



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Baker Rowlands

**Respondent:** Travelodge Hotels Ltd

**Heard at:** Cardiff **On:** 12, 13 and 14 March 2019

**Before:** Employment Judge S Davies  
Ms C Williams  
Mr P Charles

**Representation:**

**Claimant:** In person

**Respondent:** Ms C Urquhart, counsel

**JUDGMENT** having been sent to the parties on 17 March 2019 and reasons having been requested by the Claimant by email of 15 March 2019 in accordance with Rule 62(3) of the Rules of Procedure 2013:

## WRITTEN REASONS

1. Oral judgment with reasons were given at the hearing. The delay in provision of the written reasons was due to administrative workload and other judicial commitments.

### Claims and issues

2. On 10 May 2018, the Claimant presented an ET1 claim form to the Tribunal, alleging constructive unfair dismissal and discrimination on grounds of sexual orientation; direct discrimination (section 13 Equality Act 2010 (EQA)) and harassment (section 26 EQA). The period of ACAS early conciliation lasted from 26 April 2018 to 1 May 2018.
3. The Claimant identifies as a gay woman.

4. The issues are set out in a Case Management Order of 19 October 2018 [34] and reproduced below (with amendments granted at hearing).

**Time limits**

- Were the Claimant's complaints presented within the time limits set out in Sections 123(1)(a) & (b) of the Equality Act 2010 ("EqA")?

**Constructive unfair dismissal**

- Was the Claimant constructively dismissed?
- did the Respondent breach the implied term of mutual trust and confidence, i.e. did it, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the Claimant?
- did the Respondent breach the implied term to provide a fair disciplinary procedure?
- did the Respondent breach the implied term to provide adequate support to the Claimant as an employee (with regard to her workload and lack of managerial support in 2017)?
- did the Claimant "affirm" the contract of employment before resigning?
- did the Claimant resign in response to the breach of contract?
- The conduct the Claimant relies on as breaching trust and confidence (including failure to provide a fair disciplinary procedure and adequate support) is particularised in the attachment to the ET1 claim form. The final straw being the events of 4 April 2018

**Direct discrimination because of sexual orientation**

- Has the Respondent treated the Claimant as follows:
  - i. Transferring the Claimant to Queen Street on 1 November 2017, and by doing so Mr Bridle put the Claimant into a volatile working environment (amendment [56]);
  - ii. misconstruing the friendship between the Claimant and Stacey, because of the Claimant's sexual orientation;

- iii. the way in which the investigation on 4 April 2018 was conducted by Kerry Hassell-Shaw, including the questions asked (the six bullet point questions included at page 4 of the document attached to the ET1 claim form);
  - iv. constructive dismissal (amendment [57]).
- Was that treatment "*less favourable treatment*", i.e. did the Respondent treat the Claimant less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?
  - The Claimant relies on the following comparator, Dina Charalambous, and/or hypothetical comparators (save in respect of (i) above where she relies on Dina Charalambous only).
  - If so, was this because of the Claimant's sexual orientation and/or because of the protected characteristic of sexual orientation more generally?

#### **Harassment related to sexual orientation**

- Did the Respondent engage in:
  - i. the conduct outlined above as allegations of direct discrimination? and
  - ii. the disciplinary process started on 15 September 2017 (amendment [52])
- If so, was that conduct unwanted?
- If so, did it relate to the protected characteristic of sexual orientation?
- Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

#### **Hearing**

#### **Amendment Application**

- 5. On the first day of this hearing the Tribunal dealt with an amendment application the Claimant sent to the Tribunal on 31 October 2018 [47-63]. The application was granted for the reasons given at the hearing in respect

