



EMPLOYMENT TRIBUNALS

Claimant: Miss S. Bi

Respondent: E-ACT

Heard at: Birmingham

On: 2 – 4 October 2017

Before: Employment Judge Cocks

Members: Mrs N Gill
Mrs D P Hill

Representation

Claimant: In person

Respondent: Mr D Leach Counsel

WRITTEN REASONS

1. These written reasons to our Judgment of 4 October 2017 are provided upon a request being made for them by the claimant.

2. The Tribunal heard evidence from the Claimant and from Mr King, Ms Flynn, Ms Tanner, Ms Johnson and Ms Browne for the Respondent. We had an agreed bundle of documents. This hearing follows on from our Reserved Judgment of 22 March 2017. There were two remaining issues for the Tribunal to determine. The first is the victimisation claim, and the second is an additional Public Interest Disclosure detriment allegation, which the Tribunal allowed last time by way of an amendment to the claim. This was that the first Respondent provided false, prejudicial and discriminatory information to Birmingham City Council and that it did so on the ground of the protected disclosure made by the Claimant. We have had written and oral submissions from the parties and a diagram from the Claimant setting out what she sees as having occurred. We have taken the submissions and the law we have been referred to into account.

The Victimisation Claim

3. The relevant law for this claim was set out in our previous Judgment. However, in our deliberations today, we reminded ourselves of the following:

Section 27 Equality Act 2010 provides that a person (A) victimises another person (B) if A subjects B to a detriment because

(a) B does a protected act or

(b) A believes B has done or may do a protected act

A protected act includes making an allegation (whether or not express) that A or another person has contravened the Act.

4. The tribunal asked itself the following questions:

- i. Did the claimant (C) do a protected act? or
- ii. Did the respondent (R) believe that C had done or may do a protected act?
- iii. Did R subject C to a detriment?
- iv. If so was the C subjected to that detriment because she had done a protected act or R believed she had or might do so?

5. It is not necessary for us to make any further findings of fact about this particular claim. The Claimant alleges that because she did a protected act, her assignment at the School was terminated and she was informally blacklisted. We have already made findings relevant to this allegation in our Judgment of 22 March 2017. The issues were agreed at the Case Management Preliminary Hearing on 7 June 2017 to be:

5.1. did the First Respondent believe the Claimant had stated Heartlands Academy was anti-Muslim,

5.2 if so, does the statement that Heartlands Academy was anti-Muslim amount to a protected act and in particular an allegation that the Respondent had contravened the Equality Act 2010,

5.3if so, was the Claimant subjected to a detriment by the Respondent in having her assignment terminated and,

5.4 if so, was she informally blacklisted by the Respondent for the same reason.

6. As we have found, Mrs Jones (who made the decision to terminate the Claimant's assignment) believed that the Claimant had stated that Heartlands Academy was anti-Muslim. We do not fully understand where this belief came from, other than from what the Claimant had said to Mrs Walters about feeling uncomfortable as a Muslim watching the video clip. But it is clear that Mrs Jones did hold such a belief. It is Miss Bi's position that Mrs Jones had formed a belief that the Claimant had done a protected act - namely that she had said Heartlands is anti-Muslim.

7. We accept Mr Leach's submission that this is as far as the basis for the protected act matter can go. It was not put to us that Mrs Jones believed the Claimant might do any other form of protected act in the future. Nor was it put by the Claimant to Mrs Jones in cross-examination that Mrs Jones believed that the Claimant might do a further protected act. The only protected act that can be relied on by the Claimant is Mrs Jones's belief that Miss Bi had said the school was anti-Muslim. As the Claimant rightly points out to us, it is irrelevant whether she had actually accused the school of being anti-Muslim. In fact, it has always been Miss Bi's case that she had not said that Heartlands Academy was anti-Muslim, and that she had made no mention about feeling uncomfortable as a Muslim watching the video clip. The Tribunal did not accept that this was quite

the case. The Claimant had referred to being a Muslim in the context of watching the video clip to Mrs Walters.

