EMPLOYMENT TRIBUNALS

Claimant: Dr Geoffrey Parker

Respondent: Liverpool John Moores University (1)

Ed Loffill (2)

Atif Waraich (3)

Michael Riley (4)

Joe Yates (5)

Mark Power (6)

Laura Halpin (7)

Naomi Scharf (8)

Sally-Ann Costello (9)

Maria Burquest (10)

HELD AT: Liverpool

ON: 2, 3, 4, 5, 6, 9, 10, 11, 12, 13 (chambers from afternoon 13 September) 30 September, 1 and 2 October 2024

BEFORE: Judge Johnson

MEMBERS: Mr J Murdie
Ms F Crane

REPRESENTATION:

Claimant: unrepresented
Respondent: Ms D Masters (counsel)

JUDGMENT

The judgment of the Tribunal is that:

(1) The complaint of unfair dismissal brought in accordance with Part X of the Employment Rights Act 1996 is not well founded which means it is unsuccessful.

(2) The complaint of breach of contract is not well founded which means it is unsuccessful.

(3) The complaint of detriments arising from the making of protected disclosures contrary to Part IVA Employment Rights Act 1996 is not well founded which means it is unsuccessful.

(4) The complaint of harassment relating to race contrary to section 26 of the Equality Act 2010 is not well founded which means it is unsuccessful.

(5) The complaint of direct discrimination relating to race contrary to section 13 of the Equality Act 2010 is not well founded which means it is unsuccessful.

(6) The complaint of indirect discrimination relating to race contrary to section 19 of the Equality Act 2010 is not well founded which means it is unsuccessful.

(7) The complaint of victimisation of contrary to section 27 Equality Act 2010 is not well founded which means it is unsuccessful.

REASONS

Introduction

1. These proceedings arose from the claimant's employment as a lecturer with the respondent where he was employed from 15 July 2016 until 14 October 2021 when his employment was terminated. The first respondent relied upon the potentially fair reason of some other substantial reason (SOSR) although earlier that year, the claimant had been issued with a final written warning following a disciplinary process.

2. This case involves ongoing difficulties arising between line management of the claimant, their expectation that he cooperates and complete certain tasks and the way in which he communicated with managers when asked to carry out these tasks.

3. Following his dismissal, the claimant presented a claim form to the Tribunal on 18 March 2022 following a period of early conciliation from 12 January 2022 to 22 February 2022 in the case of the first respondent. However, his proceedings involved not only the first respondent university but additionally 9 other individual respondents who were fellow academics in senior roles or HR officers dealing with the ongoing employment relations issues.

4. He brought complaints of unfair dismissal, detriments and dismissal arising from the making of several protected disclosures, direct discrimination, harassment, indirect discrimination, and victimisation. The claimant is a Canadian national and relied upon the protected characteristic of race.

5. The individual respondents will be described in the section below concerning the evidence used in this case as they all gave witness evidence. They were supported by the first respondent university's representatives and on 14 June 2022 a response resisting the claim was presented to the Tribunal. This was amended with the permission of the Tribunal on 27 January 2023.

6. Case management took place before Judge Horne on 9 November 2022 and Judge Ainscough on 28 June 2023. Judge Horne was asked to carry out further case management on 14 May 2024, but due to a listing difficulty it was relisted for 21 May 2024 before Judge Johnson. This involved the consideration of several matters and there were concerns that the parties might not be ready for final hearing date. Fortunately, it was possible for revised case management orders to be made and the final hearing dates were preserved. However, several preliminary matters remained to be resolved and this meant that the Tribunal were unable to begin hearing witness evidence in this case until day 3, (4 September 2024).

7. The claimant had made an application to the Tribunal on 24 August 2024 seeking strike out of the respondents' grounds of resistance. No specific provision under Rule 37 had been identified by the claimant, but in paragraph 2 of his application, he made the following statement, *'…the manner in which proceedings have been conducted by or on behalf of the respondents has been unreasonable…'* and that *'…the respondent had not complied with the Employment Tribunals Rules.'*

8. The Tribunal was conscious that the claimant was a litigant in person and bringing a claim of some magnitude and complexity. It took this into account when dealing with the application which was made under Rule 37 of the Tribunal's Rules of Procedure and assumed that the claimant relied upon the Rule 37(1)(b) and Rule 37(1)(c) respectively.

9. Although his application was lengthy, it essentially involved the following two matters:

    a) A data breach by the respondents (treated as meaning their 'conduct' - Rule 37(1)(b);

b) The respondents' later reference in correspondence to comments made by Judge Batten at the Judicial Assessment which took place on 24 October 2023 (also Rule 37(1)(b)); and,

c) Failure by the respondents to comply with case management orders made prior to the preliminary hearing before Judge Johnson in May 2024, when the dates for compliance were revised (failure to comply with a Tribunal order being Rule 37(1)(c).

10. The claimant was permitted to make his application at 2pm on day 1 (2 September 2024) and Ms Masters was then permitted to reply on behalf of the respondents.

11. Judge Johnson reminded the parties that the exercise of a Tribunal's discretion in relation to Rule 37 involved them considering whether to impose a draconian sanction (i.e. strike out). Consequently, the claimant must persuade the Tribunal that the respondents had behaved extremely poorly and to a significant degree in respect of the grounds relied upon.

12. The Tribunal's conclusion was that the claimant's reference to an alleged data breach (the first allegation), related to something wholly unconnected with the proceedings. It could not therefore be considered the subject of poor behaviour or conduct on the part of the respondents within the meaning of Rule 37(1)(b).

13. In relation to the allegation involving judicial assessment (the second allegation), Judge Johnson observed that the Presidential Guidance referring to these 'hearings' was that they were confidential in terms of what was discussed between the parties. He observed that in his Note of Preliminary Hearing dated 21 May 2024, he had already discussed this matter in paragraphs (43) to (46). In relation to this application, he considered that the claimant was referring to the discussion that often takes place upon the conclusion of the judicial assessment. This was where a Judge hearing the Assessment felt that there was a need to provide concerning future case management. This was the case here and the respondents were relating to Judge Batten's comments regarding the parties' approach to the proceedings based upon what she had observed. After all, it must be correct that judicial assessment should not serve as a means of preventing or avoiding the advancement of the case Judge Johnson concluded that the respondents' representatives had properly referred to case management discussions and not the confidential discussions which had taken place during the actual assessment. For these reasons, it was concluded that the respondents behaved appropriately.

14. In relation to the alleged failure to comply with what were the older case management orders (the third allegation), Judge Johnson noted that they predated those made at the preliminary hearing case management of 21 May 2024. The implication being that from 21 May 2024, although many earlier orders had not been complied with, the new case management orders operated as a 'reset', with the intention of the parties being ready for the final hearing in September 2024. Any previous failures to comply were no longer

relevant, especially as the revised case management orders had been complied with by the respondents and the parties were now ready to proceed to the final hearing.

15. The Tribunal disagreed with the claimant's arguments that the respondents had mislead the Tribunal and were involved in fundamental dishonesty. These allegations were concluded to be unhelpful, unnecessary, and wrong. The Tribunal considered that the respondents had actually behaved in way which was consistent with the overriding objective under Rule 2 of the Tribunals Rules of Procedure. Accordingly, the claimant's application was misconceived. Indeed, it was noted that his actions concerning this preliminary matter had distracted him from progressing his case so that he was fully prepared for the final hearing.

16. The Tribunal was provided with a significant bundle of documents across 3 lever arch files and witness statements from all the individual respondents. The claimant had failed to provide a witness statement until shortly before the final hearing began and significantly following the disclosure by the respondents of their witness evidence. The claimant's witness evidence was short and did not appear to be comprehensive. However, the Tribunal considered that it would be proportionate and in the interests of justice for the final hearing to proceed with reliance being placed upon the claimant's earlier grounds of complaint provided as part of the proceedings. The Tribunal were grateful to Ms Masters for not objecting to this course of action. The claimant was a litigant in person and this approach would ensure that the Tribunal could hear as much relevant evidence as possible from both sides. Ms Masters confirmed she could adjust her cross examination accordingly and the respondents were keen to continue with the final hearing.

