EMPLOYMENT TRIBUNALS

Claimant: Dr Leary-Owhin

Respondent: London South Bank University

Heard at: London South **On: 1, 2, 3, 4, 5, 8, 10, 11, 12, 15, 16 February, 1 March 2022 and in chambers 10, 11, 12 & 13 May 2022**

Before: Employment Judge Khalil sitting with panel members
Mr R Shaw
Mr K Murphy

Appearances

For the claimant: in person
For the respondent: Ms Ahmad, Counsel

RESERVED JUDGMENT

Unanimous decision

The claim for direct race discrimination under S.13 Equality Act 2010 is not well founded and is dismissed.

The claim for harassment (race) under S.26 Equality Act 2010 is not well founded and is dismissed.

The claim for victimisation (race) under S.27 Equality Act 2010 is not well founded and is dismissed.

The claim for detriments for making protected disclosures under section 47B Employment Rights Act 1996 is not well founded and is dismissed.

The claim for automatic unfair dismissal for making protected disclosures under section 103A Employment Rights Act 1996 is not well founded and is dismissed.

The claim for ordinary unfair dismissal under section 94/98 Employment Rights Act 1996 is not well founded and is dismissed.

Reasons

Claims, appearances and documents

1. This was a claim for unfair dismissal under S.94/98 Employment Rights Act 1996 ('ERA'), dismissal for making a protected disclosure under S.103A, detriment for making a protected disclosure under S. 47 C ERA, direct race discrimination under S.13 Equality Act 2010 ('EqA'), harassment (race) under S. 26 EqA and victimisation under S.27 EqA. The issues were agreed and set out in a detailed Case Management Summary following a Hearing before EJ Ferguson on 28 January 2021. The claimant confirmed during the Hearing that issue numbered 4 (in the Discrimination table) should have the word 'not' deleted.

2. The claimant appeared in person. The respondent was represented by Ms Ahmad, Counsel.

3. The Tribunal was presented with a witness statement bundle of 337 pages, a Bundle of 2858 pages from the respondent (not agreed with the claimant) and a supplementary Bundle of 190 pages from the claimant. The claimant's witness statement alone was 221 pages (1000 paragraphs).

4. The Tribunal announced at the outset that it had 11 Judicial sitting days to complete the case in this trial window (not 15) - reading, evidence and submissions. Thereafter the Tribunal would deliberate, probably over 3 days, on a date to be fixed. There were 12 witness statements, 7 for the respondent, 5 for the claimant, though one of the claimant's witnesses would not be giving evidence.

5. The Tribunal undertook some provisional reading and following some deliberation, announced that there were significant challenges to start and complete this case in this trial window having regard to the overwhelming volume of documents. The overriding objective required proportionality and the documentation before the Tribunal was wholly disproportionate. They key challenge was the length of the claimant's witness statement which would take about 1.5 days to read alone, before considering the other statements and the documents referred to therein. Whilst the claimant was dismissed following an investigation, disciplinary and appeal process (not disputed), there 13 grievances (and appeals against outcomes) which he also instigated.

6. The Tribunal proposed 3 options

    a) the parties could apply for the Tribunal to read most of the documentation before it and *if* the Tribunal was satisfied that it should do so, this would mean 3-4 days of

reading, which would directly impact the prospect of the case not completing and going part-heard unless cross examination on both sides was significantly curtailed.

b) or the Tribunal could postpone the Hearing and spend as much time as was necessary to case manage and give directions to page limit the bundle and word limit the witness statements and the Tribunal could also determine a preliminary issue of whether the disclosures relied upon were qualifying protected disclosures as this was disputed.

c) or the Tribunal could be directed to read certain (limited) documents in the bundle and relevant parts of the claimant's witness statement *only*, with proportionality at the forefront of the parties' direction. Those would then be the exclusive documents which would be read, with only a small margin of variance upon application.

7. Following the lengthy discussion with the parties, the respondent preferred not to lose the trial window and offered the Tribunal a reading list of about 250 pages. The claimant added to this list by another 100 or so documents. The respondent's documents were set out in its chronology document. The claimant's additional documents for reading were highlighted as follows:

   691-708 (Addendum 11), 1439-1448 (Addendum 28), 1519-1529 (Addendum 29), 2064-2066 (Addendum 41), 2158-2177 (Addendum 42), 2203 – 2227 (Addendum 45), 2245-2247 (Addendum 45A), 2260-2270 (Addendum 48), 2272-2276 (Addendum 49), 2360-2369 (Addendum 57).

8. The Tribunal interpreted both parties opting for option (c) above. The Tribunal said it would undertake its reading subject to the relevance of the documents to the issues in the case. At this early stage, the Tribunal was not in a position to determine that and was reliant upon the parties directing the Tribunal reasonably in this regard.

9. The claimant's witness statement was reduced in length and following a long discussion with the claimant and following further Tribunal deliberation, the Tribunal Ordered the claimant to produce a revised witness statement, by extracting from his current witness statement (but not adding anything new), limited to 40 pages (this was a maximum) by 10.00am on Thursday 3 February 2022. The claimant was informed he needed to bring 4 copies. This statement was to be focused on the issues the Tribunal needed to decide only. The claimant asserted in this regard that he had been 'astounded' that the respondent had included all of the documentation relating to 11 other grievances which he said were not relevant.

10. The Tribunal discussed timetabling with the parties and it was agreed that the claimant would have 4 days to cross examine the respondent's evidence and the respondent would have 2.5 days to cross examine the claimant's evidence. This was in the light of the discussion about the claimant's revised witness statement, an indication that Ms Diane Paice (for the claimant) would not be giving evidence and the Tribunal's provisional observations on the relevance of Mr Michael Keith. The claimant asserted Mr Keith was an expert witness on discrimination, but no application had been made to adduce such

expert evidence to date. Furthermore, he had never worked for the respondent and could not give any direct evidence on any of the formal processes followed/actioned by the respondent or their outcomes. The Tribunal also informed the claimant that the Tribunal were the custodians to adjudicate on discrimination allegations in the workplace. Experts were occasionally relied upon by Tribunals to offer the Tribunal expertise on an area *out with* its expertise. The claimant was also informed without Ms Paice giving oral testimony, her witness statement would carry limited weight as it could not be questioned by the respondent or the Tribunal.

11. The timetabling of evidence would leave half a day for submissions and half a day for slippage. It was emphasised that the Tribunal should be directed to read with the Tribunal's earlier comments in mind, any document which was considered essential to the issues outside of its reading list. For the avoidance of doubt, the Tribunal was not going to read in the region of 3000 documents in the Bundle or anything close to that.

12. The claimant had one 3-page document (a stage 3 grievance appeal outcome letter in relation to the claimant's grievance against Ms Griffiths Jones) which he said was not in the respondent's bundle or his supplementary bundle. This was not objected to and was admitted on application.

13. The respondent had applied to give evidence first. This might have caused some prejudice to the claimant if he had to commence cross examination first (unexpectedly) today or even the next morning, but as the evidence was not to commence until day 3 (Thursday pm 3 February 2022), such prejudice did not arise. It was also fair to permit the respondent to have some further time to revise/re-evaluate its cross examination of the claimant's evidence once it had received the revised witness statement from the claimant on Thursday morning. Whilst the starting burden of proof was on the claimant in relation to the discrimination and protected disclosure claims, dismissal was admitted thus it would not be irregular for the respondent to give evidence first to assert its potentially fair reason for dismissal (for which it carries the burden) in relation to the unfair dismissal claim.

14. The claimant also asked if he was able to wear Nigerian national dress on some days, including a hat ('Fila'), which the Tribunal said was absolutely fine.

15. The claimant also said there was a contract between students and the respondents he has sought disclosure of. He said he had applied for disclosure of this from the respondent including an application to the Tribunal but could not say when. The Tribunal informed the claimant to address the Tribunal in this regard on Thursday afternoon when the parties return and before evidence was to commence. This would give the claimant more time to ascertain what he had done and when.

16. On Thursday 3 February 2022, the claimant produced his witness statement and it was 40 pages as Ordered. The respondent objected to paragraph 27 which appeared to refer to an additional protected act in January 2019. It was not in the agreed list of issues. The claimant was informed that he would need to apply to amend his claim. The Tribunal

also admitted a Stage 3 appeal outcome letter dated 5 April 2019 from Professor Shan Wearing.

17. The respondent had also produced a document called 'Enrolment Terms' which was not objected to but the claimant sought a further document (a Course Study) document which the respondent said it would take instructions on.

18. The Tribunal Ordered the parties to produce by Monday 7 February 2022 a summary of all the grievances raised by date, a *brief* description, the outcome, the appeal outcome and date, whether it was dealt with as part of the disciplinary or appeal process, which were outstanding and the page numbers in the bundle. In addition, an organisation chart showing the positions within it of those in the cast list in this case. This was ultimately produced by the respondent and although the claimant said the grievance summary was not accurate, this was limited to the reference to a grievance against Mr Winter, which should read Mr Westover.

19. Before the evidence commenced, the Tribunal summarised the applicable law on unfair dismissal to the claimant, as a litigant in person, in particular the ***Burchell*** test and the range of reasonable responses. The Tribunal also explained the burden of proof provisions in relation to the discrimination claims and the difference in tests in relation to the protected disclosure claims relating to dismissal and detriment (reason or principal reason and material influence respectively). The claimant was also informed that he should focus on the agreed issues in this case and that if he disagreed with a respondent witness about a relevant factual dispute, he should challenge it as otherwise it was open to the Tribunal to simply accept the respondent's unchallenged evidence.

20. On Day 4, the Tribunal admitted the course study planning document on a consensual basis (MA Planning Policy and Practice'). The claimant also applied for disclosure in relation to the circumstances relating to the disciplinary sanction applied to one of his named comparators, Mr Neil Adams. The claimant had said he knew he had issues around health, alcoholism and personal/family circumstances, which he was aware of as he had supported him and that his treatment had been more favourable. The Respondent was permitted to take instructions. The respondent submitted on day 5 (7 February 2022) after taking instructions, that Mr Adams was given a final written warning for conduct relating to being under the influence on account of mitigating circumstances namely alcoholism, family circumstances as a result and contrition. The claimant further submitted he was a close personal friend of Mr Adams. The Tribunal, following deliberations, rejected the application for disclosure. The evidence/submissions in relation to Mr Adams' mitigating circumstances, causative of his (lesser) sanction, were not in dispute: health, alcoholism and family circumstances. Further, there was no good reason the application was being made now, a disclosure application, if relevant, could and should have been made sooner. Mr Adams could also have been called by the claimant to give evidence, with whom he said he had a close relationship.

21. On day 6 (8 February 2022), the Tribunal admitted an organisation chart and a grievance schedule produced by the respondent. Both of these documents had been requested by

the Tribunal as an aid rather than for the parties to question each other on. The claimant did not object to the organisation chart but said the grievance schedule was incomplete. He was informed he should reflect on the document and let the Tribunal know of the alleged factual omissions only.

22. In addition, on day 6, the claimant informed the Tribunal that his brother had sadly passed away last night. He said he had been in hospital. The claimant was visibly upset/emotional. The Tribunal expressed its condolences and asked the claimant to take some time out to reflect on what he might wish to say to the Tribunal in the light of this personal issue. The respondent could also take instructions and the Tribunal would discuss the matter too in the break. The Tribunal said the overriding objective to act fairly and justly was at the forefront of its mind. Following a short break, the Tribunal announced 3 possible options. Option A was to continue (today) with the Hearing; option B was to pause the Hearing today and resume on Thursday 10 February 2022 (noting that Wednesday 9 February 2022) was already a non-sitting day). The Tribunal could add a further day to the planned deliberation week and invite the parties back to conclude, say the evidence of Ms Langford and to close their cases. Option C was to stop the Hearing altogether at this point and the Hearing would be re-listed for the remaining days part-heard.

23. Both parties expressed a desire to proceed with option B. The respondent informed the Tribunal it had expressed its condolences to the claimant. Following Tribunal deliberation and further discussion with the parties, the Tribunal agreed this was the way forward. The loss of Tribunal time could be made up by the addition of a further day for oral submissions which was fixed for Tuesday 1 March 2022. The claimant asked if he would be permitted to attend the funeral if it fell within this Tribunal sitting. The Tribunal informed the claimant this would be accommodated and if that happened, further arrangements for the Hearing would be discussed. The Tribunal also agreed to sit from 9.30am on Friday 11, Monday 14 and Tuesday 15 February 2022 to be in a position to finish the evidence in good time by Tuesday afternoon. The parties were in agreement.

24. On Monday 14 February (day 10), the claimant made 2 applications. First to interpose Ms Coupar as she was unavailable to give evidence on Tuesday. He said, because of his bereavement, he had overlooked informing his witnesses about the change to the day they needed to attend the Tribunal. In discussions with the claimant and Ms Coupar directly, it emerged that she had a hospital appointment at St George's hospital (in Tooting at 2.00pm). Ms Coupar had an outlook diary entry on her phone but the Tribunal was not given any medical evidence. She said she lived in Banstead and it would take about 45 minutes to get there. She added she did not wish to be in Tribunal for 2 days as she worked on a daily rate basis, further that she had a lot of work to do in the next 4 weeks. The respondent objected as it did not wish its cross examination of the claimant to be disrupted. The respondent said this would be prejudicial. The Tribunal asked how long the respondent's cross examination would take and was informed up to 45 minutes. Following Tribunal deliberation, the application was refused. The Tribunal resolved she could still give evidence at 9.30am (on Tuesday 15 February) and she was free to leave the Tribunal now.

25. The second application was an application to amend to add claims of direct discrimination, harassment and victimisation in relation to evidence around the respondent's case on discussions had after the disciplinary hearing on 15 July 2019 and before the decision was reached or conveyed. Further, in relation to the respondent's evidence about precedents of grievances and disciplinary being heard concurrently. The claimant was informed of the ***Selkent Bus*** guidelines /Presidential Guidance. The claimant said he did not make the application sooner as he had wished to see what was said in evidence. The application was opposed. The Tribunal, following deliberation, refused the application. The matters referred to were known at the very least when the witness statements were exchanged on 21 December 2021. Those statements served as the evidence in chief. The application could have been made a lot sooner. The respondent's evidence had closed on Friday 11 February. No application for disclosure had been made (regarding the evidence of precedents) and the issue had not been raised. The Tribunal commented in passing that it had read and considered the respondent's policy on the hearing of grievances concurrently with disciplinary proceedings and where matters were 'related' (page 294) which mirrored the ACAS Code on discipline and grievances (paragraph 46 of the code). The balance of injustice/prejudice, being the key question, was firmly against the granting of the application.

26. On the day when closing submissions were heard (1 March 2022), the claimant enquired about the status of the contemporaneous 'twitter' evidence which had been put to the claimant under cross examination. This was to rebut the claimant's assertion that he had not sensationalised his case. The Twitter feed was permitted to be read back to the claimant which cited the claimant saying that he had been called a 'witch-hunter' and that he was not a 'witch doctor'. The claimant did not challenge the accuracy of what the respondent's counsel had stated. The Tribunal confirmed that it had been admitted in evidence but upon the respondent's application to admit further twitter evidence (about the Hearing), this was not permitted though the Tribunal noted the respondent reserved its position on that evidence in respect of any application in connection with the manner in which the proceedings had been conducted by the claimant. The Tribunal observed in passing that it did not consider the 'tweet' to be an accurate report of what had been said to the claimant under cross examination.

27. An additional matter was raised by the Tribunal, as it was informed by the HMCTS Legal Officer, who had been observing the proceedings for training and development (announced at the outset), that she had been approached by the claimant seeking to know what she had learned from the process (to which she responded) but was also asked what she thought of the claimant's case. She said she was pressed on the latter and was uncomfortable about being asked that. The Tribunal raised this with claimant who said he could not recollect saying the latter. The respondent's counsel said that she too heard the claimant engage in this dialogue with the claimant in the way reported, as had her client. The Tribunal remarked that if said, it was inappropriate and very irregular to do so. During the lunch break, the clerk also informed the Judge, unprompted and unsolicited, that she had heard the claimant press the Legal Officer about what she thought of his case. She too had found it uncomfortable and had gestured to the Legal Officer not to respond. This further information was put to the claimant who maintained

that he did not 'recollect' saying this. The Tribunal said it would consider whether it needed to make any finding or reach any conclusion on this whilst deliberating.

28. For the claimant, the Tribunal heard evidence from the claimant himself, Dr Alan Winter (former lecturer), Ms Kirsteen Coupar, former Director of Student Services, Professor Michael Keith (University of Oxford).

29. For the respondent, the Tribunal heard from Dr Duncan Tyler, Former Head of ULES, Professor Craig Barker, Dean of the School of Law and Social Sciences, Professor Pat Bailey, Provost of the respondent, Professor Patrick Callaghan, former Dean of the School of Applied Sciences (currently Associate Pro Vice chancellor for Research), Mr James Stevenson, Group Secretary and Clerk to the Board of Governors (dismissing officer), Professor David Pheonix (appeals officer), Vice Chancellor and Ms Helen Langford, former Deputy Director of People.

Relevant findings of fact

30. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence given by witnesses during the hearing, including the documents the Tribunal was directed to read at the outset and those referred to by the witnesses in evidence and taking into account the Tribunal's assessment of the witness evidence.

31. Only findings of fact relevant to the issues and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was a document the Tribunal was directed to read or was taken to.

32. This preamble is particularly important in this case as the bundle documents were disproportionately dense and substantial in volume and because the Tribunal made it clear the basis upon which the case would be heard in this trial window.

33. The respondent is a University.

34. The claimant worked as a Senior Lecturer and Course Director, MA Planning, Policy and Practice within the division of Urban, Environmental and Leisure Studies ('UELS') from 8 June 1992 until his dismissal with effect from 30 September 2019. Within the division, academics in Planning, Housing and Tourism worked closely together.

35. In addition to teaching responsibilities, the claimant and other lecturers in the division, had responsibility to supervise dissertations of both undergraduates and postgraduates, full time and part time.

36. The university issues an enrolment of Terms and Conditions to students. The MA Planning course for which the claimant was the Course Director, has a written course guide. This was written by the claimant. Both of these documents were before the Tribunal. There were no other documents before the Tribunal in relation to the arrangements between students and the respondent

37. At the time of his dismissal, the claimant's line manager was Ms Vanessa Beever (Director Education and Student Experience, School of Law and Social Sciences). That took effect consequent on the disputes which arose in this case between the claimant and his previous line manager Dr Tyler, the claimant's subsequent grievance relating to that dispute and the claimant's request for alternative line management.

38. The claimant had some concerns/issues in relation to his previous 2-line managers too (Ms Richards & Mr Morad). This was referred to by Dr Tyler in his meeting with Professor Barker on 7 February 2019 and was set out in paragraphs 4 and 5 of his witness statement. (This evidence was unchallenged). The Tribunal was not taken to the precise details though the claimant did refer himself to previous issues in 2016 in his emails of 10 December and 13 December 2018 (pages 441, 462).

39. In August/September 2018, the claimant was in an at risk (of redundancy) pool with others but, owing to better than expected student numbers on the Planning course, enrolling for September 2018, the claimant ceased to be at risk. Mr Tyler confirmed this in an email dated 18 October 2018 (page 424). Within this email Mr Tyler said he understood the claimed had ceased to be at risk for a few weeks (unbeknown to him) and that the claimant had declined to attend a meeting with Mr Barker about this confirmation.

