



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH by CVP

BEFORE: Employment Judge Truscott QC
Mrs S Dengate
Mr S Townsend

BETWEEN:

Ms N Payne

Claimant

AND

**(1) Corinthian Benefits Consulting Limited
(2) Mr L French**

Respondents

ON: 1, 2 and 3 June 2021

Appearances:

For the Claimant: Ms N Gyane of Counsel

For the Respondent: Ms A Johns of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is:

1. The claims of direct sex discrimination, contrary to sections 11 and 13 of the Equality Act 2010 are not well founded and are dismissed;
2. The claims of direct age discrimination, contrary to sections 5 and 13 of the Equality Act 2010 are not well founded and are dismissed;
3. The claims of harassment, related to the claimant's sex, contrary to sections 11 and 26 of the Equality Act 2010 are not well founded and are dismissed;
4. The claims of harassment, related to the claimant's age, contrary to sections 5 and 26 of the Equality Act 2010 are not well founded and are dismissed.

REASONS

PRELIMINARY

1. The Claimant brought claims of sex and age discrimination and harassment.
2. She gave evidence on her own behalf and was represented by Ms N Gyane, Barrister. She led the evidence of Mr Philip Nimmo, her partner, Ms Danielle Watson and Ms Freya Bannochie. The Respondent was represented by Ms A Johns, Barrister, who led the evidence of Mr Robert MacGregor, Managing Director, Mr Lee French, Mrs Ann Woolfe and Ms Olivia Devereese.
3. There was one volume of documents to which reference will be made where necessary. The numbering in the judgment refers to the pages in the electronic bundle except where otherwise stated.

Issues

The issues were amended slightly for the purposes of this hearing to the following:

1. Direct discrimination/harassment:

- 1.1. On or about the **14 November 2019** did the Second Respondent inform the Claimant that CPC and CBC would be looking for two executive assistants, commenting that the First Respondent would be looking for *“a young driven person a bit like the young lads on the client support team or what I would really like is an Anne Hathaway character from The Devil Wears Prada, not a mum”*, and whilst saying the last three words of this sentence, gesticulating dismissively towards the Claimant. (POC: para 7).
 - a) If so, was this comment directly discriminatory towards the Claimant, on the grounds of her sex and/or age?
 - b) If so, does this comment constitutes harassment related to the Claimant’s sex and/or age? Did the comment have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Did the comment have the effect of violating the Claimant’s dignity of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Was it reasonable for the conduct to have that effect?
- 1.2. On or about **15 November 2019**, the Second Respondent copied the Claimant into an email conversation about booking train tickets, commenting *“Good old Nikki...”*.
 - a) Was the use of this phrase towards the Claimant directly discriminatory on the grounds of her age?
 - b) Does the use of this phrase constitute harassment relating to the Claimant’s age? Did the comment have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading,

humiliating or offensive environment for the Claimant? Did the comment have the effect of violating the Claimant's dignity of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Was it reasonable for the conduct to have that effect?

- 1.3. On or around **29 November 2019**, did the Second Respondent encroach upon the Claimant's personal space, wag his finger in her face and, with reference to buying more tea bags say "just do it" in an aggressive and patronising fashion? (POC: para 13)
 - a) If so, was this conduct direct discrimination on the grounds of the Claimant's sex and/or age?
 - b) If so, does this conduct constitute harassment relating to the Claimant's sex and/or age? Did the comment have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Did the comment have the effect of violating the Claimant's dignity of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Was it reasonable for the conduct to have that effect?

- 1.4. On or around **6 December 2019**, did the Second Respondent inform the Claimant, in front of her colleagues, that it was her job as Office Manager to always make sure there was enough milk? Did the Second Respondent call the Claimant into his office and shout at her stating that he was a Director and demanded her respect? Did the Second Respondent shout at the Claimant and say that she was getting paid very good money for her job? Did the Second Respondent say that the Claimant sometimes did a good job? Was the Second Respondent trying to upset the Claimant? Did the Second Respondent say that he was sick of the Claimant's temperamental outbursts? Did the Second Respondent say that the Claimant was rude and that he would need to call a meeting? Did the Second Respondent says that the Claimant was rude and that he would need to call a meeting? Did the Second Respondent tell the Claimant to go home? (POC: para 14-19)
 - a) If so, was this conduct an act of direct discrimination on the grounds of the Claimant's sex and/or age?

- 1.5. Dismissal
 1. What was the reason for the Claimant's dismissal?
 2. Was the Claimant's dismissal because of her sex and/or age?
 3. Was the Claimant's dismissal an act of harassment related to her sex and/or age?
 4. Was the First Respondent required to follow any process when dismissing the Claimant? If so, what process, if any, did the First Respondent follow when dismissing the Claimant?

Findings of Fact

1. The Claimant was employed as Office Manager on 2 February 2018. As part of her role as Office Manager the Claimant was required to support the management

team and Directors of both Corinthian Pensions Consulting (CPC) and Corinthian Benefits Consulting (CBC).

2. The Respondent is an employee benefit company which specialises in providing small and medium businesses with advice and services in respect of employee benefit schemes.

3. The Claimant reported to Roger Moss who managed the Client Support team. He was made redundant on 9 November 2018, at which point, the management of the Client Support team passed to the Second Respondent, Mr Lee French who was appointed as a Principal Consultant in March 2015 and made a Director in April 2017. In April 2019, the Claimant's reporting line changed to Mrs Ann Woolfe, as she took over the management of the Client Support team.

4. The Just Group acquired Corinthians Pension Consulting Ltd (CPC) in August 2018. The Claimant's contract novated to the First Respondent [152-153].

Relationship with Mr MacGregor

5. Mr MacGregor is the Managing Director of the Respondent. There were occasions when the Claimant felt the need to ask for a meeting with him to discuss a perceived slight by him. There was an instance when she felt that he had not acknowledged her presence [150-151]. On each occasion, despite it not being intentional, he acknowledged her feelings and apologised. Following these meetings, their relationship was somewhat strained.

Relationship with Mr French

6. The Claimant got on well with Mr French from the start of her employment until around November 2019. They shared banter and discussed television and films they had watched. Her WhatsApp chat with Mr French from 8 June 2018 to 22 November 2019 was friendly [146-148] and on 1 July 2019 she added him to a WhatsApp group to talk about her holiday [149]. She gave evidence of a disagreement with Mr French on 8 November 2018 but the Tribunal did not accept that, if the incident occurred, it was of any materiality.

Claimant's pay

5. The Claimant was recognised as a valued employee by CPC and CBC. Towards the end of 2018, she was offered a pay rise from £25,000 to £26,000 and a bonus of £1,250. After she expressed her dissatisfaction with the offer, it was agreed her pay would increase to £27,500. This was a 10% increase which was more than other employees received [158-159].

Help with workload

6. In mid-2019, the Claimant informed Mrs Woolfe that she was struggling with her workload. The Respondent removed the requirement that she take the minutes of the management meetings in August 2019, thereafter the management team started taking their own minutes of meetings.

7. More significantly, in August 2019, the employer decided to recruit an assistant for each side of the business. It was envisaged that the assistant would take on some of the Claimant's duties to help ease the pressure on her.

8. The Claimant was pleased to hear the proposal. On 4 September 2019, she produced two lists of duties. The first contained the duties of the Office Manager which she would continue to perform [182-183]. The second contained duties that would be better suited to the assistant role [184]. On the second list, the Claimant said: "I think it would suit a junior ... and would really be an opportunity for a young person to expand their skills" [183]. This is the first time the issue of age was raised in relation to the new role.

9. The assistant role was going to attract a salary of £25,000 [200] and be less senior than the Claimant's role.

Meeting to discuss sexism

10. In the exit interview of Ms Bannochie, the issue of sexism in the business was raised. On 9 August 2019, Mrs Woolfe organised a meeting with the female members of staff to discuss whether they felt there was a culture of sexism within the company.

11. The notes of the meeting say: "*None of the attendees voiced any concerns that there was any evidence of sexism*" [175]. Ms Devereese confirmed that this matched her recollection of the meeting. The Tribunal found that this is what occurred.

14 November 2019

12. Mr French stated that the business wanted someone with drive and ambition and used the example of 'the actress in *The Devil Wears Prada*', as he had watched that film over the previous weekend. Ms Devereese asked whether he had meant Anne Hathaway, which he confirmed. The Claimant asked if this was 'because she was young and pretty'. Mr French explained that this was not what he had meant and that instead he was referring to her drive and enthusiasm, which are the terms used on the job descriptions.

13. On 15 November 2019, Mr French was liaising with some colleagues via email regarding the purchasing of some train tickets, in response to the comment that the Claimant would be organising it, he replied 'Good old Nikki [winking smiley face]' [193]. This was meant as a reflection on what she had done and that she was reliable in sorting things like this out. The Claimant replied with 'less of the old!!' to which he replied, 'I knew you'd say that and nearly put that in the email...hahaha' [192-193]. The Claimant then replied saying that she was 'still reeling from the Anne Hathaway comment' [224].

29 November 2019

14. The Claimant alleges that there was an incident between Mr French and her on 29 November 2019, where he encroached upon her personal space, wagged his finger at her and told her that as Office Manager it was her job to make sure that they always had tea and allegedly said to her in an aggressive and patronising manner "just do it".

Mr French says this incident did not take place. The Tribunal accept Mr French's evidence.

6 December 2019

15. On 6 December 2019, Mr French left his office and entered the kitchen area of the office, saw that the Claimant was making drinks for other members of staff and he had not been offered one. He asked the Claimant if he could have a coffee. The Claimant replied, 'we've almost run out of milk' to which he said, 'we'd better ask the Office Manager to get some.' The Claimant shouted at him that she was not the only person who could get milk and it was not her job to do so. The Claimant continued shouting saying 'I'm spinning so many plates and am so busy', to which he replied, 'everyone's busy, including me'. The Claimant rolled her eyes and said 'yeah, really!' He said to the Claimant 'if you want to raise your voice and speak to me in that manner, let's continue in my office' [267].

16. The Claimant and Mr French went into his office and he closed the door. The Claimant continued to shout at him and accused him of being rude and derogatory towards her. He said, 'you shouldn't be speaking to me like that, I'm a Director of the company', the Claimant said, 'I can speak to you how I want'. He asked the Claimant what she thought her job was, as surely replenishing the milk, coffee etc was part of her role. He explained that he, Mrs Woolfe and Mr MacGregor had bent over backwards to try and help her with her workload, hence the vacancy for a Personal Assistant. The Claimant explained that she felt like she was being pulled from pillar to post and was juggling so many things, that milk wasn't top of her list. He asked whether the Claimant needed to prioritise better and said that he'd get the milk. The Claimant said that she would get the milk and stormed out of his office slamming the door behind her. At this point, he called Mrs Woolfe to explain what had happened.

17. After the Claimant returned with the milk, she came back into his office and continued to berate him for several minutes about how rude he was and that he was as rude as Robert (Mr MacGregor) and just wanted a 21-year-old to shout at and be rude to. Mr French stayed quiet and just listened to her. Once the Claimant had finished, he said, 'I have never been made to feel so angry at work and have never been made to feel the way you have made me feel'. He explained that, 'I have never shouted at anyone at work and being purposely rude to people just isn't in my nature, so I completely resent the accusation'. He went on to say that 'I didn't mind what age, or sex people were, I just want them to be able to do their job, so why do you think I want a 21-year-old to be rude to?' The Claimant said that this was how she felt treated and that she was just a skivvy. She said she spent her whole weekends miserable and "*hated working like this*" [202]. Mr French asked what she wanted and she said she did not know. At this point, he asked the Claimant what she wanted, she said she didn't know. He said to the Claimant that she did a good job 'sometimes', the Claimant raised her voice again asking him what he meant by 'sometimes'. He said, 'no-one does a good job all the time. I don't do a good job all the time, Ann doesn't do a good job all the time, Robert doesn't do a good job all the time'. He reiterated that he just wanted people that believe in what they do and to do a good job for the company. He again asked the Claimant what she wanted to happen. The Claimant didn't know and got up and left the office, once again slamming the door behind her [203]. He rang Mrs Woolfe again to update her on what had just happened. Mrs Woolfe suggested that

this could be a disciplinary situation and to check the Staff Handbook. Mrs Woolfe further suggested that he send the Claimant home and say to her that they'd discuss this further and follow up with the Claimant the following week.

18. He left his office and went to the Claimant's desk and asked if he could have a word. They went back into his office and he suggested that the Claimant went home and said that they could discuss matters further the following week. The Claimant replied that she "was going anyway" and that she was going to the Doctors on her way home. The Claimant then left his office.

19. Mr French sent an email to their HR Consultancy asking whether they could have a conference call on Monday 9 December and then sent a WhatsApp message to the CBC Board letting them know about the situation. He had a subsequent call with Mr MacGregor to let him know exactly what had happened and that he would immediately document the exact nature of the incident and made notes [202-203].

20. On the afternoon of 6 December, the Claimant messaged Mrs Woolfe via WhatsApp and asked her to call her. In her conversation with Mrs Woolfe on 9 December 2019, the Claimant said she needed some time to see how she felt and she questioned whether she could work with Mr French again. Her partner said she should just leave.

21. Mrs Woolfe called the Claimant on 12 December and the Claimant said that the company was sexist, ageist and bullying. Mrs Woolfe reported to Mr MacGregor and Mr French that she had asked her if she would like to speak to someone from HR Adviseme (the HR consultants) as they would be completely unconnected, and she said that she thought that she would [205-206]. The Claimant sent Mrs Woolfe a WhatsApp message on Friday 13 December 2019 to say she had been signed off until Christmas/New Year [208]. Ms Julie Nicholds, of HR Adviseme, called the Claimant on 13 December and arranged to speak to her on 18 December 2019. Ms Nicholds reported back to Mr MacGregor, Mrs Woolfe and Mr French that the Claimant was very angry and upset and that she maintained she had done nothing wrong. She claimed that she was the glue that held the two businesses together (Corinthian Benefits and Hub Pension Consulting) and that everybody loved her. She reported that the Claimant said that if Mr French apologised to her, she would consider coming back after Christmas.

22. They instructed Ms Nicholds to speak to the Claimant again the same day to see if she could improve the situation. If she was unable to, they asked her to terminate the Claimant's employment verbally, but to offer her the opportunity to resign as it was so close to Christmas. The Claimant was extremely angry to hear this and refused the resignation offer and said they would have to dismiss her.

23. Ms Nicholds prepared the termination letter and emailed a copy dated 19 December and sent a hard copy in the post to the Claimant [212 – 217]. The reason for the termination was the breakdown of the relationship between the Claimant and Mr French.

SUBMISSIONS

24. The Tribunal heard oral submissions from both parties and received written submissions from each. These are not repeated here but were greatly appreciated by the Tribunal.

LAW

Direct Discrimination

25. Section 13 of the Equality Act 2010 (“EqA”) deals with direct discrimination. It states as follows:

(a) “(1) 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.”

26. Section 23 EqA deals with comparators. It states as follows:

“(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.”

27. It is only if the Tribunal is satisfied that there is less favourable treatment when comparing the treatment of the claimant to what would have been received by the actual or hypothetical comparator, that the test of whether an alleged act was direct race discrimination arises and this requires a consideration of the reason for the treatment.

28. The Equality and Human Rights Commission: Code of Practice on Employment 2011 (‘the Code of Practice’) sets out helpful guidance for carrying out the comparator exercise. As to the identity of the comparator, paragraph 3.23 of the Code of Practice confirms:

The Act says that, in comparing people for the purposes of direct discrimination, there must be no material difference between the circumstances relating to each case. However, it is not necessary for the circumstances of the two people (that is, the worker and the comparator) to be identical in every way; what matters is that the circumstances which are relevant to the treatment of the worker are the same or nearly the same for the worker and the comparator.

29. As to the comparison exercise for a hypothetical comparator, paragraph 3.27 of the Code of Practice confirms:

Who could be a hypothetical comparator may also depend on the reason why the employer treated the Claimant as they did. In many cases, it may be more straightforward for the Employment Tribunal to establish the reason for the Claimant’s treatment first. This could include considering the employer’s treatment of a person whose circumstances are not the same as the Claimant to shed light on the reason why that person was treated in the way they were. If the reason for the treatment is found to be because of a protected characteristic, a comparison with the treatment of hypothetical comparator(s) can be found.

30. In **Amnesty International v. Ahmed** [2009] IRLR 884 Mr Justice Underhill (as he then was) (at para 34) confirmed that where the act complained of is not inherently discriminatory, it can be rendered discriminatory by motivation. This involves an

investigation by the tribunal into the perpetrator's mindset at the time of the act. This is consistent with the line of authorities from **O'Neill v. Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor** [1996] IRLR 372, the Tribunal should ask what is the 'effective and predominant cause' or the 'real and efficient cause' of the act complained about. In **Nagarajan v. London Regional Transport** [1999] IRLR 572, HL, it was stated that if the protected characteristic had a 'significant influence' on the outcome, discrimination would be made out.

31. The crucial question is why the claimant received the particular treatment of which she complains.

32. Where there may be more than one reason for the Respondent's conduct, the question for the Tribunal is whether (in this case), age or sex was the effective cause of the conduct (**Rees v Apollo Watch Repairs plc** [1996] ICR 466 EAT and **O'Donoghue v Redcar and Cleveland Borough Council** [2001] EWCA Civ 701)

33. Paragraph 3.11 of the Code of Practice confirms:
The characteristic needs to be a cause of the less favourable treatment but does not need to be the only or even the main cause.

34. Paragraph 3.13 of the Code of Practice confirms:
In other cases, the link between the protected characteristic and the treatment will be less clear and it will be necessary to look at why the employer treated the worker less favourably to determine whether this was because of a protected characteristic.

35. The burden of proof provisions in relation to discrimination claims are found in section 136 of the EqA.

36. The Court of Appeal, in **Igen Ltd v. Wong** [2005] ICR 931 CA, has authoritatively set out the position with regard to the drawing of inferences in discrimination cases in the light of the amendments implementing the EU Burden of Proof Directive.

37. In **Laing v. Manchester City Council** [2006] ICR 1519 EAT, the Employment Appeal Tribunal held that the drawing of the inference of *prima facie* discrimination should be drawn by consideration of all the evidence, i.e., looking at the primary facts without regard to whether they emanate from the claimant's or respondent's evidence page 1531 para 65. The question is a fundamentally simple one of asking why the employer acted as he did: **Laing** para 63. That interpretation was approved by the Court of Appeal in **Madarassy v. Nomura International plc** [2007] ICR 867 CA at paragraph 69. The Court also found at paragraphs 56-58 that 'could conclude' must mean 'a reasonable tribunal could properly conclude' from all the evidence before it. That means that the claimant has to 'set up a *prima facie* case'. That done, the burden of proof shifts to the respondent (employer) who has to show that he did not commit (or is not to be treated as having committed) the unlawful act, at page 878.

38. Tribunals should be careful not to approach the **Igen** guidelines in too mechanistic a fashion (**Hewage v. Grampian Health Board** [2012] ICR 1054 SC para 32, **London Borough of Ealing v. Rihal** [2004] EWCA Civ 623 para 26).

39. The Court of Appeal has confirmed the foregoing approach under the EqA in **Ayodele v. Citylink** [2018] IRLR 114 CA.

Harassment

40. Under section 26(1), harassment occurs when a person engages in unwanted conduct which is related to a relevant protected characteristic and which has the purpose or the effect of:

violating the worker's dignity; or
creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker.

41. Unwanted conduct covers a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.

42. In **Betsi Cadwaladr University Health Board v. Hughes** EAT/0179/13 (Langstaff P) the EAT considered the recent cases in relation to harassment under section 26 Equality Act and said as follows:

[10] Next, it was pointed out by Elias LJ in the case of *Grant v HM Land Registry* [2011] IRLR 748, that the words “violating dignity”, “intimidating, hostile, degrading, humiliating, offensive” are significant words. As he said “tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

[11] Exactly the same point was made by Underhill P in *Richmond Pharmacology* at para 22:

“... not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

[12] We wholeheartedly agree. The word “violating” is a strong word. Offending against dignity, hurting it, is insufficient. “Violating” may be a word the strength of which is sometimes overlooked. The same might be said of the words “intimidating” etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.

43. In relation to the word “environment” in section 26, in **Weeks v. Newham College of Further Education** EAT/0630/11, the Employment Appeal Tribunal said: “...it must be remembered that the word is “environment”. An environment is a state of affairs”. Words spoken must be seen in context and that context includes other words spoken and the general run of affairs within the particular workplace.

DISCUSSION and DECISION

44. Lest the inclusion of some of the Claimant's evidence in the findings of fact causes confusion, this was done to provide a context for the findings although the Tribunal did not accept the evidence of the Claimant where it conflicted with that of the Respondent's witnesses. The Tribunal considered the general evidence of the relationship between the Claimant and Mr French which was good and the specific evidence of what occurred on each relevant occasion with whatever relevant written material was available.

45. The Tribunal did not ignore the evidence of Ms Bannochie and Ms Watson who spoke generally of a "lads culture" and provided evidence specific to their cases. They did not support the Claimant in the specific allegations which she made. The Respondent was sufficiently concerned at the exit interview of Ms Bannochie that they called a meeting to discuss sexism to which the Claimant did not contribute. The Claimant says [WS paragraph 34]: "*We did raise the issue of the working environment at CPC being sexist, and we discussed the fact that Danielle Watson was not given the opportunity to move to CPC for a role which she was perfect for*". In cross-examination the Claimant said: "*I raised sexism in a quiet way.*" The Tribunal accepted that the Claimant did not raise any concerns about sexism at the meeting. If she did, it would have been noted especially since the sole purpose of the meeting was to discuss whether the staff had any concerns.

Anne Hathaway comment on 14 November 2019

46. The Claimant states in her ET1 that on or about the 21 November 2019 Mr French was discussing the new personal assistant/executive assistant role with her. Mr French disputes the exchange could have been on that date as he had a full days Board Meeting on 21 November and he attended his aunt's funeral on 22 November. He said the conversation took place on 14 November, Ms Devereese (Head of Project Delivery for Hub Pension Consulting) was also present.

47. The Claimant alleges now that on 14 November 2019, Mr French informed her that the Respondent was looking for "a young driven person a bit like the young lads on the client support team or what I would really like is an Anne Hathaway character from the Devil Wears Prada, not a mum" and gestured dismissively towards her. At the time, the Client Support team was made up of two males and four females, each of whom was good at their jobs, so he had no reason to refer to the males in the team. Also, there was no reason for Mr French to refer to mums in this way as many of his colleagues are Mums, as is his own wife and Ms Devereese. Finally, the Claimant alleges that he was flicking his hand towards her, he denies this occurred and the Tribunal accept that he did not. Nor does the Tribunal accept the Claimant's account of the conversation. Mr French said he was looking for someone motivated and full of drive and ambition and referenced the character from The Devil Wears Prada. Ms Devereese supplied the name of the actress, Anne Hathaway, and Mr French agreed. The Claimant commented that this was "*because she was young and pretty*".

48. Mr French's comment about the Anne Hathaway character was not an act of direct discrimination. He did not say it because the Claimant was female and/or

because the Claimant was 54 years old. He said it because he was describing a candidate with motivation and enthusiasm.

49. It was the Claimant who first raised the issue of sex and age in a context where it did not naturally arise. Thereafter each incident is seen by her in that erroneous context.

“Good old Nikki” comment on 15 November 2019

50. There was an email thread on 15 November 2019 [192-194] in which Mr French asked Paul Andrews whether he was going to buy some train tickets. Mr Andrews confirmed he was and said: *“That makes me sound great, it will be Nikki that will be doing it really”*. Mr French responded: *“Good old Nikki”*. The Claimant responded: *“Less of the old !!”* and Mr French replied: *“I knew you’d say that and nearly put it in the email...hahaha”*. The Claimant replied: *“I’m still reeling from the Ann Hathaway comment!”* [224] That was the end of the exchange. The Claimant claims Mr French said ‘get good old Nikki, she will do it’. The Claimant alleges Mr French came out of his office in response to her email to excuse and justify his comment. Mr French disputes this. The Claimant has also alleged that the Managing Director, Robert MacGregor, was present and Mr French’s wife commented that “that could be an HR issue”. The Tribunal concluded that the Claimant’s account did not happen [242, 245 and 246].

51. The comment *“Good old Nikki”* was not an act of direct discrimination or harassment. It was not said because of her age and was not related to her age. It was clear from the context that Mr French was appreciative of the Claimant being reliable and was praising her for doing a good job. It was indicative of an amicable relationship between them. It was not related to her age. It was not reasonable for her to take offence and it is not established that she did.

“Just do it” comment on 29 November 2019

52. The Claimant alleges that on 29 November 2019 Mr French encroached upon her personal space, wagged his finger in her face and, with reference to buying more tea bags, said *“just do it”* in an aggressive way. The Respondent denies this allegation happened at all. The Tribunal accepted the Respondents’ position.

53. The Claimant accepted in cross-examination that even if the situation happened as, she says it did, it was not related to or connected with her age and/or sex. Therefore, her case taken at its highest does not amount to an act of direct discrimination or harassment.

Final day at work on 6 December 2019

54. Mr French’s account of the events of 6 December 2019 [202-203] was accepted by the Tribunal. The Claimant’s description of Mr French being *“extremely angry”* is not accurate; she was the aggressor in the situation. She accepted in cross-examination that she might have been *“louder than normal”*. All six witnesses in the office say it was the Claimant who was shouting, not Mr French [223, 226, 227, 229, 232, 233]. Guy Lashkar described her as *“extremely loud”* with a *“confrontational tone”* and *“quite aggressive in her actions”* [227].

55. The Claimant agreed in cross-examination that she accused Mr French of just wanting “a 21-year-old to shout at and be rude to”. This was the only reference to age in this conversation and it was raised by the Claimant. She said in evidence she did not know why she referred to that age in particular. Mr French’s response to this comment was that he did not mind what age or sex people were and that he just wanted them to be able to do their job.

56. It is noted that the events of 6 December 2019 are pleaded as direct discrimination only. The Tribunal did not accept that Mr French treated the Claimant less favourably because of her sex and/or age. He responded appropriately to the Claimant’s confrontational tone. Mr French’s conduct was not discriminatory although some of his replies were less than helpful in a tense situation.

57. The Claimant’s evidence relating to her conversation with Mrs Woolfe on 12 December 2019 notes show that during the call she said [206]: *“I don’t know if maybe me challenging him offended his masculinity, he’s mentioned before getting young people in. I feel they are sexist, ageist and bullying. After 18 months it’s chipped away at me.”*

58. Mr French had not mentioned getting young people in. It was the Claimant who raised the issue of age:

- (i) in the list of duties on 4 September 2019 [183];
- (ii) in the Anne Hathaway conversation on 14 November 2019; and
- (iii) when she accused Mr French of wanting a 21-year-old to be rude to on 6 December 2019.

59. When this was put to the Claimant in cross-examination she said: “They all talked about getting young people in. It was part of their culture.” She said by “all” she meant Mr MacGregor, Mrs Woolfe and Mr French. This was the first-time allegations were made against Mr MacGregor and Mrs Woolfe. In addition, the Claimant was asked what she meant by: “After 18 months it’s chipped away at me”. She had previously agreed in evidence that she had had a good relationship with Mr French up until November 2019. The Claimant’s response to this question was that Mr French had made derogatory remarks towards her from June 2018 onwards.

Dismissal on 19 December 2019

60. The dismissal letter shows that the Respondent dismissed the Claimant for a breakdown of trust and confidence [212]. This was the genuine reason for dismissal; there was no desire to get rid of the Claimant because of her sex and/or age.

61. During the conversation with the HR Advisor on 18 December 2019, the Claimant said she would only consider returning to work if Mr French apologised. The Claimant agreed in cross-examination that this was a condition of her return. Mr French was not prepared to apologise because he felt he had done nothing wrong. In these circumstances the parties had reached an impasse and the Respondent was entitled to dismiss the Claimant for a breakdown of trust and confidence.

62. The dismissal was not an act of direct discrimination. There is no evidence to suggest the Respondent dismissed the Claimant because she was female and/or because she was 54 years old.

63. The Claimant herself does not even allege that she was dismissed because she was female and/or because she was 54 years old. In her witness statement she says: *"I believe the reason my employment was terminated was ... because I had told Ann Woolfe that I considered the company to be sexist, ageist and bullying"* (WS paragraph 59). When questioned on this paragraph in cross-examination she said *"yes I stand by that"*. This allegation is not the reason for dismissal contended for.

64. Mrs Woolfe emailed staff on 3 January 2020 advising them of the Claimant's departure and explaining that the company would not be replacing the Office Manager role [220]. The Claimant alleges in her Particulars of Claim that the email was "evidence that she was dismissed to facilitate the recruitment of a younger, career driven individual." In cross-examination, the Claimant accepted there was no reference to a younger, career driven individual in Mrs Woolfe's email. She accepted that the new recruits following her departure were females aged 51 and 66 [WS AW paragraphs 30-31] but said that this evidence had been contrived.

65. There are a number of harassment complaints. The Claimant has not established that any of the conduct relied upon had the purpose of violating her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment on the grounds of age or sex or had that effect.

66. The dismissal was not an act of harassment. It was not related to sex and/or age. The Claimant was dismissed because of the breakdown of the employment relationship.

Conclusion

67. Turning to the issues

Direct discrimination/harassment:

1.1 On or about the **14 November 2019** did the Second Respondent inform the Claimant that CPC and CBC would be looking for two executive assistants, commenting that the First Respondent would be looking for *"a young driven person a bit like the young lads on the client support team or what I would really like is an Anne Hathaway character from the Devil Wears Prada, not a mum"*, and whilst saying the last three words of this sentence, gesticulating dismissively towards the Claimant. (POC: para 7).

- a) If so, was this comment directly discriminatory towards the Claimant, on the grounds of her sex and/or age?
- b) If so, does this comment constitutes harassment related to the Claimant's sex and/or age? Did the comment have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Did the comment have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Was it reasonable for the conduct to have that effect?

The Tribunal did not accept the Claimant's account of this exchange. It accepted the account given by Mr French and Ms Devereese. It follows that the answers to a) and b) are No.

1.2 On or about **15 November 2019**, the Second Respondent copied the Claimant into an email conversation about booking train tickets, commenting "*Good old Nikki...*"

- a) Was the use of this phrase towards the Claimant directly discriminatory on the grounds of her age?
- b) Does the use of this phrase constitute harassment relating to the Claimant's age? Did the comment have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Did the comment have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Was it reasonable for the conduct to have that effect?

The Tribunal answered a) and b) No.

1.3 On or around **29 November 2019**, did the Second Respondent encroach upon the Claimant's personal space, wag his finger in her face and, with reference to buying more tea bags say "just do it" in an aggressive and patronising fashion? (POC: para 13)

- a) If so, was this conduct direct discrimination on the grounds of the Claimant's sex and/or age?
- b) If so, does this conduct constitute harassment relating to the Claimant's sex and/or age? Did the comment have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Did the comment have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Was it reasonable for the conduct to have that effect?

The Tribunal did not accept that this incident occurred.

1.4 On or around **6 December 2019**, did the Second Respondent inform the Claimant, in front of her colleagues, that it was her job as Office Manager to always make sure there was enough milk? Did the Second Respondent call the Claimant into his office and shout at her stating that he was a Director and demanded her respect? Did the Second Respondent shout at the Claimant and say that she was getting paid very good money for her job? Did the Second Respondent say that the Claimant sometimes did a good job? Was the Second Respondent trying to upset the Claimant? Did the Second Respondent say that he was sick of the Claimant's temperamental outbursts? Did the Second Respondent say that the Claimant was rude and that he would need to call a meeting? Did the Second Respondent say that the Claimant was rude and that he would need to call a meeting? Did the Second Respondent tell the Claimant to go home? (POC: para 14-19)

- a) If so, was this conduct an act of direct discrimination on the grounds of the Claimant's sex and/or age?

The Tribunal did not accept that the Second Respondent behaved in the manner narrated in the Issue. Mr French did say, at some stage, that the Claimant was being paid good money, but the context was not as narrated in the issue as it was the Claimant who was shouting at him. There was no age or sex discrimination.

1.5 Dismissal

1. What was the reason for the Claimant's dismissal?
2. Was the Claimant's dismissal because of her sex and/or age?
3. Was the Claimant's dismissal an act of harassment related to her sex and/or age?
4. Was the First Respondent required to follow any process when dismissing the Claimant? If so, what process, if any, did the First Respondent follow when dismissing the Claimant?

The reason for the dismissal of the Claimant was because she refused to apologise to Mr French for her behaviour. There was no sex or age discrimination or harassment. The Respondents did not have to follow any process.

68. For the foregoing reasons, the Tribunal dismissed all of the Claimant's claims.

Employment Judge Truscott QC

Date 25 June 2021