17. The Tribunal was conscious that this long running case involving a termination of employment several years ago needed to proceed without any further delay. In particular, the claimant had decided at the preliminary hearing case management before Judge Johnson on 21 May 2024 to continue with his claim brought against the second to tenth 'individual' respondents. This was despite the first respondent confirming that it would not rely upon the statutory defence under section 109 of the Equality Act 2010 and they would nonetheless call them all to give witness evidence at the final hearing.

18. It was in the interests of justice to proceed and any prejudice to the claimant in not having provided a fully detailed witness statement addressing each of the allegations within the list of issues arose from his failures to cooperate fully in the process between May and September 2024.

19. The list of issues remained a matter of some discussion and the next section explains how the Tribunal dealt with this matter.

Issues

20. The issues which the Tribunal has been asked to consider were finalised at the preliminary hearing case management before Judge Johnson on 21 May 2024 and could be found at pages 230 to 247 of the final hearing bundle.

They were lengthy and in places did not represent the ideal list, which would typically (in a sentence or two), describe each allegation using the simple descriptions of 'when', 'who', 'what' and 'why'/'how' something happened.

21. A great deal of time had nonetheless been spent with concluding a final list and this was the version finalised at the preliminary hearing before Judge Johnson on 21 May 2024. It was essential that it was finalised at this stage. Without this certainty, it would not be possible for the parties to understand whether they had complied with disclosure of all relevant documents and that they could be confident that their witnesses addressed everything that what within their knowledge and what would be considered by the Tribunal. Moreover, the revised case management orders would only work with a final list being in place.

22. Accordingly, although some debate took place between the parties during the first few days of the hearing, the Tribunal made clear that the parties must present their case based upon the list of issues found at pages 230 to 247 of the final hearing bundle.

23. Due to their length, it is not appropriate to repeat the list of issues below as it would add disproportionate volume (to what is already a lengthy reserved judgment and reasons), but in summary, the issues under consideration involved the following matters:

Time limits

24. Time limits, applying sections 111 and 48 Employment Rights Act 1996 in relation to unfair dismissal and whistleblowing detriments respectively and section 123 Equality Act 2010 in relation to the direct and indirect race discrimination complaints as well as harassment and victimisation.

Unfair dismissal

25. Unfair dismissal in relation to Part X Employment Rights Act 1996 and considering whether the claimant was dismissed for the reason or principal reason making protected disclosures below, or whether he was fairly dismissed for the potentially fair reason of some other substantial reason.

Breach of contract

26. Breach of contract/Notice Pay. Was the claimant dismissed for a breach of the implied term that an employee should not be the subject of retaliation for raising unpopular opinions or for a failure to follow its contractual disciplinary process?

Protected disclosures

27. Protected disclosures, (Part IVA Employment Rights Act 1996). The claimant relied upon 5 protected disclosures beginning in September 2018 and ending on 17 September 2021.

28. Detriments related to the protected disclosures. The claimant relied upon 15 detriments, although some related to different individuals but involving the same events.

Discrimination, harassment and victimisation

29. Harassment (race) (section 26 Equality Act 2010). The claimant relied upon 9 separate allegations.

30. Direct race discrimination (section 13 Equality Act 2010). The claimant relied upon 12 separate allegations.

31. Indirect race discrimination (section 19 Equality Act 2010). The claimant relied upon 2 PCPs regarding the retention of records and argued 3 instances of where these PCPs would place those sharing the claimant's protected characteristic at a particular disadvantage.

32. Victimisation (section 27 Equality Act 2010). The claimant relied upon a single protected act, namely a meeting on 8 March 2019 with his Head of Department and HR and the asserted detriments mirrored the detriments identified in the whistleblowing complaint.

Remedy

33. The question of remedy would be left for another date should the claimant be successful in whole or in part with his claim given that there was insufficient time to deal with that matter in these proceedings.

Note: Whistleblowing detriment 13 and matters relating to Zia Chaudhry

34. The Tribunal's reading was delayed until day 2 (3 September 2024), because of the preliminary matters that were discussed on day 1. Judge Johnson during his reading noted that one of the allegations of whistleblowing detriments (detriment 13), concerned the involvement of Zia Chaudhry who was appointed as an investigating officer during the disciplinary process, but was not named as a party in the proceedings by the claimant. He was not being called as a witness in support of the respondents' case.

35. Judge Johnson noted that he recognised Mr Chaudhry's name and believed that it was likely that they had been in the same year at secondary school. Although he had not originally been in the same class group as him, Judge Johnson recalled that he had shared some of the same classes as him during their sixth form years from 1985 to 1987. However, Judge Johnson added that he had very little contact with him since that date and although Mr Chaudhry was a barrister, he had not worked with Judge Johnson when he had worked as a solicitor. To ensure that there was full transparency, he explained this matter to the parties on day 3 and asked if either wanted to make any observations or make an application for recusal. Both confirmed that this presented no difficulties for them and the hearing therefore proceeded with Judge Johnson chairing the panel in this case.

Evidence used

36. The claimant gave evidence and also called Edward Saul who was employed by the first respondent and worked with the claimant.

37. A particular difficulty in this case was that the claimant (despite having been given ample opportunity to do so by Judge Johnson at the PHCM on 21 May 2024), had failed to exchange his witness evidence with the respondents on the date designated by the revised case management orders made at that hearing. Pragmatically and sensibly, the respondents decided to unilaterally disclose their witness evidence which assisted with ensuring that the final hearing dates could be preserved.

38. Shortly before the final hearing, the claimant disclosed a relatively brief witness statement. This statement provided very little relevant evidence concerning his allegations. Instead, it appeared to focus upon his employment history and his ongoing issues concerning failures on the part of the respondents to comply with earlier case management orders in these proceedings. Helpfully, Ms Masters confirmed that she would nonetheless cross examine the claimant concerning the list of issues and documents that he had produced within the proceedings relating to his claim and during his employment. This did mean that her cross examination needed to be longer than might have been expected had a properly prepared statement had been provided by the claimant, but it was in accordance with the overriding objective. On occasion, the claimant had to be reminded that he could not use his limited written witness evidence to expand upon the already lengthy of issues which had been confirmed at the PHCM on 21 May 2024.

39. Mr Saul gave limited evidence and attended for a short period on day 6. While some of his evidence was not relevant to this case, he did deal with allegation 6 in the internal disciplinary hearing, (where a final written warning was issued against the claimant). This allegation concerned the claimant's alleged behaviour in a Teams Meeting. The disciplinary hearing officer Tim Nicholl rejected that allegation as part of his consideration of the case against the claimant at the disciplinary hearing. Accordingly, Mr Saul's evidence did not help the Tribunal in its consideration of the case insofar as the list of issues related to that event. Mr Saul did allege that he had been bullied by the claimant's final line manager Ed Loffill. However, having heard Mr Loffill's evidence and that of Mr Saul, on balance the Tribunal did not conclude that this allegation was credible.

40. The Tribunal began hearing the claimant's witness evidence on day 3 of the hearing. Considering the lengthy cross examination of the claimant that was required in this hearing and the extensive list of issues, Ms Masters helpfully divided her cross examination into 14 topics. She explained what they were and their order at the beginning of the claimant's evidence so that he could understand (and indeed so that the Tribunal could understand) what her cross examination covering at each stage of the claimant's evidence in what was a complex and overlapping list of issues. The topics were as follows:

    a) The university and the claimant's role

b) Health and safety matters
c) Line management issues in 2017/2018.
d) Line management issues in 2019.
e) The grievance process.
f) Covid and the university's response
g) The Research Excellence Framework (REF)
h) Disciplinary process and the final written warning
i) The subsequent process and the some other substantial reason for the dismissal
j) The appeal against dismissal
k) The breach of contract complaint
l) The section 19 EQA indirect race discrimination complaint
m) The balance of the allegations remaining
n) The question of jurisdiction under section 123 EQA (time limits)

41. The second to tenth respondents gave evidence and in support of the first respondent University who was their employer at the material time. The individual respondents were as follows and gave their evidence in the following order to accommodate their availability:

a) Day 5 - Professor Michael Riley
(Director of Civil Engineering and Built Environment at the material time and head of the claimant's department, initiated the SOSR process/fourth respondent).

b) Day 7 - Dr Ed Loffill
(Programme Manager Civil Engineering/claimant's line manager from December 2019 until dismissal/second respondent).

c) Day 7 – Professor Mark Power
(Vice Chancellor, chair of the SOSR appeal/sixth respondent).

d) Day 7 and 8 – Laura Halpin (HR Business Partner in Faculty of Engineering, supporting management at the disciplinary and SOSR process/seventh respondent).

e) Day 8 – Professor Joseph Yates (Former Chair and Faculty Pro Vice Chancellor ('PVC'), dismissing manager/fifth respondent)

f) Day 8 – Ms Sally-Ann Costello (HR Business Partner and supported Mr Power for the SOSR appeal hearing, ninth respondent).

g) Day 8 – Ms Naomi Scharf (HR Business Partner and supported Mr Yates at the SOSR hearing which resulted in the claimant's dismissal, eighth respondent).

h) Day 9 – Professor Atif Waraich (Head of Computer Science and person who was described as 'effecting' the decision to suspend the claimant/third respondent).

i) Day 9 – Maria Burquest (Director of Legal and Governance, designated whistleblowing contact/tenth respondent)

42. The respondents had disclosed their witness evidence. They were in the main lengthy statements provided by each of the above named witnesses and each responded to the allegations within the list of issues which were relevant to them.