40. In response to this email, the claimant sought official notification and said that when he was 'invited' rather than 'instructed' to attend a meeting, it was for him (the claimant) to decide whether to attend such a meeting or not. The Tribunal found this to be a bizarre assertion, especially as the claimant was at risk of redundancy at that time and the invitation was from the Dean (22 October 2018, page 423).

41. On 19 October 2018, Mr Tyler emailed his team with a proposed Annual Work Plan ('AWP') setting out his expectations and availability of all the lecturers to teach, personal tutees, dissertations, field trips, course management, recruitment and wider participation work. In his email, Dr Tyler explained that some of the lecturers were dissertation heavy. Where lecturers were under their expected/contracted hours, this was also stated.

42. In the claimant's case, he was about 30 hours under (page 430). On the summary document at page 2607, the claimant's (under) capacity hours was stated to be 39 hours.

43. The claimant emailed Mr Tyler on 13 November 2018, copying in another lecturer, Dr Antonia Noussia, expressing concern about the number of dissertations he had asked to supervise. He said it would not be good for his work-life balance or his health or well-

being. He concluded his email saying Í trust at least seven dissertations will be reallocated (page 431).

44. Dr Tyler responded to the claimant accepting that the allocation was not ideal, but that as the claimant had the spare hours, he had capacity. He said he was hoping to get more resource in to the department by February/March 2019 (page 430).

45. The claimant emailed Dr Tyler on 14 November 2018 saying (in summary) the dissertation supervision workload was not in the interests of the students or in the interests of his health and well-being which he said he knew Dr Tyler took seriously. He said he had not been sleeping well because of the worry. He referred to the respondent not recruiting new staff who could undertake dissertation supervision and he said the distribution of workload needed to be fair. He said five needed to be re-allocated and looked forward to this happening (Page 429). This email was copied to Dr Phil Pinch and Dr Antonia Noussia (page 427).

46. On 18 November 2018 Dr Antonia Noussia emailed Dr Tyler, copying in the claimant (page 433). She suggested each lecturer take one dissertation each and that two Hourly Paid lecturers ('HPLs') take two each. She concluded by asking Dr Tyler to let her know of his decision.

47. On 19 November 2018, Dr Tyler emailed the team explaining that whilst some lecturers had been allocated more supervision, the hours were available and collectively, the division was 606 under hours. He further explained there were no funds available to pay HPLs to undertake post-graduate or under-graduate supervision. He suggested that those lecturers with a heavy supervision workload could swap for a teaching load off others. He asked to be told about any such arrangements which might be agreed (page 450).

48. In an email of 19 November 2018, the claimant, emailing Dr Tyler and copying in the team, said the uneven distribution of dissertation supervision especially for part time students who only attend one day a week was the problem and he felt that it was too late in the academic year to re-allocate teaching. He also agreed with Dr Noussia's suggestions. (He sent a separate email to Dr Tyler (copied to Dr Noussia & Dr Pinch only) making the same point about Dr Noussia's suggestions and commenting generally on dissertation supervision numbers – pages 448 & 449).

49. Dr Tyler sent 2 further emails on 19 November 2018 to the claimant only. In one email, he said the claimant had the hours and further, that the claimant could use Skype (like Dr Eddie Isaacs) and he should get IT to set him up. In his other email, regarding Dr Noussia's suggestions, he said (again) there was no budget for HPLS. Further, he referred (again) to consider supervision via Skype, saying it was quite standard and that Dr Isaacs and Neville Kendall already did that (pages 448 & 449).

50. In a further email on 19 November 2018, the claimant did not consider the Skype option would assist because the dissertations were mostly for part-time Masters students. He went on to state that if a proper solution was not found, he would have to let the students

know of the difficulties in being able to resource the dissertation supervision properly (page 447). He copied in Dr Noussia.

51. In response, on 20 November 2018, Dr Tyler repeated that the claimant had the hours, there was no money to pay HPLs and to get Skype. He referred again to the possibility of getting resource which could assist for marking in the next semester. He also invited the claimant to look at swapping his part time students for full time students. He concluded by saying it was totally inappropriate to inform students that the resources were not available when they were (page 447). Dr Noussia was copied on this email.

52. On 21 November 2018 the claimant emailed Dr Tyler copying in Dr. Noussia, Dr Pinch and Dr Winter. He said he did not think Dr Tyler's suggestions were feasible or addressed the problems. He explained his concerns about dissertation supervision of part time post graduate students who would attend once a week on Thursdays. He said other colleagues had the same issues and he and other colleagues were under workplace stress as a result and dissertations needed to re-allocated. He said the problem was a resourcing issue in the light of the loss of staff. He suggested a meeting and for this reason he had copied in HPLs (page 469-470).

53. Dr Tyler replied on the same day copying in the same individuals. He accepted the position was not ideal and agreed with much of the claimant's analysis. However, he explained he could not ask those over hours to take on supervisions. Those with hours available, after teaching and management, had to be allocated supervisions. He explained he was over budget on HPLS by about £15,000 (just on teaching requirements) and also needed to find £60,000 of savings, thus could not pay for HPLS. He also repeated the suggestion about switching over supervisees. He also referred to the prospect of advertising for new resource and he hoped to have the position on advertising for more resource resolved before Christmas. He explained that this would provide some relief regarding resourcing issues from around Easter onwards. He concluded by saying that he thus had virtually no wriggle room at this time (page 445).

54. On 22 November 2018, the claimant approached other lecturers asking if they would supervise one of his dissertations. The claimant approached 4 lecturers. The email to Dr Eddy Isaacs was at page 476. In his email he had stated:

*"Hope things are ok with you. Duncan has agreed that we have a serious problem trying to organise supervision this year, mainly because of the colleagues that have left and because I teach two modules this semester then three next semester on the day the part time students are in Uni. I know you have a busy year, but could you do me a favour and supervise a dissertation (attached)" (*page 476).

Dr Isaacs and Mr Kendall informed Dr Tyler that they had been approached about this and thought it was inappropriate to be asked to take on the extra work.

55. On 22 November 2018, Dr Isaacs sent a draft of an email he intended to send to the claimant to decline his request to undertake one of his dissertations. The draft of the

email was a toned-down draft. This was obvious as the email from Dr Isaacs began '*I thought about writing a strong and quite rude email to him, but I am aware he is quite fragile at the moment'.* This draft email was copied into Mr Kendall (page 475).

56. On 23 November 2018, Dr Tyler emailed the team to explain that he was aware the claimant had approached some lecturers to take on some of his dissertations and that he believed that there was an implication that he (Dr Tyler) had agreed to this approach. He stated that whilst he agreed to some of the claimant's analysis, he had not agreed to the claimant's solution (s). He said he had agreed for the claimant to swap individual supervisees but that had not been the claimant's approach. He also reiterated that he was working hard to secure more resource and hoped to know the nature and scale of this by the new year (page 477). Dr Noussia took the view that there was a misunderstanding. She felt the claimant was asking for personal favours and it was for individuals to decline or accept the request. She emailed Dr Tyler and the team saying this on 23 November 2018 (page 477).

57. In an email dated 26 November 2018, the claimant emailed Dr Tyler, copying in Dr Noussia, Dr Pinch and Dr Winter. He said he found Dr Tyler's handling of this matter as imposing additional stress on him. He said the Associate Professors thought a meeting would help and believed that due to the loss of resource in summer, there was money available and 7 dissertations should be allocated to HPLs (page 482-483).

58. On 5 December 2018, Dr Tyler replied (page 481), copying in the same individuals. He said he had the claimant's emails and those from others. He said there was no more resource to take on HPL staff. He said there was no reasonable case to go over budget when there was hours capacity within the permanent team. He stated:

    "*I remain of the opinion, that while not to your satisfaction, from a management point of view the allocation is fair and it is up to staff to use all reasonable measures including skype, email, telephone conversations and face to face meetings, group meeting (or most likely a combination of these) to fulfil their obligations."*

    He added he did not want to enter into further protracted correspondence on the issue.

59. On 10 December 2018 the claimant emailed Dr Tyler. He said his handling of the matter was adding to his stress, his well-being and was impacting negatively on the students and other work colleagues. He referred back to an experience with a former Head of Unit when work colleagues of the claimant had complained about him anonymously about his dis-interest in staff meetings. He said Dr Tyler's earlier email had brought back memories of that and thus Dr Tyler had been insensitive or naïve. He said that he had been unfairly criticised in public and Dr Tyler's behaviour had been triply damaging because of the anonymity of complainants and the impact of his working relationships with them. This email was also copied to Dr Noussia, Dr Pinch and Dr Winter (page 480).

60. On 11 December 2018, Dr Tyler emailed the claimant explaining he would not reveal the names of those individuals who had spoken to him about the emails the claimant had

sent. He added that he needed to make it clear to the team that the claimant's approach to other lecturers, who were already up to hours or had high dissertation loads too, to take on some of his dissertations had not been sanctioned by him. He referred to the slow process of getting more resource which he said he found frustrating but concluded by saying he would keep on trying on behalf of the ULES team, all of whom he valued (page 470). The email was copied to Dr Noussia, Dr Pinch and Dr Winter.

61. In an email dated 12 December from the claimant to the UELS team he expressed his views as follows (in summary):

    - He said Dr Tyler had not addressed the points he had raised.
    - He said this was the only place he had worked where colleagues had complained about management and that colleague complaint culture appeared to be encouraged.
    - He was critical of the anonymity of complaints. He stated what he believed Dr Tyler should have done (but had not done).
    - If a favour was requested, it was for the individual to decide what to do. It did not require the blessing of the Head of the department (Dr Tyler).
    - He referred to the issue around the anonymous individuals who had refused to take on his extra dissertations from him as a pathetic and/or comical matter.
    - He cited the 4 individuals he had approached one of whom had told him he had not complained.
    - He referred to the colleagues who had complained to Dr Tyler as unfair, ill-considered, distressing, disrespectful, duplicitous and damaging to future relations.
    - He made reference to a previous issue where complaints had been made against him anonymously too.
    - He said he had now lost respect for and could not trust some of his UELS colleagues
    - He said UELS needed to discuss urgently how management deals with complaints from colleagues.

62. Dr Isaacs, who was one of the recipients of the email of 12 December 2022, emailed Dr Tyler, copying in Mr Kendall, 11 minutes later expressing that he was 'mightily upset'. He said it was inappropriate to be asked to do the claimant's work and the issue compounded his views about not wanting to interact with colleagues outside of Tourism (page 466).

63. On 13 December 2018, Dr Tyler emailed the claimant (only) explaining that the colleagues who had approached him had thought it inappropriate to be asked to take on the claimant's work (as they were already up to hours) which was clear from the AWP circulated. He said it was not being treated as a complaint (page 465).

64. In response to this email, the claimant responded to the entire team (pages 462-465), providing a copy of Dr Tyler's email of 13 December 2018, stating/saying:

- The response (of Dr Tyler) was cursory and dismissive.
- Dr Tyler's response did him no favours as a Manager/Head of Department.
- Dr Tyler's treatment of the claimant was unfair (and of colleagues and students).
- The treatment was a 'carbon copy' of treatment he had received a few years ago in which, he alleged, Dr Tyler had played a pivotal role.
- The denial of 'complaints' against him as sophistry.
- Dr Tyler had not treated him fairly and not bothered to explain to the colleagues who had approached him the problems faced regarding supervising part time postgraduate.
- There was nothing wrong with asking for favours and it was custom and practice.
- Dr Tyler's unhelpful insistence on dealing with the issues he had raised, affecting his wellbeing.
- Dr Tyler's handing of the matter had led to broken working relationships and may impact on student learning
- He suggested a meeting of the UELS team and a discussion with the anonymous colleagues

65. On the same day (13 December 2018), Dr Isaacs and Mr Kendall informed the claimant that they had discussed the claimant's email about taking on some of his dissertations with Dr Tyler. Dr Issacs maintained that he thought the request was inappropriate and strange and something he would never have done and he declined it as he, like the others, was over-worked. He said the AWP was the forum through which work should be spread (pages 502 and 504).

66. Dr Winter sent an email to the team on 14 December 2018 supporting the concerns about resourcing and the volume of dissertations and that in his opinion, it was not

inappropriate to ask for help from colleagues if needed. He also expressed his disapproval of collective emails, which he said generated more heat (page 479).

67. There had also been an exchange of emails between the claimant and Dr Tyler on 12 December 2018 about the reporting of the claimant's absence which he had not informed Dr Tyler about. He insisted that he did want to report his absence to Dr Tyler (by text) as he might not receive the text, he might not act on the text and because of his current unfair treatment and thus he asserted he would continue to email 'Helen Minja' (student administrator) only. Dr Tyler expressed to Professor Barker and Ms Beever that this was getting 'silly' and that he had not treated the clamant differently to anyone else (pages 497).

68. On 17 December, the claimant emailed Dr Tyler (and copied in others in the division) about how the planning team had been defined (in relation to discissions with Mott MacDonald) as anyone who teaches Planning. He referred to being the only member of the team who was RTPI qualified (page 506). In response, Dr Sophie Elsmore (an HPL in Housing and Human Geography), said she found his email 'fairly insulting and undermining' (page 507). Dr Samuel Johnson-Schlee, another recipient, also emailed Dr Tyler referring to the email as being particularly galling and undermining. He said the email was incredibly rude given that he had circulated it to others. He also referred to the claimant's emails in recent weeks, verging on bullying requiring serious intervention (page 457).

69. On 17 December 2018, the claimant emailed Dr Isaacs and copied in the whole team (pages 508-510. In this email he said:

    - He was prepared to talk to colleagues directly when an issue arises, unlike Dr Isaacs.

    - He was surprised by Dr Isaacs' characterisation of his request for support as inappropriate.

    - He criticised his use of the world inappropriate and said that as neither he or Dr Tyler recognised this as a complaint about him, this was a problem.

    - He said that Dr Issacs position implied he would never do anyone a favour which is something he would of course remember.

    - He raised a series of rhetorical questions about why Dr Isaacs had not sought to approach the claimant directly.

    - He was critical of and disappointed in Dr Isaacs' behaviour.

70. Dr Isaacs emailed Dr Tyler on 13 December 2018 informing him that he would not be responding to the claimant's email but that if he 'kicked' off about this at the (forthcoming) away day, he might struggle to 'keep his mouth shut' (page 511).

71. The claimant sent a further email to Dr Tyler on 19 December 2018 (page 512) asking 5 questions essentially about his handling of the dissertation issue and who had approached him about the matter.

72. On 13 December 2018, Ms Robyn Griffiths-Jones and Ms Sonia Leeyou (Senior Lecturers) had asked the claimant to be taken off the emails which were being exchanged in relation to the dissertation issue (pages 613 and 702). The email from Ms Griffiths-Jones said:

"*Hello Mike, could you please take me off the circulation list for these emails. Thank you"*

Ms Leeyou said similarly:

"*Hello Mike, I would also like to be removed from the circulation list for this specific matter. Thanking you.*"

In response, the claimant criticised their stance and criticised Dr Tyler, first on 17 December (page 613) and then on 18 December 2018, the claimant emailed both of them setting out a long list of 15 (work) matters in which he said they were thereby saying they had no interest (page 519-520): *"Please indicate the specific problem/issue currently facing all UELS colleagues and of great importance for our students' learning experience in which you have no interest"*. Both emails were copied to the team.

73. Ms Leeyou emailed the claimant and the team on 18 December and explained that she felt the forum for such discussion was in a departmental meeting.

74. In response, on 20 December 2018, Ms Griffiths-Jones emailed the claimant (page 519), copying in Dr Tyler (only) saying:

- The tone of his email was unpleasant and had upset her.
- It was verging on offensive, especially with regard to her professional integrity.
- She referred to the irony of helping colleagues and referred to 2 examples where she believed she had done just that.
- She said she merely politely asked to be taken off an email distribution list. She said she was a part time member of staff who knew nothing about what these emails were referring to. When she needed to make a judgment about the matter, she would ask for the information and reach an informed conclusion.
- She concluded by informing the claimant not to email her again.

75. By this time, Dr Tyler had also escalated the issue with the claimant to Professor Barker to seek a resolution. Professor Barker emailed the claimant and Dr Tyler on 19 December 2018. He said he would be conducting an investigation into the protracted exchange of emails and the effect on relationships in UELS. He informed both that a meeting would be held on 7 January 2019 and they could both be accompanied if they wished. He concluded his email as follows:

    "*In the meantime, all communication between you on this matter must desist and certainly should not be copied to any or all staff within the division. This is a reasonable management request and I expect full compliance*"

76. On 20 December 2018, the claimant sent a long email to Ms Griffiths-Jones. He disagreed with her description of the tone of his email to her being unpleasant or that it was verging on being offensive. He invited her to explain these comments. He responded to one of the occasions of support Ms Griffiths-Jones had referred to and did not accept that she did know what was going on as she had been copied into the emails. He also said he was confused by her statement 'do not email me again' and asked if she had said the same to the others. He asked her further about this comment not to email her again and whether it applied to any work matter or a specific issue. He concluded by saying '*when you make the accusations you did in your email, I have every right to respond, especially to defend myself'* (page 518*).*

77. Ms Griffiths-Jones did not respond to the claimant. She did however email Dr Tyler on 20 December forwarding to him a copy of the email she had received and saying "*For your info, I do not intend to respond, he seems intent on sucking me in to some horrible vortex*" (page 517).

78. In advance of the meeting on 7 January 2019, the claimant submitted a 15-page statement summarising his position. In this statement he offered to apologise for referring to Dr Tyler and Dr Isaacs as pathetic in his email of 12 December 2018 (page 536); however he said Dr Tyler's emails of 23 November, 11 December and 23 December and Dr Isaacs' email of 13 December 2018 needed to be retracted. He also said Dr Isaacs needed to apologise. Further, that it was unlikely that Professor Barker's investigation and subsequent report could bring positive closure. He said there had been no such closure in 2014 and 2016 either (page 538).

79. The Claimant and Dr Tyler set out what they considered to be the issues for resolution. The claimant set out 15 points ranging from, in summary, the allocation of dissertation supervisions, anonymity of complaints, criticism of how Dr Tyler handled the matter and his use of emails and criticisms of colleagues' lack of support. Dr Tyler referred to three matters: the toxic environment created by the emails, the claimant's inability to accept management instructions and his undermining of him and his undermining of colleagues via unreasonable and provocative language questioning their integrity, professionalism and specialist knowledge (pages 539-540).

80. A meeting took place on 7 January 2019. The notes were at pages 543 to 548. The claimant had asked Dr Adrian Budd to accompany him. In this meeting the claimant

provided a long list of issues (comparable to that already stated) and at the end of which he said he was seeking closure if Dr Tyler apologised for his actions and the harm done to the claimant. He stated, amongst his listed matters, he would apologise to Dr Tyler. He said he had been treated in an undermining and unacceptable way. Dr Tyler summarised his view that the claimant had become disruptive, unmanageable and there was no trust. He added he was undermining him and had upset colleagues. Professor Barker expressed concern that notwithstanding his instruction about no further emails to be sent about this matter, a further email had been sent by the claimant to Ms Griffiths Jones. The claimant said he had understood that to relate to the claimant and Dr Tyler. The claimant said by the submission of his comments/statement he was not raising a grievance. Professor Barker explained that the matter still required investigating.

81. The claimant submitted a further statement on 10 January 2019. This was 35 pages providing further details and views following the meeting with Professor Barker. The document contained offers from the claimant to apologise to others (Dr Tyler, Dr Isaacs, Ms Griffiths-Jones and Ms Leeyou) as well as expectations that others (Dr Tyler, Dr Isaacs, Ms Griffiths-Jones, Mr Westover) would apologise to him and actions he expected them to take (pages 582-584).

