



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4102895/2022**

**Held in Glasgow on 31 October, 1, and 2 and 3 November**

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**Employment Judge L Doherty**

**Members Mr Gallacher & Ms Paton**

**Ms B Tierney**

**Claimant  
Represented by:  
Mr G Tierney –  
Private Individual**

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**South Ayrshire Council**

**Respondent  
Represented by:  
Ms E Stevenson –  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The unanimous judgment of the Employment Tribunal is that;

1. the claim of direct sex discrimination under Section 13 of the Equality Act 2010 (the EQA) is dismissed;
2. the claim of harassment related to sex under Section 26 of the EQA is dismissed;
3. the claim of victimisation under Section 27 of the EQA is dismissed.

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**REASONS**

1. The claimant presented claims of direct sex discrimination under Section 13 of the Equality Act 2010 (the EQA), harassment related to sex under Section 26 of the EQA, and victimisation under Section 27 of the EQA.

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2. The hearing, which with the agreement of the parties was confined to the Merits, was conducted over three days. The claimant was represented by her father, Mr Tierney and the respondents by their solicitor, Ms Stevenson.
3. The claimant gave evidence on her own behalf and evidence was given by  
5 Jan McGarry, Senior Communities Officer and Brodie Buchanan, Community Learning Assistant, both employed by the Respondents.
4. For the respondents evidence was given by Mark Conway previously  
Coordinator, Community Learning with the respondents; Jill Tomlinson, Team  
Leader; and Ryan Ward Communities, Team Leader, both employed by the  
10 respondents.
5. The parties produced a Joint Statement of Agreed facts, and lodged a joint  
Bundle of Documents.
6. At a Preliminary Hearing (PH) on 29 July 2023 the issues in the claims were  
noted as follows.

15 *Direct sex discrimination (Equality Act 2010 section 13)*

7. *Did the respondent do the following:*
  - a. *Not finding the claimant to be successful following interview in February 2022 and appointing the male against whom she had raised a grievance and preferring him.*
  - 20 b. *Was that less favourable treatment? The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. The claimant says she was treated worse than the person (who was a man) who was successful in the interview.*
  - 25 c. *If so, was it because of sex?*

*Harassment related to sex (Equality Act 2010 section 26)*

8. *Did the respondent do the following things:*

- a. *In April 2022 the claimant was made aware from a colleague that during an evening in April a male colleague had suggested that the complaints the claimant had made about the colleague were “trumped up”.*
- 5 b. *By appointing her colleague following an interview rather than the claimant to the role. If so, was that unwanted conduct?*
- c. *Did it relate to sex?*
- d. *Did the conduct have the purpose of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive*  
10 *environment for the claimant?*
- e. *If not did it have that effect? The Tribunal will take into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.*

***Victimisation (Equality Act 2010 section 27)***

- 15 9. *Did the claimant do a protected act as follows: the grievance raised by the claimant around May 2021 (with a decision being issued in July 2021).*
10. *Did the respondent do the following things: During the process for the promoted role which the claimant went for, the respondent was led to believe that the claimant was the “troublemaker” in respect of her grievance, and the*  
20 *undertaking the claimant had been given that a note be placed on the individual’s file (about the grievance) was not implemented, and the person about whom her grievance related was given preference and as a result the claimant was not appointed.*
11. *By doing so, did it subject the claimant to detriment?*
- 25 12. *If so, was it because the claimant did a protected act?*
13. *Was it because the respondent believed the claimant had done, or might do, a protected act?*

14. These were the issues which were before the Tribunal, and the parties were reminded of these at the outset of the hearing.