43. The documents consisted of a bundle of 3 lever arch files and containing more than 2000 between them. Additional pages were added to the bundle as appropriate and relevant and where it was in the interests of justice for them to be included. Moreover, there were problems arising from 'digital corruption' when the first respondent was printing the bundles and these were swiftly addressed by the parties as the case progressed. On day 1 of the hearing, the claimant agreed the final hearing bundle but asked for some additional documents to be included. Despite being later than permitted by Judge Johnson's revised case management orders the claimant was allowed on day 1 to add some documents which he had not previously requested from the respondents, but which were made available.

44. There was a further issue which arose during the hearing of Maria Burquest's evidence. This involved a few emails within the bundle which did not identify who had been 'blind copied' to them. The Tribunal accepted that this amounted to no more than a genuine mistake arising from copies of the emails being printed from those recipients' accounts who would not have the 'BCC' recorded. This matter happened on day 9, was restricted to Ms Burquest's evidence and following an adjournment, the first respondent provided a copy to the claimant and the Tribunal. This was not controversial and it was then possible for Ms Burquest's evidence to be completed.

45. Finally, the respondents also provided a case management bundle used purely for the application and discussions on day 1 relating to Ms Masters' concerns about the claimant's witness evidence. Once the final hearing properly began, this bundle was not required any further by the Tribunal.

Findings of fact

46. The parties should note that the Tribunal's findings of fact do not seek to deal with every point where the parties disagree, simply what is relevant to the issues which the Tribunal is being asked to consider. If the discussion of an incident or point does not appear within these findings, it does not mean that it has not been considered by the Tribunal, simply that it is not relevant to the issues and the findings that we are required to make.

47. In terms of the findings that we make, the Tribunal has reached its decision on what it considers to be on *balance of probabilities* the most likely way or reason in which an incident arose or happened.

The first respondent employer

48. The first respondent (JMU) is a university situated in Liverpool offering a wide range of undergraduate and postgraduate courses and it also is involved with research work. It is a relatively large university with a significant student body and employing many academic, teaching and support staff.

49. Not surprisingly, given JMU's size, when dealing with employee relations matters, it has access to considerable in house HR and Legal support. It creates and regularly updates numerous policies and procedure. Those which are relevant to this case and which were included within the bundle were as follows:

    a) Staff Disciplinary Procedure, (pp250-266).

    b) Staff Grievance Procedure, (p267-272).

    c) Whistleblowing Procedure, (2 versions dated June 2017 and July 2019 and found at pp2004-2009 and pp2010-20125).

    d) Data Protection Policy, (3 versions dated September 2018, 2019, and 2020 and found at pp2084-94, pp2095-2105 and pp2106-2116 respectively).

The claimant

50. The claimant, (Dr Parker), was employed by JMU as a lecturer/senior lecturer in civil engineering/water engineering from July 2016 until his dismissal in October 2021, (p273). It was a teaching role but also involved some research. He was paid a salary by JMU with the usual terms that would be expected within a lecturer's contract. He was subject to an initial probationary period of 12 months and while the disciplinary and grievance procedures were referred to within the contract of employment, they were specifically incorporated within this document, (p282).

51. The Tribunal observed that despite being asked straightforward questions by Ms Masters regarding the expectations for his role, Dr Parker tended to give equivocal answers and would often challenge the definition of the question asked. However, on balance, the Tribunal accepted that he would teach several modules in his specialised subject areas with student numbers varying each year from 150 to 220. Some of the teaching could involve laboratory work and this could take place at the Henry Cotton Laboratory in the Peter Joost Building at JMU.

52. His contract of employment included a requirement that he:

    'work flexibly and efficiently, and to maintain the highest professional standards in discharging your responsibilities, and in promoting and implementing the corporate policies of Liverpool John Moores University, (p276).

Dr Parker accepted that this including an expectation that he would behave courteously to colleagues and students. Following some further cross examination from Ms Masters, he also said when asked that this should include work colleagues, that:

'I agree my behaviour should be maintained to the highest professional standards' but qualified this by saying this was a *'balancing exercise and you can be very courteous and completely failing to do the job required.'*

53. Dr Parker was subject to line management and during his employment with JMU was managed by:

    a) Dr Felicite Ruddock, (from 2016 to 2019).

    b) Dr William (Bill) Atherton (from 2019 to 2020).

    c) Dr Edward Loffill (from 2020 to 2021)

    Both Dr Ruddock and Dr Atherton were the subject of a grievance brought by Dr Parker in November 2019. Dr Loffill is of course the second respondent in these proceedings. The Tribunal noted that Dr Parker included numerous other JMU staff within his grievances in 2019 and the Tribunal will refer to them below as appropriate and as is relevant.

2017

54. In January 2017 JMU conducted its annual student survey this included a complaint which the then Head of Department Professor Rafid Al Khaddar attempted to address them with Dr Parker. In email correspondence with Dr Ruddock and Professor Al Khaddar, Dr Parker became very focused upon arguing that the complaint was '*demonstrably false'* and he was unwilling to agree with his managers that nonetheless the complaint needed to be addressed, pp316 to 320). These were not the only complaints made against Dr Parker during his time at JMU, but it represented an illustration of his reluctance to address any criticism which might come his way.

55. JMU like most universities across the UK comprises of a diverse staff and student body which commendably they believe is something to celebrate. Dr Parker holds both Canadian and British nationality but described his origins as being Canadian. During February 2017 he was thanked for volunteering to supervise a Canadian themed table at an International Day Breakfast Meeting on 28 February 2017, (pp2016-18). He responded to Angela Clarke who organised the event that he was surprised to have been 'volunteered' as he could not recall agreeing to participate. However, he did concede it was a nice thing to do during cross examination and attended the event as requested in March 2017. He did not raise any issues about being asked to participate as a Canadian and while during his evidence he suggested that he did not want to challenge because he was new to JMU, his reaction to the complaint the previous month demonstrates on balance of probabilities that had he felt that he was the victim of discrimination, he would have said so at the time. Indeed, when a colleague complimented Dr Parker upon the maple

syrup which had been supplied by him on the Canadian themed table at the event, he responded by email by saying:

'Great timing too – tomorrow is Canada Day!'

There was simply no evidence that Dr Parker was unhappy with being included for this event at the time that it took place, (p365).

56. Dr Parker was keen to develop his profile within JMU and farther afield and following a meeting with Professor Al Khaddar and the Dean Ahmed Al-Shamma, he sent an email on 22 February 2017 which described a *'good discussion'* and expressed an enthusiasm for *'tapping into our existing international networks'.* It specifically made reference to using *'my existing Canadian network'* which while he attributed the suggestion to Mr Al-Shamma, he was enthusiastic in describing how he could do this, referring to Canadian academic bodies that he had been involved with noting that he had a *'considerable track record and network'* and his *'considerable bilingual network',* (p330). The Tribunal does not accept that Dr Parker was treated in a way which could be considered unfavourable and 'reducing' him down to his Canadian nationality. They were trying to encourage him to identify and used his networks and this was a positive thing to do. indeed, during these discussions he signed off his email by saying, *'thanks again for today, very encouraging'.*

57. The following month, in March 2017, problems were identified with the structure of the Henry Cotton Concrete laboratory which was part of Dr Parker's workplace and concrete/cement dust had become an issue. Lorraine Buchan who was a JMU Health and Safety Advisor reported her concerns to Sara Rioux who is the Head of Operations and immediately, the building was restricted to staff and students until the necessary works were carried out and as agreed with Professor Al Khaddar, (pp355-6).