82. On 14 January 2019, the claimant raised a grievance against Dr Tyler (page 600). He said he was suspending any offers to apologise.

83. On 20 January 2019, the claimant raised a grievance against Ms Griffiths-Jones (page 609). In a conclusions section in this document, the claimant said Ms Leeyou may have 'discriminated' against him, further that Ms Griffiths-Jones, Ms Leeyou and Dr Tyler contravened LSBU and ACAS policy and perhaps even the Equality Act. There was reference to the claimant's health and well-being. He also said Ms Griffiths-Jones' behaviour may well be gross misconduct (page 611).

84. Dr Tyler submitted a statement in response to the grievance against him (pages 621 to 626).

85. Between 14 January and 20 February 2019 (pages 775 – 788), there was an exchange of emails between the claimant and Mr Budd, his accompanying companion and former union representative:

- On 14 January, Dr Budd suggested the matter could lead to a major escalation and that the claimant should apologise to Ms Griffiths-Jones and Mr Issacs. He also said based on experience, the matter could end up dominating the claimant's life for 6 months

- On the same day the claimant had said he was determined to seek redress for unfair treatment and culpability lay elsewhere

- On 16 January, Dr Budd suggested apologies on both sides to draw the matter to a close

- On 18 January Dr Budd informed the claimant not to copy him in on any more emails. He said the claimant had rejected his advice. He said he considered the claimant fundamentally mistaken in his course of action and he should withdraw his grievances and apologise to his colleagues, starting with Ms Griffiths-Jones

- On 21 January, the claimant provided a lengthy response, maintaining his right to pursue his course of action and saying he had apologised to Ms Griffiths-Jones and that Mr Isaacs and Dr Tyler had apologised to him

- On 26 January the claimant sent a further email to Dr Budd asking a series of questions about Mr Budd's email of 18 January

- Dr Budd responded on 28 January to the claimant's email and referred to his 21 January email as 'precisely the sort of hugely elaborate over-reaction and mis-reading of events I am warning you against'. He acknowledged Dr Tyler could have raised the supervision issue with the claimant verbally, he expressed surprise Ms Griffiths-Jones and Ms Leeyou had not taken out grievances against the claimant and suggested that as the claimant was in conflict with so many people, including it appeared him too, that he (the claimant) could be the problem. He concluded by urging the claimant to withdraw from his actions and restore good relations, otherwise based on experience he could see this ending in the termination of his employment

- The claimant responded on 2 February, disagreeing with Dr Budd and commenting that Dr Budd had decided Dr Tyler, Ms Griffiths-Jones and Professor Barker were all right without seeing the evidence

- On 4 February Dr Budd said to the claimant that he was being pig-headed in claiming that the dissertation allocation was the issue and that he was making a mountain out of a molehill, clouding relationships with others including him. He repeated his assessment that the claimant could well be managed out based on experience. He said 'you don't need a friend who agrees with you, but the opposite'

- On 14 February the claimant said Dr Budd was totally misunderstanding the issues and he, like Dr Tyler, Mr Westover, Ms Griffiths-Jones and Professor Barker, was treating him unfairly, horrendously and despicably

- On 18 February Dr Budd said he was alerting the claimant as a friend to the potentially devastating consequences of his approach which he said did not warrant him (Dr Budd) being lumped in with the others he had listed

- On 20 February, the claimant replied saying he maintained respect for Dr Budd but did not consider him a friend, saying he had caused him stress and pain magnified because of a 15-year friendship. He considered Dr Budd hostile who

had badgered and bullied him using totally inappropriate language and he questioned the tone and motivation of his last email.

86. On 16 February 2019, the claimant submitted a grievance against Dr Budd largely based on the foregoing exchange.

87. On 25 January 2019 a grievance meeting was held with the claimant, before Professor Barker. Ms Walakira (HR) was in attendance too as was Ms Richardson (HR note taker). The claimant declined to be accompanied. The notes were at pages 660 to 668. In this meeting the claimant said Dr Tyler's behaviour was possibly 'discriminatory' as he had shown a duty of care towards Mr Isaacs and Ms Griffiths-Jones in his statement of 18 January 2019 but not towards him (page 662). Professor Barker asked the claimant if in the light of his comments around duty of care, he was alleging a breach of the Equality Act 2010 as this did not feature in points 1 to 19 of his grievance. In response, the claimant said he was 'teasing out implications', but his grievance was as stated in points 1 to 19 (pages 560-561 of his 10 January 2019 statement). He said the Equality Act was not central to the investigation. If an independent reviewer was looking at this, the decision maker my decide discrimination had taken place (663).

88. Professor Barker interviewed Dr Noussia, Dr Isaacs, Dr Adams, Dr Pinch, Dr Tyler and Dr Winter.

89. With effect from 13 February 2019, Ms Vanessa Beever (Director of Education and Student Services), School of Law and Social Science, became the claimant's line manager at the request of the claimant (page 2691).

90. On 7 February 2019, Ms Griffiths Jones wrote to Professor Barker (and Ms Walikira (HR)) expressing concern about her personal safety. She said although she had not yet read the grievance papers (against her) she had read all the emails/statements leading up to this point, which had caused her upset and as she believed the claimant to be irrational and bullying, she was fearful of meeting him. She explained that she had changed her route to get to her lesson yesterday to avoid the chance of meeting him, which was before she knew of the grievance. As she was now to prepare a statement in response to his grievance, which he would see, she had become concerned about what is reaction might be. She did not wish to meet him whilst she was in the building (page 737-738).

91. Ms Griffiths Jones also submitted a written statement in response to the grievance, dated 12 February 2019. In this statement, she said the claimant's email of 18 December 2018 had shocked and upset her. She said she could not understand the vehemence in tone. She took it very personally. She added that it was unpleasant in tone and when he had responded to her (after she had asked him not to email her again), she felt it was verging on bullying (page 754-756).

92. On 21 February 2019, Professor Barker concluded his investigation and produced reports in relation to the grievances against Ms Griffiths-Jones and Dr Tyler (pages 794-799 and 800 to 811). The grievance against Ms Griffiths-Jones was not upheld. Moreover, the grievance was considered to be vexatious. The grievance against Dr Tyler

was also not upheld. Moreover, the investigation report concluded that the claimant had undermined Dr Tyler and his behaviour was characterised as unreasonable and disrespectful and a lack of regard of the impact of his actions on the team creating tension and low morale. The report referred to a breakdown in trust, confidence and respect and a disciplinary investigation was recommended because the issues were considered to be serious.

93. The claimant was suspended on full pay on 21 February 2019 by Professor Bailey. The claimant did not attend the suspension meeting. Professor Barker and Ms Walikira (HR) were in attendance (pages 789-792). In the follow up letter (page 812-814), the claimant was advised of:

- the allegations of bullying and harassment against him relating to Dr Tyler
- the allegations of bullying and harassment against him relating to Ms Griffiths-Jones
- repeated failures to adhere to reasonable management instructions:

- by failing to meet a marking deadline

- constantly undermining of Dr Tyler by consistently questioning and challenging his authority in relation to work assigned (such as dissertations)

- cumulative instances of misconduct:

- not notifying/reporting absence to Dr Tyler

- non-adherence to divisional practices regarding teaching, especially regarding classes involving study trips

- non-adherence to values in line with dignity at work obligations resulting in a breakdown in trust and confidence

- falsely declaring the number of hours the claimant had been teaching

94. The respondent also retained the right to add to or change the allegations in the light of the investigation.

95. A follow up meeting regarding the suspension took place on 4 March 2019. The notes were at pages 1121 to 1125. Professor Bailey felt that through a fear of reprisal/retaliation and because the allegations included bullying and harassment (in particular citing Ms Griffiths Jones) and because he felt that the claimant might interfere with the investigation, suspension was justified. The claimant was asked about his well-being. The claimant said he was getting support from his GP, family and friends. Professor Bailey said he should contact Ms Beever if he needed further support.

96. Professor Callaghan was appointed to undertake the subsequent disciplinary investigation.

97. He undertook investigation meetings with Professor Barker, Dr Pinch, Dr Isaacs, Mr Kendall, Dr Tyler, Dr Johnson-Schlee, Ms Manalsuran, Dr Elsmore, Ms Griffiths-Jones, the claimant, Ms Beever, Dr Kilburn and Dr Noussia between 22 March 2019 and 3 April 2019.

98. In summary, with regard to the issues in this case and proportionality, the persons interviewed expressed as follows:

    - Professor Barker said the claimant had some good qualities, but he did not engage fully with the wider activities of the division. He referred to a difficult relationship the claimant had with a previous Head of department (Ruth Richards) in relation to management requests. He referred to incidents in 2014 & 2016. He also referred to the claimant's negativity in June 2018 in relation to outcomes of a research meeting where he had been passive aggressive. He explained the claimant had applied, unsuccessfully, on 3 occasions to be an associate professor. He felt the claimant had not taken on feedback. Professor Barker also felt the claimant ought to have become involved in the RTPI Project Board. He felt the claimant was always challenging Dr Tyler's decisions. He accepted Dr Tyler could have handled the workload issue better, but he was also aware of the claimant's challenging behaviour. He said that when Dr Tyler had approached him, he had sought advice from HR too. He believed the previous redundancy situation may have impacted him. In relation to Dr Tyler's email to the team (23 November 2018), he explained that he could have asked if Dr Issacs or Dr Kendall knew who else the claimant had approached, but that it was not unreasonable to assume the claimant had sent his email to all members of the division. Professor Barker referred to the claimant's email to Ms Griffith-Jones after she had asked to be removed from the email exchanges as 'dreadful'. He said she had felt bullied and upset and was fearful, avoiding areas in case she would see him. He had also taken out a grievance against her. He considered the tone and volume of the emails to be inappropriate. In relation to the claimant's well-being, he said he had signposted EAP, but that recently, the claimant had told him to stop offering support as he was getting this from his GP, family and friends. He added that he had been sent a letter from the claimant's GP confirming he had no psychological issues. He felt the claimant's treatment of his colleagues, especially Ms Griffiths-Jones, had justified his suspension. In relation to the claimant returning to the division, he felt there were concerns about the claimant's behaviour and relationships had been significantly undermined (pages 1036-1039).

    - Dr Pinch said he was a close personal friend of the claimant of about 10 years, they had shared an office for that time and would have lunch 2-3 times a week. He felt the claimant's reaction to the AWP email was because he felt it was unfair. He said he had agreed to take on 2 dissertations for the claimant. He said

it was not customary for lecturers to swap unless agreed with the Head of Department. As he felt the claimant was distressed, he felt his request for help to be reasonable. He was aware that other colleagues had felt his request should not have been done informally. When some staff had asked to be removed from the email chain, he felt this was reasonable as the claimant was escalating the matter and involving other colleagues unnecessarily. He said he had raised this with the claimant, as a friend. He expressed concerned about his health as he knew he had been at risk of redundancy before. He felt whilst the claimant was known for being robust, his emails seemed out of character in their escalation. Some colleagues expressed concern for the claimant, others were upset and uncomfortable by his emails. When he had spoken to the claimant about his health in a 'round about' way, the claimant had said he was happy with his actions and sure of where this was heading. He was still concerned about the claimant's health and the effect on the division. He said it would be useful to have more team meetings, though Dr Tyler also had an open-door policy to individual meetings (pages 1040-1042).

- Dr Issacs said he had refused the claimant's request for help as he was already stretched and had discussed it with Dr Kendall who had also been approached. The conversation was overheard by Dr Tyler. Dr Issacs said the request was inappropriate. Dr Isaacs said it was not customary in the Tourism team to share workload. He had never, in 13 years, received such a request, so he thought this request was strange. He felt the claimant's subsequent emails to find out who had mentioned this to Dr Tyler were upsetting and of a bullying and harassing tone to Dr Tyler. He felt the tone of the claimant's emails were coming from a bad place. Whilst he did not feel bullied himself, he felt the claimant had bullied Dr Tyler. As Head of department, he felt Dr Tyler had done the right thing with his response. He said he had previously witnessed unhelpful behaviour from the claimant, which had made him not want to have any interactions with him. He also mentioned that the claimant might need mental health assistance. He said Dr Tyler was very transparent and his positive changes had been a 'breath of fresh air' (pages 1080-1081).

- Dr Kendall said that in the Tourism team, colleagues occasionally helped each other but he had never received a request outside of that team. He was asked by the claimant if he had commented on his request (for help) and he said to him that he had told Dr Tyler it was odd. He said other people had felt bullied and harassed by the claimant. He said about Ms Griffiths Jones that he had witnessed her reaction to breaking down in tears when she had seen the clamant in the corridor as he shared an office with her. He said he could understand why some colleagues felt bullied and harassed as the emails were accusatory in tone. For his part, he felt the emails were over the top and not the sort of emails one would expect. He said the claimant had felt victimised and thus felt the need to justify himself. He said he had observed the claimant behaving unacceptably in divisional meetings and felt there was a historical culture with the claimant and other staff members. Dr Kendall was aware that the claimant's emails had annoyed a lot of people (pages 1082-1084).

- Dr Johnson-Schlee said while he was sympathetic to the initial issues, he said he found the Planning team email insulting and undermining, the claimant's emails were becoming aggressive and were of a bullying, threatening and harassing nature and the undermining of Dr Tyler was unpleasant (the notes of his meeting with Professor Callaghan included his email of 17 December in which he had said he had found the claimant's Planning email galling and undermining) (pages 1286-1289).

- Dr Manalsuren agreed with the workload concerns, the claimant was the one to make negative comments, challenging the Head of Department and had walked out of meetings, it would be a good idea to discuss allocations in team meetings, it was not custom for staff to swap student allocations or to do favours with regard to student allocations (pages 1290-1292).

- Dr Elsmore said it was customary for colleagues to share workloads but it was inappropriate for the claimant to ask for help as staff were already overstretched, the request should have been done through Dr Tyler, there was a reason to have a Head of Department, otherwise it was unmanageable. The claimant's initial concerns were valid but the claimant's responses were unacceptable. She was concerned for his well-being as his behaviour was not rational, the content and tone of the claimant's emails were becoming harassing and bulling over time, the claimant's planning email of 17 December 2018 was insulting and unprofessional which had caused offence and was undermining with undertones of bullying and the claimant's fishing for information about who had said things (to Dr Tyler) anonymously was inappropriate and harassing (1293-1295).

- Ms Griffiths-Jones said she had found the claimant unsupportive in meetings and felt he looked down on people, he had walked out of a meeting, she had asked the claimant not to copy her in as the tone of the claimant's emails were becoming personal and unpleasant, she did not want to make a judgment on the matters being raised, she had been upset by the claimant's email to her after she had asked to be taken off the emails, his tone was unhinged and she felt her professional integrity undermined, she felt the email had a bullying tone. After the claimant had taken out a grievance against her, she had started using avoiding behaviour to not bump in to him, she felt intimidated in close proximity as the tone of his emails was unhinged and he had taken out a grievance. She had seen the claimant in the corridor which had left her feeling distressed and had walked in to Dr Tyler's office in tears, she was very concerned if she had to work with him again (1296-1298).

- Ms Beever commented that some colleagues had mentioned to her that the emails were of a harassing and bullying tone, especially where individuals had been asked to be removed, she said the email exchange with the claimant around incomplete marking had been uncomfortable, she was unaware of any negative impact on students who she felt were positive towards the claimant, she felt Dr

Tyler could have handled the matter differently, she was concerned for Dr Tyler's well-being and she felt some leadership and management training to handle difficult conversations would help (pages 1305-1308).

- Dr Milburn commented that the logistics (and practicality) of part time dissertation was a reasonable concern, it was customary to redistribute work on a reciprocal/swap basis (and provided the Head of Department was happy with it), but the claimant was underhand in his allocation of work, the claimant had failed to teach all sessions on a field trip module and time allocated to him on the AWP. He provided adverse feedback on the claimant's personal tutoring/dissertation supervision, that the claimant did not attend applicant or open days on weekends, he did not undertake straightforward tasks, he was reluctant to update lecture notes, he rarely attended key meetings. The proceedings he had raised against the individual who had asked not to be copied in on emails was unbelievable and had caused disbelief and consternation amongst staff, the claimant had an agenda to undermine Dr Tyler and one email had been shameful, embarrassing and disrespectful which should not have been sent to Dr Tyler and shared with others. The perception of the claimant's email had moved to disbelief amongst his colleagues and his behaviour considered odd such that colleagues had reached out to him (1309-1313).

- Dr Noussia commented that the volume of dissertations allocated to the clamant was high and she didn't think it was inappropriate for the claimant to have asked colleagues for help and Dr Tyler's email about it was unnecessary. She added however that the claimant's emails had become unreasonable and over the top and that he had overdone it. She said she had told the claimant his emails were unnecessary and caused aggravation. In relation to the claimant's well-being, she had noticed a positive difference in his appearance a few weeks ago. She did not feel bullied or harassed by the claimant but she reported that other colleagues had told her they did. She stated she did not understand why the claimant had been suspended as she did not consider his behaviour threatening and the re-allocation of his work had led to stress in the division. She added that students had been asking about him with whom she believed he had a good relationship (pages 1314-1316).

- Dr Tyler commented that he got on well with the claimant and were friends, but he was not easy to get along with, previous managers had had problems, the claimant's behaviour had changed when he was put at risk of redundancy. He was happy for staff to swap work as long as he (Dr Tyler) was informed, the staff were happy and there was an equitable workload. It had been unreasonable for the claimant to have approached colleagues (2 of whom had mentioned it to him) and the claimant was under hours. He had mentioned swapping, Skype, email and telephone options to the claimant. Although he agreed with the claimant's general concerns, if the claimant offloaded 63 hours he would be 93 hours under. The claimant had said he would inform students about a lack of resources which he found bullish, threatening an undermining, his behaviour towards and grievance against Ms Griffiths-Jones was harassing and bullying.

Dr Tyler mentioned that the claimant had failed to mark exam papers to an agreed deadline (this was after he had ceased line managing him), he considered there was a GDPR breach relating to passport information of 14 students (though he acknowledged the claimant had not done the compulsory training) and he had refused to report his sickness absence to him. Dr Tyler also provided several examples of behaviour of the claimant he felt was contrary to the respondent's values: questioning the professionalism of colleagues, questioning the credentials of the planning team, a lack of engagement with RTPI, adverse feedback from a student who said he had been kept waiting for 2 hours for a dissertation supervision which lasted 5 minutes, not turning up to 3 scheduled dissertation supervisions, informing a colleague (Mr Neil Adams) of his grievance and suspension, rarely volunteering to take on work for the good of the division and not competing course monitoring reports on time for several years. Also, Dr Tyler said he didn't think team meetings were of much benefit because of the atmosphere, the claimant had shouted at him in October 2018 (twice), he felt the claimant had a problem with management and receiving instructions, the claimant had pursued a campaign in the past to seek out who had made comments about his behaviour in meetings, the claimant's bullying went beyond boundaries when he started involving more than just himself (and Dr Tyler), the claimant's behaviour was disruptive and the claimant had never wished to engage with OH regarding his well-being although support had been offered and suggested by colleagues and HR (pages 1281-1285).