### **Findings in fact**

- 5 15. From the evidence before it and the Agreed Statement Facts the Tribunal made the following findings in fact.
16. The claimant, whose date of birth is 12 May 1994 commenced her employment with the respondents in November 2017 as a part-time Youth Worker. The claimant has been employed in various roles by the respondent under different contracts. She has held multiple part-time contracts simultaneously. She also carried out Bank work.
- 10 17. On 14 December 2020 the claimant commenced a Targeted Approach to Young People Xtra post, which is a Band 3 post. The claimant worked as part of the team of 4, which comprised 2 women and 2 men. The claimant also worked on occasion as a Senior Youth Worker, which is a band 4 post.
- 15 18. The Community Department in which the claimant worked overall employed a larger number of women in the men. The gender split was approximately 75% female:25% male. In the team in which the claimant worked she was line managed by a male member of staff and a number of senior members staff were male.

### 20 *Grievance Procedure*

19. On the 31 May 2021 the claimant raised a complaint relating to an incident which was alleged to have taken place with one of her male colleagues (hereinafter referred to as A). She reported this to her immediate line manager, Mr Scott Thomson on 2 June. Mr Thomson arranged an informal mediation session between the claimant, and A. The claimant was accompanied by her supporting colleague, Ms Buchanan.
- 25 20. The mediation was unsuccessful, and that the claimant submitted a formal grievance on 9 June. The grievance included complaints about the manner which A had disciplined children within the youth club setting, data protection

concerns relating to the sharing of images on social media, and also about matters arising from allegations of A's unwanted conduct toward the claimant and an alleged incident of 19 May 2021.

21. The claimant's grievance was dealt with by Mr Mark Conway. In line with the respondent's grievance policy, which required the claimant to be invited to a meeting within seven days, letters were issued on the same day inviting the claimant to a meeting on 17 June 2021. The claimant attended this meeting accompanied by Ms Buchanan, as her supporting colleague. Ms Buchanan was on occasion asked for input at that grievance meeting and she was corroborative of the claimant, but this was not a grievance meeting at which any grievance or complaint about A on the part of Ms Buchanan was considered.
22. Mr Conway met with A, as required by the respondents' policy, to put the claimant's grievance to him.
23. A meeting then took place with the claimant, again accompanied by Ms Buchanan, on 28 June 2021 when Mr Conway advised her of the outcome of her grievance. She was told that her grievance was upheld in part and that she would no longer have to work with A on a 1;1 basis and a note would be put on A's personnel file.
24. A separate management meeting took place on the same day with A to advise him of the outcome of the grievance. A letter recording the outcome of the grievance was put on A's file. This dealt with taking photographs of young people in a work setting which were shared on WhatsApp, sharing a photograph of a male member of staff at the gym on WhatsApp without his permission, disciplining a young person without the presence of other members of staff, and general professionalism around use of WhatsApp respecting boundaries between private and working life.
25. The outcome of the grievance was confirmed to the claimant in a letter dated 1 July 2021, which stated among other things the following;

*'Your stage one in grievance form submitted on 9 June 2021 set out your concerns about your belief or the inappropriate behaviour and conduct of your colleague (A) . Your proposed resolution was;*

5 *"For me, I would like it to be on record that his name is noted for being reported for harassing and inappropriate behaviour both in and out of the workplace, as well as the multiple broken code of conducts. I do not want to have to work alongside him again."*

...

10 *In terms of the Councils Grievance Procedure the outcome of this hearing is that your grievance has been upheld in part.*

15 *I have subsequently met with (A) and addressed some of the concerns highlighted by you and explained to (A) the expectation from myself going forward. I also confirmed at the outcome meeting that I would uphold your request not to have to work with (A) on a 1:1 basis. I cannot, however say with any certainty that you won't have to work alongside each other with other staff present – this is due to the nature of both rules and the fact that either of you could pick up Bank shifts when these were offered.'*

26. The claimant was advised of her right to appeal against the grievance outcome. She did not do so.

20 27. Mr Conway also proposed a meeting between himself, the claimant, A and their manager so that he could outline his expectations to both parties moving forward. This was not part of the grievance process and the claimant did not have to attend this meeting. The claimant agreed to attend. A meeting took place on 26th of July in which clear expectations were established in relation to working together, communication and social media. These expectations were agreed by all parties in attendance.

