



GRANT THORNTON CASE STUDY

1. The organisation

Grant Thornton Johannesburg is an audit and advisory firm. It used to be part of a national federation of Grant Thornton firms, but the Johannesburg firm chose to leave the federation during 2018 when the federation merged with Sizwe Ntsaluba Gobodo. The Johannesburg firm is now part of BDO and has 900 partners and staff.

2. The situation

Nerisha Singh, a director with the firm working in the forensics section, experienced persistent and highly invasive sexual harassment from the head of the forensics section, Vernon Naidoo. In one incident, the two had travelled on business to Durban where Mr Naidoo told her they would have to stay overnight in a hotel and that they would have to share a bedroom in terms of company policy. He also bought her an expensive necklace and when she rejected it, he “punished” her by, for example, excluding her from important meetings.

So, in October 2017 she resigned and was invited for a discussion about her resignation with the Deputy CEO, Ms Gillian Saunders. Ms Saunders allegedly said, in the discussion, that Ms Singh was not the first person to complain about Mr Naidoo. (Another seven victims subsequently raised sexual harassment complaints, five of them against Mr Naidoo.) The firm asked Ms Singh to stay on, so she retracted her resignation on 8th December. She laid a formal complaint of sexual harassment against Mr Naidoo and an enquiry was convened. Mr Naidoo submitted apologies due to sickness and subsequently “left the building”, so the disciplinary process was “inconclusive”. The firm later said that in an interview on Radio 702 he was no longer an employee, although it was discovered that he in fact continued contracting for the firm with existing clients.

At the end of January 2018, Ms Singh was told that, although as far as she was concerned, she had retracted her resignation and was therefore once again a permanent employee, she was in fact on contract, which was only for 3 months. Ms Singh informed the firm she would pursue a case of constructive dismissal in that case. On February 23rd, Ms Saunders told her she would have to leave at the end of March and, according to Ms Singh, the main reason for this was “Your attitude in asserting your labour law rights. You are a Black Female, you can get a job anywhere. Leadership upstairs take an unfavourable view of you about bringing a case of sexual harassment. This is undirector-like behaviour”. On March 15th the Audit Partner invited her for coffee and explored possibilities of offering her her job back. She said no, she couldn’t trust the organisation and didn’t

like their values. She worried she would be sabotaged. On March 26th, the Audit Partner phoned her and said “the leadership has met, and decided to offer you your job back, we will email the offer of employment”. She refused this and decided to take her story public by giving an interview on Radio 702.

The initial response of Ms Saunders on Radio 702 was that the firm had policies in place to deal with this sort of allegation.

Ms Singh then started looking for other employment and has alleged further victimisation over this case on the part of Investec, who discontinued a recruitment exercise with her after taking a reference from Grant Thornton. “They told me that they were concerned about whether I would be a culture fit for the organisation.” As at January 2020, she is still unemployed having been “ghosted” [her term] by all potential employers she has approached, despite being highly qualified in a scarce skills area of fraud and money laundering.

3. Actions taken by the organisation

After Ms Singh went public, Grant Thornton launched internal investigations and the international Grant Thornton executives got involved. These included an external, independent investigation which was led by Human Resources executive, Jennifer Jeftha, and Grant Thornton prepared a detailed report for the Commission for Gender Equality in response to their request for information.

Later in 2018, the firm said that they apologised “unreservedly” to two former employees who were sexually harassed by its former Head of Forensics. The accused had since left the firm.

The firm also said in a letter to clients that it had “previously publicly apologised and acknowledged mistakes in the way the matter was handled and the impact it had on the individuals concerned”. Grant Thornton added:

“We have written to the individual who raised the allegations to acknowledge that the former Head of Forensics’ conduct violated acceptable standards. We have offered her a meaningful settlement amount for the impact this has had, and we have again apologised to her unreservedly.” The settlement agreement remains confidential.

4. A second problem followed as a result of the first

In June 2018, a complaint of sexual harassment was laid against the CEO, Paul Badrick. He stepped aside while the complaint, about alleged harassment in 2015, was investigated. Towards the end of August, he was back at work after he was cleared of the sexual harassment allegations laid against him. Serena Ho, the chairperson of the governing board at Grant Thornton Johannesburg, said “Sexual harassment allegations levelled against Mr Badrick have been dismissed in an independent investigation by attorneys Norton Rose Fulbright and he has returned to work. The independent legal review found only one complainant... she (the complainant) left the employ of the firm towards the end of last year.”

5. The outcome for the organisation

The international leadership of Grant Thornton said ““The Johannesburg firm’s management failed, in these instances, to address inappropriate behaviours that were at odds with what we expect from our senior leaders”.