58. On 10 March 2017, Dr Parker sent an email to Dr Al Khaddar complaining about a *'joke'* that had made at a team meeting about Dr Parker's emails being too long. What was significant was that the comment appeared to have been made in front of other team members and Dr Parker quite reasonably explained that he felt undermined. Professor Al Khaddar correctly replied quickly and said:

'I am sorry to have upset you. This was meant as a joke and if you know me better you will realise that this is what it was.'

'This will not happen again'.

Shortly after midnight, Dr Parker replied and said:

'You didn't upset me. If we are peers, you can make jokes at my expense and vice versa.'

'But we are not peers.'

He noted that students were also in the room when the comment was made. While there is no reason why a line manager cannot challenge the emails of a team member being too long, this is an issue to be carried out in private. These short exchanges were unfortunate and, on this occasion, Dr Parker was behaving reasonably in *'calling out'* the comments that had been made, given the surrounding circumstances.

2018

59. On 1 April 2018 Dr Parker was appointed as the liaison for JMU's ICBT College in Sri Lanka and while this was a role which he appeared to value, it did not involve any formal promotion or regrading to his contract of employment, (p475). He had visited Sri Lanka in February 2018 and travelled with Dr Esther Norton, (p400).

60. Dr Norton was an external examiner from Anglia Ruskin University and she had been instructed by JMU to review the BSH Civil and Structural Engineering and her report was dated 3 July 2018, (pp420-433). Although evidence was not heard from witnesses in detail concerning the report, the Tribunal noted that it was largely positive. However, she raised concerns regarding health and safety matters where the mixing of cement by students was being carried out without personal protective equipment and in a car park that was in use. This was an issue because of the fundamental expectation that civil engineers will understand the need for good health and safety procedures.

61. Importantly, it was Dr Norton who shared the report with JMU and this was received by Professor Al Khaddar on 5 July 2018 and forwarded the same day to Dr Parker, (p434-5). Dr Parker then sent an email to his colleague Larry Wilkinson who worked with him on the Sri Lanka course on 18 July 2018. He made no mention of concerns regarding health and safety issues raised in Dr Norton's report and instead focused upon who would be the module leader of the programme for the forthcoming year, (p436-7). There was no evidence that he was raising any concerns with JMU about failures to comply with health and safety responsibilities. He did email Professor Al Khaddar on 9 August 2018 concerning his response to Dr Norton's report being signed off by the Head of the Department. The Tribunal were not shown a copy of the report but based upon the evidence available, we found that on balance, Dr Loffil was correct when he explained that JMU responded to Dr Norton's concerns regarding Health and safety, their Lab Manager Tony Owens was flown to Sri Lanka to review the matter and that campus was not allowed to reopen until the concerns had been addressed. This was supported by Bill Atherton's comments made during a grievance investigation on 18 December 2019, (p823). Importantly, this was a concern raised by Dr Norton and not Dr Parker.

62. He did engage in a lengthy complaint about the ICBT course on 29 June 2018 concerning his relationship with a colleague in Sri Lanka and which he raised with Mr Wilkinson and Professor Al Khaddar, (pp411-416). This was nothing to do health and safety issues and his tone was very ill tempered and blunt about his colleague and his belief that managers needed to back him up. His

language was criticised by Professor Al Khaddar in his reply on 17 July 2018, as being unacceptable and while acknowledging that issues needed to be resolved, it was essential that he noted *'Confrontation is not the solution but diplomacy and persistence is the answer. (p411-2). He noted that he was receiving complaints from students about information he had not provided.* While no further action was taken at this point, this exchange was evidence of the intemperate way in which Dr Parker could correspond and that he gave little attention to the feelings of colleagues who would receive these lengthy emails and especially, given Professor Al Khaddar was trying to support him.

63. In July 2018 another student tried to book an appointment with Dr Parker and he shared the paragraph from Al Khaddar's email of 17 July 2018 in his reply concerning the student complaint. He appeared to be telling both Al Khaddar and Ruddock that it was students being unreasonable in seeking meetings with him because he asked to meet on a Saturday. while it was understood that building work had begun during July 2018 and this restricted the availability of office space and that he did not normally meet students on a Saturday, he simply gave managers the impression that he was being unhelpful with students.

64. During 2018, complaints had been received concerning Dr Parker and, a student, complained that he was not uploading exam answers and he was refusing to do so. In an email forwarding this complaint to Dr Parker and managers on 13 August 2018 Professor Al Khaddar requested that the answers be uploaded, (p469). It was notable that the student was complaining about this refusal for a second time and had previously been refused by Dr Parker when a request had been made for an exam sat in April/May 2018, (p470).

65. Dr Parker's tone did not improve in his emails sent in September 2018 and on 12 September 2018 he sent an email to his managers about the course subject of Water Activity which is worth repeating here:

'Et Voilà!

If anyone wants to see my next feat of prodigious fortune telling, or have their tarot cards read, I can be found at Starbucks tomorrow.

There I will be acquiescing to an idea that is a priori neither objectively better nor based on any rules or conventions that can be produced, but merely different that the first, establishing that someone has been subjugated for doing nothing more than the act of volunteering.

At least in this instance it did not involve coaching students to complain and invoke rules that don't exist.

There was nothing within the emails exchanged during on this day that suggested this flippant and confrontational message was in reply to light hearted banter between colleagues. Dr Parker in cross examination said that he was:

'getting into sarcasm here…funny as well…my annoyance is coming through here.'

While that might have been his feeling, it was not an appropriate.

66. Not surprisingly, this upset Professor Al Khaddar and in his reply the same day, he opened by saying:

'I really do not understand the reasoning behind these emails. It looks [sic] you are accusing staff of not delivering without looking at your performance last year and the number of complaints that resulted. If you do not want to do the task you have been given then just say it rather than complaining about other members of staff not delivering…

'You have sent a number of such emails over the summer and I tried not to respond but my tolerance level has reached its limit…if you want to discuss something that you are not happy with then just let me know and we will discuss…' (pp483-482).

Dr Parker in evidence said that:

'I think he is getting the effect he is after…he is preparing a case against me…making an example of me in public meetings with Ms Ruddock.'

The Tribunal disagrees and finds that Professor Al Khaddar's comments were a reasonable response to what were provocative comments by Dr Parker.

67. That evening at 22:02, Dr Parker felt it was appropriate to respond to Professor Al Khaddar by saying:

'…Yes you're correct. It is less clear to me that you fully understand your statutory obligations. Support is not just a T-shirt slogan.

'I am prepared to give you the chance to discuss your record of this – not in writing – tomorrow.' (p485).

This was a rude and inappropriate email to send especially given Professor Al Khaddar's early indication that Dr Parker's way of communicating was unacceptable. While he was entitled to disagree that he was being supported by management, he could have responded in a much more measured way and in a respectful manner that could be expected of academic colleagues.

68. Indeed, in a further email sent on 13 September 2018 at 9:57, Dr Parker told Professor Al Khaddar that was patronising opening with:

'I am going to help you…'

and stating that,

'I can check if the University has a point person to brief you on these if you would like.'

He referred to peer bullying in the context of a safe workplace. Not surprisingly, Professor Al Khaddar simply responded at 10:02 by saying:

'I am sorry but I am not going to respond to this email, I find it intimidating and on the impolite side.' (p486-7).

Dr Parker in cross examination described this reply as being *'classic abuser behaviour…'* because Professor Al Khaddar was *'two levels above me…'* The Tribunal disagrees, there is a clear pattern of behaviour on the part of Dr Parker where when faced with any perceived challenge or criticism he goes on the offensive and seeks to blame and accuse others and adopts a superior and grandiose tone with his mangers.

