



EMPLOYMENT TRIBUNALS

Claimant: Miss C Conway

Respondent: Oxford Business College UK Limited

Heard at: Reading **On:** 17, 18 April and (in chambers) 13 June 2019

Before: Employment Judge Gumbiti-Zimuto
Members: Miss SP Hughes and Mr J Appleton

Representation:
For the Claimant: In Person
For the Respondent: Mr S Joshi (Solicitor)

RESERVED JUDGMENT

The claimant's claims are not well founded and are dismissed.

REASONS

1. In a claim form presented on the 25 September 2017 the claimant made a complaint of unfair dismissal, direct discrimination on the grounds of sexual orientation, and being subjected to detriment because she made protected disclosures. The respondent defends the claimant's complaints.
2. On 13 June 2018 the parties attended a preliminary hearing at which a case management discussion took place resulting in the issues being identified. The parties have agreed that the issues as set out by Employment Judge Lang are the issues for us to determine in this case.
3. The claimant gave evidence in support of her own case. The respondent relied on the evidence of Dr Padmesh Gupta, Ms Titiksha Shah, Mrs Gerry Takamura. All the witnesses produced written statements as their evidence in chief. We were also provided with a trial bundle of 711 pages of documents and a further supplementary bundle of 39 pages. From these sources we made the following findings of fact.
4. The claimant was employed as an Academic Coordinator by the respondent from 9 September 2015 until 5 May 2017. The claimant was later promoted to Academic Coordinator and Foundation Programme

Manager. The claimant was responsible for managing the English Language programmes and Compliance Officer.

5. The claimant had previously been employed by the respondent on a zero-hours contract as an academic tutor from about February 2013 until January 2015.
6. The claimant had not been subject to any prior disciplinary action.
7. In the summer of 2016, following a conversation with Dr Padmesh Gupta, the respondent's Managing Director, the claimant became aware of the possibility of the respondent recruiting students under the age of 18. The claimant states that she informed Dr Gupta that the College would be in breach of Safeguarding laws if it did so. In November 2016 the claimant discovered that the respondent had recruited students who were under 18 and in an email dated 24 November 2016 set out the respondent's legal obligations and duty of care in respect of the students under the age of 18.
8. The respondent accepts that there are legal and regulatory requirements in the case of students under 18 that not required for older students but take issue with the claimant's assertion that recruiting students under 18 is unlawful. It is not unlawful.
9. The claimant's evidence was that she explained that international students under 18 required special safeguarding measures and that the respondent should have these in place. The claimant states that she told Dr Gupta that the respondent was blatantly breaching child protection and safeguarding rules, advising him that the respondent was likely to be in breach of child protection laws.
10. Dr Gupta does not accept that a conversation in the terms suggested by the claimant ever took place.
11. Also, in the Summer 2016 the claimant, who is gay, informed colleagues about her plan to propose marriage to her same sex partner.
12. On 30 August 2016 the claimant was invited to attend a meeting with Dr Gupta. The email inviting the claimant had a subject line reading: "Review". The body of the email read stated: *"Dr Gupta has taken over the management of compliance and wants to meet with you and I and look at the work, amount done, demands etc. This is not an appraisal in anyway but an informal chat between thee of us regarding volume of demands from different auditing bodies... As you are way of Thursday and Friday it can only be done tomorrow, do you have time in the afternoon? May 3:00? You don't need to prepare anything but your spreadsheet with all your compliance tasks might help us get a better picture. Any questions do let me know."*
13. The respondent subsequently produced notes of this meeting (p162). The notes record observations being made about the claimant's work needing

“too many checks”, not “up to standard”, requiring “closer attention to detail ... for public documents”. The notes record the claimant providing explanations, including, that “she is not given enough time for the preparation of documents”, that she was providing support to Mrs Takamura in the absence of a member of staff and that she does not get enough support.

14. On the 14 September 2016 the claimant was invited to a further meeting with Dr Gupta and Mrs Takamura. The invitation stated: *“The purpose to discuss new job role for academic assistant to fill in Kavita’s position.”* The meeting took place as scheduled and the respondent has subsequently produced notes of this meeting (p163).
15. The notes record that the purpose of the meeting was for a *“discussion on job roles as restructuring is needed since Kavita’s departure.”* Around this time the respondent had dismissed Kavita an employee doing administrative work. Dr Gupta is recorded as stating that there is an ongoing issue about the claimant’s *“QAA coordination work”* and that the principal was not satisfied with the standard of the claimant’s work. It was suggested that the claimant work full-time with Mrs Takamura taking on the work that had been done by Kavita but on a *“higher level”*. The claimant protested that the work was junior administration/personal assistant level and did not require the claimant’s qualifications and skills. There was a discussion about the claimant’s sick leave and days off. The claimant denied that it affected her ability to perform. The notes conclude with the observation: *“PG and Gerry both said that these were just thoughts and if Carmel is happy where she is, we will go for a junior staff position. Carmel to think and come back by end of next week- 23rd Sept.2016”*.
16. In September 2016 the claimant became engaged to her same-sex partner. The claimant states that: *“I feel that my engagement triggered senior management to subject my work to a massive amount of scrutiny, as well as overloading me with work, and failing to take action to do anything about inadequate resources. SMT did not like an openly gay staff member, as the College’s income relied heavily on Middle Eastern students.”*
17. The evidence of Ms Shah, which was not challenged by the claimant, was that she has known the claimant for many years and that the claimant was open about her sexual orientation: It was common knowledge. Further there was evidence that the respondent had for a number of years employed a gay man who was open about his sexual orientation.
18. The claimant makes a direct link between the offer of Kavita’s role and the announcement of her engagement. The claimant states that in both the meetings, 31 August 2016 and 14 September 2016, there was no mention of the claimant’s performance being reviewed. The claimant further observes that instead of recruiting a junior staff position as stated at the 14

September 2016 the respondent in fact recruited to the position of Vice Principal and promoted Mrs Takamura to the role of Principal.

19. In November 2016 the claimant discovered that the respondent had recruited students under 18 years old. On 24 November 2016, the claimant sent an email to the senior management team (p175). In her statement the claimant says that she stated that the respondent "*should not have recruited children and that the College was in breach of safeguarding requirements*". This is not stated in the email that we have been shown, the email sets out the respondent's duty of care and legal obligation to and in respect of students under 18. The claimant did not receive a reply to her email.
20. The claimant says she was placed under immense pressure, overloaded with work, continuously given increasing duties without taking any measures to alleviate the failure to provide adequate resources. This resulted in the claimant suffering stress.
21. The claimant states that an external quality nominee and a member of the senior management team carried out an audit which included a review of the quality of the claimant's work. The claimant reports that the external quality audit found that her workload was, "*far too large*". The claimant says that no action was taken by management to alleviate this in fact more work was added to her workload. Dr Gupta accepted that the claimant had a large workload at the time but stated that the workload was increased by the claimant's absences.
22. The claimant states that on several occasions she asked for help and to sort-out the, "*chaotic filing system*". The claimant states that the external quality audit agreed that the respondent's filing system was not fit for purpose. The respondent's chaotic and unfit filing system made it extremely difficult for the claimant to do her job. It was accepted on behalf of the respondent that the claimant had raised the issue of the filing system.
23. In January 2017 the claimant was asked go on to a zero hours contract. She refused. The respondent's case is that the claimant was offered a zero hours contract because her attendance was poor, the claimant had frequent sickness related absences and was not punctual, the respondent wanted to retain the claimant but wanted to see if working on a freelance basis would have any appeal. The respondent's position was that they were exploring ways to accommodate the claimant's desire to work fewer days.
24. In about January/February 2017 the position of Academic Manager was advertised. The claimant did not apply for the role.
25. In February 2017, the claimant complains that she was refused the opportunity of attending HESA training by Dr Gupta. The claimant says the training was essential for successfully doing her job. Dr Gupta said

that the budget could not extend to sending the claimant: two other staff members were to attend the training and would debrief the claimant on returning from training. Later, when one of the nominated staff was planning to leave the respondent's employment, Dr Gupta agreed to send the claimant on the training. The respondent states that the original decision not to send the claimant on the training was justified because the claimant had received training and also because of the claimant's attendance record it was important that someone else from the admissions department went on the training so that they could cover the claimant's compliance duties in her absence.

26. The extent of the respondent's absences was contentious between the parties. The claimant states that she did not have a poor attendance record. It was agreed between the parties that over the relevant period the claimant had about 8 days sickness and 3 days compassionate leave.
27. The claimant's first Appraisal should have taken place in about March/April 2016, however the Principal of the College (at that time David Foggs) did not carry out the appraisal despite the claimant requested the appraisal take place on several occasions. The claimant completed a pre-appraisal form in which she had requested Compliance Training.
28. In February 2017, Dr Gupta carried out the claimant's first appraisal. The claimant again made a request for Compliance Training. Dr Gupta stated that at around this time he was monitoring the claimant's work closely because of the errors arising in her work.
29. On 23 March 2017, Dr Gupta notified the claimant that she was required to attend a disciplinary hearing. The claimant requested time to prepare for the hearing and the hearing took place 30 March 2017. The letter made reference to the review meetings of 31 August 2016 and 14 September 2016 and "*a letter of concern ... related to your continuously neglecting instructions from Dr Gupta.*" The letter set out a number of issues of concern. The claimant was informed that if she was unable to provide a satisfactory explanation for the matters of concern her employment may be terminated. The claimant was informed that she was entitled to be accompanied by a fellow employee.
30. At the disciplinary hearing each of the 6 points of concern were discussed with the claimant. The result of the disciplinary hearing was a decision to dismiss the claimant. On 7 April 2017 Dr Gupta wrote to the claimant setting out the grounds for the decision to dismiss. The letter set out the claimant's response to each allegation and Dr Gupta's conclusions on each of the points discussed.
31. On 14 and 15 April 2017, the claimant wrote to the respondent requesting an appeal against the decision of the disciplinary hearing and setting out the basis of her appeal. On the 18 April 2017 the claimant was informed that "*an independent person will hear your appeal*". The claimant was told the appeal would take place on the 9 May 2017. The claimant was

however unable to attend on the date “*due to severe mental stress*”: the claimant’s doctor confirmed in writing that the claimant was “*currently too stressed and distressed to attend the planned appeal*”. The appeal meeting was postponed.

32. The appeal was initially rearranged for the 17 July 2017 to be conducted by Tariq Khuja. The claimant objected to him because he had a long-standing commercial relationship with the respondent and she did not consider that he could be considered independent. On the 17 July 2017, the claimant attended to find that the appeal had been postponed. Arrangements were subsequently made for the appeal to be heard by Stephen Clarke on the 26 July 2017.
33. The claimant’s appeal hearing took place on the 26 July 2017. The note taker at the appeal was Mrs Takamura. On the 10 August 2017 Mrs Takamura sent the claimant an email attaching notes of the appeal meeting. There followed correspondence between the claimant and Mrs Takamura in which the claimant pointed out that the notes that she had been provided were not an accurate record of the meeting. A set of accurate notes were eventually produced.
34. The claimant states that she has not received the outcome of her appeal, however the respondent contends that the appeal outcome was sent to the claimant on the 4 September 2017. The appeal outcome recommendations do not expressly deal with the decision to dismiss the claimant but do make recommendations in the following terms: “*A. If OBS did not actively discriminate against Ms Conway after her ‘coming out’ then as a matter of courtesy a written apology should be issued to her; B. OBS should provide a good reference (when required) for Ms Conway since it is noted that she had received noteworthy praise for her role prior to the adverse and alleged unpleasant period leading up to the dismissal.*”

The claimant’s submissions

35. The claimant says that she was automatically unfairly dismissed because of whistle blowing as the Respondent breached safeguarding obligations: “*I was terminated because of my disclosure and punished by my employer because of these disclosures.*” The claimant suffered detriments because she made protected disclosures. These detriments included being subjected to uncooperative behaviour by senior management, other staff; by attempts to redeploy her - including being asked to accept junior position, and later being asked to accept a zero-hour contract.
36. The claimant says that she refused these offers and the respondent “*upped-the-anti against me, over loading me with work, and making sure to take no steps to ensure that I had the adequate resources to be able to complete my job.*”
37. The claimant is gay and says that as result she suffered discrimination was harassed and victimised.

38. The claimant also provided the Tribunal with detailed written submissions which we have also taken into account.

The respondent's submissions

39. The respondent provides the Tribunal with written submissions which we have taken into account. The respondent denies that the claimant made protected disclosures and contends that the action taken in respect of the claimant was because of genuine concerns about her performance.

Tribunals Conclusions

40. Did the claimant make one or more protected disclosures? A “protected disclosure” means a qualifying disclosure which is made by a worker (section 43A Employment Rights Act 1996 (ERA) to his employer (ERA 43C). A “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (section 43B (1)(b) ERA).

41. There are two alleged disclosures the claimant relies upon. The first is that in August 2016, she disclosed information to the managing director that the respondent would be in breach of safeguarding laws if it recruited underage students as it was only allowed to recruit students who were over 18 years of age. The college did not have the appropriate safeguarding measures in place to recruit under 18-year olds. She believed that this tended to show that the respondent was likely to fail to comply with a legal obligation to which it was subject, namely safeguarding laws and child protection laws. She believed the disclosures were made in the public interest.

42. The second protected disclosure is that on 24 November 2016, the claimant disclosed information by email to the senior management team. She had become aware that the college had recruited underage students and said in the email that they should not have done this as they did not have the correct measures in place to comply with their duty of care to under 18 years olds. She pointed out that the college was not allowed to recruit children. She believed that this information tended to show that the college was failing to comply with a legal obligation to which it was subject, namely child safeguarding and child protection laws and she believed that this was made in the public interest.

43. The respondent denies that the claimant made protected disclosures. The respondent states that there was no disclosure of information that tended to show that the respondent was in breach of any legal obligation. It is denied that the claimant reasonably believed that the disclosures were necessary in the public interest.

44. The claimant's evidence is that in August 2016 she disclosed information to the managing director. Other than the claimant's evidence there is no direct evidence of such a disclosure being made by the claimant. The disclosure is denied by Dr Gupta. The claimant's evidence in our view does not show that there was any disclosure of information that tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. The claimant at best in our view informed Dr Gupta that the respondent would be in breach of safeguarding laws if it recruited students under the age of 18 without fulfilling out the respondent's legal obligations and duty of care in respect of the students under the age of 18.
45. This view appears to be supported by the fact that the claimant in November 2016, after finding out that there had been a recruitment of students under 18, set out the respondent's obligations in writing. The email of 24 November 2016 does not state that the respondent is in breach of its obligations it set out the obligations. In the view of the Tribunal this was the claimant setting out the respondent's obligation to ensure that it complied with its obligations towards a student under 18. This is what the claimant would be expected to do in the due performance of the role in which she was employed as compliance officer. This was not a protected disclosure.
46. In coming to this conclusion, we have considered whether in fact the Respondent was in breach of its obligations in respect of the student under 18. We note the respondent's witnesses denied that they acted unlawfully. We also note that the claimant now is adamant that the respondent was in breach. It is in our view significant that the contemporaneous correspondence does not suggest, as the claimant states, that the respondent was in breach of its obligations as opposed to setting out the nature of the respondent's obligations.
47. If the Tribunal's conclusion that there was no protected disclosure is wrong, we would have concluded that the claimant in making the disclosure was acting in the public interest.
48. The detriments that the claimant relies on are that in September 2016, she was asked to take a junior position as an academic assistant to replace a colleague who had been dismissed. It is not in dispute that this occurred. It is also not in dispute that in December 2016, the claimant was offered a zero hours contract. These matters in our view are capable of being a detriment.
49. The claimant's case is that a promotion was withheld from her. She contends that the role that had been offered to her in September 2016 was converted to a more senior role and was given to an external candidate in approximately February 2017 and that she was not offered the role. This version of events is disputed by the respondent.

50. The conclusion of the Tribunal is that on the 14 September 2016 the claimant was invited to a meeting with Dr Gupta and Mrs Takamura to discuss new job role. This would have involved the claimant taking on tasks that had been carried out by an employee who had recently been dismissed (Tavita). The respondent was looking to carry out a restructure involving the claimant working full-time with Mrs Takamura and taking on the work that had been done by the dismissed employee but on a higher level. The claimant refused because she considered the work was junior administration/personal assistant level and did not match the claimant's qualifications and skills. Following the claimant's refusal of the restructured role the respondent recruited another employee to fill the role of Academic Manager. The position was advertised in about January/February 2017: The claimant did not apply for the role. The Tribunal does not accept that the claimant was subjected a detriment in respect of this.
51. The claimant further contends that training opportunities were withheld from her. It is accepted that the claimant was initially denied the opportunity to attend HESA training in January or February 2017 but was later able to attend the training because somebody else had left the organisation. This is in our view capable of being a detriment.
52. We would not have concluded that the claimant was subjected to the detriments identified because she made a public disclosure. When the claimant was asked to take on the duties from the role that had been covered by the dismissed employee, the respondent was seeking to carry out a restructure which would have involved her working at a higher level than the dismissed employee. There was no connection with any protected disclosure relating to under 18 students. The offer of a zero hours contract was not because the claimant made a disclosure but because the claimant was perceived by the respondent, perhaps even wrongly, as having poor attendance and it was considered a convenient way to address this. It was not because she made a protected disclosure. The reason that the claimant was not initially placed on the HESA training was because the respondent considered that she had received training and by sending other staff on the training it would provide other staff the skills to cover for the claimant. It was not because the claimant had made a protected disclosure.
53. What was the reason for the claimant's dismissal? A reason for dismissal is a set of facts known to the employer or beliefs held by him which cause him to dismiss the employee. The claimant states that she was dismissed because she made a protected disclosure. Alternatively, the claimant states that she was dismissed because of her sexual orientation.
54. The respondent has given an explanation of the reasons for the claimant's dismissal. Dr Gupta at a disciplinary hearing found that there were a number of issues of concern with the claimant's performance that the claimant was unable to provide a satisfactory explanation, and this was the reason he terminated the claimant's employment. The claimant was

informed that she was entitled to be accompanied by a fellow employee. Dr Gupta, at the disciplinary hearing, discussed his areas of concern with the claimant and in his letter of 7 April 2017 set out the reasons for his decision. The Tribunal is satisfied that there were genuine concerns about the claimant's performance and that they were the reason for the claimant's dismissal.

55. The claimant has relied on the protected disclosures, we have not found that she made protected disclosures. Even if we had found that the claimant made protected disclosures they were not the reasons for the claimant's dismissal. This was clearly explained by the respondent. The gap between the purported disclosures and the claimant's dismissal indicates that it is not likely that there was any connection between the disclosures and the dismissal. The Tribunal have considered the claimant's contention that the respondent was "*papering her file*". We reject that and are satisfied that the respondent had over time genuine concerns about the claimant's performance.
56. The claimant has also relied on the contention that her sexual orientation was the reason for her dismissal. The claimant says that attitudes towards her turned for the worse after she announced her engagement to her same sex partner. The claimant says that the Senior Management Team "*did not like the like an openly gay staff member*". The Tribunal note that this was strenuously denied by all the respondent's witnesses. The Tribunal note there is evidence that other staff, previously employed by the respondent, who held a senior position was treated equally and involved to a full extent in life at the College without any discrimination. The claimant's sexual orientation has been known throughout her employment with the respondent, the claimant has been fully involved in the life of the College without any discrimination. The claimant and her partner had participated as a couple at the respondent's social occasions. The claimant suggested that it was a desire to maintain its commercial position attracting students from Middle East countries that informed the respondent's changed attitude following the announcement of the claimant's engagement. Beyond the claimant's assertion of such a position there is no evidence from which we have been able to conclude that the claimant's engagement was of any concern to the respondent at all.
57. Sexual orientation is a protected characteristic (section 4 Equality Act 2010 (EqA)). A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others (section 13(1) EqA). An employer (A) must not discriminate against an employee of A's (B) as to B's terms of employment; in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service; by dismissing B; by subjecting B to any other detriment (section 39(2) EqA). On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case (section 23 (1) EqA).

58. The less favourable treatment that the claimant alleges are her dismissal; offering her a junior position in September 2016; offering her a zero hours contract in December 2016; withholding training opportunities in January/February 2017 and withholding a promotion in January/February 2017.
59. *Dismissal:* For the reasons previously stated we are of the view that the claimant was dismissed because of the respondent's genuine concerns about her performance.
60. *Offering the claimant a position in September 2016:* The claimant seeks to rely on Alice Mitchell as a comparator. Alice Mitchell was recruited to the position of Academic Manager following an advertisement of the role in January/February 2017. The circumstances of Alice Mitchell and the claimant are materially different. Alice Mitchell applied for and was successful in obtaining the role of Academic Manager. The claimant did not apply for the role.
61. At a meeting on the 14 September 2016 the claimant was offered a revised role which included taking on the duties of an employee who had been dismissed. The reason that this offer was made was because the respondent was looking to carry out a restructure involving the claimant working full-time with Mrs Takamura, taking on work that had been done by the dismissed employee but on a higher level. The claimant's sexual orientation was not a factor in the decision of the respondent.
62. *Offering the claimant a zero hours contract:* The claimant has not adduced any evidence of a comparator in relation to this aspect of her claim. At the case management discussion, the claimant had indicated a comparator but adduced no evidence at the hearing.
63. The offer of a zero hours contract was made to the claimant because the claimant was perceived by the respondent as having poor attendance and it was considered a way to address this, by changing her contractual relationship in a way that would allow the claimant to take the time off work that she was believed to desire. The claimant rejected the offer and the matter was not pursued further. The claimant's sexual orientation was not a factor in the decision to make the offer.
64. *Withholding training opportunities in January/February 2017:* The claimant relies on the circumstances of Juliana Raza and Laura Nisal, colleagues who were initially nominated for a place on the HESA training. The claimant relies on the fact that they were not gay: "*straight colleagues were sent on training*". The claimant contends that she has shown that there was less favourable treatment on the grounds of her sexual orientation.
65. The reason that the claimant was not initially placed on the HESA training was because the respondent considered that she had received training and by sending other staff on the training it would provide other staff the