- of three complaints; [52] incident starting on 15 September 2017, [56] incidents on 1 November 2017 and [57] in respect of dismissal. All three are brought as harassment complaints and the second two as complaints of direct discrimination. The other matters referred to in the table were provided as matters of factual background only; the Claimant confirmed that there were no indirect discrimination complaints and no victimisation complaints and that there was no complaint of discrimination in respect of her non-selection for a hotel manager role in July 2017.
6. The Tribunal heard live evidence from four witnesses: from the Claimant and Jennifer Byard, Hotel Manager on her behalf. For the Respondent we heard from Matthew Bridle, District Manager South Wales and Kerry Hassle-Shaw, Hotel Manager. The Tribunal read an additional two witness statements, from Huw Huckridge, District Manager, Wiltshire for the Respondent and Samantha Baker-Rowlands, the Claimant's wife.
  7. There was an agreed bundle of about 400 pages; some additional documents were added at the start of day one; some documents had been illegible and clearer copies provided and the correct version of the disciplinary and grievance policy was inserted. We allowed into evidence handwritten notes disclosed by Mr Bridle on 8 March 2019 [352]. Due to their late disclosure, the Claimant was given time to consider and comment on the notes. We also admitted into evidence, at the start of day two, emails sent by the Claimant to Mr Bridle [115(d-e)].
  8. No adjustments to the hearing were sought by any party or witness.
  9. References in square brackets are to page numbers in the bundle.

## Summary

10. This is a case about the Claimant's resignation from her position as Assistant Hotel Manager, in circumstances where she says an investigation into a grievance about her was discrimination based on her sexual orientation. The Claimant relies on a sequence of events as amounting to a breach of trust and confidence, culminating in an investigation meeting on 4 April 2018 which triggered her resignation.

## Factual background

11. The Respondent is a nationwide hotelier. From 2010, the Claimant worked as an Assistant Hotel Manager mainly at Cardiff Central Hotel. The Claimant resigned on 4 April 2018 in circumstances which she asserts amount to constructive dismissal.

12. No disciplinary action was taken against her until 2017; the Claimant's record was unblemished until that point.
13. Mr Bridle was the Claimant's District Manager; he started work for the Respondent shortly after the Claimant did.
14. Depending on the location, size and facilities of their hotels, the Respondent rates them in terms of their complexity from A to E with A being the most complex. Cardiff Central is rated as C, but Mr Bridle suggested that in fact it is more complex because of its particular location in Cardiff City Centre in close proximity to three nightclubs.
15. At times part of the Claimant's role was to step up to cover for Hotel Managers who were absent; including a period of secondment where she was Hotel Manager at Cardiff Airport Hotel.
16. During 2011 there were discussions between Mr Bridle and the Claimant about her desire to progress. In 2011, when she was a new employee, the Claimant did not want to progress. No further progression conversations were held in the subsequent six years. In terms of succession planning Mr Bridle documented potential promotions within the hotels in South Wales region [71a]. Mr Bridle kept a track of potential candidates, including external candidates, in the period after his discussions with the Claimant in 2011. Various other internal candidates did progress through the period of the Claimant's employment, with the support of Mr Bridle, for example Ms Byard.
17. The Claimant and Tina, the Housekeeping Supervisor, had a difficult working relationship. In 2016 a mediation was held between them and although they worked together subsequently, it appears that their relationship remained somewhat strained.

### **Interview for Cardiff Central Hotel Manager**

18. Tom Williams was the Hotel Manager at Cardiff Central until he resigned, leaving on 7 August 2017. Once she was aware of his departure, the Claimant contacted Mr Bridle on two occasions, by email on 12 and 18 July 2017, to enquire about the available role [115d]. There was no response from Mr Bridle.
19. It is evident from Mr Bridle's witness statement that he had a strong preference for recruitment of Andre Williams, an individual with no hospitality experience, who he had interviewed several years previously. Prior to his appointment to the Cardiff Central Hotel Manager role Andre Williams was not put through a formal interview; rather he had an informal discussion with Mr Bridle at a local Starbucks on 18 July 2017. By contrast