99. At the end of his meeting with Professor Callaghan, Dr Tyler provided a copy of some notes he had made with regard to the investigation (pages 1028-1030). These notes were 3 pages with sub- categories called 'disruption, 'dissertations', 'staff meetings', 'module & teaching' and 'general'. In oral testimony, Dr Tyler said these were an aid memoire for him. Professor Callaghan said he only glanced through the notes but did not otherwise have regard to them when preparing his investigation report. The notes were relevant in these proceedings as on the last page under 'general', at point 7, there was a remark as follows:

"*His playing the race card was cheap and nasty. Sonia Leeyou (Afro-Caribbean) is anxious that you understand this and will not entertain any intimation of racism existing in the division. She is happy to talk to you".*

100. The Tribunal accepted Dr Tyler's evidence that these notes were created by him, in advance of the meeting, as an aid to himself for the purposes of the investigation meeting. They were handed over in the same form. Professor Callaghan's evidence was also accepted that he only glanced at these notes and also his further evidence that the notes of his investigation meeting were primarily relied upon (in relation to the production of his investigation report).

101. The Tribunal also found that the reference to the 'race card' was consequent on Professor Barker being told (by HR) that the claimant had raised with HR that Ms Griffiths-Jones' actions in asking the claimant (only) to be removed from the emails was (race) discriminatory (or that is how it had been inferred). Further, that the claimant

believed Dr Tyler not recognising this as discriminatory was discrimination by him too (this was apparent from page 610). The Tribunal found that Professor Barker had informed Dr Tyler of this.

102. The claimant was also interviewed by Professor Callaghan. At this interview the claimant said he didn't have access to all his emails since being suspended. The claimant was informed all items in his inbox and sent items had been saved on a USB stick. In response to the allegation about harassment and bullying of Dr Tyler in emails between mid-November 2018 to February 2019, including an email of 19 November threatening to inform students of resourcing issues, the claimant said he had not been presented with any substantial evidence. He added he had not been told his actions amounted to bullying or harassment. He said his email exchange was normal interaction between a senior lecturer and a head of department. In relation to Ms Griffiths-Jones, he said he would like to know when, how and what harm he caused her. In relation to missing a marking deadline, he explained he had been sick for 4 days, suffering with stress and that he had agreed with Ms Beever for extra time. In relation to undermining and challenging the authority of Dr Tyler, the claimant said he did not know what the allegation was referring to specifically. In relation to reporting absence, the claimant said he did have to report it to Dr Tyler and that he had informed him he was uncomfortable doing so. In relation to not complying with divisional practices regarding teaching, the claimant said he could not respond as there was a lack of detail. In relation to a breakdown in trust and confidence, the claimant said there was a breakdown in communication caused by Dr Tyler. He said Dr Noussia supported the claimant's view regarding the allocation of work. The claimant said Dr Tyler should not have written to all colleagues based on anonymous comments. The claimant knew who the anonymous colleagues were before he wrote to Dr Tyler about his. The claimant said he had undertaken some group supervision, as suggested by Dr Tyler, which had been well received. The claimant asserted he had a close relationship with Dr Tyler for about 10 years and he had helped his son. He considered their relationship professional and personal. The claimant said he did not know if his emails had upset anyone as he had not been made aware. He said it was not for Ms Griffiths-Jones to instruct him to remove her from his emails. He said other colleagues had found the claimant's emails to be reasonable suggesting Ms Griffith-Jones' 'weakness' compared to other colleagues. The claimant said attending weekend/evening appointments was voluntary. In relation to teaching hours, the claimant said there were different requirements and times for different modules. He said no student had ever complained that they had not received value for money. It was put to the claimant that one student had complained about not receiving dissertation supervision since November 2018, but the claimant said he could not address this without knowing further details and the name of the student. In relation to a potential GDPR breach, the claimant had uploaded passport details but had not been aware of a GDPR complaint. He had however not completed GDPR training.

103. All employees interviewed were made aware of the Employee Assistance Programme ('EAP').

104. Following these investigation meetings, Professor Callaghan produced his investigation report dated 11 June 2019 (pages 1166 to 1181). In addition, there were 48 separate

appendices essentially contained the evidence/documentation received or relied upon (running to page 1417 in the bundle). In summary, he found that the claimant had a case to answer in relation to 7 out of the 10 allegations put to him (the tenth one added after suspension was in relation to other matters including the GDPR breach). The three allegations in respect of which he found the claimant did not have a case to answer was about failing to meet a marking deadline, notification of sickness absence and falsely declaring teaching hours.

105. The report referred to relevant policies relied upon including, amongst others, the Equality, Diversity and inclusion policy and the Staff Inclusion Policy.

106. The issue of race discrimination or the claimant's race was not mentioned by the claimant at any point during the investigation meeting with him, or whistleblowing, directly or indirectly. This was not referred to by any other interviewee either. There was no expression of remorse or an apology at his investigation meeting either.

107. The investigation report was presented to Professor Bailey on 13 June 2019. Professor Bailey having read the report and appendices was satisfied that Professor Callaghan had come to a reasonable conclusion and thus asked HR to convene a disciplinary hearing. This was subsequently done by a letter dated 14 June 2019 (pages 1453-1454). The investigation report with appendices and the disciplinary procedure was attached.

108. In the disciplinary invitation, the claimant was informed of the 7 charges against him, he was provided with the report and the appendices, he was forewarned that the allegations might amount to gross misconduct and that the outcome could lead to his dismissal and he was informed of his right to be accompanied. The hearing was re-scheduled to take place on 15 July 2019.

109. Professor Wareing had been appointed to chair the disciplinary, but she was not available on the re-scheduled date. Accordingly, Mr Stevenson was appointed as Chair. Ms Coupar was also on the panel with Ms Langford (HR) supporting.

110. In advance of the hearing, the claimant also submitted a document entitled 'case for the defence' (addendum 31) at pages 1745 to 1848.

111. The claimant had also submitted a grievance in relation to the notes of Dr Tyler handed to Professor Callaghan at the end of the investigation meeting. His grievance statement submitted a response to all aspects of the content of Dr Tyler's notes (pages 1519-1524).

112. There followed an exchange of emails between the claimant and Ms Langford about the forum in which to hear this grievance. The respondent maintained, though the claimant disagreed, that as the notes formed part of the investigation report of Professor Callaghan it was reasonable for this issue to be raised and addressed as part of the disciplinary process. This was said in emails dated 3 July, 5 July and 11 July 2019 (pages 1550, 1548 and 1542).

113. In addition, on 10 July 2019, Mr Stevenson had overseen a grievance the claimant raised against Professor Bailey in relation to the claimant's suspension. This had been heard but not determined when the claimant's disciplinary hearing took place.

114. The minutes of the disciplinary meeting were on pages 1914 to 1929. The claimant was accompanied by Dr Jarvis. In addition to Ms Langford, a separate note-taker from HR was present. Professor Callaghan was in attendance to present and summarise his report.

115. In summary (having regard to proportionality and the issues in the case), at the outset of the meeting, the claimant was asked if he was fit to proceed as he had provided a letter from his GP. The claimant said his health had been affected by stress, but he was fine to carry on. Mr Stevenson said he would take into account statements from students in support of the claimant and statements from Dr Adams and Mr Jarvis (page 1510). Professor Callaghan said he had considered data containing comments from students but had adjudged this was not material. In addition, a statement from Dr Noussia which did not address the specific allegations. Professor Callaghan set out the nature of the allegations he had investigated, his findings on them and the timeline.

116. The claimant said he was innocent of all charges. He said the respondent had a duty to act fairly, consistently and should apply policies reasonably and transparently. He said he had never overstepped boundaries. He said he had not acted alone and felt it was his duty to raise concerns. He said the period of time had been stressful in relation to the unfounded allegations. He said the allegations against him were defective and should be declared null and void. He said only 2 of the allegations related to a stage 4 gross Misconduct hearing. He referred to mediation with his colleagues and sought positive closure.

117. The panel questioned the claimant. Ms Coupar asked what issues had been ignored and how he been treated less favourably. He said whilst he had been directed to EAP support, others had had one to ones. In relation to the bullying allegations against Dr Tyler and Ms Griffiths-Jones, the claimant was asked by Mr Stevenson if he denied the facts or felt they were unfair. In response, he said he did not deny the facts but did deny the interpretation. He said there wasn't anything wrong with the emails he had written. Ms Coupar asked the claimant why he felt Ms Griffiths-Jones had asked not to be included into emails. He said it was not for him to say, but for Professor Callaghan to ask. Professor Callaghan responded by saying he did ask and it was instrumental in his Judgment whether she felt bullied or harassed. He said it was only later that Ms Griffiths-Jones had felt the claimant's actions were verging on the offensive. Professor Callaghan said that she had mentioned harassment. The claimant said the workload issue was about the allocation of dissertation students.

118. Mr Jarvis commented that the matter could have been resolved with a round table meeting, the dissertation supervisions should have been sorted rather than huge email trails of various grievances. He was amazed at the escalation of events. The claimant commented that the investigation took 14 weeks. Professor Callaghan said the claimant was on leave for 5 of those weeks. The claimant raised that Dr Tyler and Professor Barker had been happy to fund his accreditation in January 2019. Professor Callaghan

did not consider this material to the allegations. The claimant challenged Professor Callaghan about what had Ms Griffiths-Jones, Professor Barker and Dr Tyler done to follow the Dignity at Work policy to find resolutions. He also said Ms Griffith-Jones had not specified the time, date, place or distance when she had been fearful of him and to avoid meeting him. Professor Callaghan was asked why he had not interviewed Sonia Leeyou, he replied because she had not complained about the claimant's email. The claimant said Ms Griffiths-Jones had victimised the claimant because he had brought a grievance against her (because she had referred to the grievance in her interview). Professor Callaghan said it was his judgment that Ms Griffiths-Jones felt harassed and bullied. The claimant and Professor Callaghan disagreed on whether the names of the students (who the claimant said he would alert about the resourcing issues) needed to be identified. In relation to the GDPR breach, Professor Callaghan confirmed it was on the basis of one student complaint and it was considered to be a breach. In relation to the 'threat' to inform students about resourcing issues, the claimant said students were already aware and there was no intention to inflict pain. The claimant said that the investigation report stated this threat was not admitted by him, but the summary had indicated an admission by reference to the 19 November 2018 email. Professor Callaghan referred to 2 emails in December as evidence of where the claimant had challenged Dr Tyler's authority. The claimant asked by times and dates when he had breached the respondent's values in response to which Professor Callaghan said the examples were in his report. Professor Callaghan if he considered he had interviewed many colleagues in response to which he said he considered 10 to be many. Professor Callaghan accepted that Dr Tyler could have taken the discussion on dissertations off-line when it was veering towards vexatious. Professor Callaghan accepted that the claimant had provided evidence of one student who had been happy with the Barcelona Field trip preparations, but he said it did not mean that the two others who had said otherwise were.

119. In his summing up, the claimant said he found the allegation of alleged harassment of Dr Tyler, preposterous. He said the allegations against him had been raised between 1 and 3 months after each incident and should have been dealt with informally at the time. He said he had suffered with severe migraines, continuous headaches, back pain, insomnia and mental exhaustion. He said he had behaved responsibly and followed policy for seven months.

120. The issue of race discrimination or the claimant's race was not mentioned by the claimant at any point during the disciplinary hearing, or whistleblowing, directly or indirectly. There was no expression of remorse or an apology at the disciplinary hearing either.

121. After the hearing, the claimant submitted further documents (addendums 32, 34 and 35 (pages 1930 to 1951), challenging some of Professor Callaghan's comments at the disciplinary hearing and providing further narrative.

122. After the disciplinary hearing, a deliberations meeting took place on 19 July 2019 involving Ms Langford and Ms Coupar. The outcome from this meeting was a matter of dispute between the parties.

123. Mr Stevenson's evidence was that there was no final outcome but that both he and Ms Coupar were contemplating a sanction of a final written warning or dismissal having regard to the series of misconduct. He added, at this stage, he thought the conduct was so unreasonable that the claimant could not continue to work for the respondent. He said he had discussed and agreed with Ms Langford that it would be useful to discuss with senior personnel the impact of the claimant returning to his role after all that had happened. He did then discuss that point with Professor Barker and Professor Bailey who both had concerns about the viability of a return to work. Professor Callaghan did not add anything further (paragraphs 23-28 of his witness statement).

124. The evidence of Ms Coupar, who was called by the claimant, was that following the deliberations meeting, whilst dismissal was discussed and contemplated, it was decided that a final written warning would be issued (paragraph 8 of her witness statement).

125. Ms Langford's evidence was that Mr Stevenson and Ms Coupar considered all possible sanctions, including dismissal for a substantial reason, dismissal for misconduct and a final written warning. They were concerned by the extent of the breakdown of the relationships. She believed they wanted to see if those relationships were repairable alongside a final written warning. Her evidence was that the deliberations meeting closed on the basis that the panel would explore whether a return to work would be possible and there was no conclusion on dismissal or a final written warning.

126. The Tribunal found, on a balance of probabilities, that no conclusion had been reached following the deliberations meeting on 19 July 2019. Mr Stevenson's evidence was corroborated by that of Ms Langford. Moreover, the contemporaneous email sent by Ms Langford to both Mr Stevenson and Ms Coupar on 22 July stated (page 1956):

"Can you let me know the final position following our discussions of last week? I would like to draft the outcome letter tomorrow for you if possible. I have my notes from the meeting on Friday, so I can proceed on that basis unless you confirm otherwise"

127. It was thus clear to the Tribunal from this letter that a final position was awaited. This email was sent on the next working day after the deliberations meeting. Mr Stevenson's diary entry showed meetings arranged with Professor Callaghan before that meeting and with Professor Barker after that meeting.

128. The Tribunal found that none of these discussions formed a part of the deliberations meeting.

129. It was also the case that the draft outcome letter on 25 July 2019, referred to dismissal (with notice) as the outcome (2738 – 2745).

130. When the dismissal outcome was conveyed to the claimant and coped to Ms Coupar on 5 August 2019, she did respond as follows:

"Did further discussions go on in my absence? My recollection is that we felt we couldn't dismiss and we would have to set very clear behavioural guidelines. This now says I have been part of a decision to terminate his employment"

131. Following a further exchange however, Ms Coupar added:

"*I am happy to have a telephone call. I'm assuming there was a final (Tribunal emphasis added) decision that relationships had broken down so much, there was no possibility of rescuing them?"*

132. Taken together, the Tribunal found that these emails re-inforced its view that a final decision had not been reached earlier (pages 1965-1966).

133. The Tribunal accepted that Ms Coupar had not been a part of those subsequent considerations. This was owing to an accident she had in the workplace at this time as a result of which she was signed off. Mr Stevenson said he knew she was not attending University and did not know about her accident (until he was informed by her) but had assumed it was sickness absence. As a result, the subsequent final outcome was reached by him as the Chair of the disciplinary hearing.

134. The outcome letter was at page 1968 to 1974. The outcome was as follows:

- Harassment & bullying of Dr Tyler - this was partially upheld. It was found that the claimant had been insubordinate and refused to comply with a reasonable management request. There was recognition that Dr Tyler could have handled the situation better and spoken to the claimant, the claimant's email responses were not professional and not in keeping with the respondent's values. Outside of the email communication, there was little evidence to support on-going bullying and harassment.

- Threat to notify students of resourcing issues – this was upheld as an act of insubordination and a potential adverse effect on student experience.

- Harassment and bullying of Ms Griffiths-Jones – this was upheld. The claimant's responses to Ms Griffiths-Jones were not professional, acceptable or reasonable. Further, that it was reasonable to determine the claimant's grievance against her as vexatious in nature. The outcome also considered this to be an attempt to humiliate Ms Griffiths-Jones in front of copied in colleagues. The emails together with the vexatious grievance could be perceived as bullying.

- Undermining/Challenging Dr Tyler's authority – this was upheld. The outcome was that the claimant's treatment of Dr Tyler was excessive and undermining in relation to dissertation supervision, where clear instruction had been given as to how to manage this within the claimant's workload.

- Failing to uphold values resulting in a breakdown in trust and confidence – this was upheld. The outcome was that given the consideration of the evidence and how matters had progressed since December 2018, the claimant had conducted himself in a manner that was likely to have seriously damaged trust and confidence.

135. The charges in relation to failing to comply with divisional practices and the GDPR breach were not upheld, though requiring data protection training for the latter.

136. In addition, the claimant's conduct had caused a fundamental breakdown in relationships (including Dr Tyler, Professor Barker and Ms Griffiths-Jones). The decision was that the this was irretrievable, and the claimant was responsible for causing it. It was considered that the claimant had not acknowledged his actions or shown remorse, especially in relation to Ms Griffiths-Jones. In determining that the claimant was not guilty of gross misconduct, the claimant's clean record was taken into account. It was also noted the claimant had been offered well-being support through PAM and the claimant had, temporarily, been assigned a different line manager. The claimant was dismissed on 3 months' notice.

137. The claimant was given a right of appeal which he exercised by his email dated 15 August 2019 with addendum 37 attached (pages 1991 to 2005).

138. At this time, the second grievance against Dr Tyler was outstanding (in relation to Dr Tyler's notes). In addition, the claimant raised a further grievance against Professor Barker on 14 August 2019. This grievance had an addendum 35 which began by cross referencing the first grievance against Professor Barker and his decision to commence an investigation and added grievances about the circumstances surrounding the decision of Dr Tyler to resign as Head of Department and the consequences of that, including an equality impact survey and that Professor Barker had discussed confidential information submitted by Dr Tyler to Professor Callaghan (pages 1984-1985).

139. The initial view of Ms Langford was for these grievances to be put on hold pending the appeal, but Professor Pheonix, who was to chair the appeal determined they should be considered as part of the appeal process. He set out his view in his letter of 3 September 2019 (page 2103) that he considered the concerns related to the evidence relied upon to generate the investigation report and he concluded that these should be raised as part of the appeal process. He said the claimant could raise any issues which he felt had led to an unreasonable outcome under the disciplinary procedure and any procedural issues. In paragraph 28 of his witness statement, he confirmed the other appeal panel members felt the matters were inextricably linked.

140. The appeal hearing took place on 5 September 2019. The minutes were at pages 2109 to 2121. The claimant was accompanied by Dr Winter. The panel members were Vinnay Tanna and Mee Ling Ng (Board of Governors). HR were in attendance with a separate HR note taker. Mr Stevenson was in attendance too to present the dismissal case.

141. The claimant had prepared and read from a statement (addendum 40) on pages 2128 to 2139.

142. In summary and having regard to the issues in the case and proportionality, at the hearing, the claimant questioned the panel members' training and ability to hear the case. Professor Pheonix said they had substantial experience. He also explained the appeal was not a rehearing. The claimant said he would raise his grievance concerns (regarding Dr Tyler & Professor Barker) in the appeal hearing under protest.

143. The claimant said some of the notes of Professor Callaghan's investigation meetings were missing but which he had received after chasing them. He said he had received the disciplinary hearing notes late too. The claimant said evidence from students in support should be taken into account. The claimant said his health had been ignored and that the cost to the respondent to date was about £470,000. The claimant read from addendum 37 and said the evidence, investigation and disciplinary hearing were flawed. He referred to Dr Tyler and Ms Griffiths-Jones not seeking to resolve matters informally. He said he had been denied a proper duty of care, there were outstanding grievances, and he was prepared to engage in mediation. He said this should involve all people Professor Callaghan had interviewed and because HR had made mistakes too, outside mediators should be involved. In relation to his health, the claimant said he started to get migraines from mid-December 2018 and was taking painkillers. He said Dr Tyler had not conducted a return to work interview and found out about the change in line management to Ms Beever in a return to work interview with HR. In relation to his suspension, he said there were thousands of emails he had not been able to access, but he could not say whether or not this would have made a difference. The claimant commented that he found Dr Tyler's notes intimidating and the reference to the 'race card' offensive. He referred to Professor Barker excluding the claimant from discussions after Dr Tyler had resigned as unfair and discriminatory. He said would send in further addendums 41 and 42 in relation to these grievances.