8. Which brings the Tribunal on to the question of whether what Mrs Jones believed could amount to a protected act under Section 27 of the Equality Act. The issue is whether what Mrs Jones believed the Claimant had said can be a protected act with the definitions contained in Section 27(2): either 27(2) (c) or 27(2)(d). Mr Leach argues the statement that Heartlands Academy was anti-Muslim, does not amount to a protected act. He submits that it is a vague and general allegation that Mrs Jones, or Heartlands Academy, harboured subjective feelings of resentment or disapproval towards the religious group and that does not amount to an allegation that there has been a contravention of the Equality Act. By itself, we agree that such a statement could be viewed in that way, but it has to be seen in the context in which Mrs Jones believed it to have been said.

9. The Claimant had referred to being a Muslim to Mrs Walters and asked her to imagine how she, the claimant, must have felt watching the clip (paragraph 37 of our Judgment). Whatever the source of Mrs Jones' belief, the Claimant had made a complaint about the video clip, the lesson and had linked it to her religion. We do not know how, or why, Mrs Jones extrapolated what she did from what had been said. As we say in our Judgment, there seems to have been a knee-jerk reaction to the Claimant's complaint that morning. A belief was held by Mrs Jones that part of the Claimant's complaint was that the school had acted in a way which showed disapproval of Muslims.

10. The Tribunal recognises that Section 27 (2)(d) requires more than just a belief that the statement had been made for it to amount to a protected act. It must be a belief that the Claimant is making an allegation, whether or not express, that there has been a contravention of the Act. The answer to this lies in the words in parenthesis 'whether or not express'. It is not an express allegation. We reminded ourselves of Miss Choudhury's evidence about what Mrs Jones had said to her: Mrs Jones mentioned that the Claimant had raised issues in relation to the content of the Year 7 English lesson, the fact that a video was shown of 9/11 events, and she made a passing comment that she had never in all her years at the Academy been accused of being anti-Muslim. The important word being 'accused'.

11. The Claimant is not believed to have said: "you have contravened the Equality Act by discriminating against Muslims". The statement which she is believed to have said by Mrs Jones must be seen in context. The video clip was shown to a class with a number of Muslim students in it. The Claimant herself is Muslim. It shows the horrific consequences of a terrorist act, carried out by terrorists who purported to be Muslim. It is common knowledge that it led to a wave of Islamophobia across the world. In that context, and from what the Claimant had said to Mrs Walters, it can be easily inferred that Mrs Jones believed the Claimant was making an allegation that the school, by showing the video clip in the circumstances it was shown, was acting in an anti-Muslim way and that this was part of the Claimant's complaint. Therefore, we find that there was a belief that the Claimant was making an allegation, or accusation, that there had been religious discrimination by the school and so amounting to a protected act. It is hard to see how such a statement could not be otherwise.

12. We need go no further, the Claimant was dismissed, in part, because of Mrs Jones' belief that she was accusing the school of being anti-Muslim. The

Respondent recognises that there is no further argument about this in the light of our findings in our earlier Judgment.

13. The other alleged detriment is that the Claimant was informally blacklisted. This allegation was put to us on the basis that emails (pages 156 and 159) between Miss Flynn and Ms Browne indicate that they took steps to prevent the Claimant from working in schools again. This allegation is not about any later alleged detriment which we allowed in by the amendment. It is specifically about whether the school took action to blacklist the Claimant with Edustaff and get her removed from their books. As the findings of fact show, whatever might have been said in emails, the fact is that Edustaff did not take the Claimant off its books and actively tried to find Miss Bi another position in a Birmingham school. Further, it was Miss Choudhury who actually dealt with Edustaff. Her evidence, which was not effectively challenged, was that she did not make such a request to Edustaff.

14. Therefore the conclusion on the victimisation claim is it succeeds in relation to the Claimant suffering a detriment by having her assignment terminated, but not that she suffered a detriment by being blacklisted or that Edustaff were told to remove her from their books and actually did so. There was no such detriment.