- the Claimant was treated very differently. We accept the Claimant's evidence (paragraph 8 of her witness statement) that during a phone call on 19 July 2017, she was informed by Mr Bridle that the role was closed. This accords with the sequence of events, Mr Bridle having met with Andre Williams the previous day. We also accept as valid the Claimant's perception that Mr Bridle was resistant to her application for the role.
20. The Claimant's interview was arranged at short notice on 21 July 2017 in Swansea, a location which was convenient to Mr Bridle due to his impending holiday the following day. We accept that the Claimant had to travel through bad weather in order to attend the meeting. Although the Claimant is a well experienced Assistant Hotel Manager she had very little time to prepare for the interview, in circumstances where she lacked support from her Area Manager and had not been through an interview process for many years.
21. There is a dispute as to the nature of feedback received from Mr Bridle following the interview, Mr Bridle describes sitting down on the sofa to discuss matters with the Claimant immediately after the interview, which the Claimant does not recall. It was agreed that there was a short phone call with feedback between Mr Bridle and the Claimant the following day. We refer to the notes of feedback [133] and we find that this is evidence that some feedback was given on the day but that was brief in nature; there was no indication given of how Mr Bridle would support the Claimant to progress in future. The Claimant was aggrieved about the way her application for this promotion was dealt with; she was unsuccessful in circumstances where her emails were not responded to, she was initially told the role was closed and an outside candidate was slotted into the role without any current formal interview.
22. Andre Williams left very shortly after his appointment, for personal reasons connected with his father's ill health. He resigned prior to the Claimant leaving for her holiday in August 2017. Andrew Self, Hotel Manager at Merthyr Tydfil was slotted into the vacant role, again without a formal interview and without Mr Bridle notifying the Claimant that the role was available again. No consideration was given to informing the Claimant of the vacancy or supporting her to progress. We heard evidence that Mr Self is openly gay, but this evidence only came up during the course of the hearing, it was not in any of the witness statements for the Respondent. This is a surprising omission given the nature of the complaints being brought to the Tribunal. The Claimant was unaware of Mr Self's sexuality. We find that the recruitment process was unsatisfactory and lacked necessary transparency and structure to ensure fair treatment of all candidates.

### **Claimant acting up as Hotel Manager**

23. Following Mr Williams departure, Cardiff Central was left without a Hotel Manager from 7 August 2017 until Mr Self's appointment in mid-September 2017. During that period the Claimant acted up to cover the Hotel Manager position. The hotel was short staffed in early August and particularly so from 9 to 14 September 2017, on the Claimant's return to work from holiday.
24. We accept the Claimant's evidence that she prepared rotas in advance of her holiday and that these were altered in her absence by the two Managers called in to cover her holiday. The Claimant's evidence that Cardiff Central had only two cleaners for the whole hotel is evidenced by her emails [153 – 156]. The Claimant was unhappy with the support she was receiving from Mr Bridle and tried to make contact with a more senior Manager, Gary Steele, but had no response. Mr Bridle suggested that the rotas were fully staffed during this period, but we were not shown the documents he claimed evidenced this assertion; they were not in the bundle. We prefer the Claimant's evidence on this point.
25. We reject the suggestion by the Respondent that Mr Bridle brought in a trainee manager, Alex, to support the Claimant [185]. This did not happen until 15 September 2017, the same date that Mr Bridle called a grievance fact finding meeting with the Claimant. We find in the circumstances that Alex was brought in to cover the Claimant's absence due to her suspension pending completion of the grievance investigation.
26. The Claimant acted up at a period when the Cardiff Central hotel was understaffed, and she was not offered adequate support to deal with understaffing by managers.