Since then, Grant Thornton “implemented additional programmes for staff which were run by an external labour consultant. The consultant was available once a week and met with staff in an anonymous and confidential setting.

In addition to this, the firm said that they also held a series of five workshops which were attended by 118 staff members. These workshops focused on how to deal with harassment in the workplace with further workshops being planned.

Grant Thornton acknowledged that “something had gone wrong” and said the GTIL report highlighted a need for the firm to address its leadership’s approach to upholding global values and standards. It reinforced the need for the Johannesburg firm to create an environment where its people felt respected and supported.

“We have zero tolerance for any form of harassment. We will continue to monitor and review and will take steps to address leadership challenges and the underlying culture,” the firm said.

The Commission for Gender Equality (CGE) said that Singh had since settled the matter amicably.

The “amicable” settlement was confirmed by Grant Thornton. The company said in an emailed response that “the complaint has been withdrawn. The matter has been settled amicably.”

The company could not, however, be drawn to reveal what an amicable agreement meant in the circumstances.¹

6. Learning points

- a) The person to whom a complaint is first made, whether officially or informally, “off the record” or however, must be trained in receiving such complaints so that complaints are not “fobbed off”, reported to higher levels inappropriately or otherwise mishandled. The most important issue is that the complainant feels “heard” and can feel confident that the organisation will take her/him seriously. (Themes that have been noted are that many complaints are minimised or trivialised.)
- b) All levels of management must commit themselves to come to an understanding that sexual harassment is workplace misconduct and must be dealt with no matter who is involved. It is simply unacceptable (and illegal) to disadvantage an employee for following their legal and procedural rights. A culture where promotion depends on “toeing the line” is an unhealthy culture.
- c) If the person who receives a complaint has reason to believe that the alleged perpetrator has a pattern of similar behaviour (whether this belief is built on fact or rumour/gossip), a process should be constructed to find out in a safe way whether other employees have been impacted. Depending on how widely employees have been impacted, a suitable response should be formulated.

¹ <https://www.iol.co.za/business-report/companies/grant-thornton-chief-back-after-sex-allegations-dismissed-16782656>

- d) If an alleged perpetrator is “dodging” a disciplinary enquiry, for example, through claiming illness, the organisation should pursue alternatives, such as re-convening the enquiry or serving the employee with a letter stating that an enquiry will be done in his absence.

If an alleged perpetrator resigns to avoid a disciplinary process, there are also remedies here. Some legal opinions will advise that should the employee not serve out their notice period in their employment contracts, the employer has jurisdiction over the employee until the end of the notice period. However, following a Labour Court ruling in 2019 “The position on whether an employer may continue disciplining an employee post resignation with immediate effect is at this point uncertain considering the three conflicting judgments discussed above. However, if following the latest case law, the position is that an employer may not discipline employees post resignation with immediate effect. Employers who insist on taking disciplinary action where an employee has resigned with immediate effect, will have to resort to the common law remedies available and seek orders for specific performance to hold such an employee to his or her notice period.”² Put simply, if the employee submits notice in terms of their contract, usually a month, then the disciplinary enquiry can proceed (but would have to be concluded within the notice period). If the employee submits notice with immediate effect, the employer would have to obtain an order of court for specific performance before being able to proceed with a disciplinary enquiry.

Another alternative that could be explored is hold an investigation rather than a disciplinary enquiry, follow the same sort of process of offering the alleged perpetrator the right to put his/her point of view and cross-examine, and proceed even if he/she doesn’t take up the offer. Their employment record could then reflect the fact that allegations were made, the employee resigned in breach of the notice period and elected not to participate in an investigative process. This could then be contained in any reference to a prospective employer – it is factual and therefore cannot constitute defamation.

(The fact is that it is blatantly clear that Grant Thornton did not want to take action against the perpetrator. Their collective ambivalence as senior management was also demonstrated by their contradictory behaviour towards Ms. Singh in respect of her continued employment with the organisation).

- e) Efforts by an organisation to ensure an ethical culture, particularly where this is part of their customer value proposition as would be the case with professional service firms, will be severely undermined if sexual harassment is in any way condoned or protected. An ethical culture does not condone sexual harassment.

Finally, in summary, this case is simply another example of protecting the perpetrator and demonstrating “Himpathy” so clearly that the reputational risk took second place as opposed to showing an inherent desire to comfort the perpetrator and vilify the victim.

This case study was written by Dr Penny Abbott and Dr Angela du Plessis

² <https://www.cliffedekkerhofmeyr.com/en/news/publications/2019/Employment/employment-alert-3-june-escape-route-resignation-with-immediate-effect.html>