Findings of Fact relevant to the amendment claim

15. After the termination of her assignment the Claimant wrote the email to Miss Choudhury on the 23 September. Shortly after, she went to the media about what had occurred. Our starting point is Ms Butt's safeguarding check list. Razia Butt was a Resilience Officer with Birmingham City Council's Safeguarding Board. She dealt with safeguarding matters across all the schools in Birmingham, whether a school is Trust run or Local Authority controlled. There is a statutory responsibility to protect children. Ms Browne told us about the guidelines on keeping children safe in education and how that impacts on the procedures which the academy had to have in place.

16. The Academy itself did not alert Birmingham City Council about Miss Bi's disclosure. They did not see it as a safeguarding matter and, as the evidence showed, have never done so. However, it is not our role to make findings about this. The reason why Ms Butt became involved, and visited the school, was as her safeguarding checklist shows, at page 134. It was in response to the school's appearance in a Daily Mail report of the 25 September 2015. This had come about because Miss Bi had gone to the press.

17. Ms Butt visited the school on the 28 September at 10.15am to carry out a safeguarding review. It is clear that everyone involved was in a state of panic about her visit that morning. Miss Flynn, as Chair of the Governors and the governor responsible for safeguarding issues, was called by Mrs Jones (who was on sick leave) and asked to attend. She told us she knew no details of what had occurred and had been given no information by Mrs Jones, other than it was a safeguarding matter. Even accepting Miss Flynn's evidence that she had not read the Daily Mail report of 25 September, the meeting was on the 28 September. We find it strange that no one had alerted her earlier to media interest in the school or what it was about.

18. Ms Browne, the Lead across the Respondent Trust for Safeguarding, had

only been in post for a few days and was en route to visiting another school at Shenley. She was instructed to go straight to Heartlands Academy by the CEO, David Moran, who told her there had been a Daily Mail article about the School. At that point, she did not know what the safeguarding review was about only that she had to get there before Ms Butt left. She arrived after the commencement of the meeting on the 28 September. The Tribunal has been taken to her previous witness statement where, in effect, her evidence was to refute any suggestion that this was a safeguarding matter. In that statement, she sets out more details than in her witness statement for this hearing. We considered them together. She cannot personally know what happened at the start of the meeting.

19. We know from other witnesses that the first part of the meeting with Simon King, Gary Christie, Adele Johnson, Noran Flynn, Helen Tanner and Razia Butt lasted no more than 20 minutes. We found Ms Browne's evidence about how she found out about the allegation in that first part of the meeting a little inconsistent with her previous statement and those of the other witnesses. The evidence from them was that Ms Butt learned of what happened from what they had told her in the first part of the meeting. Ms Browne was not present at that stage yet her earlier statement says that Ms Butt had met with Mr King and watched the video clip. She does not say that Ms Butt had spoken to the other people present at the first part of the meeting at the school. However, the focus of her first statement was different in what was considered relevant to tell us and we accept that.

20. The sense of panic was apparent from the evidence of some of the other people there. Mr King told us that staff were worried that if Ms Butt's review did not go well, they could be facing an OFSTED Safeguarding Audit. We are satisfied, on the basis the evidence from Simon King, Helen Tanner, Noran Flynn and Ms Butt's report that nothing was said about the Claimants circumstances. They are consistent in their evidence that they did not tell Ms Butt that the Claimant had been Head Girl at Saltley School, or that she had worked at Small Heath School. Nor had they told her about the Claimant's dissertation at the part of the meeting attended by them.

21. We know it was a short meeting and essentially a fact finding exercise by Ms Butt. The Tribunal finds that no one at the initial part of the meeting told Ms Butt anything derogatory about Miss Bi, or gave her the information about which the Claimant now complains. Ms Butt was told that Miss Bi had made the complaint and then went to the media. What is interesting about Miss Butt's report under 'Background' (134) is that it concentrates on Miss Bi's actions, her TA log, what happened on the 22 September, and her raising concerns about the content of that lesson the next day. It is recorded that she had said it offended her as a Muslim. That information must have come from the staff at that meeting. However, it is all factual information and not about what the Claimant complains of to us. After Mr King, Mr Christie, Miss Flynn and Miss Tanner left, Miss Butt conducted a safeguarding review with Adele Johnson and Elizabeth Browne present. It is important to point out what Ms Butt's role was at the school that day; she was not there to investigate the incident, she was there with a narrow remit to carry out a safeguarding review. As Ms Browne's email on page (132) sent that afternoon shows.

22. In Counsel's notes, sent in response to the Claimant's application for Ms Butt to attend as a witness, it is stated that as part of due diligence in conducting the audit, Ms Butt obtained, among other things, a screenshot of a webpage

showing the abstract of the research carried out by the Claimant (296g). We understand that Ms Butt had her own laptop with her, Ms Browne told us she made notes that morning on it, in her and Miss Johnson's presence, down to around half way or slightly further down, in the report at page 134. We know that this page was later amended by her. The amended version is at page (157).

23. What is of relevance to us is the sentence at the end of the background section which states:

"There is some concern that the TA had previously worked at Small Heath School and may have raised similar concerns. Also about motivation for wanting to work at Heartlands School and suitability to work in schools."

There is no reference to the Claimant being head girl at Saltley School.

24. The report does not state who expressed those concerns. It might have been Ms Butt herself or it may have been a joint concern expressed between the people present at the later part of the meeting. Support for this is shown in Miss Browne's email, at page 132, in which she reports back on the meeting to Mr Moran and others that afternoon. Of particular relevance, it states:

"Both Razia and myself are concerned that the TA has abused her position of trust, the fact that she named other schools in the dissertation, her weekly TA log submitted was critical of staff not focused on the students (submitted on the Monday eve). She has recently completed her dissertation on 'The Childs Centred Perceptive on the Trojan Affair. British rules Islamic rules'. We suspect that this girl has done it before. She was head girl of one of the Trojan Horse Schools."

25. What Ms Browne records goes further than what Ms Butt had stated in her report - when she writes she was head girl of one of the Trojan Horse Schools, We also note that Ms Browne states that all staff were to have the PREVENT training that evening.

26. The Claimant had sent a copy of her MA dissertation to Adele Johnson on the 15 September 2015 (86). There had been a discussion earlier that day about it. It was research done into the effects of being at a 'Trojan Horse school' on the children's psychological and emotional wellbeing. The Claimant sent it to Miss Johnson, thinking it would assist the school, as her email shows. She also gave it in good faith for that purpose. The Claimant says there was a meeting the next day, at which Mr King was present, when she believes her dissertation was discussed. Mr King says he attended no meeting and we have seen evidence showing that he could not have been at any meeting that day as he was carrying out a peer review at another school.

27. Further, the Claimant was not present at that meeting and cannot know what it was about, whatever her suspicions. We accept Miss Johnson's evidence that there may well have been a staff meeting on 16 September, but it was not about Miss Bi's dissertation. She did not read it, did nothing with it and forwarded it onto Ms Newey-Burridge on 23 September after being told Mrs Jones wanted it. In any event, if the school had concerns about the dissertation, nothing happened in relation to it until the 28 September and Ms Butt's visit.

28. The rest of the review was spent doing an audit of the safeguarding procedures and processes, as Miss Butt's check-list shows (135-138). Because

Ms Johnson had no warning of the visit, there was a considerable amount of 'to-ing and fro-ing' to obtain documents that Ms Butt required. It was for that reason, and the fact that Ms Butt needed to leave in the afternoon, that the audit concluded on 5 October. We know from Ms Browne that Ms Butt requested the Claimant's personnel file and that it was probably Ms Choudhury who found it and brought it to them.

