriment at the time. At this point she had advice from her Union Representative but she still did you not mention to Brook Street, her Agency, the "honey" or the "Wetherspoons" incidents or her concerns about stalking, which were in our view the most serious of the harassment allegations.

59. On 27 April, Mr Patel provided a full description of the conclusions that he had reached because at this point it was know that the Claimant was complaining.

60. On 12 May 2016, the ET1 claim was issued and the Claimant says that if there are any events which are out of time, which some of the harassment complaints appear to be, she had been told by her solicitors that all of the incidents were linked to continuing acts. The Claimant's career in Government work was not curtailed by this incident. On 20 June she was placed in a Government role within NOMS and on 16 February 2017 she resigned her employment with the First Respondent, Brook Street, as she took up a permanent role as an Executive Officer with the DWP.

Conclusions

61. Our conclusions are brief because most are recorded already in the findings of fact, but we want first to mention some of the points that arose during the hearing. We have to say, with regret, that the Claimant's behaviour during the litigation illustrates that the reasons the Respondent gave for her dismissal were accurate. For example:-

    1. We invited the Claimant to withdraw allegation 9.2.1 in the face of the evidence which she agreed with. Nonetheless she wanted to pursue it. This was in our view rather perverse and reflected the Respondent's views of her capability and her attitude.

    2. During the hearing, the Claimant failed to recognise that there was any room for improvement in her work even though there was much evidence that this was not the case and that any problems were not just due to lack of training.

3. The Claimant, in instructing her non-legal representative, Mr McClean, who came in the capacity of a friend, she did not understand that he needed to question on the issues as defined in the Case Management Discussion of July 2016, and that he needed to question on those only. I gave guidance but the guidance was not followed. I explained that the List of Issues had been agreed at the hearing on 27 February 2016 and we would have expected the Claimant to be more focused given that she does have legal knowledge and has told us that she has studied for the LPC. She was at the Preliminary Hearing herself and so was able to participate in the discussion of the List of Issues which was originally drafted by the solicitors who had advised her. It is perhaps not surprising that the Claimant did not write in afterwards to object that the List of Issues was not sufficiently comprehensive, which she could have done.

4. The Claimant says that we prevented her from cross examining Mr Seeruttun about her performance and it is true we did curtail the cross examination, but this was because it was not relevant. Mr Seeruttun was not the manager who was critical of her performance or the manager who decided to dismiss her. In fact Mr Seeruttun and the Claimant were in agreement that right through until the end he hoped and believed that any deficiencies could be overcome with support and training.

5. The Claimant also said that she was prevented from cross examining Mr Patel about her performance, but we allowed extensive cross examination and only brought it to a close when the questioning became repetitive.

Harassment

62. In relation to harassment, we have concluded in the findings of fact that the harassment allegations have not been made out. Where incidents happened they did not meet, or in fact go very close at all to meeting, the legal definition. We formally dismiss the five allegations of harassment.

63. Some of the allegations were made out of time. Were the time limit issue to become relevant we might have extended the time limit as being just and equitable or perhaps a continuing act, given that the same manager was alleged to be involved in all of the incidents.

Direct sex discrimination

64. In relation to direct sex discrimination, was the Claimant dismissed because of her gender, the only issue here is the dismissal. The Claimant has tried to argue that there were other issues of direct discrimination, but they are not recorded in the List of Issues. Mr Patel said that his decision was gender neutral and he denied malice and that he was influenced by Mr Seeruttun, although of course if there was malice, and he had been influenced, this would not necessarily mean that there was discrimination.

65. We agree that the sole decision maker was Mr Patel; he received advice from HR and feedback from his lawyers that it was his decision. His reasons were extremely cogent, well expressed and documented. There is no room for doubt

that that those were his reasons and they were not connected to the Claimant's gender.

66. In summary, the reason for the dismissal was the Claimant's performance and some concern about her attitude and as I have said the decision was evidence-based.

67. As for Mr Seeruttun, who was not influential and in fact tried to support the Claimant to the end, there is no evidence that he turned against her or tried to influence the outcome because the Claimant rejected his invitation out on a date on 2 February, and of course we found that he did not in fact ask her out anyway. Further, the Claimant needs to be aware that a jilted suitor can be of either gender or indeed of the same sex and so this situation is not a situation in which gender discrimination would arise.

68. The Claimant says that Mr Patel and Mr Seeruttun took a typical Indian male attitude; they thought that as a woman she should be staying at home and that there was institutionalised discrimination. We have found no evidence of that; Mr Patel says that it is ridiculous to say that he had these attitudes and makes the point that does not regard himself to be an Asian male because he is British. He also makes the point that he had of course recently selected the Claimant to be an AO, and indeed he selected her to be in his team because he had high hopes for her abilities, so that it would be very strange if only a few weeks later he was then against her because of her gender. In the circumstances, there is no evidence of a discriminatory attitude or institutionalised discrimination.

69. In the end, the Claimant has asked us whether we agree that her work was very good and that any areas for improvement were due to poor training. We regret to say that we do not agree. The reason why the Claimant was dismissed was her poor performance and not her gender.

Victimisation

70. Finally, in relation to victimisation, we have reached the conclusions recorded in the findings of fact above. We find that neither of the alleged protected acts were in fact protected acts and so it was not possible for there to be victimisation. If we are wrong, there were no detriments.

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Employment Judge Wade
27 July 2017