144. Dr Winter said that when he read Dr Tyler's notes he was shocked and speechless. He said there were no toxic meetings and although bullying should be seen from the perception of person bullied, an independent assessment should be made if the complaint was reasonable. He said he hadn't interpreted the emails the claimant sent as bullying (though he said they could be seen as nuisance). He said there had been a badly handled redundancy issue and there was a resourcing issue. He considered the matter to be an over-reaction and the claimant had been treated differently to a gross misconduct case involving a former colleague, thus the claimant had been victimised.

145. The claimant questioned Mr Stevenson that a stage 4 process was only for gross misconduct. Professor Pheonix commented that it was believed that gross misconduct might have been the outcome. Mr Stevenson said the allegations were taken in the round and ultimately, it was decided that it was not gross misconduct. In relation to alternatives, Mr Stevenson felt the situation was irretrievable.

146. Mr Tanna asked if, looking back, the claimant could have done things differently. In response the claimant referred to a negative impact on his workload and health if he had done the 13 dissertations.

147. Mr Stevenson said his judgment was properly considered and he stood by it. The claimant stated Professor Callaghan's investigation had not been forensic, he had chosen an arbitrary sample of people to interview but he was saying there was bias or pre-judgment. He said there were many allegations against him from employees in the investigation report which were not followed up or could have been dealt with informally. He said management need to ask if bullying and harassment is credible or if a person is being over-sensitive. Professor Pheonix said he had already said the perception of the individual would be considered.

148. There was a generic reference to the Equality Act 2010 at the appeal hearing and a specific reference to the race card comment in Dr Tyler's notes. There was no other reference to race discrimination and the claimant's race was not mentioned by the claimant at any point during the appeal hearing, or whistleblowing, directly or indirectly. There was no expression of remorse or an apology at the appeal hearing either.

149. After the appeal hearing the claimant submitted his two further addendums relating to Dr Tyler and Professor Barker. He also submitted addendum 43 which was his summary of the appeal hearing.

150. Professor Pheonix also asked Professor Barker to submit a summary of his actions before the disciplinary process was initiated. This was at page 2691.

151. The claimant's grievance against Professor Bailey (relating to the suspension) was rejected on 4 September 2019. The claimant submitted an appeal against this on 10 September 2019. Professor Phoenix decided to take the same approach he had with the second grievances the claimant had raised against Dr Tyler and Professor Barker and decided to determine this grievance appeal as part of the disciplinary appeal process. He provided the material to the panel for consideration.

152. The claimant's appeal was rejected. The outcome letter was dated 19 September 2019 (pages 2231 to 2238). The outcome was follows:

- Procedural issues – It was noted that the claimant had raised 13 grievances to date, all of which had concluded except 4 (1 of which was an appeal). It was confirmed that given the subject matter, it was appropriate to determine the grievances as part of the disciplinary appeal. In relation to the stage 4 process, as there was a potential for the allegations to amount to gross misconduct, it was an appropriate use of policy. The appeal panel also determined that the suspension had been reasonable and no disadvantage had been suffered by the claimant in preparing for the disciplinary hearing. There was nothing to address in relation to the (new) stage 2 grievance in relation to Professor Barker, which could not have been appropriately addressed through the stage 3 appeal.

- Evidence/disciplinary investigation – The appeal outcome, which included reference to discrimination, was that Professor Callaghan's investigation was thorough, fair and reasonable. A number of interviews were conducted and it was for Professor Callaghan to determine if there was a case to answer and to present the case at the disciplinary hearing too.

- Harassment & Bullying of Dr Tyler –appeal rejected. The appeal outcome agreed that the claimant's emails to Dr Tyler amounted to insubordination and a refusal to comply with line managements requests which were a form of bullying. The appeal outcome noted that this was limited to the emails sent to Dr Tyler but that did not prevent this from amounting to a form of bullying or harassment.

- Threat to notify students of resourcing issues – appeal rejected. The appeal outcome was that the disciplinary panel's decision was appropriate as the email relied upon was sufficiently clear and no additional information was needed.

- Harassment and Bullying of Ms Griffiths-Jones – appeal rejected. The appeal outcome was that the dismissal letter made it clear that in coming to the conclusion that the claimant had bullied and harassed Ms Griffiths-Jones, it took in to account the claimant's comments in the email chain and the subsequent raising of a grievance, which it regarded as vexatious. Further that it was open for a judgment to be made that it was vexatious without the existence of a definition within the respondent's policy/policies. No evidence was disregarded and the claimant's assertions of modifying his behaviour and apologies were considered and the conclusions reached were entitled to be reached at the disciplinary stage.

- Undermining/Challenging Dr Tyler's authority – no separate finding reached

- Failing to uphold values resulting in a breakdown in trust and confidence – appeal rejected. The appeal outcome was that this allegation had been considered and concluded on reasonably, specifically that there was clear evidence of a breakdown of trust with Dr Tyler, Ms Griffiths-Jones and Professor Barker, attributable to the claimant's behaviour.

153. There was no criticism of the decision to lay charges in respect of the two allegations which were not upheld at the disciplinary stage.

154. In relation to reasonableness of the decision, having regard to all of the individuals involved in the disciplinary and grievance processes, the appeal considered the likelihood of all of them not objectively reviewing evidence and the potential for bias or discrimination and considered it highly unlikely that the evidence considered at all of these processes could have led to unfair bias. Further, the claimant was asked to reflect on and identify whether he would have done things differently and the appeal concluded that the claimant did not outline any actions to modify his behaviour and they felt there

was no evidence that the claimant recognised his behaviour was inappropriate and could have impacted on others. The appeal reflected on the claimant's communication tone, the large volume of emails and the number of grievances raised and concluded the claimant had failed to reflect on his behaviour or acknowledge any need to change. This behaviour had been consistently demonstrated and it was very clear it had resulted in an irrevocable breakdown in trust and confidence.

155. The appeal considered but rejected that the evidence submitted altered its view of the decision to dismiss. In particular, that Dr Tyler had suggested ways of managing the dissertation supervisions, Professor Barker had attempted to hear both sides in his meeting on 7 January 2019, support had been offered via PAM and OH and there had been agreement to change the claimant's line manager to Ms Beever in February 2019.

156. In relation to health and well-being, the medical evidence submitted was acknowledged. It was stated that the claimant was afforded breaks during the appeal hearing and that reasonable steps had been taken during the process in relation to the claimant's health, including offers of EAP support (via PAM) and OH.

157. The letter concluded that the dismissal stood, based on an irretrievable breakdown of trust brought about by a range of actions and behaviour deemed as serious misconduct.

158. After the appeal hearing, the claimant had on 11 September 2019 raised a grievance in relation to the decision for the outstanding second grievances against Professor Barker and Dr Tyler to be considered as part of the dismissal appeal hearing. This was called addendum 45 and was at pages 2203 – 2227.

159. The claimant also raised a further grievance on 23 September 2019 about the decision to consider the grievance appeal in relation to Professor Bailey (related to the suspension) at the dismissal appeal hearing. This was called addendum 45A and was at pages 2245 - 2257.

160. The claimant also said in an email dated 23 September 2019 that he considered his 3 months' notice expired 3 months from his appeal outcome i.e., from 19 September 2019 (page 2248).

161. The claimant also raised further grievances on 24 September and 25 September 2019 against both of the governors (who were part of the appeal panel). These were called addendum 46 and addendum 47 (pages 2249-2257.

162. On 25 September 2019, Ms Marcelle Moncrieffe-Johnson, Executive Director of People and Organisational Development, wrote to the claimant to explain that the respondent would not be dealing with any further investigation of the issues raised and the grievances as these all related to the disciplinary process which had been finally determined following the outcome of the appeal. It was further confirmed that the claimant's 3 months' notice ran from his dismissal, not his appeal outcome. In addition, that the claimant's notice period was being brought forward to 30 September 2019 and the claimant's balance of notice would be paid in lieu. The letter also addressed the

claimant's accrued holiday pay, pension contributions and the claimant's personal belongings (pages 2258-2259).

163. On 5 October 2019, the claimant escalated a complaint about unfair treatment via the respondent's 'Speak Up' Policy (page 2302). The Speak Up policy was at pages 246-251).

164. The claimant also submitted addendum 53 called 'Statement regarding serious malpractice' on 14 October 2019 (pages 2305-2315).

165. This was responded to by the Chair of the Audit Committee on or around 17 October 2019 (page 2321). It was noted that the speak up policy should not be used for matters which should be raised under grievance, complaint or disciplinary procedures or to re-open matters which have already been considered under them (page 247, section 1, introduction). It was noted that the appeal against dismissal had been determined which was considered final. Accordingly, the complaint would not be addressed under the Speak Up policy. (This was subsequently resurrected by the claimant and the same position was confirmed by Mr Jerry Cope, Chair of the Board of Governors, on 27 November 2019 (pages 2818-2819)).

166. By their letters dated 5 November (pages 2348-2349) and 25 November 2019 (page 2408), Ms Langford and Ms Moncrieffe-Johnson informed the claimant that the respondent considered matters related to the claimant's dismissal and associated attempts to pursue further grievances closed. This was in response to further emails and addendums received from the claimant.

167. The Tribunal records that the following *additional* grievances were raised by the claimant:

- Mr Westover regarding bullying – not upheld on 19 February 2019, appeal rejected
- Dr Isaacs regarding supervision issue – withdrawn by the claimant
- Professor Barker regarding Professor Barker's investigation – not upheld on 23 May 2019, appeal rejected
- Professor Callaghan regarding the investigation meeting– not pursued beyond the informal stage
- Professor Pheonix regarding the dismissal appeal outcome – not dealt with as the respondent says there was no further right of appeal
- Mee Ling Ng and Vinnay Tanna regarding the dismissal appeal outcome – not dealt with as the respondent says there was no further right of appeal and because the respondent says a grievance cannot be pursued against a governor

- Ms Moncrieff-Johnson regarding issues linked to the disciplinary process – not dealt with as the respondent says Ms Moncrieffe-Johnson was longer an employee when the grievance was raised and because the issues were linked to the concluded disciplinary process

- Professor Barker regarding the collection of personal belongings – not dealt with as it was raised after dismissal

168. The extent of relevance, if any, to the issues the Tribunal needed to determine is set out in the conclusions below.

Findings on the claimant's credibility/reliability

169. The Tribunal considered it appropriate and necessary to set out some specific findings with regard to the claimant's credibility/reliability in this case.

170. The claimant referred to the grievance appeal (against the rejection of his first grievance against Dr Tyler) as overturning the finding that his grievance against Ms Griffiths-Jones was vexatious. When the letter of 5 April 2019 was seen by the Tribunal, it did not support this assertion at all. The Tribunal found this was plain and obvious, in fact it was expressly not adjudicated on as part of the grievance appeal.

171. During the claimant' cross examination, the claimant objected to a reference/attack by the respondent's counsel on his upbringing by his mother. This was in the context of counsel putting to the claimant that, as a grown man, he did not have to be told by others that his actions or behaviour were bullying, because this was something that he would have learnt as a child in school. There was no express or implied reference to the claimant's mother. The Tribunal interjected when the claimant took issue with the point to explain the foregoing to the claimant. The Tribunal found that this (his upbringing by his mother) was something the claimant knew, or ought to have known, was not being put to him.

172. Also, during cross examination, the respondent's counsel put to the claimant that he was sensationalising his discrimination claim. The claimant rejected that proposition. To rebut the claimant's response, counsel asked if she could refer to the claimant's tweets which he had been doing during the course of the proceedings. She read one such tweet aloud from the laptop of her instructing Solicitor as follows:

"*I will give evidence that my line manager accused me of being a witch-hunter, I am not, neither am I a witch doctor"* (12 February 2022)

173. This tweet was permitted to be read out aloud subject to the claimant's right to object that it was not tweeted by him or was inaccurate/mis-quoted. The claimant did not deny his tweet.

174. In so far this was related to oral evidence given by Dr Tyler, the Tribunal did not, unanimously, have any note of such evidence given by Dr Tyler and/or its connotations with witch- doctory. This was a description and annotation of the claimant's own making.

175. The claimant was also persistent in his refusal to accept that the concept of non-protected characteristic harassment (rather than bullying) was something that the respondent's policies covered/or something that he could be charged with. In response to the Tribunal asking him if he felt non-protected characteristic harassment was unactionable he said yes. He understood that the bullying and harassment case against him regarding Dr Tyler and Ms Griffiths-Jones was not about any of their protected characteristics. The Tribunal referred the claimant repeatedly to the respondent's staff inclusion policy (page 219-233) and sections 2.6, 2.7 and 3.1 and he maintained that the respondent could not bring a charge of harassment against him unless a protected characteristic was involved. However, in his closing written submission, he accepted in paragraph 16, that non-protected characteristic harassment was covered, instead saying that referring to the definition in different ways was unhelpful. The Tribunal found that on any reasonable reading/interpretation of the respondent's policies, with well-known principles of bullying and harassment in the workplace, the claimant's evidence in this regard had been remarkable and insincere.

176. The claimant also placed reliance on a contract he said existed between the respondent and its students, specifically in support of his belief that providing dissertation supervision to part time students on Thursdays could only be done face to face. There was no contract in either bundle. During the course of the Hearing, the respondent disclosed an 'Enrolment Terms' document and subsequently a document called 'MA Planning Policy and Practice' document (written by the claimant). There was no reference to the requirement for face-to-face dissertation supervision in these documents. It was not until day 10 of the Hearing, when the claimant was being cross examined, that the claimant claimed that there was another separate document, not before the Tribunal, which obligated the respondent to provide face to face supervision. He said, the respondent was 'bound' to do so. In response, the Tribunal remarked:

"How can we determine whether or not you have made a protected disclosure without the document you place reliance on? If you knew it to be relevant you would have raised it before, it is now day 10 of this Hearing?"

177. The claimant appeared to be referring to some other module guide; the respondent said nothing else existed, the Tribunal could not be sure if the claimant was referring to some other document which he had written. He added that he didn't get disclosure and that there must be some legal redress if students didn't get face to face dissertation supervision.

178. The Tribunal found that the claimant's reliance on the documents in support of his belief had constantly wavered and found there was no other relevant document.

179. The claimant said that Ms Griffiths-Jones' reference to the claimant's grievance against her (during the investigation meeting with Professor Callaghan) was chronological only, not causative of contributing to why she said she felt intimidated. The relevant paragraph was at page 1298. Ms Griffiths-Jones said after the clamant had taken out a grievance against her, she began to use avoiding behaviour. Further, that she felt intimidated because of the tone of his emails *and* because he had taken out a grievance against her. The Tribunal found it was plain and obvious, on any reasonable reading, that the grievance did, causatively, contribute to how she felt and the measures she was taking. The claimant's view to the contrary was, frankly, absurd.

180. In the light of the incident involving the Legal officer and Clerk (see above), the Tribunal did consider it necessary to reach a finding on what it felt happened as it was a matter which did go to the claimant's credibility. The Tribunal noted that two Court Officers had, independently, reported the incident in broadly similar terms to the Judge. In addition, the respondent's counsel and her client had corroborated the same version of events. The respondent's counsel has an overriding professional duty to be truthful to the Court. The Tribunal found, unanimously, that it was more likely than not that the claimant had asked the Legal Officer what she thought of his case, which, the Tribunal found was seeking an opinion on the merits not the procedure. She had already responded on her learning regarding the process/procedure but was then pressed to comment further on what she thought of his case. The Tribunal found this wholly inappropriate and in addition, the claimant's denial of doing so, dishonest. Any comment which might have been forthcoming risked being put into the twitter public domain as the claimant was tweeting about his case.

181. The Tribunal took in to account the above findings on credibility in reaching its conclusions below.

Applicable law

Unfair Dismissal – S.98 (2) & (4) Employment Rights Act 1996 ('ERA')

182. The respondent relied on S.98 (2) (b) (conduct) in relation to its potentially fair reason for the claimant's dismissal. The burden to show the reason rested with the respondent.

183. Subject to showing a reason, the Tribunal needed to consider whether the dismissal was fair or unfair, having regard to the reason shown by the respondent, whether the respondent acted reasonably or unreasonably in treating it as a sufficient reason for dismissal which question shall be determined in accordance with equity and the substantial merits of the case. The test is settled from the well-known ***BHS v Burchell 1978 IRLR 379*** case:

- the respondent genuinely believed in the claimant's misconduct
- that belief was based on reasonable grounds
- there was as much investigation as was reasonable.

An employer who satisfies the ***Burchell*** should not be examined further.

184. The range of reasonable responses applies both to the substantive decision to dismiss and to the procedure (***Sainsbury's Supermarkets Ltd v Hitt 2003 IRLR 23).***

Discrimination - S.13 (Direct), S.26 (Harassment), S.27 (Race) Equality Act 2010 ('EqA')

185. The direct race and victimisations provision of the EqA say:

S.13 (1): Direct:

(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.

S.26 Harassment:

(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—

(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

(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,

(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.

(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.

S.27: Victimisation:

(1) 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.

(2) Each of the following is a protected act:

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

186. The burden of proof is set out in S.136 (2) EqA. This provides:

"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."

187. S.136 (3) provides that S. 136 (2) does not apply if A shows that A did not contravene the provision.

188. The guidance in ***Igen Ltd v Wong 2005 ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd 2003 ICR 1205 EAT*** provides guidance on a 2-stage approach for the Tribunal to adopt. The Tribunal does not consider it necessary to set out the full guidance. However, in summary, at stage one the claimant is required to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, (now any other explanation) that the respondent has committed an act of discrimination. The focus at stage one is on the facts, the employer's explanation is a matter for stage two which explanation must be in no sense whatsoever on the protected ground and the evidence for which is required to be cogent.

189. The Tribunal notes the guidance is no more than that and not a substitute for the Statutory language in S.136.

190. In ***Laing v Manchester City Council 2006 ICR 1519 EAT***, the EAT stated that its interpretation of Igen was that a Tribunal can at stage one have regard to facts adduced by the employer.

191. In ***Madarassy v Nomura International PLC 2007 ICR 867 CA***, the Court of Appeal stated:

"*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal "could conclude" that, on a balance of probabilities, the respondent had committed an unlawful act of discrimination*"

192. In Victimisation claims, the protected act must have a 'significant influence' on the decision to dismiss or the alleged detriment ***Nagarajan v London Regional Transport 1999 ICR 877 HL.***

Protected Disclosure claims

193. Under S.103A ERA, an employee shall be regarded as unfairly dismissed if the reason, or if more than one, the principal reason, for the dismissal is that the employee made a protected disclosure.

194. By virtue of S.47B ERA, a worker has the right not be subjected to a detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure. In ***NHS Manchester v Fecitt and others 2012 IRLR 64***, it was stated that the test is whether the protected disclosure "materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower".

195. A protected disclosure qualifying for protection is one made in accordance with S.43A (which refers to S.43 C to S.43H about the conveyance of a qualifying disclosure) and S.43B (which defines a qualifying disclosure).