69. Meanwhile, the 2018/19 academic year was about to begin and remedial construction work was still being carried out to the Peter Joost building. This had arisen when Lorraine Buchan notified Sara Rioux (Head of Operations) who in turn sent an email on 3 March 2017 to Professor Al Khaddar about concrete dust becoming an issue. This email was shared with staff within the department and they were asked to provide details of all projects being carried out in the location and report and staff or student experiencing symptoms of exposure to concrete dust. (pp354-6). Lots of staff therefore became involved with this problem, but the Tribunal finds that the reporting of the concerns came from Ms Buchan and Ms Rioux being responsible for health and safety issues in the site and not Dr Parker.

70. Not surprisingly in relation to the forthcoming 2018/19 academic year, Dr Parker wanted confirmation from Professor Al Khaddar that there would be safe access to the site when induction began the next week in an email on 13 September 2018. Professor Al Khaddar replied shortly afterwards and confirmed that the Estates team were carrying out check and he would confirm the position once he had heard from them, (p489). He then confirmed the next day that staff could not enter the building until cleaning had been carried out to remove the concreted dust, (p490-1). While Dr Parker claimed that he sent an email to Ms Rioux during September 2018 disclosing concerns about construction dust there was no available documentary evidence and no convincing witness evidence to support this allegation. On balance we do not find such an email was sent by Dr Parker.

71. Interestingly however, on 24 September 2018, Dr Parker did email Ms Rioux and explained the outcome of his *'preliminary assessment of possible hazards including dust.'* He seemed to accept that the *'risk has now been assessed and controlled, retrospectively.'* (p499).

72. A few days later on 27 September 2019, Laura Halpin from HR contacted Dr Parker at 12:13 explaining that she had been asked by Professor Al Khaddar to arrange a meeting with him to discuss emails that he had sent previously, explaining that he could have a union representative with him. there was no suggestion that he was to be the subject of a formal process at this stage, (p504-5). In the subsequent exchange of emails that day it became clear that it related to Dr Parker's tone and language in emails and student complaints.

This concluded with him confirming that he would meet if Ms Ruddock attended the meeting with him, which was agreed, (p503).

73. However, once it became clear that some of the documents, Dr Parker had sought from Dr Ruddock could not be located, he asked whether the meeting was an informal or formal grievance meeting within JMU's grievance procedure, (p507). Ms Halpin explained that it was an informal meeting not under any procedure but nonetheless *'…as I am attending, you can have a work colleague or TU representatives with you.* (p510). While Ms Halpin was clear about the nature of the meeting, it was understandable that Dr Parker would have some anxieties about the invitation given its background and that he was being told that HR were involved and he could rely upon the support of a union representative. Nonetheless, it was reasonable for management to explore these issues through an informal route at this stage rather than escalate to a formal process.

74. At this point, attempts were made to arrange a mutually convenient time for the meeting and following correspondence on 3 October 2018 Dr Parker said at 10:19 that *'…I am not going to participate in such a meeting'.* Although it was not entirely clear why he had made this decision, his reasoning appears to be because the informal meeting was not part of an official JMU process, (p512). No progress was made during the remainder of 2018 with regards to arranging a meeting other than that Professor Al Khaddar emailed Dr Parker on 20 December 2018 arranging a one to one meeting between them to discuss *'other issues [concerning] the programme leadership of the ICBT programme.'* If it was in his mind that he could use that meeting to explore the matters identified by Ms Halpin in October 2018, he did not express that within the email (p538).

2019

75. On 8 January 2019, Dr Parker emailed Ms Halpin seeking clarification as to the nature of the meeting which he had been invited to during the Autumn of 2018. However, in a convoluted email he suggested that she had previously *'avoided answering this direct and legitimate question'* concerning the policy that was being used for the meeting. However, several paragraphs later he refers back to her email of 3 October 2018 where she confirmed that the meeting did not fall under JMU procedures, (pp540-1). Ms McCrystal of HR replied (due to Ms Halpin's absence), on same day and patiently reminded Dr Parker of what was being proposed, namely:

'I must however point out that it is reasonable for you to be required to attend a meeting with your line manager or head of department along with a member of POD [HR] that is not under a formal procedure. I can see from your e-mail that Laura has explained the basis of the meeting and of course if there is a member of POD present you can take a colleague or trade union representative to the meeting.' (p539)

The Tribunal finds that this email made perfect sense. Yet Dr Parker strangely opened his reply by saying that *'…I must admit your email does not quite make sense'* (p539). Considering Dr Parker's replies to correspondence

within the bundle and his evidence given during the hearing, he was clearly suspicious of the motives behind the proposed meeting. However, it was clearly informal and he was being offered the protection of a trade union representative or other companion. It was reasonable for management to expect him to attend.

76. Also on 8 January 2019, Professor Al Khaddar met with Dr Parker and he was removed from his role relating to the Sri Lankan campus. The reason for this decision, however, was not to replace him. The Tribunal accepted that this occurred because another member of staff who was the Sri Lankan campus Link Tutor at JMU moved into the department and Dr Parker's liaison role was no longer required. It was not a demotion and he lost no money because of this decision.

77. Dr Parker also believed that issues connected with the proposed informal meeting were also discussed at this meeting. This was confirmed by Professor Al Khaddar's email to Dr Parker the next day on 9 January 2019 and the following was of relevance:

    a) there was an urgent need for Dr Parker to have his PDPR [appraisal].

    b) *'We did discuss the number and tone of emails exchanged and agreed that this should stop and we both agreed that a face to face discussion was more productive and saves a lot of time.'*

    c) *'We also agreed that emails from staff and students should be responded to and not left unanswered.*

,

    d) *'We did discuss working as a team and how important this is to staff moral [sic] and productivity.'*

    Dr Parker acknowledged this email and agreed in principle to what had been said, although he did raise some reservations concerning when he would raise matters in writing. The informal meeting proposed by HR was no longer required and did not take place other than that Ms Halpin wrote to Dr Parker to confirm that what Ms McCrystal had previously said was correct but that she recognises that he had discussed the relevant issues with Professor Al Khaddar, (p558).

78. The next step was then for a PDPR to be arranged and his line manager Ms Ruddock wrote to Dr Parker on 9 January 2018 and proposed that one could be arranged for the following Monday. He replied shortly afterwards and made clear that he did not feel that a PDPR would be *'credible'…'until such time as I have a better sense of what is going on.'* He then quickly followed this reply with a further email and while he made vague references to possible changes in line management, the Tribunal finds that this was an exercise in prevarication and that he was not keen for the PDPR to take place, (pp550-1).

79. She then wrote to him again on 4 February 2018 and proposed that the PDPR takes place on Friday 8 February 2018. He then replied and confirmed he

was happy to attend a PDPR, but first requested sight of the previously completed PDPR documents for 2017 and 2018 as he only had the drafts available, describing this step as being *'helpful'. (p570).*

80. Dr Ruddock replied on 26 February 2018 and asked for copies of the draft PDPRs held by Dr Parker explaining that *'I think that my versions got lost when my computer crashed a while back.'* Rather than simply reply with copies of what he had, he queried whether she was proposing to recreate the missing information which would have been included within the missing final version, (p573). Whatever Dr Parker's reasons where for questioning Dr Ruddock, the Tribunal could not understand why the PDPR could not go ahead with the documents that were available given that the final versions could not be created.

81. The following month on 8 March 2018, Dr Parker attended a meeting with Dr Ruddock, Professor Al Khaddar and Ms Halpin. Ms Halpin's email of 26 March 2018 recorded the numerous questions that he had raised. However, the following actions were described as agreed:

    a) Dr Ruddock to remain as his line manager.

    b) PDPR to take place as soon as possible.

    c) Dr Parker would produce a research proposal.

    d) Face to face meetings were preferable to lengthy emails.

    e) Being more visible in the office, to be involved and to keep calendar up to date, (p576).

82. Dr Parker responded on 1 April 2019 and did not agree that the email necessarily represented the note of the meeting and queried whether the other attendees would amend them further, (p577).

83. Dr Ruddock then made a further attempt to arrange the long overdue PDPR with an email sent to Dr Parker on 12 April 2019 and reminded him that *'The PDPR process is about moving forward, not backwards…'* unhappily, Dr Parker had become fixated about the missing earlier PDPR documents. Dr Ruddock had previously been frank and accepted they were missing from her computer. Quite unnecessarily he responded with a very challenging email and made the following comments, (while copying in Professor Al Khaddar and Ms Halpin to this reply):

    'I take this to mean your position is that documentation to support this will not be brought forward as requested. Can you confirm for everyone's records that this is an inability to do so (no such relevant documentation/records exist) rather than a lack of willingness to do so).