### **First grievance investigation**

27. Tina raised a grievance about the Claimant [135], by email of 24 July 2017 sent to Mr Bridle. The grievance procedure [293(d)] provides that grievances should be raised with Line Manager. At the time Tina had been temporarily moved to Queen Street. Tom Williams was about to leave Cardiff Central and Mr Wheeler was Manager at Queen Street. Mr Wheeler commenced a period of holiday and then became unwell and was subsequently transferred to a different hotel branch. Mr Bridle was not Tina's Line Manager, but by 24 July 2017 Tom Williams had handed in his notice and that may explain why the grievance was sent to Mr Bridle.
28. The Claimant believes that Mr Bridle encouraged staff to concoct grievances, perhaps this view was based on his lack of support for her. However, we have to balance her belief against Mr Bridle's denial and the

reality of his busy workload. Additionally there was a history of poor working relations between Tina and the Claimant. It is highly unlikely that a Manager would encourage concocted complaints from staff, not least because of the workload dealing with such complaints produces. We find that Mr Bridle did not encourage staff to concoct a complaint and we reject the suggestion that there is anything untoward in the grievance being directed to Mr Bridle in the particular circumstances.

29. As part of the investigation, Mr Bridle spoke with Jo, who had indicated her intention to resign, on 7 September 2017 [142]. We reject the suggestion that Jo was offered a contract of employment in order to give evidence. This is supported by the fact that Jo subsequently left the Respondent and did not take up any offer of a contract. In the circumstances of her impending departure, the fact that Mr Bridle spoke to Jo first seems a reasonable approach. Mr Bridle was gathering information from various relevant individuals and was aware that Jo may have information that was relevant to the issues raised in the grievance. Mr Bridle spoke with Tina on 11 September 2017 [157] and then other colleagues; Anna and Daisy on 11 and 12 September 2017 [166 & 171].
30. Around this time, Mr Bridle's wife was undergoing hospital treatment, and it would have been a busy and potentially stressful time for him. HR prepared a suspension letter for the Claimant which was approved by Mr Bridle. The suspension letter appears in two versions dated 13 and 15 September 2017 but with the same content [180 and 187]. We accept the Claimant's evidence that she received the suspension letter dated 13 September 2017. Having considered the content of the interviews that were conducted with various staff following Tina's complaint, we conclude that a decision to suspend the Claimant had been reached on 13 September 2017 and this is supported by the fact that the Claimant's letter had this date.
31. The grievance investigation meeting with the Claimant was conducted on 15 September 2017 with Mr Bridle and Ms Hassle Shaw; the Claimant was suspended. The allegation under investigation was 'serious act of discrimination, bullying or harassment – treatment of team members and alleged racially discriminatory behavior and comments'
32. Following the Claimant's fact finding meeting, further interviews were carried out with colleagues; Pamela and Christina on 29 September 2017 [211 and 217]. We accept that Ms Hassle Shaw did make attempts to contact Dawn, a witness suggested by the Claimant who was on maternity leave but could obtain no reply. We consider it appropriate not to repeatedly contact somebody who is either about to give birth or has a young baby. We note that the Claimant was able to obtain a witness statement from Dawn ahead of her disciplinary meeting in any event.