25 28. A meeting along similar lines was held with Ms Buchanan as another member of the team.

29. Operational arrangements were put in place to ensure that the claimant and A did not work together on a 1:1 basis.
30. In terms of the respondents' internal policy the grievance procedure was confidential to the parties and they were advised of this. Where necessary for operational reasons managers, including Mr Ryan Ward, were made aware of the fact that there had been a grievance and that as a result of the grievance procedure the claimant and A were not to work together on a 1: 1 basis.
31. A letter recording the outcome of the grievance was put on A's file. This dealt with taking photographs of young people in a work setting which were shared on WhatsApp, sharing a photograph of a male member of staff at the gym on WhatsApp without his permission, disciplining a young person out with the presence of other members of staff, and general professionalism around use of WhatsApp respecting boundaries between private and working life.
32. On two occasions the claimant saw A arriving for the start of his shift before she had completed hers. She felt upset at this. On the second occasion when this occurred she brought this to the attention of her manager and arrangements were put in place which meant this did not occur again.
33. On 27 July 21 the claimant requested Occupational Health support. The respondents approved CBT sessions for the claimant.
34. It emerged from one of the OH reports that the claimant advised that she had instigated a grievance process but did not feel satisfied with the outcome. OH recommended a meeting with management.
35. On 12 August Mr Conway emailed the claimant expressing some surprise at this, and asked her to clarify what she was not satisfied with in relation to the outcome of the grievance in order to help agree the next steps. On the same day the claimant responded indicating that it was not her intention, and she did not appeal because she was happy with the outcome.
36. On 23 August the claimant emailed Mr Conway asking for written confirmation that the grievance she had submitted had gone on A's file.

37. Mr Conway responded on the 24 August confirming that the decision and outcome of the grievance were raised and shared with A verbally and in writing and a copy of the letter was held in his file. The claimant responded thanking him for that confirmation.

5 38. At some point after 16 March 2022 Ms Buchanan raised a grievance about one of her male co-workers which was not upheld.

#### *Job applications*

39. On 6 September 2021 the claimant's application for a Band 9 post was rejected on the basis she did not evidence the essential criteria for the post.

10 40. On 7 September 2021 the claimant passed the selection process for a band 7 post, but was unsuccessful at the 'in -tray' stage of the process.

41. On 3 December 2021 the claimant was successful at interview for a Band 5 post. She took up this employment on 1 February 2021.

15 42. On 1 February 2021 a Band 7 Communities Officer post was advertised. The claimant was encouraged to apply for this post by Jan McGarry. Ms McGarry, had worked with the claimant previously and had a favourable view of her abilities'. Ms McGarry held a band 9 post and was the line manager of the advertised the Band 7 post.

20 43. Ms McGarry and the claimant were on friendly terms. The claimant had told Ms McGarry about her grievance against A. Ms McGarry was aware that the grievance was a confidential process.

44. The interview panel for the post initially comprised of Ms Tomlinson, Mr Ward and Ms McGarry.

25 45. The claimant and A were among the candidates who applied for the post. The claimant, A, and one other candidate were selected for interview.

46. The respondents' policy on recruitment requires the interview panel to be fair and objective to all candidates. Both at the shortlisting and interview stage candidates are marked separately and a benchmarking exercise takes place.



The function of the interview panel is to consider the candidate's skills, knowledge and expertise for the post. They do not have sight of an internal candidate's personnel file. This type of information is not available to them for external candidates.

5 47. If a candidate is successful at interview they become the 'preferred candidate' and are not offered the post until such time as background checks are conducted and their suitability for the post is confirmed. The interview panel are not involved in this part of the process.

10 48. Prior to the shortlisting stage of the process Ms McGarry approached Ms Tomlinson and advised her that she had a concern that A was not fit to be in the office with young girls and that if he got the job then young girls in the office would not be safe.

15 49. Ms Tomlinson reported this to Mr Conway. He advised her that there had been a historical incident involving A and the claimant and it had been agreed that they would not work together.

50. Mr Conway then decided to remove Ms McGarry from the interview panel due to her comments. He was concerned that she could not act fairly to one of the candidates and that she had demonstrated pre-judgment. A Ms Scott was substituted in her place.

20 51. Shortly before the interviews took place, Ms McGarry alerted the claimant to the fact that A was a had been selected for interview for the post. This caused the claimant to be distressed. She felt it impacted her performance at interview.

25 52. The interviews took place on the 24 February 2022. The candidates were all asked the same questions. The interviews are not time limited.

53. The claimant attended for interview at 11am. Her interview lasted approximately 25 minutes. The interview panel considered that the claimant performed very well at interview and after the benchmarking process she scored 18 out of a possible 20.

54. A attended for interview at 9.40am. His interview lasted approximately 50 minutes. The interview panel considered that his performance was outstanding and that his answers gave examples of the level of work he had performed which were at the top level of the competency framework that applied. After benchmarking he scored 20 out of 20.
55. A was already in in a Band 7 post. He had more years' work experience than the claimant.
56. After interview A became the preferred candidate. Ms Tomlinson contacted all of the candidates to advise of the outcome. She telephoned the claimant on the 25 February. The claimant asked Ms Tomlinson who got the post. When Ms Tomlinson advised it was A the claimant immediately terminated the call.
57. The claimant's father contacted Jan McGarry later that day to advise that the claimant was unfit for work due to the news that A got the job.
58. On 7 March 2022 the respondents received ACAS notification of this claim.
59. The claimant continued to work with other organisations but self-certified as unfit to work in relation to all her contracts of employment with the respondents. She did not return to work with them.
60. The Band 5 post in which the claimant sat was generally line managed by a Band 9 post holder, not a Band 7 post holder. The arrangement which was in place to ensure the claimant and A did not work on a 1:1 basis would have remained in place after A was appointed.
61. In general terms a Band 7 post holder held a position of seniority a Band 5 post holder. Prior to the interview the claimant was a Band 5 and A was a Band 7.

**Note on evidence**

62. While there was disagreement between the parties as to how the respondents should have acted, there were few material conflicts in the evidence before the Tribunal.

63. The Tribunal found all of the respondents to be credible and generally reliable. There were no significant inconsistencies in their evidence, and it was consistent with the documentation to the extent that it was produced.
64. The Tribunal generally found the claimant to be credible. That is not to say, however, that it formed a view about the credibility of her evidence as to the behaviour of A which was the subject of her grievance complaint. The substantive matters which lay behind the grievance were not in issue and the Tribunal did not hear from A.
65. Ms Buchanan's evidence was to a significant degree irrelevant. She gave evidence about A's behaviour corroborative of the claimant. However, the substance of the grievance, or whether A was guilty of the conduct of which he was accused, or whether the respondents erred in their conduct of the grievances, were not in issue before this Tribunal. The evidence of Ms Buchanan about her experiences with another male member of staff in March 2022 and a subsequent grievance which she raised postdated the act of discrimination complained of, and was not relevant to the issues before the Tribunal.
66. Mr Tierney sought to rely upon Ms Buchanan's evidence about the substance of her subsequent grievance complaint as founding the claimant's claim of harassment, which is a matter dealt with below.
67. The Tribunal did not find reliable Ms Buchanan's evidence suggesting that her complaints about A were included in the claimant's grievance. The Tribunal accepted that she was corroborative of the claimant's position during the grievance process, but it was satisfied that Ms Buchanan was there in the capacity to support the claimant in the process. This was the clear evidence given by Mr Conway, which the Tribunal accepted.
68. The Tribunal did not conclude that there was a 'laddish' culture in the Department, notwithstanding the issues raised by the claimant. There was a credible denial of such a culture this by Mr Conway, and the fact that the claimant's concerns were dealt with so speedily when they were raised as a grievance, and measures put in place to deal with concerns when she raised

them thereafter, was inconsistent with such a conclusion. Furthermore, albeit the claimant was line managed by a Mr Thompson and had a number of male senior managers, the composition of the Department in which the claimant worked overall was female.

5 69. There was a conflict in the evidence was of the claimant and her own witness, Ms McGarry. It was the claimant's evidence that Ms McGarry telephoned her the night before the interviews took place to advise her A was a job candidate. Ms McGarry's evidence was that she did not tell the claimant that A was a job candidate, and she did not know who had done so; she denied knowing who  
10 the other job candidates were.

70. Ultimately not a great deal turned in this, but the Tribunal was satisfied that on balance it was Ms McGarry who told the claimant that A was a candidate for the job. It was fortified in this conclusion in that Ms McGarry denied any involvement in the recruitment process. This evidence was not challenged in  
15 cross examination, and it was correct to say that she had no part in the final job selection process, however, Mr Conway and Ms Tomlinson gave credible evidence about the fact that Ms McGarry has initially been on the interview panel, as a result of which she would have known the job candidates, but had made a comment which was prejudicial to A and for that reason has been  
20 removed from the panel. The Tribunal did not understand that the fact Mrs Gary had been removed after having made a comment about A to be challenged by the claimant, and indeed it formed part of Mr Tierney's submission that she had been removed from the interview panel.

71. Ms McGarry suggested that she only had a vague knowledge about the  
25 claimants grievance, which she knew was a confidential process, and had passed on that the claimant had been concerned that A should be allowed to apply for the job. The Tribunal's impression of Ms McGarry's credibility was negatively impacted by its conclusion to the effect that she had told the claimant that A was a job candidate, despite her denial that that was the case.  
30 For that reason it preferred the evidence of Ms Tomlinson who impressed the Tribunal as being a credible and generally reliable witnesses, as to the comment made by Ms McGarry about A to Ms Tomlinson, which was also

spoken to by Mr Conway, to the effect that young girls in the office would not be safe if A got the job.

### Submissions

72. The parties helpfully provide written submissions, which they supplemented  
5 with oral submissions. Where required the submission are dealt with below.

### Consideration

#### *Section 13 Claim – Direct Discrimination*

73. Section 13 (1) of the EQA provides;

10 *‘(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.’*

74. Section 23 provides;

*‘Comparison by reference to circumstances*

15 *(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.’*

75. Section 136 of the EQA deals with the burden of proof and provides;

*‘(1) This section applies to any proceedings relating to a contravention of this Act.*

20 *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision’*

76. It is not in dispute that the respondent did not find the claimant successful for the Band 7 post following interview in February 2022, and that they appointed the male against whom she had made the complaint.
77. The issue was whether that amounted to less favourable treatment of the claimant that her male comparator who was appointed, on the grounds of her sex.
78. Mr Tierney submitted that specifically the respondent discriminated against the claimant by preferring a male candidate, against whom she had lodged a grievance which was partially upheld, in an interview for a post where he would have supervisory and oversight responsibility for her. That this was contrary to an undertaking given to the claimant by the respondent following the grievance procedure. In so doing the respondent provided less favourable treatment to the claimant and she was treated worse than someone else was treated namely the male applicant against whom she had lodged a grievance and that this was on the grounds of her sex.
79. There was however no persuasive evidence to support the conclusion that A would have line managed the claimant . The immediate line management for the claimant's Band 5 post lay with a Band 9 post. It was accepted that as a Band 7, A was overall in a position of superiority to the claimant, who was a Band 5. However, that was the case even before A was successful at interview as he was already a Band 7 postholder. The claimant spoke of her apprehension that in some hypothetical scenario she might be line managed by A, but she made no investigation with the respondents as to how A's appointment would impact upon her line management. The Tribunal accepted Mr Conway's evidence that the arrangements which had been in place to ensure that that the claimant and A did not work one-to-one would have been maintained.
80. Mr Tierney relied on the claimant's evidence to the effect that she was apprehensive that contrary to the undertaken given to her, her interviews and A's interview would take place in the same location, and she had a reasonable apprehension that she would be required to meet with him there, for example

in a waiting room. He submitted that the claimant gave evidence, corroborated by Jan McGarry that this adversely affected her performance at the interview and had a significant impact on the outcome of the interview.

81. The claimant's and A interviews were, however, some time apart.  
5 Furthermore, the claimant's apprehension was generated by information provided Ms McGarry who told the claimant that A was a candidate, not the respondents. While the claimant may have felt her performance was impacted, this did not appear to reflect in the impression of the interview panel. How the claimant performed was not a matter Ms McGarry could speak  
10 to as she was not part of the interview panel.
82. In any event the relevant question is whether the claimant was treated less favourably than her comparator whose circumstances were not materially different to her circumstances.
83. The Tribunal was satisfied that A's circumstances were materially different to  
15 the claimant's. The claimant had only recently been appointed to a Band 5 post. A already held a Band 7 post. A had more work experience than the claimant. The Tribunal was satisfied that while the interview panel considered the claimant performed well at interview, A performed better, providing  
20 answers about work experience at the top of the applicable competency framework. This is supported by their scoring of the two candidates. Their conclusions in this regard are also supported by the length of the interviews with the two candidates, which suggested that A gave more detailed answers than the claimant to the questions asked, which was consistent with the evidence of Ms Tomlinson and Mr Ward as to the quality of A's interview.
- 25 84. The Tribunal concluded that it was for these reasons that A was appointed, and that his appointment to the post in preference to the claimant did not amount to less favourable treatment of her on the grounds of her sex. The Section 13 claim is therefore dismissed.

*Section 26 Claim - Harassment*

- 30 85. Section 26 provides;

*'(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

5 *(i) violating B's dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(2) A also harasses B if—*

*(a) A engages in unwanted conduct of a sexual nature, and*

10 *(b) the conduct has the purpose or effect referred to in subsection (1)(b).*

*(3) A also harasses B if—*

*(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,*

15 *(b) the conduct has the purpose or effect referred to in subsection (1)(b), and*

*(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.*

20 *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*

*(a) the perception of B;*

*(b) the other circumstances of the case;*

*(c) whether it is reasonable for the conduct to have that effect.'*

86. The question identified at the PH was whether in April 2022 the claimant was  
25 made aware from a colleague that during an evening in April a male colleague



had suggested that the complaints the claimant had made about the colleague were “trumped up”.

87. There was no evidence led to support the conclusion that this had occurred.

88. In his submissions, Mr Tierney relied on the evidence given by Mr Buchanan to the effect that she had been harassed by A and shared details of this with Mr Conway at the claimant’s grievance meeting.

89. For the reasons given above the Tribunal did not find this evidence to be relevant. The Tribunal is not considering a claim of harassment on the grounds of A’s alleged treatment of the claimant.

90. There was nothing about the respondents’ handling of the claimant’s grievance to suggest that she was entitled to conclude that they considered she trumped up charges or was a troublemaker. The grievance was dealt with swiftly; it was partially upheld; and its outcome was not appealed.

91. Mr Tierney relied on Ms Buchanan’s evidence about events in March 2022, and submitted that when Ms Buchanan communicated this information to the claimant the claimant was upset and formed the view that the respondents had a poor opinion of her and viewed her as a troublemaker.

92. Any discussion which the claimant had with Ms Buchanan, and any views which she formed as a result of these could amount to the respondents subjecting her to unwanted conduct on the grounds of her sex. The respondents did not act in any way towards the claimant. Mr Tierney referred in his submission to indirect sex discrimination, but the EQA does not make provision for such a complaint.

93. Mr Tierney also submitted that the fact that the claimant was not appointed to the Band seven 7 post and instead A was appointed constituted an act of harassment. For the reasons given above the Tribunal did not conclude that A’s appointment was an act of direct discrimination. There was no basis upon which to conclude that A being appointed instead of the claimant after an interview in which he was assessed as a better candidate than the claimant,

constituted unwanted conduct on the grounds of the claimant's sex, which had the prescribed effect in terms of Section 26.

94. The claim under Section 26 is therefore dismissed.

*Section 27 claim – Victimisation*

5 95. Section 27 states ;

*'A person (A) victimises another person (B) if A subjects B to a detriment because—*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.'*

10 96. It was accepted that the claimant did a protected act, which was raising a grievance in May 2021 with the conclusion being issued in July 2021.

97. The questions posed in terms of the issues identified at the PH were;

15 *a. During the process for the promoted role which the claimant went for, the respondent was led to believe that the claimant was the "troublemaker" in respect of her grievance, and the undertaking the claimant had been given that a note be placed on the individual's file (about the grievance) was not implemented, and the person about whom her grievance related was given preference and as a result the claimant was not appointed.*

20 98. It is accepted that in lodging her grievance the claimant did a protected act.

99. There was no evidence to support the conclusion that the respondents considered the claimant was a troublemaker in respect of her grievance or because she had lodged it. Neither the claimant, or any of the witnesses who gave evidence spoke to this being the case. Furthermore, the fact that the claimant was promoted to the Band 5 post after she lodged her grievance is inconsistent with the conclusion that she had been identified as a troublemaker because she had lodged a grievance.

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100. The Tribunal was satisfied that the note of the grievance outcome had been placed on A's file. Mr Conway gave convincing evidence about this, and detailed its content. His evidence was consistent with his email to the claimant confirming it had been done. There was therefore no omission as submitted by the claimant.
101. On submission Mr Tierney's position was that the note on A's file should have been shared with the interview panel, and that Mr Ward who had knowledge of the grievance should have told the others on the panel about it or recused himself and his failing to do so was an act of victimisation. Instead, he submitted, Ms McGarry who had raised it was wrongly removed. He referred to evidence given by Ms Tomlinson to the effect that had she known about the concerns this may have affected her decision.
102. Dealing with the latter point first, Ms Tomlinson was asked questions by Mr Tierney about the 4 concerns raised with A by Mr Conway. The scenarios put to her by Mr Tierney lacked context or background and the Tribunal could attach little or no weight to her expression of views on these matters being put to her in an abstract way.
103. Secondly, the Tribunal was satisfied that the function of the interview panel was to assess a candidate's skills knowledge and expertise for the post. The interview panel was not privy to an internal candidate's personnel file. A candidate selected by the interview panel was not offered the post until appropriate checks had been carried out, and this was not a task which the interview panel was involved in. Albeit the claimant clearly felt very strongly about the matter, the procedure in place was that the contents of an internal candidate's personnel files were not made available to the interview panel and there was no evidence to support the conclusion that there should have been a departure from this, and that the interview panel should have been made aware of the outcome of a confidential grievance process involving the claimant and A which had been resolved without appeal.
104. Thirdly, the Tribunal was satisfied that in line with the respondents' recruitment policy which sought to achieve fairness and impartiality to job

candidates it was proper that a panel member who expressed a prejudicial view about a candidate was removed from the interview panel.

105. The grievance procedure was confidential and against that background, albeit Mr Ward was aware of the grievance for operational reasons, his failure to share that with the other panel members or recuse himself could not be seen, as submitted by Mr Tierney, as exhibiting a closed mind or animus against the claimant.
106. Mr Ward's or Mr Conway's failure to share the confidential grievance outcome of an internal job candidate to the interview panel could not be said to amount to a detriment to the claimant on the grounds that she had done a protected act.
107. The claim under Section 27 is therefore dismissed.

**Employment Judge: L Doherty**  
**Date of Judgment: 07 November 2023**  
**Entered in register: 10 November 2023**  
**and copied to parties**