S.43B ERA:

(1) Disclosures qualifying for protection:

In this Part 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 one or more of the following:

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

196. S.43B ERA requires consideration of whether the claimant had a reasonable belief that the information disclosed is made in the public interest and tends to show one of the six matters listed above (subjective test) and if so, was that belief a reasonable one (objective). ***Chestertons Global Ltd v Nurmohammed 2018 ICR 731 CA*** and ***Babula v Waltham Forest College 2007 EWCA Civ 174.***

197. Pursuant to S.48 (2) ERA, the burden of proof in relation to the reason for the alleged detrimental treatment rests on the respondent. However, this is once a protected disclosure has been established and that the respondent has subjected the claimant to a detriment.

198. In relation to S.103A ERA, the burden of proof in relation to dismissal was addressed in ***Kuzel v Roche Products Ltd [2008] EWCA Civ 380, CA***:

"57…*when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that, in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.*

58. Having heard the evidence of both sides relating to the reason for dismissal it will then be for the ET to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.

59. The ET must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the ET that the reason was what he asserted it was, it is open to the ET to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the ET must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

60. As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason."

Conclusions and analysis

Victimisation S.27 Equality Act 2010 ('EqA')

28 May 2019 ('Addendum 28' pages 1439-1448)

199. The first protected relied upon by the claimant was on 28 May 2019, in relation to his first grievance against Professor Barker. This was in the context of the claimant not meeting a marking deadline in relation to some exams which Professor Barker had criticised him for and said he was holding students to ransom. The claimant had said, in an email appended (page 1445):

"*Your singling me out for this unfair and frankly bizarre criticism may well be discriminatory under the Equality Act 2010."*

200. The Tribunal had to consider if this statement was a protected act. S.27 (2) (d) refers to the making of an allegation, whether or not express, that [A] or another person has contravened the Act.

201. The Tribunal concluded that a general, universal statement about contravention of the Equality Act 2010 was not sufficient. The Act deals with multiple protected characteristics. Every individual in a workplace has multiple protected characteristics. The claimant had multiple protected characteristics including age, race, religion, sex, sexual orientation. The Tribunal concluded that on a purposive reading of the provision, it requires more than the making of a sweeping statement of Equality Act discrimination and at least some, even minimal reference. Some reference to a protected characteristic, or more than one, is required, even implicitly/impliedly. There was no clue in this assertion as to why or how it was being said the Equality Act 2010 had been contravened. All that was required was 'because of my [age], [race], [religion or belief], [sex] or [sexual orientation] to assert the contravention. There were insufficient contextual circumstances to disregard the need for some sort of assertion along these lines. Further, it was not asserted as a contravention but as the possibility of.

202. The Tribunal had regard to the claimant's grievance against Ms Griffiths-Jones on 20 January 2019 (not asserted as a protected act), which was similarly vague, casual, unspecific and uncertain. Discrimination allegations are serious and in the Tribunal's conclusion, cannot be left to arbitrary speculation. There was no wider 'protected characteristic' specific context or any implied inference on this occasion either.

203. At the meeting on 25 January 2019, in relation to the grievance against Dr Tyler, at which the claimant said Dr Tyler's actions were possibly discriminatory (not asserted as a protected act), this was dealt with 'head on' by Professor Barker. But the claimant said

discrimination was not central to his grievance, but that *if* an independent reviewer was looking at the matter, then the decision maker *may* well decide that discrimination had taken place. Again, nothing was said about any protected characteristic or any implied reference.

204. Whilst the Tribunal also noted that, thereafter, in February 2019, the discrimination allegation in relation to Ms Griffiths-Jones had been stated to HR (orally) to be, or was interpreted as, an allegation of race discrimination (not asserted as a protected act), which provided some of the context of Dr Tyler's notes of 8 March 2019, where he referred to the race card (which will be analysed below), that did not assist with an allegation against Professor Barker. In his grievance against Ms Griffiths-Jones, confirmed in oral testimony, the claimant stated that Dr Tyler not recognising the actions of Ms Griffiths-Jones as being potentially discriminatory, was his allegation of discrimination against Dr Tyler. This did not assist with the allegation of this protected act against Professor Barker.

205. Thus, the Tribunal concluded, this was not a protected act. It was completely unspecific and caveated by the possibility of discrimination rather than asserted as a contravention.

1 July 2019 ('Addendum 29' pages 1519-1524)

206. The claimant's second grievance against Dr Tyler was relation to his notes of 8 March 2019. It was clear that the grievance was in relation to the entire content of his notes which included, in one bullet only, the 'race card' reference. In relation to this assertion there was reference to the Equality Act but also specific cross reference to the race card comment and victimisation (page 1522). It was thus potentially a protected act.

207. The Tribunal considered it necessary to analyse the background and context of this assertion of discrimination against Dr Tyler. The Tribunal concluded as follows:

- Dr Tyler and the claimant had a friendship over a long period of time, around 15 years. This was common ground.

- This friendship was evidenced by the claimant having visited and stayed with Dr Tyler and he knew members of his family. This was common ground.

- There had been no historic allegations of discrimination against Dr Tyler from the claimant.

- The dispute at the time between the claimant and Dr Tyler was, essentially, documented via the emails which had its source in the dissertation supervision/workload/draft AWP. No allegation of discrimination arose.

- The reference to discrimination was mentioned in a singular word in the claimant's meeting with Professor Barker on 25 January 2019. When it was subsequently discussed, pro-actively, the claimant said it was not central to his

grievance. He added that hypothetically, an independent reviewer may conclude that discrimination had taken place. There was no reference to race.

- The claimant's belief was that failing to recognise that the conduct of Ms Griffiths-Jones was potentially discriminatory, was the discrimination allegation against Dr Tyler. The context here was Ms Griffiths-Jones asking to be excluded from an email exchange/loop in which she and others were copied, involving a dispute between the claimant and Dr Tyler. The claimant considered it relevant that she did not ask others to exclude her from emails too and this was potentially discriminatory. It was plain and obvious to the Tribunal that there was no basis for her to ask the same of others when this was about the claimant escalating his issues. This was clear cut. The contribution from others was occasional and the matter was quite obviously not between 'them' and Dr Tyler. It was not a collective matter, with the claimant acting as an appointed spokesperson (even if there was a wider relevance). Neither would it have been appropriate, on any reasonable view, for the claimant to ask the Head of Department, her boss, to be excluded from such emails.

- The comments of Dr Tyler in his notes were made after the grievance against Ms Griffiths-Jones. By that time, he knew of the email exchange between the claimant and Ms Griffiths-Jones; he knew of the subsequent escalation of this as a grievance against her; he knew of the impact of that on her – she had cried in his office. The Tribunal concluded that the actions and conduct of the claimant in relation to Ms Griffiths- Jones started off as being sarcastic and publicly disparaging (the first email); it had evolved into spite (the second email); it ended up being an act of bullying and harassment when the claimant pursued a grievance.

- The Tribunal noted that the claimant did not take out a grievance against Ms Leeyou. She too had asked to be excluded from the email chain and had not said that to anyone else. She was the only other person who said so. Whilst she also wrote an email, which the claimant described as conciliatory (about the forum for resolution), the claimant maintained on 20 January 2019, that she may have discriminated/contravened the Equality Act too (page 611). Ms Leeyou is black. It was unexplained why she was not pursued in the same way as Ms Griffiths-Jones. No doubt if she was, it was likely to make a race discrimination allegation against Ms Griffiths-Jones highly unmeritorious.

208. In the light of the foregoing background and context, it was little wonder to the Tribunal that Dr Tyler's response to the race discrimination allegation was one of frustration and exacerbation such that he commented that the claimant playing the 'race card' was cheap and nasty. In the Tribunal's view, this was because it was plain and obvious, that the request of Ms Griffiths-Jones to be removed (as had Ms Leeyou) from wanting to be part of what was clearly a hostile email chain was even less than innocuous. It was entirely reasonable. The Tribunal drew upon its collective industrial/workplace experience that such behaviour was commonplace, especially because of the over-reliance on 'cc' in emails. There was nothing in it, yet she was hounded by the claimant. There was nothing

untoward in the exclusivity of her request (of the claimant). That view of the claimant was completely ill-founded and misconceived. Notably, Dr Tyler's notes referred to Ms Leeyou being anxious for the claimant to understand (that the allegation was cheap and nasty) – the Tribunal concluded because she, a black person, knew she had said the same thing to the claimant.

209. In such circumstances the Tribunal considered the claimant's allegation of discrimination against Ms Griffiths-Jones and Dr Tyler and his subsequent grievance about Dr Tyler's notes to be cynical and not made in good faith. The Tribunal concluded the claimant knew full well there was no basis for his belief that Ms Griffiths-Jones or Dr Tyler had discriminated against him or that the race card comment was an act of discrimination/victimisation. Rather than being opportunistic, the Tribunal concluded that the claimant's allegations were false and made in bad faith because the claimant did not believe in them. The grievance about the race card comment was thus disqualified from being a Protected Act by S.27 (3) EqA. The Tribunal was slow to reach this conclusion, but following careful deliberation, the Tribunal were unanimous and certain about this conclusion.

9 September 2019 ('Addendum 41' pages 2141 – 2156)

210. The claimant relies on pages 10 and 12 of this document. On page 10, the claimant had simply cross-referred to his grievance of 20 January 2019 (his grievance against Ms Griffiths-Jones), wherein he had stated that Ms Griffiths-Jones, Ms Leeyou and Dr Tyler had perhaps contravened the Equality Act. On page 12, he had said Dr Tyler's notes may well be contrary to the Equality Act.

211. In the light of the foregoing conclusions and analysis (above), the Tribunal concluded both because of entire non-specificity and because both assertions were considered to be false and made in bad faith, neither of these remarks in the 9 September 2019 document were protected acts.

14 October 2019 'Addendum 53' (page 2311)

212. The claimant relies on page 4 of this document wherein he had said that the disciplinary appeal panel (which included the two governors) had condoned the apparently racist behaviour of Dr Tyler and appeared not to comply with the Equality Act 2010. The claimant also relied on a reference to Dr Tyler's notes (on page 7) but there was no reference.

213. In any case, In the light of the foregoing conclusions and analysis (above), the Tribunal concluded that both assertions were false and made in bad faith and thus neither of these remarks (to the extent that there was an implied reference to Dr Tyler's notes) in the 14 October 2019 document were protected acts.

Alternative conclusions (if the claimant did make protected acts as asserted)

Detriment '2' – 13 June 2019 - because of the alleged protected act on 28 May 2019, Professor Callaghan failing to refer in his investigation report to race discrimination by Dr Tyler

214. In the alternative, the Tribunal was satisfied and concluded that Professor Callaghan did not subject the claimant to a detriment by failing to refer in his investigation report to race discrimination by Dr Tyler because of the claimant's alleged protected disclosure relating to Professor Barker on 28 May 2019.

215. Professor Callaghan's investigation meetings were conducted between 22 March and 3 April 2019. The protected disclosure relied upon was in connection with a subsequent grievance appeal on 28 May 2019 which did not form part of Professor Callaghan's remit of investigation.

216. This grievance appeal was heard by and rejected by Mr Richard Flatman, Chief Financial Officer. It was against a decision of Mr Paul Ivey, Deputy Vice Chancellor and Chief Business Officer. The grievance appeal hearing (pages 1976-1981) on 13 August 2019 did not make any express reference to discrimination, race or otherwise.

217. There was no evidence that Professor Callaghan knew of the 28 May 2019 grievance appeal document or the specific reference to the possibility of an infringement of the Equality Act 2010 in relation to marking deadlines.

218. Further, the Tribunal concluded that the reason why Professor Callaghan did not refer to race discrimination by Dr Tyler in his report is because that had not been alleged at all by the claimant, or any other respondent to the investigation process. The obvious time to raise this would have been during the investigation meeting. Alternatively, if this was about the 'race card' comment in Dr Tyler's notes, the Tribunal accepted that broadly, though not exclusively, Professor Callaghan relied on the interview notes and the pre-existing email traffic with individuals for the basis of his report. The Tribunal concluded that Professor Callaghan only gave cursory consideration to Dr Tyler's notes. There was one reference to those notes in his report (page 1177, '7.54') but not otherwise. This appeared to be in the context of whether an assertion made by Dr Milburn about the claimant not teaching in the 12th week had any corroboration and Professor Callaghan referred to a comment in a 'Module and Teaching' section of this document. The reason why the race card comment was not referred to was because a race discrimination allegation had not formed a part of this investigation process. Professor Callaghan had not even seen the content of the grievance against Ms Griffiths-Jones.

219. The Tribunal noted that the notes were handed over upon request and disclosed as part of the investigation report too (appendix 9). This transparency did not support any ill-motive.

220. The Tribunal concluded the alleged protected act did not influence the respondent's decision making and the burden of proof did not shift to the respondent.

Detriment '4' - 5 August 2019 – because of the alleged protected acts on 28 May 2019 and 1 July 2019, the respondent dismissed the claimant and disregarded Dr Tyler's notes

221. In the alternative, the Tribunal was satisfied and concluded that the reason why the respondent dismissed the claimant was not because of the alleged protected acts on 28 May or 1 July 2019. In addition, the reason why the respondent disregarded Dr Tyler's notes was not because of the alleged protected acts on 28 May 2019 and 1 July 2019.

222. The claimant was dismissed for reasons relating to his conduct namely partial bullying and harassment of Dr Tyler, bullying and harassment of Ms Griffiths-Jones, insubordination towards and the undermining of authority of Dr Tyler and because through the claimant's conduct, he had seriously damaged trust and confidence. In addition, there had been a fundamental and irretrievable breakdown of trust and confidence between the claimant and Dr Tyler, Ms Griffiths-Jones and Professor Barker. Having regard to its findings above, The Tribunal considered the evidence for this to be overwhelming. The claimant had repeatedly failed to grasp that it was not the concerns he had raised about time or work pressures, or resourcing, that was the issue, rather it was the manner, tone, density and repetitive nature of his actions over a protracted period. He had behaved highly disrespectfully. He was publicly trying to shame his colleagues and publicly humiliating his line manager and his conduct towards Ms Griffiths-Jones was singularly the most disturbing. As referred to above, the criticism that she had somehow singled him out, was, on any reasonable interpretation, far-fetched and hopeless. The claimant's pursuit of her was vexatious. The claimant's emails of 12 and 13 December 2018 were particularly insubordinate, but it was the totality of the claimant's email campaign against Dr Tyler, his boss and Head of Department, which the Tribunal concluded to be of a bullying nature. The claimant, it appeared to the Tribunal failed to, or chose not to, understand this, instead the Tribunal formed an impression that he appeared to be fixated on looking to the respondent to provide discrete examples or episodes of bullying. It was not one of those cases.

223. The matters forming the substance of the allegations against the claimant all pre-dated the alleged protected acts.

224. There was no evidence that Mr Stevenson or Ms Coupar knew of the 28 May 2019 grievance appeal document or the specific reference to the possibility of an infringement of the Equality Act 2010 in relation to marking deadlines.

225. In relation to disregarding Dr Tyler's notes, the Tribunal concluded that although they were a part of Professor Callaghan's investigation report and appendices, the claimant was invited to discuss his grievance about the notes at the disciplinary hearing, which he declined/did not do. The respondent's reliance on these notes was minimal and not detrimental as the issue referred to in the notes, was not an allegation in respect of which the claimant had a case to answer (page 1177).

226. The Tribunal concluded the alleged protected acts did not influence the respondent's decision making and the burden of proof did not shift to the respondent.

Detriment '5' - 5 September 2019 – because of the alleged protected acts on 28 May 2019 and 1 July 2019, the appeal panel disregarded Dr Tyler's race discrimination and also, Professor Pheonix decided that the claimant's stage 2 grievance against Dr Tyler would be heard during the dismissal appeal hearing (and he failed to determine the stage 2 grievance)

227. In the alternative, the Tribunal was satisfied and concluded that the appeal panel did not subject the claimant to a detriment by disregarding Dr Tyler's alleged race discrimination. The appeal panel concluded that there was in fact no race discrimination. Thus, they did not disregard Dr Tyler's race discrimination. The claimant's appeal against dismissal was unsuccessful and the appeal panel upheld the disciplinary panel's reasons for the claimant's dismissal. The appeal outcome referred expressly, albeit generically, to the possibility and/or rejection of any discrimination twice, even though there was no specific cross reference to the race card comment in Dr Tyler's notes.

228. There was no evidence that the appeal panel knew of the 28 May 2019 grievance appeal document or the specific reference to the possibility of an infringement of the Equality Act 2010 in relation to marking deadlines.

229. The decision of Professor Phoenix to combine the hearing of the claimant's stage 2 grievance against Dr Tyler with the dismissal appeal hearing was entirely rooted in policy and pragmatism. This would receive consideration at the highest level. Before the appeal hearing, the claimant had been offered the opportunity to have that grievance considered at the disciplinary hearing too. The respondent's policy (paragraph 23, page 294) and the ACAS Code on disciplinary and grievance procedures (paragraph 46) are explicit about the legitimacy of two overlapping disciplinary and grievance processes being heard concurrently. The clue was in the sub-headings entitled: 'Overlap between grievance and disciplinary procedures' and 'Overlapping grievance and disciplinary cases' respectively. The grievance about Dr Tyler's notes were a part of Professor Callaghan's investigation report and appendices which had led to the disciplinary case against the claimant. The claimant was reluctant to acknowledge the appropriateness of this decision and even if he genuinely believed the two processes not to be overlapping, the Tribunal did not consider such a stance to be objectively reasonable and moreover, this had nothing to do which the alleged protected acts.

230. The Tribunal concluded the alleged protected acts did not influence the respondent's decision making and the burden of proof did not shift to the respondent.

Detriment '6' – 19 September 2019 - because of the alleged protected acts on 28 May 2019, 1 July 2019 and 9 September 2019, rejecting the claimant's appeal and disregarding Dr Tyler's race discrimination

231. In the alternative, the Tribunal was satisfied and concluded that the appeal panel did not reject the claimant's appeal because of any of the alleged protected acts. The Tribunal concluded that the appeal panel was independent and conducted a thorough review of

the claimant's grounds of appeal following an appeal hearing. The appeal was rejected because the appeal panel upheld all of the reasons for dismissal. The appeal panel noted that there had been 13 grievances up until the appeal hearing, all of which had concluded save for 4, 3 of which were heard concurrently with the dismissal appeal. This did not fix the appeal panel with knowledge of the content of the appeal document of 28 May 2019 or the specific reference to the possibility of an infringement of the Equality Act 2010 in relation to marking deadlines.

232. The Tribunal concluded that the appeal panel was robust in its decision that there had been an irrevocable breakdown in trust and confidence. This was partially demonstrated by the unlikelihood of several senior personnel reaching biased decisions, having been involved in separate formal decision-making processes. In oral testimony the claimant submitted, in response to Tribunal questioning, that this was because of a conspiracy rather than individuals all coming to discrete, independent conclusions. The evidential basis for such a claim was non-existent, there was nothing before the Tribunal to essentially suggest a collusion/a dishonest agenda. Mr Stevenson did not volunteer, before the appeal hearing, that Ms Coupar did not have 'final' input into the decision to dismiss, after he made post disciplinary hearing enquiries, but that did not feed into any conspiracy theory involving others. The relevance of this matter is analysed below in the Tribunal's conclusions on the unfair dismissal claim.

233. The Tribunal repeats its conclusions above regarding the appeal panel not disregarding Dr Tyler's alleged race discrimination.

234. The Tribunal concluded the alleged protected acts did not influence the respondent's decision making and the burden of proof did not shift to the respondent.