    'In either event, the first step of any credibly mutual discussion then will have to be a written acknowledgement that, due to lack of care and following of procedures, it [sic] not possible to accurately characterise Personal

Development and Performance discussions (including explanations and commitments made) over the period of June 2016 to present not the case and that I would not be 'embargoed''.

Once the above is produced and entered the file, we can have an initial meeting, sure. It is important it be in the file for many reasons.' (pp580-1)

This reply served to undermine his line manager provided unnecessary and disproportionate conditions and served to delay the resolution of his long overdue PDPR. Sadly, this was a pattern of behaviour that continued for the remainder of his employment.

84. Magnanimously, Dr Ruddock repeated in her reply dated 17 April 2019 that *'it was my fault that insufficient backup was kept'* and encouraged Dr Parker to attend a meeting to discuss his PDPR. Dr Parker's subsequent reply was unkind and unhelpful and he continued to focus upon the missing documents and kept reminding Dr Ruddock that she had lost them and inserted unnecessary comments such as:

'I really don't appreciate people wasting my time'; and

required 3 steps so that *'we can do a 'meeting' (my willingness to do is part of my expression of good faith as well and is since); and concluded by saying,*

'My feeling is given your track record here I [sic] we should do this in writing.'

Dr Ruddock was not communicating in a way which invited a condescending response of this nature from Dr Parker and in reality, his 3 steps which he was seeking reflected her proposal to resolve the PDPR knowing that earlier documents were missing, (pp579-582).

85. Dr Ruddock continued patiently to encourage Dr Parker to attend the PDPR and there is no need to refer to the further exchange of emails on 17 April 2018 which follow a similar form to those mentioned above, (pp585-7). His final email sent to her that day at 13:09 disingenuously stated he had:

'explained comprehensively my expectations to you prior to any meeting which will purport to discuss PDPR' and referred to her *'seeming inability to keep credible written records.'* (p590).

86. Dr Parker then turned his attention to Ms Halpin and on 17 and 18 April 2018 exchanged emails concerning notes of the meeting on 8 March 2019. During several emails, Ms Halpin expressed a view that she had provided all of the information that was available from the meeting and that there was never intended to be verbatim minutes, (p593). She confirmed that he had shared the brief note that she had with Professor Al Khaddar and Dr Ruddock and it appeared that Dr Parker believed that notes would be available concerning several matters including the comment attributed to Professor Al Khaddar that *'nobody can force me to stay in Civil Engineering.'* No further notes became available which suggested that a statement of this nature had been made. Ms Halpin was clear in her evidence that she could not recall hearing this

statement although did recall a discussion about line management. Dr Parker of course failed to deal with this matter in his witness statement and in cross examination he remained of the belief that Professor Al Khaddar used those words and that he perceived them as being a threat because it was said in the context of a discussion regarding the *'forthcoming changing environment'.*

87. Having considered the limited evidence available, on balance the Tribunal does not believe that Professor Al Khaddar said what was alleged. Ms Halpin consistently gave credible evidence throughout and Dr Parker's evidence was much less credible given that he tended to see himself as being constantly under threat and the Tribunal found that this clouded his recollection of discussions that took place.

88. In April 2019, Dr Parker also alleged that Professor Ahmed Al Shamma who was the Head of Facilities told him that he had been expected to cultivate his Canadian options when he began his employment with JMU in 2016. By the time of this final hearing, the Professor no longer worked for the University and Dr Parker was unable to identify any documents which recorded the meeting when this allegedly was said. He remained of the view during his evidence that this statement was made even though he did not raise the comment in his grievance. Dr Parker would not accept that even if the comments had been made as alleged, the Professor was simply, being encouraging and trying to help. In cross examination he felt that *'they were giving me a clear signal.'* This he believed, was because he was *in cahoots* with Professor Al Khaddar who was suggesting he could work elsewhere.

89. On balance, we accept that Professor Al Shamma probably did raise the question of Dr Parker cultivating his connections in Canada. He was after all an academic with an international background and had worked in universities in Canada and the USA as well as the UK. However, we could not accept that it could reasonably be considered a hostile attempt to persuade him to leave JMU. It is reasonable for universities to expect their academics to maintain connections with their former institutions and to explore ways in which these relationships can be built and indeed, enhancing their own careers. Any adverse conclusion drawn by Dr Parker from this conversation arose from his belief that there was a conspiracy to persuade him to leave.

90. The next month on 10 May 2019, Dr Parker sent a lengthy email to several academics in his work area relating to a Civil Engineering Away Day. It was a challenging email and criticised in a very public way the whole agenda for the event. It is understood that Professor Al Khaddar would have been leading on this event and he forwarded the email to Ms Halpin and Professor Al Shamma seeking advice about how to respond as he felt that Dr Parker was *'trying to undermine the whole department.'* (pp609-610). The original email may have had elements of constructive criticism within it which could have been used to improve the planned away day. But the way in which was presented and distributed to numerous recipients understandably left Professor Al Khaddar feeling undermined when a separate meeting with him could have been beneficial.

91. From 7 August 2019 Bill Atherton became Dr Parker's line manager and like Dr Ruddock, it was his responsibility to arrange for annual PDPRs to be completed. By this date, Dr Parker had not completed a PDPR since 2017. Ms Halpin initially informed Dr Parker of the change and on 15 August 2019 at 11:44 Dr Atherton emailed Dr Parker asking that he complete his PDPR form in advance of a proposed meeting with him, (p625). Dr Parker responded with a message shortly afterwards at 12:11 expressing his concern about the change of line manager. He expressed his disappointment in *'people failing to meet their obligations.' (p627).*

92. Dr Atherton responded 30 minutes later and asked to meet for a chat and this took place the next day on 16 August 2019. This appeared to go well, although Dr Parker sent a further email later in the afternoon at 17:53 agreeing to resume the appraisal process but on condition that he was supported in an application for Readership at JMU, including Programme Management and Supervisory Roles. He also referred to the bringing of a grievance as well, (p624).

93. The proposed grievance appeared to relate to ongoing communications with HR during the summer regarding the historic appraisal process and several lengthy emails were sent to Ms Halpin and others on 13 and 14 August 2019, (pp616-9). It is difficult to fully understand what his unhappiness related to, but in broad terms we concluded that Dr Parker did not feel that his career had progressed as well as it should have done since 2016. There was an absence of self-reflection within these intemperate emails and they involved him attacking management and in particular the Head of Department, Professor Al Khaddar. This culminated in Professor Al Khaddar (who had been copied into the emails), expressing his unhappiness to Professor Al Shamma and Ms Halpin on 14 August 2019 seeking a resolution as he felt the allegations being made were not correct and that Dr Parker was being disruptive to the Department, (p623). The Tribunal noted that despite having been cautioned about sending numerous lengthy and overly critical emails, Dr Parker had not changed his approach to communications with managers. While there was nothing wrong with having an opinion or a belief that things could be done differently, his methods of communication continued to display a lack of consideration concerning those about whom he was writing.

94. On 23 August 2019, Dr Parker sent a lengthy and overly critical email to Director of HR Julie Lloyd concerning Ms Halpin sending him the previous edition of JMU's grievance procedure rather than the current version. At its highest the Tribunal felt that this was a minor error and was not done deliberately. Not surprisingly, Ms Lloyd was unimpressed but did provide a short explanation concerning the minor differences between the two documents, (pp633-4). This exchange was another illustration of ongoing unreasonable behaviour on the part of Dr Parker and his complaint to the Head of HR was wholly disproportionate when a simple clarification with Ms Halpin would have been all that he needed to do to resolve this matter.

95. Dr Atherton and Dr Parker resumed their discussions regarding the overdue PDPR/Appraisal and on 5 September 2019, Dr Parker sent a lengthy email which opened with him stating that:

'I have taken advice on this and what I have received back is that it is (may be) ill-advised to fill out the PDPR/Appraisal forms prior to receiving at a minimum, some assurances from other parties involved
-chiefly that
a) they acknowledge past errors and
b) they are prepared to take real steps to try and rectify the situation…'

He then effectively proceeded to make a list of demands which on the face or it needed to be met, before he would agree to engage in the PDPR process, (p644-5). Not surprisingly, Dr Atherton declined to make any promises stating that *'…I am not aware of any precedence [sic] for this.'* The matter was left at this point with Dr Parker responding and saying he would wait for management to respond.

96. On 20 September 2019, Dr Parker then responded to his former line manager Dr Ruddock who had attempted to respond to his earlier lengthy email sent that day expressing concern about being allocated as a personal tutor for 7 students during the 2019/2020 and the modules that he was being expected to teach. Ms Ruddock responded in a concise way and explained what was required for each of the identified modules. Dr Parker's reply was disrespectful and wholly inappropriate and once again, it is necessary to refer to it in full:

'Thank you for your email.

'To mirror your response.

'Grapes can be 'red' or 'white'

'Apples are often green, red or yellow.

'(None of this is responsive or has anything to do with an agreed teaching plan for 2019-20).

'If you do not provide me with a plan to manage your mismanagement, I will (I suppose) have to make up my own.

'If you'd like to discuss what that might be, please let me know.

'Regards'

By anyone's standards this was an obnoxious and upsetting email to receive. Dr Parker could have simply said that Dr Ruddock's answer did deal with what he had asked and his behaviour on this occasion was very poor.

97. On 26 September 2019, an email exchange took place because of Ed Loffil explaining a change of policy regarding student's raising extenuating circumstances, (presumably in relation to coursework deadlines). Dr Parker was clearly unhappy with the changes being described and referred to the whole Civil Engineering academic staff in an email sent at 11:33 regarding

Professor Al Khaddar making departmental changes at *'…closed door meetings without minutes.'* This upset Professor Al Khaddar and in a reply at 11:48 stated that there were no closed door meetings and he said to Dr Parker, *'Geoff, you need to stop sending these sarcastic statements as they are not good'.* (pp675-8).

98. In a reply sent solely to Professor Al Khaddar and Dr Atherton at 21:51 Dr Parker said, *'I have apologised (perhaps unwarrantably) for a 'sarcastic' tone that Prof. Al Khaddar has attributed to me…',* but then proceeded to criticise him for the tone of his email and requested that Professor Al Khaddar provide a written apology *'…circulated to the Civil Engineering Academics list that apologises for the tone of his email…'.* The Tribunal concluded that this response was unnecessary and simply represented Dr Parker's attempt to transfer blame for inappropriate messaging onto his manager rather than accepting that his response would have been better raised on a one to one basis with Professor Al Khaddar rather than responding to the entire department, (p674-5). Professor Al Khaddar forwarded the email to Professor Riley and Ms Halpin shortly afterwards and asked whether he need to reply to Dr Parker's email.

99. On 27 September 2019, Dr Atherton met with Dr Parker and attempted to discuss several matters as his line manager. He summarised them in an email sent at 17:07 that day. Reference was made to his grievance and that once the process had concluded, mediation would be considered as an option. Additionally, in terms of email correspondence Dr Atherton explained that he should be the single point of contact. Finally, he was reminded that participating in an annual appraisal was a contractual requirement and he could not refuse to attend one. The Tribunal considered that this email was a measured response and dealt with the outstanding problems that existed with Dr Parker in a clear and straightforward way. It was an appropriate document to send and the Tribunal noted that instead of responding with a lengthy email, Dr Parker simply replied at 17:13, with the message *'Receipt Acknowledged',* (pp682-3). He then produced a long letter on 30 September 2019 seeking to argue that he was attempting to arrange appraisal meetings on 18 occasions between 2017 and 2019. He concluded by saying that *'I would be delighted to enter into a sincere and good faith Appraisal process',* but once again made it conditional upon a number of commitments being made by management, (p684-5).

100. Despite this response, Dr Atherton remained resolved to conclude the PDPR and on 15 October 2019 he explained that he was exploring with HR about the possibility of obtaining a statement regarding missing PDPR. He proposed a meeting on the next Friday, which Dr Parker indicated *'should be OK',* (p692).

101. Then on 25 October 2019, Dr Atherton emailed Dr Parker at 13:44 seeking that they *'move forward now with the Annual Appraisal process.'* Once again, just as it appeared some progress could be made with the PDPR, Dr Parker became obstructive in his reply sent at 18:56 and referring to his *'expecting an appraisal outcome offer package…aligned to my August emails…'* He concluded by stating that *'After Tuesday 2019-10-29 it will*

become increasingly difficult for us to find an internal way through this mess,'(p694).

102. He had also sent a letter that day at 13:50 which was two and a half pages in length and covered a great of their previous discussions. Importantly, Dr Parker concluded by stating that he would not agree to participate in the appraisal process without the described outcome offer package being met. This included the option of JMU paying for him to be represented by an independent solicitor, (pp696-8). He imposed a 4 day deadline in which he expected Dr Atherton to respond.

103. Dr Atherton continued with his plans to arrange a PDPR and on 1 November 2019, invited Dr Parker to his annual appraisal. He confirmed in his email sent at 15:30 that this was a formal instruction and at 15:48, Dr Parker said he was preparing a response to this invitation and other matters and referred to his communication with Professor Ian Campbell the then Vice Chancellor and Professor Mike Riley who was Head of Built Environment but who was about to be appointed Vice Chancellor, (p700). Dr Atherton replied at 16:45 reminding Dr Parker that he had been appointed to manage the appraisal and that he had been specifically told by HR not to involve the Dean of the Vice Chancellor. This prompted Dr Parker to reply at 17:36 and significantly within this email he questioned whether Dr Atherton was fully qualified to act as his line manager, (p699).

104. Dr Parker commenced his grievance on 1 November 2019 and made complaints against the following individuals:

a) Professor Al Khaddar (pp728-32).

b) Dr Atherton (pp733-7).

c) Julie Lloyd (Head of HR), (pp738-42).

d) Laura Halpin, (pp743-47).

e) Dr Ruddock, (pp748-52).

Greg Thompson from HR acknowledged receipt of the grievances by letter dated 8 November 2019 and confirmed that it would be investigated as a formal grievance under JMU's grievance procedure, (p726).

105. On 5 December 2019, Dr Parker was informed by HR that Professor Andy Tattersall was appointed at the Grievance Officer, that he would be invited to a grievance meeting on 16 December 2019 and that he could be accompanied by a trade union representative or colleague, (p763). Dr Parker provided documents for the meeting in an email sent on 12 December 2019 and forwarded to Professor Tattersall an opening statement, addendum and an 'Exhibits Exhibit Theme Map', (p781). Other witnesses were to be interviewed who had been named within the grievances raised by Dr Parker and they took place a few days following his meeting.

106. The following day, Professor Al Khaddar informed staff in his department that Dr Ruddock and Dr Atherton would be retiring in early 2020 and while confirming that their posts would be retained and permanent appointments would eventually be made, an invitation was given for an expression of interest in interim appointments to the role, (p782). On 18 December 2019, Dr Parker responded to Professor Al Khaddar to confirm that he would not apply for these roles.

January to June 2020

107. On 8 January 2020, HR wrote to Dr Parker and explained that Professor Tattersall had interviewed all the witnesses and wanted to discuss the grievance with him, (p842). A meeting was arranged to take place on 16 January 2020, but the day before, Dr Parker sent a 'Prepared Statement' of 2 ½ pages in length. The Tribunal noted that no outcome in relation to the grievance had been sent to Dr Parker and the statement effectively provide details of his terms of engagement for the meeting and this would involve him attending, listening to Professor Tattersall, but only agreeing to respond in writing after the meeting and once he had received a record of the meeting which he accepted as being accurate, (p860-3).

108. The meeting took place on 16 January 2020. In addition to Professor Tattersall and Dr Parker, Ms McCrystal attended on behalf of HR and a note take was also present. In paragraph 7 of the written note that was produced, it was confirmed that they *'summarise the key points of the meeting and are not a verbatim record.'* It was explained that the 2016 and 2017 PDPR documents were not available, but that Dr Parker's completed Probation Review was available. A range of matters were discussed, but Dr Parker was reminded that it was in his best interests to attend a PDPR appraisal as soon as possible. The statements taken from witnesses were discussed and Dr Parker was invited to sign the note, (p873-887 & p898).