29. Ms Browne paints a picture of a meeting driven by Ms Butt; she requested documents and they had to be provided to her. The OFSTED audit issue was in Ms Johnson and Ms Browne's minds. Ms Johnson was on edge as it was her responsibility to ensure that the procedures within the school were up to date and in place. Ms Browne was on edge because she was in a new, unfamiliar job, wanted to impress and show that she was on top of the situation. She tells us that the concerns set out in her email at page 132 all came from Ms Butt. But were expressed as joint ones because she wanted to appear to be involved and on top of the situation: hence the reference to 'Both Razia and myself..'

30. She told us that their concerns were about the dissertation and the possibility of the Claimant using Heartlands Academy for research purposes. She says that the information about the connection between the Claimant and Saltley School, the fact that it had been a Trojan Horse school and the Claimant having been Head Girl, came from Ms Butt. Ms Browne says that she did not know that Saltley School had been one of the Trojan Horse schools. Wherever this information came from, Ms Browne adopted it in her email to the senior people at E-ACT. The only interpretation that can be put on the statements at pages 132 and 134 is that the Claimant was being linked to a Trojan Horse school by reason of having been Head Girl, because of her dissertation and that her intentions in raising her concerns about the lesson were suspicious. Why else state: "We suspect that this girl had done it before". In context, this cannot be about the Claimant carrying out research at the school.

31. There was clearly some discussion with Ms Butt about the Claimant and connections to Trojan Horse schools. This is supported by Ms Browne and emails we have seen from Birmingham City Council where Ms Butt sends a copy of the screenshot (559) – the abstract of the Claimant's dissertation - to an anti-terrorism expert Mushaq Ally, as we see at page 549. She also plainly sets out her concerns about Miss Bi (550).

32. The Tribunal appreciates why the Claimant feels as she does about these matters. She was not interviewed by Ms Butt, or during the school's own investigation. A dissertation that she had given to the school in good faith for educational welfare purposes seems to have been used to say she had linked herself to the Trojan Horse affair (549). It appears Ms Butt had a number of other concerns about the claimant's motivation for wanting to work in schools (550). We have been careful not to make firm findings about these matters. First, it is not relevant for us to do so. Secondly, we have had no evidence from Ms Butt. The issue for us is not what Ms Butt did with any information she obtained, or what her further actions might have been, but what information the Respondent actually gave to her on the 28 September and why.

33. There is simply no evidence before us as to where information came from that the Claimant had worked at Small Heath School. It is in Miss Butt's report but she does not identify whose concern it was, or how she acquired what is accepted by the Respondent to be erroneous information, and later confirmed to

the Claimant as being so. We do not accept the contention that Ms Butt must have confused Saltley School with Small Heath School. She is a Resilience Officer and presumably very aware of the names of schools in the Birmingham area.

34. Likewise, we do not know from the evidence where the statement that the Claimant had been Head Girl at Saltley School, one of the Trojan Horse schools, came from. It was not on her CV, it was not in her dissertation. She told us this was not publicly available online. She accepted that it is now available publicly – we simply do not know what could have been found online at that particular time. We do not know who might have done such a search, whether it was one of the Respondent's staff or Ms Butt herself. We do not know whether this was information known by Ms Butt from another source. The respondent's witnesses' evidence is consistent that it had not come from them.

35. What we do know is that Ms Butt was shown a copy of the Claimant's dissertation. Ms Browne said it was in the Claimant's personnel file. It had been sent by the Claimant as an email attachment and sent on within the school. Ms Browne told us that she saw Ms Butt reading it the morning of the audit. Razia Butt had requested the Claimant's personnel file. We were told this was part of the Safeguarding audit to check the recruitment processes. We do not know if anyone else's personnel records were obtained, however we accept that Ms Butt requested the Claimant's file. Without her evidence, we cannot know her motivation for doing so. We accept Miss Browne's evidence that the dissertation was in that file. We are not sure how Ms Butt had a screenshot of the abstract, but that it was obtained at 13.33 on the 28 September. We do not know why, as part of the audit, Ms Butt read the dissertation if the concern had only been around the Claimant using Heartlands Academy for research purposes. There was information in the claimant's CV (74), which was in her personnel file that she had been through ethical approval for her research.

36. Having made our findings, we considered the submissions that both parties made to us and the relevant law which we were referred to, both at this hearing and the earlier one.

37. The allegation for us to determine, despite the amount of evidence we have heard, is that the Respondent reported false, prejudiced and discriminatory information about the Claimant to Birmingham City Council. The Claimant expanded on this by explaining the information in question related to an alleged involvement in the Trojan Horse affair arising from her connection to Saltley School (at which she had been Head Girl); a link to Small Heath School at which she was erroneously thought to have worked; and her dissertation.

38. When we came to analyse the evidence before us, we have had no evidence from Razia Butt about what anyone at the School told her, or gave to her. On Ms Browne's evidence, she given the Claimant's personnel file and she saw a copy of the dissertation which was in the personnel file. The Claimant was not there. Ms Browne's evidence was not effectively challenged that the dissertation had not been in the personnel file and had been given voluntarily by someone at the school to Ms Butt.

39. Likewise, we do not know where the information about the Claimant being Head Girl at Saltley School and having worked at Small Heath School came from. Evidence that someone at the School passed on all this information to

Razia Butt is simply not there.

40. What we do know is that there was a discussion which, as Ms Browne records in her email, was about the Claimant potentially being linked to the Trojan Horse affair. The Claimant submits that much of what she believes to have been said about her resonates with the Clark Report, extracts of which have we have been taken to. That might be the case. It might have been an influence in Razia Butt's mind. We do not know.

41. The Tribunal cannot go further than the actual allegation. As our findings show, there is no evidence that the alleged information, other than the dissertation, was given by the academy staff to Ms Butt. The dissertation reached her by way of the personnel file which had been specifically requested by her. The Claimant says staff at the school went on a fishing expedition to link her to the Trojan Horse affair and passed the information to Ms Butt. There is no direct evidence that this happened.

42. With regard to the dissertation, the reason it was given to Razia Butt was that she had requested the personnel file. It was not volunteered to her by the Respondent. The reason was not because the Claimant had made a protected disclosure, but because of the Respondent's obligation to comply with the Safeguarding audit. Whilst it might be suggested that the audit only arose as a result of her disclosure, which we have found to be a protected disclosure, this is not causally close enough. Ms Butt requested the Claimant's personnel file, the school complied with her request. It had little option but to do so, particularly in light of a possible OFSTED audit if Ms Butt was not satisfied with what she saw and heard.

43. Ms Browne went along with a discussion about the Claimant and her possible involvement in Trojan Horse matters. She adopted that position in her email at page 132. That is not the complaint before us. The complaint before us is about what information was passed to Razia Butt and Birmingham County Council.

44. The Claimant has suggested to us that the motivation for the school providing derogatory and damaging information about her was to deflect attention from a report to OFSTED about their failings onto a focus about the Claimant being part of the Trojan horse affair. We do not accept this theory. What could have prompted an OFSTED audit would have been a failure by the School to satisfy Ms Butt that its procedures and processes in relation to safeguarding were compliant and robust.

45. Another matter which is not being dealt with is whether the Claimant could rely on the additional detriment claim in relation to her victimisation claim. Even if we accepted and considered such a late amendment, it could not succeed. Essentially for the same reasons as this public interest disclosure detriment allegation fails.

46. The Tribunal understands why the Claimant feels as she does about subsequent events in relation to linking her to the Trojan Horse affair and the effect this might have on her ability to work in schools. On the basis of the evidence we have seen and heard in relation to the allegation made, this cannot be laid at the door of the Respondent. We can only assess the evidence which was before us, in accordance with the relevant law and the case as it is being put

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to us. Therefore the Tribunal concludes that the additional allegation is not well founded and must fail. It was not a detriment either done by the respondent or, in respect of the dissertation, on the ground that the Claimant had made a protected public interest disclosure.

Employment Judge Cocks
18 January 2018