## Disciplinary

33. It was Mr Bridle's decision to pursue the allegations as they were framed. In the invitation to disciplinary meeting of 13 October 2017 [241] the allegation was 'serious failure to demonstrate the leadership behaviours/management practice required – specifically your conduct towards team members has fallen significantly below the expectation that Travelodge holds for someone in AHM position and that your conduct towards team members has been unacceptable and unprofessional'. The allegation for consideration at the disciplinary meeting was different to the allegation given as reasons for suspension; in particular the allegations of racism did not proceed to disciplinary.
34. Several dates were set for the disciplinary meeting and they were changed on a number of occasions. The Claimant was informed that the meeting would be on 6<sup>th</sup>, then 10<sup>th</sup> and then 11<sup>th</sup> October [205]. Following the Claimant raising a grievance about various matters on 9 October 2017 [204 – 205], the meeting was rescheduled again so that the grievance could be heard first, followed by the disciplinary on 18 October 2017 both to be heard by Mr Huckridge.
35. Whilst awaiting the disciplinary meeting the Claimant made a request to speak with various witnesses [232]. The Claimant felt that she was blocked by Mr Bridle in terms of accessing work emails and being able to contact colleagues. We note that the Claimant may well have felt this way, but it is a normal part of a suspension process pending disciplinary that employees are asked not to contact their colleagues. The Respondent's response [235 – 236], refused the Claimant's request to speak to the witnesses outside of the disciplinary meeting. Rather than informing the Claimant of the process [304g – paragraph 7.5], the Respondent specified her request should be raised at the disciplinary meeting. Additionally the Respondent said that the Claimant's request to access work emails should also be raised at the disciplinary meeting.
36. The Respondent's conduct of the disciplinary procedure did fall short of its own policy, at least initially. The Claimant took advice from ACAS and following her grievance, the procedure was largely put back on track by the Respondent. Specifics of the allegations were not provided to the Claimant in the invitation to the disciplinary meeting. The Claimant felt she was forced into the position of having to chase the Respondent to ensure the process remained on track and she felt unsupported. We have empathy for the Claimant's position; mistakes with dates and not providing access to information will have heightened her anxiety at a stressful time.
37. The Claimant attended the grievance and disciplinary meeting with Ms Byard as her companion. Mr Huckridge's evidence about dealing with the

grievance and disciplinary was not challenged; he did not give evidence as the Claimant did not wish to question him. Mr Huckridge gave the Claimant a final written warning for a period of 12 months in respect of the Claimant's admission that she had sworn in earshot of colleagues [265 and 282]. Mr Huckridge recommended a transfer within district [284]. The Claimant did not appeal the outcome. Mr Huckridge made the suggestion of a transfer to Mr Bridle, to facilitate a fresh start. Tina was moved back to Cardiff Central.

### **Transfer to Queen Street**

38. The Claimant alleged that Mr Bridle deliberately put her in a volatile environment at Queen Street, where Mr Wheeler had been absent, and staff were unsettled at Queen Street. The unchallenged evidence of Mr Huckridge was that the decision to transfer the Claimant was his.
39. We reject the suggestion that Mr Bridle deliberately placed the Claimant at Queen Street for the reasons she suggests. Indeed, after the Claimant moved to Queen Street there were no issues in the period from November 2017 to March 2018. Both the Claimant and the Hotel Manager, Dina, were friendly with staff and socialised with them outside of work.

### **Second grievance Investigation**

40. On 27 March 2018 the Respondent received a complaint about the Claimant from a colleague, Stacey [311]. This grievance was sent to Employee Relations, which is within process for raising grievances; attached were text messages sent by the Claimant and between her and Stacey [314-322].
41. The complaints Stacey raised refer to a number of matters taking place outside of work. Most notably two alleged incidents where it was alleged the Claimant tried to kiss her; first at the Christmas party and subsequently on a Welsh international rugby day. As well as Stacey's complaint a witness statement was provided by Dina [309] which supported the allegations with regard the later incident on 17 March 2018. The Claimant sent a text to Stacey on 18 March 2018 at 10:20am (the morning after the latter incident) which said, 'I'm sorry'. Stacey's text reply started 'U really gotta stop it, I'm not gay and I ain't gonna be turning...'[320].
42. The Employment Relations Department allocated the investigation to Ms Hassle Shaw. The Claimant was working at Queen Street on 4 April 2018 where she was fully occupied dealing with an auditor. Ms Hassle Shaw and Mr Self arrived to interview the Claimant and the Claimant brought Ms Byard into the meeting as a witness. The questions posed by Ms Hassle Shaw during the fact finding meeting form the basis of the Claimant's discrimination complaint, she was asked:

- How would you describe your relationship with Stacey?
  - Do you contact her outside of work?
  - Would you describe yourselves as friends?
  - Do you text her late at night?
  - How many drinks did you buy her?
  - Did you try to kiss her in the toilets?
43. During or shortly after that fact finding meeting the Claimant resigned. She wrote a brief note, which did not give reasons for her departure, as she was upset and resigned on the spot.
44. Following her resignation the Claimant was informed that she was suspended pending further investigation but ultimately was placed on garden leave when her resignation was accepted [337-8]. There was no outcome from the complaint raised by Stacey.
45. Post resignation the Claimant raised a grievance [336] which alleged discrimination, bullying and harassment as well as constructive unfair dismissal; there was no explicit reference to Mr Bridle. The Claimant said that she resigned because of the trauma of being investigated over the allegations made by Stacey.

## Law

46. The Tribunal referred to sections 95 and 98 Employment Rights Act 1996 (ERA) and sections 13 and 26 EQA.
47. Paragraphs 24 – 34 of the Respondent’s written submission deal with the applicable law and are incorporated in this judgment by reference.
48. Direct discrimination can be subtle and hard to prove. People are generally unlikely to make overtly discriminatory decisions, actions and comments. Making out a complaint, is a fact specific process and the Claimant needs to establish facts from which we could infer discrimination. The test that we apply is more than just a ‘but for’ causation test. The fact that somebody has a protected characteristic, such as being gay and that they have experienced less or unfavourable treatment is not enough on its own. The comparative exercise is necessary so that we can test the reason for the treatment complained of; as such the comparator needs to be in materially similar circumstances to the Claimant. Unreasonable behaviour is not necessarily the same as discriminatory behaviour.
49. When it comes to harassment; the unwanted conduct complained of must be related to a protected characteristic. The purpose or effect of the conduct of must be the humiliation of the Claimant or creating an otherwise prohibited environment. When we are assessing whether there has been

harassment we need to take into account the Claimant's perspective, whilst also making an objective assessment in all the circumstances.

## **Conclusion**

### **Constructive dismissal**

50. We first deal with the selection process and lack of support shown to the Claimant in 2017. The recruitment process was poor; it lacked equity of treatment and ran contrary to the Respondent's internal Resourcing Policy [93-101]. We find that telling the Claimant that the role was closed rather than supporting her desire to progress is notable; Mr Bridle had made up his mind about appointing Andre Williams before he interviewed the Claimant. This affected his approach to the Claimant and is demonstrated by his lack of response to her emails at [115(d)].
51. As for workload, there were failings to adequately support the Claimant particularly on her return to work from holiday. Cardiff Central was short staffed and we consider that the focus of the Respondent was on investigating the complaint against the Claimant rather than adequately supporting her as an acting Hotel Manager at a complex and busy city centre site.
52. Taken together we consider that the events of July to September 2017 above were a breach of the duty to provide adequate support to the Claimant and amounted to a fundamental breach of the implied term of trust and confidence in the Claimant's contract.
53. Turning to the disciplinary matters; it is not unusual to prepare a suspension letter in advance of meeting someone subject to investigation, in case that action is required. As the disciplinary progressed in Autumn 2017, errors were made by the Respondent in the process but were rectified on the whole after the Claimant complained. There were some failings with regard to the disciplinary meeting in that the Claimant was not able to call witnesses/access emails. A more reasonable approach would have been to explore her requests in advance, so that the Claimant could access information in a controlled manner and be fully prepared to answer her case. The Claimant could and should have been informed by the Respondent that she could ask to call witnesses to attend the hearing, as is suggested in the ACAS Code on Disciplinary and Grievance. The Claimant's grievance was considered, and a response provided. Neither the grievance or the disciplinary outcome were appealed. In light of the Claimant's concessions about swearing and the narrowed scope of the allegation for which she was eventually disciplined, we do not consider the procedural errors negatively affected the outcome. Not having exercised the right of appeal the internal

process was not exhausted. In the circumstances we do not consider there was a failure to provide a fair disciplinary process.