*Detriment '**7**' – 25 September 2019 - because of the alleged protected acts on 28 May 2019, 1 July 2019 and 9 September 2019, Ms Moncrieffe-Johnson shortened the claimant's notice period*

235. In the alternative, the Tribunal was satisfied and concluded that Ms Moncrieffe-Johnson did not shorten the claimant's notice period (and pay the balance in lieu) because of any of the alleged protected acts. The Tribunal concluded that she did this because by 25 September 2019, the claimant's appeal against his dismissal had concluded and had been communicated by a letter dated 19th September 2019, but thereafter by the claimant's addendums 45A, 46 and 47 (on 23, 24 and 25 September 2019), he was seeking to continue with dismissal or appeal related grievances when he had no further right of appeal. These grievances were against Professor Pheonix and the lay governors on the appeal panel. Notably, in the claimant's addendum 45A, in his introduction he stated he understood there was no further right of internal appeal against the decision of the appeal panel. It is right that there had been other grievances raised too, post the appeal hearing but before the appeal decision (addendums 41, 42, 44 and 45), but the Tribunal rejected that a particular comment in one addendum (addendum 41) influenced Ms Moncrieffe-Johnson at all to proceed in the way she did, or indeed by the content or fact of the other alleged protected acts.

236. Further, there was no evidence that she knew of the 28 May 2019 grievance appeal document or the specific reference to the possibility of an infringement of the Equality Act 2010 in relation to marking deadlines.

237. The Tribunal concluded the alleged protected acts did not influence the respondent's decision making and the burden of proof did not shift to the respondent.

Detriment '8' – 17 October 2019 - because of the alleged protected acts on 28 May 2019, 1 July 2019 and 9 September 2019, Mr Duncan Brown failed to investigate the alleged malpractice and rejected the claimant's whistleblowing allegation

238. In the alternative, the Tribunal was satisfied and concluded that Mr Duncan Brown, the Chair of the Audit Committee, did not fail to investigate the alleged malpractice and reject the claimant's whistleblowing allegation because of any of the alleged protected acts. The reason why, the Tribunal concluded, was because the speak up policy should not be used for matters which should be raised under grievance, complaint or disciplinary procedures or to re-open matters which have already been considered under them (page 247, section 1, introduction). This was unequivocally the case and Mr Brown had satisfied himself that the issues were outwith the remit of the speak up policy (page 2817).

239. Further, Mr Duncan Brown only had regard to addendum 53 (pages 2305-2315), which only referred to one of the alleged protected acts relied upon (addendum 41) and not the others and there was no evidence he knew of the others. The Tribunal noted that draft emails had been sent to Mr Brown (pages 2812 & 2814) but the sender had been anonymised. The Tribunal concluded it was more likely than not it was Mr Michael Broadway, Deputy University Secretary who had initiated the dialogue (page 2321) and who was referred to by Ms Langford (paragraph 69 of her witness statement). Thus, the Tribunal concluded that Mr Brown's judgment was not otherwise 'infected' by another person's knowledge of the protected acts, as the Tribunal was not satisfied that Mr Broadway knew of the fact and/or content of the other alleged protected acts. The Tribunal also noted that Mr Broadway had sought views from Ms Langford and Mr Stevenson (and possibly Ms Moncrieffe-Johnson), but the Tribunal concluded that it was more likely than not, that their input would have been limited to the fact of the matters raised, being subject to a completed disciplinary and appeal process.

240. The Tribunal concluded the alleged protected acts did not influence the respondent's decision making and the burden of proof did not shift to the respondent.

Detriment '9' – 2 December 2019 - because of the alleged protected acts on 28 May 2019, 1 July 2019 and 9 September 2019, in considering the claimant's appeal regarding the whistleblowing, Mr Jerry Cope failed to require Mr Brown to provide a statement and dismissing the appeal. Also, bias in relying on statements from Ms Moncrieffe-Johnson and Ms Langford disregarding the claimant's evidence.

241. This appeared to relate to Mr Cope's emails on pages 2818 to 2819 wherein Mr Cope endorsed the decision of Mr Brown of 17 October 2019 (declining to consider the claimant's further grievances under the speak up procedure). The Tribunal could not locate addendum 61 or a letter of 20 November 2019.

242. However, the Tribunal concluded, in the alternative, that Mr Cope's reason for not requiring Mr Brown to provide a statement was because he was satisfied with his earlier response (page 2321) which he endorsed. The reason why was because he agreed that the matters were considered closed and this had been conveyed by the letters dated 25 September, 5 November and 25 November 2019. In relation to consideration of the letters of Ms Langford and Ms Moncrieffe-Johnson, the Tribunal concluded that this was quite obviously limited to the fact of the matters raised, being subject to a completed disciplinary and appeal process.

243. The Tribunal concluded the alleged protected acts did not influence the respondent's decision making and the burden of proof did not shift to the respondent.

Harassment S.26 EqA

Detriment '1' – 13/14 June 2019 Dr Tyler's notes including a tirade of unfair criticism of the claimant including the words at page 41 of the ET1 amendment

244. The Tribunal concluded that Dr Tyler's notes did include criticism about the claimant and included the race card comment already cited above. Without the race card comment, the Tribunal concluded that the notes did not relate to the claimant's race. The reasons for Dr Tyler's notes was to prepare for the investigation meeting with Professor Callaghan and to be able to address his concerns about the claimant's behaviour relating to disruption, dissertations, staff meetings and module and teaching and general behaviour. These notes contained references back to 2014, when the claimant had sought to ascertain the identity of who had raised a matter about the claimant. This was at a time when Dr Tyler was not Head of Department. The notes referred to the claimant 'hounding' colleagues to find out who had complained about him at that time. The Tribunal concluded this was recollected by Dr Tyler as that it what he felt the claimant had done now too. The notes also referred to the redundancy matter (described as disruption related to re-applying for his own job), which pre-dated the dissertations issue and also comments regarding the claimant's adverse relationship with his previous Heads of Department, including a broken relationship with Ms Richards. This was not challenged by the claimant. The Tribunal concluded that the catalyst for these notes was the claimant's conduct through the dissertation issue and the additional matters raised by Dr Tyler in these notes were not being recollected to gather evidence to use against the claimant, rather the actions of a person who had until then been restrained and tolerant but which he was no longer prepared to be. None of this was related to the claimant's race.

245. The race card comment did relate to the claimant's race and it was unwanted conduct. The Tribunal concluded however that Dr Tyler did not have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The Tribunal concluded that the notes were not intended to be circulated or used by anyone other than Dr Tyler; equally however, there was no resistance to their handover to Professor Callaghan. As noted above, there was a transparency in the process which the Tribunal saw as an indication of no ill motive on the part of Dr Tyler. Most importantly, viewed in *context*, for all the reasons set out comprehensively above (paragraphs 207 to 209) (which the Tribunal does not need to repeat in this paragraph), this comment was no more than a manifestation of Dr Tyler's frustration and exacerbation at the claimant's suggestion that there was race discrimination in Ms Griffith's-Jones request of the claimant to be removed from the emails and Dr Tyler's non-recognition of this. Neither did the Tribunal consider the *effect* of the comment to amount to harassment having regard to S. 26 (4) EqA. In the light of the Tribunal's conclusions above (in relation to victimisation and the making of a false allegation in bad faith), the Tribunal concluded having regard to all the circumstances, it was not reasonable for the comments to have the effect of harassing the claimant and that the claimant's perception was unreasonable. The claimant knew full well that his discriminatory criticism of Ms Griffiths-Jones and Dr Tyler and his subsequent reaction to Dr Tyler's comments about this was disingenuous.

246. The claimant referred the Tribunal to ***Royal Bank of Scotland plc v Morris UKEAT/0436/10.*** In this case, the claimant had complained to his manager's manager about issues between them. This manager said something to the effect that he understood the Claimant to be alleging that the manager's conduct towards the claimant was connected with his race. The Claimant denied that he had made any such allegation. He resented what he understood to be the suggestion that he was "playing the race card". Those basic facts differ from the case before this Tribunal in one material respect, namely that there was no suggestion of Dr Tyler making an assumption, stereotypically, of something the claimant had not said. In ***Morris,*** the EAT had said in paragraph 35:

"35. We see a parallel with the case of ***Richmond Pharmaceuticals Ltd v Dhaliwal [2009] ICR 724****, where the employment tribunal found a similarly stereotypical comment to constitute harassment but made a very modest award of compensation. In the great majority of cases we would hope and expect that a comment of this kind, even if formally falling within the terms of the Act, would never form the subject of a tribunal claim and would be dealt with (assuming the employee wanted it dealt with at all) by an informal apology or through the grievance procedure."*

247. In paragraph 9, the EAT had also observed (with this Tribunal's emphasis added):

"*We ought to say something more about the phrase "playing the race card", since it features a good deal in the Reasons. Unfortunately the Tribunal does not make a finding about what the Claimant, or whoever put it on his Peoplesoft record (probably quoting him), meant by it. It clearly means more than simply "making an allegation of racial discrimination" and has a pejorative overtone. In some contexts, it can mean that a*

complainant is cynically deploying his race in order to bolster a complaint which is unjustified or in any event has in truth no racial element. [Tribunal emphasis added] But we do not get the impression from the Claimant's various contemporary comments, as recorded, that that is quite what he thought Mr Arnett was suggesting he was doing. Rather, what he resented was the implication that Mr Arnett was not seeing this as a straightforward complaint by one colleague against another, requiring to be treated on its merits, but as a complaint by a black employee against a white employee: that is subtly but genuinely demeaning."

248. In the circumstances of this case and the contextual analysis of the Tribunal, the Tribunal concluded that the claimant's complaint was a cynical attempt to bolster an unjustified complaint which in truth had no racial element.

249. The Tribunal concluded that the burden of proof did shift to the respondent but which was satisfied by the respondent at 'stage 2', in the light of the foregoing conclusions and analysis.

Detriment 2

250. Having regard to the Tribunal's conclusions above (under victimisation), in particular to the reason (s) why, the Tribunal concluded that Professor Callaghan's failure to refer in his investigation report to alleged race discrimination by Dr Tyler was not unwanted conduct related to the claimant's race.

251. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment '3' – 15 July – During the disciplinary hearing, Mr Stevenson and Ms Coupar disregarded the fact that Dr Tyler's notes were obvious potential race discrimination

252. The Tribunal concluded that the reason why Mr Stevenson and Ms Coupar disregarded Dr Tyler's notes were obvious potential race discrimination is because the issue was never raised during that hearing by the claimant. The notes were not even referred to. That appeared to be a conscious decision by the claimant because he did not want his 1 July grievance about Dr Tyler's notes to be considered during his disciplinary hearing. This was confirmed by the claimant under cross examination. At the hearing, Professor Callaghan had presented the case against the claimant by reference to the comprehensive findings in the investigation report. In addition, the issue of race discrimination or the claimant's race was not mentioned by the claimant at any point during the disciplinary hearing. That was the reason why there was a disregard of Dr Tyler's notes. That was not unwanted conduct relating to the claimant's race.

253. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 4

254. Having regard to the Tribunal's conclusions above (under victimisation), in particular to the reason (s) why, the Tribunal concluded that the decision to dismiss the claimant was not unwanted conduct related to race and neither was disregarding Dr Tyler's notes.

255. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 5

256. Having regard to the Tribunal's conclusions above (under victimisation), the Tribunal concluded that the appeal panel did not disregard Dr Tyler's alleged race discrimination but had found that there had not been any discrimination. This was a view reached generically/holistically but that did not prevent it from forming a considered conclusion on any and all alleged discrimination. This was not unwanted conduct relating to the claimant's race.

257. Having regard to the Tribunal's conclusions above (under victimisation), the Tribunal also concluded the decision of Professor Phoenix to combine the hearing of the claimant's stage 2 grievance against Dr Tyler with the dismissal appeal hearing was not unwanted conduct related to the race.

258. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 6

259. Having regard to the Tribunal's conclusions above (under victimisation), the Tribunal concluded that the rejection of the claimant's appeal against dismissal was not unwanted conduct related to race; further, the Tribunal concluded, as above, that the appeal panel did not disregard Dr Tyler's alleged race discrimination but had found that there had not been any discrimination.

260. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 7

261. Having regard to the Tribunal's conclusions above (under victimisation), the Tribunal concluded that the decision of Ms Moncrieffe-Johnson to shorten the claimant's notice period was not unwanted conduct related to race.

262. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 8

263. Having regard to the Tribunal's conclusions above (under victimisation), the Tribunal concluded that the non-investigation by Mr Brown of alleged malpractice/rejection of the whistleblowing allegation was not unwanted conduct related to race.

264. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 9

265. Having regard to the Tribunal's conclusions above (under victimisation), the Tribunal concluded that Mr Cope not requiring Mr Brown to provide a statement and his consideration of the earlier letters of Ms Langford and Ms Moncrieffe-Johnson, was not unwanted conduct related to race.

266. The Tribunal concluded that the burden of proof did not shift to the respondent.

Direct Race Discrimination S.13 EqA

Detriment 1

267. The claimant relied on two named comparators, Mr Adams and Ms Paice. In relation to Mr Adams, as set out above (when the Tribunal dealt with an application for disclosure), Mr Adams had received a disciplinary sanction short of dismissal (a final written warning) for conduct relating to being under the influence of alcohol in circumstances where the respondent had regard to issues around his health, alcoholism, personal/family circumstances and contrition. The Tribunal concluded that Dr Tyler's criticisms of the claimant in his notes were not materially the same circumstances under S.23 (1) EqA. The comments of Dr Tyler in his notes were about the claimant's conduct and why he believed the relationship to have broken down. The Tribunal did not regard the situation involving Mr Adams, on the information before it, to be treated as misconduct. Dr Tyler's comments about the claimant were in relation to a protracted period involving assertions of multiple instances of unacceptable behaviour. The Tribunal considered the circumstances of Mr Adams to involve a one -off/discrete occasion. Dr Tyler's notes did not refer to the claimant's health, family related circumstances or contrition. At that time, the claimant had withdrawn his offer to apologise and the apology offer which had preceded that was conditional on apologies being reciprocated by others. In addition, the Tribunal concluded that the claimant's measure of an apology (which he confirmed in oral testimony included references to introductory greetings such as/akin to, *for example* 'Thank you for your email' or qualified comments such as 'I regret you found the tone unpleasant' but then adding 'I do not agree it is unpleasant' and saying 'You say my email upset, I apologise for that' and then setting out other criticisms of the recipient (page 517-518, the claimant's email to Ms Griffiths-Jones). There was no evidence of

personal or family mitigating circumstances in relation to the claimant. In contrast, there was no dispute between the parties that the circumstances of Mr Adams, whom the claimant had supported and who was a friend of the claimant's, involved a combination of health, family circumstances, alcoholism and contrition.

268. The circumstances in relation to Ms Paice was that she was alleged to have sworn in a team meeting which the Tribunal found was at Ms Leeyou. Ms Paice had submitted a witness statement but was not called by the claimant to give evidence. The Tribunal had limited regard to her statement. The Tribunal was satisfied that at the time of incident, she was suffering with serious ill health and family issues. She had time off work (9 months) after the meeting and had a mini-stroke, Bell's Palsy and had suffered a leg break on her way to her mother's funeral. This evidence was not contested by the respondent. The last two matters were confirmed by Dr Tyler in evidence (regarding Bell's Palsy and her bereavement). Ms Paice also stated, in paragraphs 6 and 10 of her witness statement, that she had been told that she could be disciplined for race discrimination too (against Ms Leeyou). Dr Tyler contradicted Ms Paice's statement that she was being accused of race discrimination against Ms Leeyou. He said race was not an issue. There was some corroboration for this by Dr Winter, who was at the meeting and had been called to give evidence by the claimant, who said there was no racial element. The Tribunal thus concluded this was not a racially based incident. As a result of her personal circumstances, she was offered a settlement agreement as an alternative to going through a disciplinary process. The Tribunal concluded that Ms Paice's situation and Dr Tyler's criticisms of the claimant in his notes were not materially the same circumstances under S.23 (1) EqA. The situation of Ms Paice referred to a one-off incident/episode only. In addition, she had serious underlying health issues, substantial time off work, and personal circumstances which had led to Dr Tyler considering an alternative to a formal disciplinary process. Also, the Tribunal was not satisfied that being exited via a settlement agreement (for three months salary) was 'more favourable' treatment. Ms Paice, in return gave up her job in circumstances where it was not certain she would be dismissed. If she was, she would have a right of appeal and could challenge a dismissal subsequently via litigation.

269. The Tribunal concluded there was no less favourable treatment of the claimant because of race than the treatment afforded to Mr Adams or Ms Paice or a hypothetical (white) comparator in relation to Dr Tyler's criticisms of the claimant in his notes.

270. In relation to the race card comment specifically, the Tribunal concluded that the circumstances of Mr Adams and Ms Paice were materially different as neither had made discrimination allegations and/or discrimination allegations which were considered to be made falsely and in bad faith. The Tribunal concluded that a hypothetical (white) comparator who had also made an allegation or allegations of race discrimination which was false/were considered to be made falsely and in bad faith would have been treated in the same way as the claimant by Dr Tyler. In reaching this conclusion, the Tribunal draws on its conclusions above under victimisation and harassment.

271. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 2

272. Having regard to the Tribunal's conclusions above (under victimisation and harassment), the Tribunal concluded that Professor Callaghan did not, because of race, treat the claimant less favourably than he would have treated a hypothetical (white) comparator (in circumstances where race discrimination had not been raised or mentioned during the investigation meetings and where notes handed over at the end of one of the meetings had only been given a cursory consideration), by not referring in his investigation report to race discrimination by Dr Tyler.

273. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 3

274. Having regard to the Tribunal's conclusions above (under victimisation and harassment), the Tribunal concluded that Mr Stevenson and Ms Coupar did not, because of race, treat the claimant less favourably than they would have treated a hypothetical (white) comparator (in circumstances where the issue of the notes was not *consciously* raised by or referred to at the hearing by the claimant), by disregarding, during the disciplinary hearing, the fact that Dr Tyler's notes were 'obvious' race discrimination.

275. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 4

276. Having regard to the Tribunal's conclusions above (under victimisation and harassment), the Tribunal concluded that the respondent did not, because of race, treat the claimant less favourably than Ms Paice or Dr Tyler or a hypothetical (white) comparator (in circumstances of similar allegations of misconduct and a breakdown in the employment relationship and a document appended to an investigation report which was not referred to) by dismissing the claimant, or by disregarding Dr Tyler's notes which formed one of the appendices of the investigation meeting. Ms Paice was not, for the same reasons already stated, an appropriate comparator. The Tribunal did not consider Dr Tyler an appropriate comparator either. He was not the subject of a disciplinary process against whom allegations had been made or in relation to whom there was an investigation report, correctly in the Tribunal's conclusion. There had been a grievance raised against him which had been rejected.

277. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 5

278. Having regard to the Tribunal's conclusions above (under victimisation and harassment), the Tribunal concluded that the appeal panel/Professor Pheonix did not, because of race, treat the claimant less favourably than a hypothetical (white) comparator (in circumstances where discrimination had not been found and where an outstanding grievance was considered related to a disciplinary process), by disregarding Dr Tyler's race discrimination or by combining the consideration of the outstanding grievance against Dr Tyler with the dismissal appeal hearing.

279. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 6

280. Having regard to the Tribunal's conclusions above (under victimisation and harassment), the Tribunal concluded that the respondent did not, because of race, treat the claimant less favourably than Ms Paice or Dr Tyler or a hypothetical (white) comparator (in circumstances where an appeal panel had independently upheld the reasons for dismissal and found an irrevocable breakdown in trust), in rejecting the claimant's appeal and disregarding Dr Tyler's race discrimination. The Tribunal's conclusions above regarding Ms Paice and Dr Tyler not being appropriate comparators is repeated and there was no appeal process in relation to either and see above conclusions (detriment 1, direct race discrimination).

281. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 7

282. Having regard to the Tribunal's conclusions above (under victimisation and harassment), the Tribunal concluded that Ms Moncrieffe-Johnson did not, because of race, treat the claimant less favourably than a hypothetical (white) comparator (in circumstances where post dismissal appeal grievances were raised which were related to the dismissal and appeal process which was closed), by reducing the claimant's notice period.

283. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 8

284. Having regard to the Tribunal's conclusions above (under victimisation and harassment), the Tribunal concluded that Mr Brown did not, because of race, treat the claimant less favourably than a hypothetical (white) comparator (in circumstances where matters raised under the speak up policy had already been the subject of matters

considered under the respondent's grievance and disciplinary processes), by not investigating the alleged malpractice and rejecting the claimant's whistleblowing allegation.

285. The Tribunal concluded that the burden of proof did not shift to the respondent.

Detriment 9

286. Having regard to the Tribunal's conclusions above (under victimisation and harassment), the Tribunal concluded that Mr Cope did not, because of race, treat the claimant less favourably than a hypothetical (white) comparator (in circumstances where an earlier statement had been conveyed about closure of matters already raised during the disciplinary and dismissal appeal processes, the fact of which had been confirmed in writing by HR), by failing to require Mr Brown to provide a statement and dismissing the appeal and by relying on statements from Ms Moncrieffe-Johnson and Ms Langford.

287. The Tribunal concluded that the burden of proof did not shift to the respondent.

Unfair dismissal S.94/98 ERA

Burchell

288. The Tribunal concluded that the respondent did have a genuine belief in the conduct of the claimant which had caused an irretrievable breakdown in the employment relationship and in particular between the claimant and Dr Tyler, Professor Barker and Ms Griffiths-Jones. The Tribunal refers to its reasons above in relation to the reasons why the Tribunal concluded the respondent had dismissed the claimant. The Tribunal was satisfied and concluded that the respondent genuinely believed that the claimant had behaved in a bullying and/or harassing manner towards Dr Tyler and Ms Griffiths-Jones and he had undermined the authority of Dr Tyler and acted insubordinately towards him. There was no ulterior motive for the respondent. In fact, prior to the dissertation issue which had emerged consequent on the AWP cascaded on 22 October 2018, the claimant had been hostile and agitated towards the respondent because he had been put at risk of redundancy. This was demonstrated by the tone of his email and his cursory/dismissive reaction to being told by Dr Tyler he was no longer at risk. The Tribunal concluded that if there was a sinister agenda in play, the respondent could have dismissed the claimant by reason of redundancy. It did not. The Tribunal noted the historic tension between the claimant and his previous line managers which the claimant had survived. The Tribunal concluded that Dr Tyler's response to the claimant's challenge to his authority was to tackle him head on, which was escalated only when others, in particular, Ms Griffith-Jones became the target of his outbursts. He was no longer prepared to tolerate the claimant's mode of operation and it was that genuinely held belief which essentially was the genesis of all that followed. The claimant never backed down and it could be said

neither did Dr Tyler. The Tribunal concluded however, that was his prerogative as Head of Department and the authority he had, which was being undermined and disrespected.

289. The Tribunal concluded that by reason of the emails the claimant sent and publicised to the team in relation to Dr Tyler and those sent to Ms Griffiths – Jones and his subsequent pursuit of her by raising a grievance, were the acts which demonstrated the respondent had reasonable grounds upon which to hold its belief in the claimant's misconduct. To a large extent those emails did not require an over-analysis. The tone, content, volume and persistent nature of the emails, collectively, provided the platform for the respondent's action. The claimant raised grievances against Dr Tyler and Ms Griffiths-Jones, shortly after Professor Barker's intervention, at Dr Tyler's request when the matter had got out of hand. Thereafter, the claimant pursued a grievance against Professor Barker too. All were unsuccessful. The respondent was entitled to take this into account in determining that the relationship between the claimant and the respondent had irretrievably broken down. The respondent also had regard to the finding in the grievance outcome and at dismissal that the grievance against Ms Griffiths-Jones was vexatious. The claimant appeared to challenge, at the Hearing, that the finding at the grievance outcome stage had not been upheld on his appeal against that grievance outcome. The grievance outcome letter dated 5 April 2019, produced during the Hearing did not support the claimant's assertion at all. The appeal outcome letter referred to Professor Barker commenting at the appeal hearing that a vexatious grievance was a grievance made without merit and not raised in good faith and that it was in the scope of the disciplinary investigation. The appeal outcome supported the respondent's reliance on this aspect of the case against the claimant. These were documents which the claimant had expressly asked the disciplinary panel to have regard to and they did – pages 1915 and 1968. The Tribunal also concluded that Professor Callaghan's decision not to consider the previous grievance decision documentation of Professor Barker (relating to Dr Tyler and Ms Griffiths-Jones), introduced greater objective reasonable grounds for the subsequent outcomes and decisions – it provided a separate independent assessment of the situation and not one which, in the circumstances of this case, was likely to be attacked by the claimant as being a rubber-stamping exercise.

290. The Tribunal concluded that the respondent carried out as much investigation into the matter as was reasonable. Professor Callaghan interviewed 12 individuals in total, based on the allegations against the claimant. The interviews were thorough. The Tribunal noted that some spoke in favour of the claimant, largely in relation to the basis of the claimant's concerns about workload and/or resourcing – Dr Pinch, Dr Johnson-Schlee, Dr Manalsuren, Dr Elsmore, Dr Milburn and Dr Noussia. To a certain extent Dr Tyler had also thought some of the claimant's concerns were valid and he said that to the claimant too (pages 445 and 477). However, the case against the claimant was never about the legitimacy of raising reasonable concerns about workload. The Tribunal concluded that it was open to the respondent not to insist on a meeting with Ms Griffiths-Jones regarding the grievance against her, at that time, in the light of her email of 7 February 2019 (page 238). Her statement of 12 February 2019 described sufficiently her position and how she had felt. Further, she was an interviewee subsequently when Professor Callaghan undertook his investigation. The Tribunal concluded that Mr Stevenson's discussions with Professor Bailey, Professor Callaghan and Professor

Barker after the disciplinary hearing but before a sanction was finally decided upon was not unreasonable or inappropriate. The Tribunal concluded that it was open to the respondent to determine the sanction in respect of the wrong-doing by deliberating further including speaking to others. The claimant referred the Tribunal to ***Ramphal v Department for Transport UKEAT/0352/14***. That was a case in which the EAT considered the role of HR in the context of significant amendments made by HR to an investigation report in to alleged misconduct. The EAT concluded that HR had gone beyond their role to advise on procedure and process, straying into culpability. Notably, the EAT commented in paragraph 52:

"In my opinion, it is disturbing to note the dramatic change in Mr Goodchild's approach after intervention by Human Resources. A number of proposed findings favourable to the Claimant or exculpatory as to his conduct are replaced by critical findings. A proposed finding of misconduct is replaced by a finding of gross misconduct and a proposal to impose a final written warning is replaced by a proposal, and then decision, to summarily dismiss the Claimant after Mr Goodchild had been informed that dishonesty was not a necessary ingredient of gross misconduct. This is clearly not the case if the finding is one of theft or fraud. The Employment Judge has not explained what it was that caused Mr Goodchild to take a more critical view of the Claimant's conduct if it were not the influence of advice from Human Resources. 53. It seems to me that Human Resources clearly involved themselves in issues of culpability, which should have been reserved for Mr Goodchild. Mr Goodchild clearly went beyond discussing issues of procedure and law."

And in paragraph 56 the EAT remarked:

"I consider that an employee facing disciplinary charges and a dismissal procedure is entitled to assume that the decision will be taken by the appropriate officer, without having been lobbied by other parties as to the findings he should make as to culpability, and that he should be given notice of any changes in the case he has to meet so that he can deal with them, and also given notice of representations made by others to the Dismissing Officer that go beyond legal advice, and advice on matter of process and procedure"

The Tribunal concluded, having regard to the vast background by that time, that Mr Stevenson was by then seeking to ascertain the degree of impact of the claimant's conduct on the employment relationship. It was clear that by then Mr Stevenson and Ms Coupar had decided that the claimant's conduct was so serious to warrant at least a final written warning or dismissal. There was no dramatic or significant interference by Professor Bailey or Professor Barker at all. Their views were also based on the absence of any informed remorse/contrition or an acceptance of responsibility/a willingness to change by the claimant. Dismissal (for Gross Misconduct) was already contemplated. This course of action was put to Ms Coupar by the Tribunal, who agreed that it was reasonable for Mr Stevenson to have undertaken these further enquiries. Alternatively, the independent appeal panel also concluded that the relationship had irretrievably broken down (without seeking or knowing the views of others). That enquiry and process cured any alleged procedural defect.

If the Tribunal was wrong in its assessment that the claimant did not need to provide further input, the Tribunal was satisfied unanimously, that it would have made no difference to the outcome at all – if the claimant had been informed before dismissal or at the appeal hearing that Professor Bailey and Professor Barker had expressed concerns about the breakdown in the employment relationship, the claimant would have challenged them and most likely raised further grievances, but this would not have altered the respondent's decision, in the Tribunal's conclusion. Their views were based on their personal assessment and processes which they had decided on. By the dismissal stage, the claimant had raised multiple unsuccessful grievances including a second against Dr Tyler. By the appeal, there was a second grievance against Professor Barker and the unsuccessful outcome of the grievance against Professor Bailey and the appeal against that.

291. The Tribunal considered but rejected the application or relevance of the Supreme Court's decision in ***Royal Mail Group Ltd v Jhuti 2019 UKSC 55***. In that case the Supreme Court concluded if a person in the hierarchy of responsibility above the employee determines that she or he should be dismissed for a reason but hides it behind an invented reason which the decision maker adopts, the reason for dismissal is the hidden reason rather than the invented reason. In the case before the Tribunal, whilst the discussions with Professor Bailey and Professor Barker were not made known to the claimant, or to the appeal panel, the Tribunal concluded there was no hidden or invented reason for dismissal – it was and remained serious misconduct which had led to the irretrievable breakdown in the employment relationship. The appeal panel were not infected by the earlier discussions as they did not know about them and they considered the matter independently. They had said:

"*The panel also reflected on your written and verbal submissions for the appeal panel and considered your communication tone, the large volume of emails, the number of grievances raised and general behaviour. The panel felt that you had failed to reflect on your behaviour and acknowledge any need to change your approach. The panel considered that you had consistently demonstrated poor behaviour in this regard (from the evidence dated from December 2018 onwards) and continue to behave in this way to date. The panel was very clear that this behaviour had resulted in an irrevocable breakdown of trust and confidence." (Page 2236)*

Range of reasonable responses

292. The Tribunal concluded that the respondent's decision to dismiss the claimant was both procedurally and substantively within the range of responses.

293. The Tribunal noted that the respondent did have regard to the claimant's clean disciplinary record. In addition, the respondent had regard to the claimant's health. It was not contested that the claimant was offered support via the respondent's health support programme (PAM Assist). The claimant had also expressed more than once that he had the support of his own GP and friends. The Tribunal accepted that there would

have been an impact on the claimant's well-being in connection with the on-going internal processes, but the claimant did not present a health reason not to proceed with a meeting or hearing on any occasion. He expressly confirmed he was ready to proceed with his dismissal hearing having been asked the question at the outset, consequent on the claimant presenting a letter from his GP. The claimant also had limited time off (28 and 29 November 2018) by reason of being unwell. The Tribunal was not taken to any medical/sickness documentation relating to time off or the claimant's well-being or that his conduct was explained by his well-being. The sheer mass of written communications, in the form of addendums, illustrated that the claimant was able to the deal with the issues in detail. The claimant had elected to pursue multiple grievances and appeals. Whilst the claimant asserted that was his right, it was not a manifestation of poor health.

294. The question of remorse was considered by the respondent but was rejected as being a genuine or actual mitigating circumstances. It was open to the respondent to conclude this in the light of the claimant issuing qualified attempts to 'apologise' – being conditional on others apologising to him. Most significantly, 4 days after providing a lengthy statement in which these conditional 'apologies' were contained, he withdrew his offer to 'apologise' and decided instead to present two grievances against Dr Tyler and Ms Griffiths-Jones respectively. At the dismissal hearing, the claimant asserted he was innocent of all charges and that he had not overstepped the mark. He said the charges against him should be declared null and void. There was no expression of remorse or apology at the dismissal or appeal hearings. That was the time to raise remorse. Instead, the claimant's position was entrenched in vindicating his actions. The apologies the claimant said he was making went entirely against the grain of raising multiple grievances and appeals against those outcomes.

295. There was no inconsistent treatment with Mr Adams or Ms Paice. In ***Hadjioannou v Coral Casinos Ltd [1981] IRLR 352*** the EAT said in relation to an argument about alleged disparity in treatment:

"It is only in the limited circumstances that we have indicated that the argument [that is the disparity argument] is likely to be relevant and there will not be many cases in which the evidence supports the proposition that there are other cases which are truly similar or sufficiently similar to afford an adequate basis for the argument. The danger of the argument is that a tribunal may be led away from a proper consideration of the issues raised by [the equivalent of s98 of the 1996 Act]. The emphasis in that section is upon the particular circumstances of the individual employee's case."

296. For reasons already analysed above the factual scenario and personal circumstances of Mr Adams and Ms Paice were materially different. They were nowhere near alike the circumstances of the claimant.

297. The respondent was entitled to treat the disciplinary process under stage 4 of its policy as the charge against the claimant was gross misconduct and dismissal was a possible outcome. That was clear from paragraph 32 of the policy at page 279. It mattered not that ultimately that charge was not upheld. Gross Misconduct included as examples, but not exhaustively, serious breaches of the respondent's equality and diversity policies

(The Equality, Diversity and Inclusion Policy and the Staff Inclusion Policy), which the respondent was entitled to state these were after the investigation and when the claimant was invited to a disciplinary hearing.

298. The Tribunal also concluded that Mr Stevenson, was entitled, in the circumstances which prevailed at the time, to conclude the disciplinary process without final involvement from Ms Coupar. The Tribunal concluded that the title of 'Chair' which was reserved for only one of the panel, elevated the 'rank' of the Chair over the other panel member. In the invitation letter, the two-person panel was described as the Chair and the other person who would also be present as a panel member. In addition, this was not a case where there had only been a one-person involvement. Ms Coupar took an active part in the disciplinary hearing and in the subsequent deliberations meeting. Her evidence about where matters were left has been rejected by the Tribunal and the evidence of Mr Stevenson, corroborated by Ms Langford and via contemporaneous documentation, preferred. Her response after that, in her second email sent on 5 August, also referred expressly to the very point which Mr Stevenson concluded the deliberations about – the extent to which relationships had broken down. It was not anything new.

299. The respondent's decision to dismiss was not one which the Tribunal could interfere with. It was, by some considerable distance, within the range of reasonable responses. The claimant was the author of his own misfortune. The only criticism of Dr Tyler was that he could have handled the situation better initially but that did not provide any or sufficient excuse, justification or mitigation for the claimant's actions. It was nothing short of an ill-thought through campaign during which the claimant had scant regard for others around him. He had not heeded the supportive advice of those who had offered it – the most telling example of this was the advice of Dr Budd who had virtually predicted the breakdown in the employment relationship unless the claimant changed his approach. The claimant had elected to choose Dr Budd, a former union representative and a friend of 15 years, to accompany him at the meeting on 7 January 2019, but with whom he had then fallen out to such a degree within a few weeks that he then included Dr Budd within the pool of people who he said had treated him 'unfairly, horrendously and despicably'. He also raised a grievance, albeit that was subsequently withdrawn. The irony and hypocrisy of the claimant's criticism of the tone and language (being of a bullying and badgering nature in his view) of Dr Budd's email (20 February 2019), was not lost on the Tribunal.

300. The respondent took in to account the claimant's previous disciplinary record and the Tribunal concluded that this had influenced the decision to terminate employment with notice rather than summarily for gross misconduct – disciplinary outcome page 1973.

301. The claimant had also said about Ms Griffiths-Jones, in the investigation meeting with Professor Callaghan that she had been the only person who had found his email of 13 December 2018 unreasonable (which was factually not the case) and that was because of her weakness. The Tribunal rejected this had been inaccurately recorded. Professor Callaghan had said in this report that this was offensive (pages 1173-1174). In oral testimony, the claimant said that if someone did not complain about bullying it was because the conduct was not of a bullying nature – because Dr Tyler 'could absorb it'.

This left a hopeless and unenviable impression upon the Tribunal that the claimant expected individuals to either be robust and resilient on some universal one-dimensional standard, or, that it was not possible for bullying and harassment to ever be actionable unless someone speaks out. The Tribunal drew upon its own collective industrial and judicial experience in concluding that this was far removed from reality and the assertion was flatly rejected.

Protected Disclosure -S.43 B, S.47B (Detriment) & S.103A ERA (Dismissal)

21 November, 12 December 2018 & 10 January 2019 communications

302. Nothing in the Enrolment Terms or the MA Planning Policy and Practice Course Guide, which the claimant wrote, required the provision of face-to-face dissertation supervision for part time MA Planning students on the one day they attend (Thursdays in this case). The claimant was adamant in oral testimony that this was the requirement he had in mind at the time and now. He said the university was bound to provide face to face supervision and on day 10 of the hearing, he said this obligation was in a document not before the Tribunal. The Tribunal challenged the claimant and questioned how it, the Tribunal, could thus determine whether or not the claimant had made a protected disclosure if it didn't have before it the document the claimant placed reliance upon. In a further passage of evidence, the claimant said about face-to-face tuition that a 'student must have recourse…there must be some legal redress'. This sounded hopeful and aspirational but did not provide any support for a genuinely held belief that the respondent was in breach of contract, and/or which was objectively reasonable. The document/contract the claimant placed reliance upon was not before the Tribunal. In the Tribunal's conclusion, there was no one better placed to produce this than the claimant who was the Course Director.

303. The Tribunal did not need to conclude whether or not alleged disclosure was, in the reasonable belief of the claimant, made in the public interest.

304. Accordingly, the Tribunal concluded that the claimant did not make a qualifying protected disclosure.

305. If the Tribunal was wrong in its conclusion, based on the Tribunal's conclusions above in relation to reason for the claimant's dismissal, the Tribunal concluded that reason or principal reason the claimant was dismissed was not because of his alleged disclosures and neither did they materially influence the respondent instigating the disciplinary investigation or the decision to suspend the claimant. The former was done because of the dispute about work allocation between Dr Tyler and the claimant (as evidenced in the email traffic) which Dr Tyler escalated to Professor Barker on 19 December 2018 because of the inclusion and impact on Ms Griffiths-Jones. The latter was done because once the investigations into the claimant's grievances against Dr Tyler and Ms Griffiths-Jones were complete, the respondent considered the claimant may have a serious disciplinary case to answer and was suspended for an investigation to be undertaken.

306. The Tribunal, unanimously, dismisses all of the claimant's claims.

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Employment Judge Khalil

16 May 2022