skills to cover for the claimant. The claimant's sexual orientation was not a reason why the claimant was not initially named to attend the training.

66. *Withholding of promotion in January/February 2017*: There was no less favourable treatment of the claimant as alleged. The respondent advertised the role of Academic Manager the claimant did not apply for the role. The claimant had previously informed the respondent that she was not interested in a role which involved covering her dismissed former colleague's duties.
67. The claimant contends that she suffered unwanted conduct related to a protected characteristic. Section 26 EqA provides that a person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has that effect each of the following must be taken into account: the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.
68. The unwanted conduct which the claimant complains of is unreasonable scrutiny of the claimant's work from September 2006 through to April 2017. Overloading the claimant with work and failing to provide adequate resources even after an external audit in December 2016. Offering the claimant a junior position. Offering the claimant a zero hours contract. Withholding training from the claimant. Withholding promotion from the claimant. Failing to provide accurate notes of the appeal hearing.
69. For the reasons previously set out we do not consider that the respondent's conduct amounts to matters capable of being harassment in respect of the: offering the claimant a junior position; offering the claimant a zero hours contract; withholding training from the claimant; and withholding promotion from the claimant. The Tribunal consider there were legitimate reasons why the respondent took the action they did in respect of each of those matters. The Tribunal do not consider that the respondent withheld promotion.
70. In respect of the claimant's complaints that the respondent carried on unreasonable scrutiny of the claimant's work from September 2006 through to April 2017 and overloaded the claimant with work, failing to provide adequate resources, even after an external audit in December 2016. We do not consider that is harassment for the following reasons.
71. Dr Gupta had genuine concerns about the claimant's work, he conducted review meetings with the claimant on 30 August 2016 and 14 September 2016. The concerns that Dr Gupta had about the claimant's work were expressed at the meetings. The claimant was told of the concerns about her work. Dr Gupta accepts that he kept close eye on the claimant's work which he considered needed a lot of checking and had too many mistakes. The claimant's role as compliance officer meant that she prepared

documents which were to be submitted to outside bodies for formal regulatory purposes.

72. The respondent's conduct did not have the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
73. The respondent's conduct was unwanted conduct and the claimant says it had the effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether the conduct has that effect we must be taken into account: the perception of the claimant; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.
74. The conclusion of the Tribunal is that the concerns of Dr Gupta and the senior management team were genuine. The manner in which the claimant's work was scrutinised in our view was not excessive or oppressive. The requirement for the claimant to create documents containing accurate information for outside bodies was essential for the respondent.
75. The claimant's workload was heavy. The claimant lays the blame at the respondent who she says just made more demands on her. The respondent states that the claimant's way of working and absences created a situation where the claimant's workload was very heavy. It was accepted that an independent audit of the respondent found that the respondent had chaotic filing. We are satisfied that this would have contributed to the claimant's heavy workload. The Tribunal accept that this is capable of amounting to harassment.
76. Tribunal does not consider that the reason for the state of the claimant's work was related to her sexual orientation. The chaotic filing was due to poor systems and the overload of work due to a lack of support was not in any sense as a result of the claimant's sexual orientation. There may well have been shortcomings in the respondent's organisation which led to an increase in the claimant's workload however we are satisfied that it was unrelated to the claimant's sexual orientation.
77. Failing to provide accurate notes of the appeal hearing. The claimant has not explained why the exchange that she had with Mrs Takamura about the accuracy of the notes of the appeal is harassment related to sexual orientation. The evidence presented to us shows the claimant submitting challenges to the notes but it does not suggest that the exchange was in any sense affected by or related to the claimant's sexual orientation.
78. The claimant's complaints are in our view not well founded and the claims are therefore dismissed.

Employment Judge Gumbiti-Zimuto

Date: 21 June 2019

Sent to the parties on:

.....
For the Tribunals Office