54. The Claimant transferred hotel and continued to work without issue from November 2017 to April 2018. The second disciplinary process started in March 2018 as a result of Stacey's complaint. There is a duty on the Respondent to investigate complaints, regardless of whether events complained of happen inside or outside the workplace if they impact employees whilst they are working. Based on the weight of evidence provided by Stacey and Dina, the Respondent had no choice but to investigate. The questioning at investigation meeting may have been embarrassing but it was necessary in order to allow the Claimant to give her version of events. We do not consider there was a breach of contract with regard to the way in which the fact finding was conducted on 4 April 2018; the meeting and its content was timely and appropriate. The Respondent did not misconstrue the Claimant's friendship with Stacey; they acted on her complaint.
55. We conclude that the Claimant affirmed the breach of contract which occurred in July/September 2017; the Claimant decided to move on and continue to work, in doing so she acted as though bound by her contract despite the Respondent's earlier breach. The breaches of contract were not revived at the point of resignation because there was no breach or last straw event on 4 April 2018. The Respondent's actions on that date were appropriate in the circumstances, they had reasonable and proper cause for holding the fact finding meeting and asking the questions.
56. Additionally, resignation was not expressed as being in response to the breach of contract in 2017; it was said to be in response to the investigation in April 2018.
57. The constructive unfair dismissal complaint must be dismissed.

### **Direct discrimination**

58. Our factual findings deal with the majority of the discrimination complaints; we conclude that there was no less favourable treatment because of sexual orientation.
59. The transfer was a decision made by Mr Huckridge, rather than Mr Bridle. In any event the Claimant's own case is that she worked at Queen Street with no issue for 5 months [57].
60. Support for the Claimant in 2017 on promotion and workload was inadequate but we reject the suggestion that Mr Bridle was motivated by discrimination. We are satisfied that treatment complained of occurred for a

non-discriminatory reason; the allegations made by colleagues in the first disciplinary and the Claimant's concession about swearing, there is a non-discriminatory explanation for the transfer. There is some force in the Respondent's submission that if Mr Bridle was hostile or prejudiced towards the Claimant, that he would likely have pursued all allegations to first disciplinary, including the alleged racist remarks. We consider the fact that these allegations were dropped is relevant to an assessment of Mr Bridle's motivation towards the Claimant.

61. As for the allegations with regard to Stacey's complaint and their friendship, our conclusions are that the Respondent took necessary steps in response to a complaint from a colleague supported by external evidence. The questions posed at fact finding meeting on 4 April 2018 were necessary in order to investigate and arose from the substance of the complaint. There was no less favourable treatment. We are satisfied that had a similar complaint been made about Dina or a hypothetical comparator they would not have been treated in any different way. The treatment complained of did not relate to the Claimant's sexual orientation but was in response to Stacey's complaint.

## Harassment

62. The Claimant complained of treatment during the disciplinary process, which started on 15 September 2017. Whilst we accept that this treatment was unwanted, we rely on our findings above. The disciplinary process could have been handled better by the Respondent, and the sanction of final written warning may be harsher than some managers would have imposed in the particular circumstances, but we reject the suggestion that the warning was given in bad faith because of the concessions made by the Claimant.
63. Acts of harassment must relate to a protected characteristic. We conclude that there was no link between the acts complained of and sexual orientation. The Claimant may feel the treatment was unreasonable at times, but that is different to harassment.
64. For the reasons given above, we reject all complaints of harassment. Objectively viewed there were non-discriminatory reasons for actions complained of which did not relate to sexual orientation in a prohibited manner.
65. We note the Respondent's submissions about time limits, but we do not address them because of the findings already made. All complaints are dismissed.

---

Employment Judge S Davies  
Dated: 3 June 2019

REASONS SENT TO THE PARTIES ON

.....3 June 2019.....

.....  
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS