



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Rawlinson
Respondents: (1) TLC Care Management Limited
(2) Christopher Houghton

Heard at: Leeds **On:** 4th, 5th, 6th, 7th, 8th June and 13th August
(reserved decision) 2018

Before: Employment Judge Lancaster
Members: Mr D Dorman-Smith
Ms P Wolstencroft

Representation
Claimant: Mr J Jupp, counsel
Respondent: Mr P Smith, counsel

JUDGMENT

The claim is dismissed

REASONS

1. The Claimant, who had just turned 30 at the time, started work on 1st July 2016 and her employment as the First Respondent's Head of Operations terminated a little over a year later on 21st July 2017.
2. Her primary claims are of harassment or direct discrimination throughout her employment and culminating in what she asserts was a dismissal. The protected characteristics relied upon are both her age and her sex. There is also a single allegation of post-employment victimisation.
3. The issues were identified at a preliminary hearing before Employment Judge Rostant on 26th January 2018. These are set out in the case management order¹. The specific allegations which fell for consideration at this hearing were then set out in the a document titled "Further Information of the Claimant" dated 16th February 2018. Some of these have been modified, withdrawn or clarified in the course of this hearing.
4. The allegations are made principally against Jane Turner, who is the partner of the Second Respondent, Mr Houghton. There is a preliminary issue to be determined which is whether or not Ms Turner was in fact the agent of the First Respondent. It is accepted that an argument that there was also an agency relationship between Mr Houghton and Ms Turner is not open to the Claimant.

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5. Ms Turner was never an employee of the First Respondent. She worked as the Business Development Manager -and the sole employee - for a separate, though closely associated company, TLC Care Homes (Yorkshire) Limited.
6. Mr Houghton and his long-time business partner, Brian Taylor, are primarily engaged in the construction industry. They built the care home, Calderdale Retreat, initially working for a developer Terry Chamberlain. Their interest in the property and in Mr Chamberlain's company, TLC Care Homes (Yorkshire) Limited ("Yorkshire") was acquired in settlement of the debts owed when the development project ran into financial difficulties. That is how they ended up in the care home business, of which they had no prior experience, and why they appointed the Claimant, who is a qualified mental nurse and had worked extensively in this sector, as Operations Director. The contact with the Claimant was made through her father-in-law who was a business associate of Mr Houghton and Mr Taylor in the construction trade.
7. When the Claimant began work it must have been for Yorkshire. There was no other company she could have then worked for. Mr Chamberlain was at that time still the sole director of the company and Ms Turner was already employed by it. Although the Claimant was engaged on a higher salary than Ms Turner (£75,000 as against £40,000) their roles were effectively parallel within the organisational structure. A business planning meeting held on 30th June 2016 shortly before the Claimant in fact began work but which she nonetheless attended was convened by Ms Turner: she did not hold a merely junior role within Yorkshire.
8. Shortly afterwards, on 5th July 2016, the First Respondent, TLC Care Management Limited ("Management") was incorporated. The sole director and shareholder was Sarbjit Puar, the wife of Terry Chamberlain. The written contract confirms Management as the Claimant's employer and she was also appointed a director of the company on 8th August 2016. Following Ms Puar's resignation on 19th August 2016 she was then the sole director until Mr Houghton too was appointed on 1st December 2016 at about which time he also acquired the entire shareholding in the company. On that same date Mr Houghton also became the only director of Yorkshire, Mr Chamberlain having resigned immediately before. A third company, TLC Group Yorkshire Limited ("Group") with Mr Houghton and Mr Taylor as directors was incorporated on 5th September 2016.
9. Yorkshire remained the owner of the home and the internal financing arrangement between the companies required Management to account to it. Ms Turner as the only employee of Yorkshire therefore played a pivotal role in the communications between the two companies. She also took on part of the financial administration for Yorkshire and was a signatory on its bank accounts. Ms Turner was not however, as the Claimant persistently and pejoratively seeks to categorise her, "only essentially a bookkeeper".
10. In so far as Ms Turner carried out specific, and limited, tasks of financial administration for Management she clearly had authority – for instance in her dealings with the bank – and to that extent is properly described as an agent. In those circumstances the effect of section 109 (2) of the Equality Act 2010 is that "the principal will be liable wherever the agent discriminates in the course of carrying out the functions he is authorised to do" (per Elias LJ in Ministry of Defence v Keme [2014] EWCA Civ 91 cited by Underhill LJ at para. 42 in Unite the Union v Naillard [2018] EWCA Civ 1203). This

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proposition is elaborated upon By Underhill LJ at para. 43 of *Naillard*: “An agent may stands in the shoes of the principal in dealing with A, but if while wearing them he treads on B’s toes I see no good reason why he should not be liable to B just as much as if it had been A’s toes that were crushed: in both case the wrong is done in the course of performing the authorised functions”.

11. In this case, however, that is not what happened. The alleged acts of harassment by Ms Turner are not in the course of her performing the limited functions on behalf of Management that she was authorised to do. The complaints are in fact concerning Ms Turner carrying out her role on behalf of Yorkshire.
12. So although in principal we accept, as we must do, that because Ms Turner was employed by Yorkshire that does not automatically prevent her from also being an agent of Management (para.43 of *Kemeh*) there will have to be, in the words of Elias LJ), “very cogent evidence to show that the duties which an employee was obliged to do as the employee of A were also being carried out as an agent of B”. There is no such cogent evidence in this case. Everything that Ms Turner did is, in our view, sufficiently and satisfactorily explained by the fact that she was, within the structure of the internal arrangements that were put in place between these companies, acting as a senior employee of Yorkshire. There is no reason in these circumstances why Management would also either want or need her to enter into an agency relationship. That is expressly the view of Mr Taylor in his emails to Ms Turner on 27th and 28th April 2017 where – at a time where the personal relationship is evidently becoming strained - he approves her approach to dealing with the Claimant and says: “We will not and cannot continue with what appears to be abject dismissal of the requests for information required to properly run TLC (Yorkshire) and “there is little or no understanding from TLC Care Management Ltd of the importance of complying with the implemented structure”. It is clear that Mr Taylor understood the position to be that Ms Turner was merely doing what she was required to do, acting on behalf of Yorkshire.
13. We conclude therefore that Ms Turner was not, in any relevant sense, the agent of the First Respondent. Although this disposes of a substantial part of the case we shall, nonetheless examine, albeit fairly briefly, the specific allegations against Ms Turner.
14. We do not accept the Claimant’s subjective and unspecific allegations of Ms Turner being offensive to her, using inappropriate and insulting non-verbal gestures such as face pulling, smirking and frowning when addressing her. In any event there is no basis upon which to conclude that this behaviour, even if it had happened , was in any way related to the Claimant’s age or sex
15. Ms Turner was not subordinate to the Claimant. Conversely, neither was she and nor did she act as if she was her manager. Ms Turner held a responsible position within a sister company, in which capacity she had express authority to implement the structures in place for reporting and providing information. She did not demand that the Claimant undertake menial administrative tasks: the responsibility for providing the requisite information to Yorkshire ultimately lay with the Claimant and Ms Turner was entitled to address concerns to her. Nor did Ms Turner ask the Claimant to do things differently merely to “humiliate” her and without good reason, even if communications might have been clearer. We are satisfied that the chains of email correspondence show an appropriate dialogue between Management and Yorkshire as to the extent to

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which confidential information in fact needed to be shared and do not demonstrate any inappropriate conduct on the part of Ms Turner. Again there would in any case be nothing to link this alleged conduct with either age or sex.

16. Having seen both witnesses we are in fact satisfied that it is the Claimant who is preoccupied with seeking to assert her perceived status and seniority, rather than Ms Turner seeking to undermine her.
17. Ms Turner did not refuse to provide the Claimant with banking log in details or to prevent her keeping abreast of the financial position of the business. The contemporaneous correspondence at the time the second bank account was set up – on the authority of Yorkshire - shows quite clearly that Ms Turner expected the Claimant still to be able to access information via the existing online banking platform, and if not that alternative arrangements would be made. Again there would in any case be nothing to link this alleged conduct with either age or sex.
18. Ms Turner did not use her relationship with Mr Houghton as a way of making it clear that despite being her subordinate – which she was not – she regarded herself as more important than she was. She did not in fact say that she was waiting for the Claimant to fail. Ms Turner had responsibilities as an employee of Yorkshire. The Claimant evidently regarded this as some sort of threat to her authority within the home and did not wish to acknowledge the seniority of Ms Turner's role. (There is some corroboration for this in the fact that the Claimant appears not to have understood the distinction between their two roles, and inaccurately in February 2017 booked Ms Turner on a seminar as a representative of Management, along with herself.) Equally Ms Turner started to form a negative opinion of the Claimant's performance at work, particularly as it impinged upon her ability to do her own job for Yorkshire. As this began to lead to tensions in the working relationship it resulted in matters being filtered back to Mr Houghton, both professionally and privately. Again there would in any case be nothing to link this alleged conduct with either age or sex.
19. Ms Turner did not set out to humiliate the Claimant by ignoring her at an external seminar which they both attended. After they had both been talking to other people she then sat on the same row as the Claimant when the seminar started, but immediately next to where the Claimant was sitting because she had put her coat down on the seat in between. It is not the case that Ms Turner deliberately sat a long way apart from the Claimant. Again there would in any case be nothing to link this alleged conduct with either age or sex.
20. Ms Turner did not insist that an issue about missing toilet rolls was minuted at a governance meeting: it was not put in the minutes.
21. Ms Turner did not demand to be invited to meetings with clinical commissioning groups. In so far as these meetings were discussed at the business planning meetings which Ms Turner attended in her capacity as an employee of Yorkshire her involvement was open and authorised.
22. In the face of vehement denials from Ms Turner we do not accept the Claimant's account that she was inappropriately questioned as to her plans to have children. This cannot, without more, be proven and it is in any event a single and distinct allegation of harassment which is out of time.

23. There is nothing in the exchange of emails at around the time the home actually opened to suggest any inappropriate conduct on the part of Ms Turner. Obviously the Claimant will have been busy at this time but the requirements to provide information to Yorkshire still remained; Ms Turner was entitled to request that the paperwork was up-to-date and the chain of correspondence shows that this was done appropriately. Again there would in any case be nothing to link this alleged conduct with either age or sex.
24. Again in the face of vehement denials from Ms Turner we do not accept the Claimant's account that she made inappropriate comments about her being very young to have the responsibilities and as salary that she did or about her appearance. These allegations cannot be proven.
25. We do not accept the Claimant's subjective and unspecific allegations of Ms Turner smirking after collecting invoices from the home or of walking away from the Claimant whilst she was talking. Again there would in any case be nothing to link this alleged conduct with either age or sex.
26. There are then further allegations of harassment which do not concern the alleged actions of Ms Turner.
27. As the relationship between the Claimant and Ms Turner deteriorated from about May 2017 (cf paragraph 18 above) the Claimant makes allegations of conversations she had with both Mr Taylor and Mr Houghton about the impact of this on both the business and upon Mr Houghton's home life.
28. Firstly it is claimed that on 5th May 2017 Mr Taylor suggested getting rid of Ms Turner from the business and offering her post to Mr Rawlinson, who then says that he did not think this would be the appropriate course for all concerned – which he characterises as his “protecting” Ms Turner. (There is an unsent email written at the time where Mr Rawlinson expresses this view.)
29. We do not accept the Claimant's and her husband's evidence that this conversation took place in the way they describe and in particular that Mr Taylor was concerned about the conduct of Ms Turner. Such a view on the part of Mr Taylor would be in consistent with his emails to Ms Turner of 27th and 28th April, only a very short time before, and which we have already quoted. It is, more significantly, also inconsistent with Mr Taylor's email to Ms Turner dated 9th May 2017 when he reports back on his meeting with the Rawlinsons. Here he reiterates the “importance of the requirement of communication between companies” and says that he has ensured that Mr and Mrs Rawlinson were no longer under any illusions about this. He does however acknowledge that the structures were not yet working effectively and were to be “tweaked”. Ultimately the envisaged “tweaking” of the structures in fact entailed Ms Turner being relieved of her responsibilities for managing the relationship between Yorkshire and Management and an entirely fresh structure being put in place using a third party management company, Careport: on the face of it this is unfavourable treatment of Ms Turner rather a than of the Claimant.
30. Whilst it is correct that no steps were taken to “investigate” Ms Turner – it now being acknowledged that the suggestion in the pleadings that she should in fact have been

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“disciplined” is inappropriate – this is not in the circumstances unwanted conduct related to the Claimant’s age or sex.

31. Next it is alleged that Mr Houghton made comments about Ms Turner waiting for the Claimant to fail; that she was obsessed with the Claimant and it was affecting their home life, and; that he was emotionally blackmailing the Claimant to accede to Ms Turner’s demands so that he could have a quiet life.
32. We do not, in the face of Mr Houghton and Ms Turner’s denials, accept that these things were said , certainly not in the way that the Claimant now seeks to portray them. In any event this is not in any way conduct related to age or sex.
33. Although denied by him we are prepared to accept that on one occasion Mr Houghton in a conversation with Mr Rawlinson may have referred to some female employees (not including the Claimant herself) as “mingers” and asked where the “eye candy” was. There is no evidence whatsoever that, even if this inappropriate language was then reported back to the Claimant, it was regarded by her, subjectively, as harassment, let alone that objectively it should be regarded as likely to have that effect. In any event this is a single incident which is out of time and which was not raised until 16th February 2018.
34. Similarly we are prepared to accept that on two occasions early on in his employment Mr Houghton asked Mr Rawlinson, when he was working in an office alone if he was “knocking one out”. This “laddish” behaviour is not however, subjectively or objectively to be regarded as conduct which is so offensive that it could amount to harassment of the Claimant if she were told about it. Again this claim was not raised at all until 16th February 2018 and is out of time.
35. The Claimant complains that there were at least five meetings to which, despite her being a director, she was not invited. The culture of the TLC businesses was evidently not to hold minuted board meetings. The directors of Management did not ever meet formally: the Claimant did not attend a board meeting with her co-directors, either Ms Puar , Mr Houghton or Mr Cassidy.
36. Sean Cassidy’s company, Network Care (UK) Limited, was initially engaged by Yorkshire to provide advice and support services when, first time around, the home failed its CQC registration. The initial discussions were therefore conducted between Mr Houghton and Mr Taylor, who provided the finances to Yorkshire, and Mr Cassidy. He was then, on 10th March 2017, appointed to the board of Management as a non-executive director and replaced the Claimant as the “Nominated Individual” for the purposes of the renewed CQC application, which was successful. The Claimant remained the registered manager of the home.
37. Although the Claimant was not involved in a formal resolution to appoint Mr Cassidy we are satisfied that she was fully involved in the process and raised no objection, either to him personally or to the involvement of Network.
38. A meeting was apparently held between Mr Taylor and Mr Houghton authorising Ms Turner to open a second bank account. The Claimant was informed of this after the event (see paragraph 17 above). The context of this was that it took place shortly after the care home first opened to residents and at a time where the breakdown in

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communications of financial information between Yorkshire and Management was being reported as a concern by Ms Turner.

39. There was a meeting between Mr Houghton and Mr Taylor on 15th June 2017 at which Ms Turner did take a note. This meeting was primarily held under the auspices of Yorkshire, although it did also touch upon matters concerning Management.
40. The decision to appoint Careport in July 2017 was taken in consultation between Mr Houghton and Mr Taylor alone. At that time the Claimant's position in the company was in a state of flux as it was in the period when the discussions were still taking place about the terms of her returning to work after having put in her resignation on 25th June 2017. The Claimant was not involved in the decision but nor was Mr Cassidy who was also a director (he resigned on 11th August 2017). Mr Cassidy is, of course, the named comparator in the discrimination claims. The contract with Careport effectively entered the relationship with Network and Mr Cassidy was not given the opportunity to seek to negotiate his own deal for the future.
41. If any comment was made to the effect that any decision taken at the informal meetings where Mr Houghton and Mr Taylor conducted their business was "one for the boys" we do not consider it, in context, to be significant. Mr Houghton and Mr Taylor had a long-standing and close relationship, both professional and personal, and they were accustomed to take financial decisions jointly where this affected their common business interests.
42. The way that these decisions were taken was because that was what Mr Houghton and Mr Taylor thought (rightly or wrongly) was best for the companies in which they invested. It was not related to the Claimant's sex or age.
43. The matters which we have addressed in paragraphs 31 to 42 are above are repeated, in the alternative, as allegations of direct discrimination. There is nothing on their face to suggest that if this is in fact less favourable treatment it is because of either sex or age.
44. The Claimant also alleges that the following are also acts of direct discrimination: causing, permitting or allowing Ms Turner to act as though she were the Claimant's manager and to harass her; failing to prevent the harassment of the Claimant by Ms Turner, failing to act upon the Claimant's complaints about her treatment, and; failing to investigate Ms Turner. There is nothing on their face to suggest that if this is in fact less favourable treatment it is because of either sex or age.
45. The failure to issue the Claimant with a Preference Share after April 2017 is alleged to be direct discrimination. There is a potential argument as to the interpretation of clause 6 (a) of the contract of employment. This provides that "A "Golden" Share shall be issued at the completion of the period covered under clause 3. This entitles the holder to 5% of the Nett profits held in TLC Group, resulting solely from the on sale of Calderdale Retreat and any future homes". If the Claimant wishes to pursue this point it will have to be argued in another court. We are only concerned with whether the failure to issue a preference share is discriminatory.
46. We do note that a "golden share" as normally understood (that is a share with enhanced voting rights) is not the same as a preference share. Also at the time of this

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agreement the Group company had not yet been incorporated. Whilst we agree with the Claimant that the date under clause 3 would have been 17th April 2017, which is when the home became operational, that is when it opened, we do not consider that this entitled the Claimant to be issued immediately with a preference share in a company which was not a party to the contract and irrespective of whether she remained in employment at the point of any future sale. In our view this clause gives rise, at best, to a right to enter into a profit share agreement with effect from April 2017 but still contingent upon future events.

47. Faced with the Respondent's wholly legitimate disagreement with the Claimant's reading of this clause the failure to issue a preference share immediately cannot be an act of discrimination. It is an argument as to the proper interpretation of a contract: It has nothing to do with the Claimant's age or sex.
48. The Claimant also alleges that the following are also acts of direct discrimination: removing her from her position as director; failing to consult with her about the appointment of Careport; failing to inform Careport about her roles and responsibilities; appointing Careport to oversee operations; attempted demotion of the Claimant, and; dismissal.
49. As at 24th June 2017 the Respondents had decided that because the structures for communication between Yorkshire and Management, that is effectively between the Claimant and Ms Turner were not working, Ms Turner would no longer be involved. On 25th June 2017 however the Claimant resigned, citing only the difficult relationship with Ms Turner as the reason. Mr Houghton and Mr Taylor went to Liverpool immediately to meet with the Claimant, clearly with a view to getting her to change her mind. The Claimant was amenable to that proposition and returned to work whilst possible restructuring and reallocation of responsibilities within Management was considered.
50. On balance we accept the Claimant's argument that in the circumstances and given what she was told by both Mr Taylor and Mr Houghton this amounted to an agreed retraction of her resignation. That means that her notice was not still "live" and that when Mr Houghton purported to accept it on 12th July 2017 this was in law a dismissal.
51. However the situation was by no means entirely clear and we accept Mr Houghton's evidence that he genuinely thought the Claimant was still working her notice pending any final agreement. In particular the Claimant was seeking to negotiate the company buying a £250,000 house in Halifax so that she and her husband could move nearer to their work and no arrangements had yet been put in place to manage the future interactions between Yorkshire and Management in the absence of Ms Turner.
52. In this period of uncertainty Mr Houghton and Mr Taylor took the decision to engage, through Yorkshire, a company called Careport. Although the Claimant's salary was to be maintained and she would retain her job title, effectively the operation of the home was being contracted out and her role as manager was unclear. In those circumstances it is not surprising that the Claimant made it clear that she did not wish to work with Careport under such a structure. It was at this point that Mr Houghton terminated her employment and she was, as a consequence, also removed as a director.

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53. The central issue on the direct discrimination claims is whether or not the Claimant has established facts from which we could decide, in the absence of any other explanation that the Respondents have contrived the relevant provision of the Act: section 136 Equality Act 2010
54. The overarching allegation of the Claimant is that she believes that she was not valued because she was a young woman. That is despite the fact that she was appointed to a very well paid position and that the Respondents did not want to lose her when she tendered her resignation.
55. The making of comments about “eye candy” or “knocking one off” are not facts from which we could conclude that the Claimant was discriminated against. They are isolated and minor incidents that are now brought up long after the event to seek to suggest a prevailing misogynistic attitude: it is not enough to reverse the burden of proof.
56. The writing of a spoof email (which was never sent) and which refers to a foreign country as a “shit hole” is irrelevant. We can draw no conclusions from that which are in any way material to this case.
57. The fact that two women of relatively comparable seniority within the organisational structures of their respective companies apparently did not get on is no evidence of age discrimination. Ms Turner was not an agent of the Respondents and she did not in fact unlawfully harass the Claimant.
58. The fact that Mr Houghton and Ms Turner were in a relationship, even if that did have some implications as to the way they also conducted themselves professionally, is immaterial to whether the Claimant was discriminated against on grounds of age or sex. In reality the position is that the Claimant resented the fact that Ms Turner, whom she sought to present as her subordinate and inferior, appeared to be in a privileged position because of her closeness to Mr Houghton.
59. There is no material and demonstrable untruthfulness in the Respondent’s evidence from which we could infer that there has been age or sex discrimination. Mr Houghton may well have been dissembling to an extent when he was reluctant to admit any mistake in appointing Careport. That of itself is peripheral to the issues we have to decide and not something from which we could infer discrimination of the Claimant.
60. The short answer to this claim is that the Claimant has established no facts from which we could conclude that the burden shifts to the Respondent to prove a non-discriminatory reason for any alleged conduct.
61. Despite the Claimant’s assertions the complaints in this case do not in our view have anything to do with age or sex.
62. The final allegation is one of victimisation. In a solicitor’s letter dated 25th July 2017, responding robustly to a purported claim – apparently on legal advice- for £1million (£50,000 plus £950,000 as the value of the “golden share”), the Respondents reserved the right to report the Claimant to the relevant regulatory body should she prove not to have held the necessary qualifications to manage the care home. As the Claimant did in fact have the qualifications and was able to provide the documentation to prove

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it she will have known that no referral would in fact be made. Reserving the Respondent's position pending clarification of the matter is not subjecting the Claimant to a detriment. This is not unfavourable treatment because she had threatened a discrimination claim and is not therefore victimisation.

63. For these reasons all claims are dismissed.

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EMPLOYMENT JUDGE LANCASTER

DATE 15th August 2018

¹ "The issues

3. I now record that the issues between the parties which will fall to be determined by the Tribunal are as follows:

4. How did the claimant's employment end?

4.1 The claimant asserts that she resigned her employment on 25 June giving 4 weeks notice. She then asserts that her resignation was retracted and the retraction accepted by Mr Turner on behalf of the respondent. She further asserts that she was dismissed by the second respondent's email of 12 July.

4.2 The respondent's case is that the claimant's retraction of her resignation was not accepted and that her employment ended by virtue of her resignation.

5. Section 26: Harassment related to sex or age.

5.1 Are the respondents responsible, as principles of an agent, for the treatment of the claimant by Ms Turner? The respondents denies that Ms Turner was the agent of either respondent.

5.2 Did Ms Turner treat the claimant as alleged in paragraph 14 of the claim form (and in such other way as may be supplied in further particulars?)

5.3 Was the conduct related to the claimant's protected characteristics of age or sex?

5.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.5 If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.6 In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6. Section 13: Direct discrimination because of sex or age.

6.1 Have the respondents subjected the claimant to the following treatment falling within section 39 Equality Act, namely

6.1.1 Dismissing the claimant.

6.1.2 Those matters alleged in paragraph 35 a. to k..

6.2 Have the respondents treated the claimant as alleged less favourably than it treated or would have treated the comparators? The claimant relies on the following comparators Mr Cassidy and the second respondent (presumably where the complaint lies against the first respondent since the claimant cannot logically rely upon the second respondent as a comparator in claims against the second respondent) and/or hypothetical comparators.

6.3 If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

6.4 If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

7. Section 27: Victimisation

7.1 Has the claimant carried out a protected act? The claimant relies upon two protected acts. The first was her email of resignation. The second was her email of 21 July. The respondents assert that the letter of resignation has none of the required characteristics of a protected act and that the second was made in bad faith. Accordingly, they deny that the claimant has done a protected act.

7.2 If there was a protected act, has the respondent carried out any of the treatment set out in paragraph 38 and such others as the claimant shall supply in further particulars because the claimant had done a protected act?"