109. Correspondence continued with Dr Parker sending several lengthy emails challenging Dr Tattersall and taking a similar form to those that he had previously sent during the previous year.

110. In the meantime, Dr Ed Loffill was appointed as Dr Parker's line manager and along with his colleagues, he was notified of this appointment on 27 January 2020, (p918). He then directly emailed him on 31 January 2020 and enclosed a blank PDPR form for him to complete and asked him to ensure that he informed Dr Loffill when he was away from the office because students and staff had said they had been able to contact him, (p925).

111. Dr Parker replied within 30 minutes and said that he was *'happy to engage in an evidence based appraisal/PDPR process.'* However, he then sought information concerning the names of the students and staff who said they had not been able to contact him, (p924). In a somewhat surprising email, he then contacted Professor Tattersall and Ms McCrystal in HR at 19:54, saying that:

'I have today received an email from someone claiming to be my line manager and asking for confidential and appraisal information', (p927).

While he argued that the reason for asking was that the JMU systems had not been updated to record Dr Loffill as his line manager, he had been previously notified of his role by email on 27 January 2020 as explained above. This is not the first time that Dr Parker questioned the provenance of his appointed line manager and on balance the Tribunal concluded that he resented being managed and given instructions to complete tasks and activities which managers could reasonably expect of him as a lecturer.

112. Dr Loffill, nonetheless, acknowledged Dr Parker's email on 3 February 2020 and said he was pleased to hear that he would engage with the PDPR. However, Dr Parker was unhappy that there was no disclosure of the names of the students and staff who had complained about him not being available, (p929). Dr Loffill then responded on 5 February 2020 suggested that they meet face to face and asked whether Dr Parker wished to proceed with the PDPR or not, (p931).

113. On 5 February 2020, there was a department wide meeting concerning degree apprenticeships and it was alleged that during this meeting, Larry Wilkinson said to Dr Parker that he must have *'…gone back to Canada by now.'* The Tribunal did not hear any convincing evidence from any witnesses during the hearing concerning this evidence and in the absence of relevant documentary evidence, we are unable to find that Mr Wilkinson made the alleged comments to Dr Parker.

114. During this period, Dr Tattersall attempted to complete his grievance report and had to email Dr Parker on 3 February 2020, reassuring him that he was working on this document and asked that he stop sending any more emails relating to this case. This request was not heeded by Dr Parker and 30 minutes later a further email was sent, (p932).

115. The Covid pandemic began in March 2020 and on 9 April 2020, Professor Tattersall was able to complete his grievance report, (pp998-1009 plus appendices). It was sent to Dr Parker on 16 April 2020, (pp1010-5). The letter summarised the findings that had been made and in relation to each of the 7 allegations made, the following outcomes were recorded:

a) Construction work in the Peter Joost Building – No evidence was found to support the claim that the Department and Faculty failed in their duty of care to staff around the construction project.

b) Invitation to a meeting with the Head of Department (relating to student complaints and the tone of Dr Parker's emails) – The request to hold a meeting was found to be reasonable. In contrast, his refusal to attend was unreasonable behaviour and led to an unacceptable delay in these issues being addressed.

c) Programme Leadership, (Sri Lanka) - There were straightforward business reasons for the role to be removed and it was not decided upon to punish Dr Parker.

d) Appraisals – There were numerous reasonable attempts to arrange PDPR meetings and Dr Parker avoided engaging with the process. It was described as *'regrettable'* that the previous PDPR documentation could not be located, but that this did not preclude the later PDPR meeting from taking place. It was stated that JMU expects staff to participate in the PDPR process and Dr Parker's failure to participate and then complaint about not having a PDPR was unreasonable and potentially vexatious.

e) Health and Safety Issues – it is unnecessary to consider this allegation in detail other than to state that no evidence was found to support the allegations that health and safety was not taken seriously by management.

f) EU/ERDF Timesheets – This related to documents that needed to be completed so that JMU was correctly audited in respect of European Regional Development Fund monies that it was receiving from the EU. These documents had to be signed, but there was no evidence of staff being compelled by management to sign them against their better judgment.

g) Specific Allegations against Individuals – none of these allegations were upheld.

Professor Tattersall helpfully made several recommendations in the hope that future difficulties could be avoided and they were as follows:

a) A PDPR meeting should be held as soon as possible, regardless of whether *'prior paperwork'* is available. Continued refusal by Dr Parker to attend and cooperate would be considered unreasonable.

b) Dr Parker should receive one to one training concerning appropriate email behaviour. Disciplinary action would follow if there was further infringement.

c) Dr Parker must ensure that his line manager is aware of his working location is notified during the working week.

116. Dr Parker was unhappy with the decision and gave notice of his decision to appeal on 23 April 2020, but requested additional time so that he could produce a detailed ground of appeal, (p1055).

117. On 27 April 2020, Dr Parker questioned JMU's Data Protection and Information Officer and asked whether there had been a notification of missing data in connection with Dr Ruddock losing the 2016 and 2017 PDPR documents, (p1039). He received a reply confirming that this matter would be investigated. The Tribunal however, noted that this matter involved Ms Ruddock losing data that she should have correctly saved on her computer and it did not involve the disclosure or mis-sending of the PDPR documents to

third parties. This complaint was rejected on 29 May 2020, (p1097). On 9 June 2020, Dr Parker was informed that he should direct any further issues that he might have regarding this matter to the Information Commissioner's Office (ICO) and he was provided with their contact details, (p1113).

118. Also on 27 April 2020, Dr Parker also emailed Dr Graham Sherwood regarding to changes to the assessment rules of student dissertations as recorded in an email sent earlier that day by Dr Denise Lee. Dr Sherwood responded 30 minutes later and said that this did not reflect what was being proposed, (p1025). Dr Parker then forwarded this email to all Civil Engineering Academics 15 minutes later which meant that all his colleagues could see that he was questioning Dr Lee. He followed this with a further email sent to Professor Al Khaddar, Dr Lee and Dr Loffill stating that Dr Lee had:

'…materially misrepresented advice from the Faculty Registrar.' He added that *'…I believe it is also possible she materially misrepresented the external examination process and suggest that this should be investigated', (p1027).*

119. Dr Loffill was naturally very unhappy with what had been sent and quickly emailed Dr Parker explaining that he had been contacted by Dr Lee who had asked that he intervene as his line manager. In a very measured way, he invited him to *'retract that email to the team'* and instructed him to mark the dissertations as required as it was not his place to question the faculty registrar. Dr Parker responded immediately and refused to accept that there was anything wrong with the tone of his emails and would not retract what had been said, (pp1028-9). Dr Lee then complained to Ms Halpin on 27 April 2020 seeking support from HR, (p1031).

120. Dr Loffill responded to Dr Parker on 29 April 2020 and reminded him that if he had any issues regarding JMU protocols, he should contact him as his line manager and not with emails to the faculty registrar, the whole department and he should not imply that colleagues have misled others. He noted that he continued to have a problem with the tone of his emails and that if Dr Parker continued to *'…pursue further unhelpful communications to the whole department…',* disciplinary options would be considered, (p1045). Oddly, Dr Parker replied 3 minutes later with the response, *'Dear Dr Loffill, Stay tuned.'* The Tribunal considered this response and felt that the only reasonable conclusion to draw was that Dr Parker was making a threat and implying that his communication style would continue.

121. On 30 April 2020, Dr Parker sent an email to HR concerning his grievance appeal which was incoherent other than in its conclusion which said *'…I am waiting for another process. But you can dispose of this one now.'* This email was treated as notice of withdrawal of his appeal. Given the context in which JMU was finding itself with Dr Parker, this was a reasonable conclusion to make and it appeared that he was considering commencing legal proceedings. There was no evidence before the Tribunal that Dr Parker subsequently chased JMU for news of his appeal and this would suggest that their decision was the correct one.

122. During late May 2020, Dr Loffill then sought to arrange for Dr Parker to release marks and feedback for course 7001BEPG and to provide a list of topics for course 7002BEPG. These were described as management instructions. He failed to comply with these requests and on 4 June 2020 with a second deadline for compliance being missed, he notified Ms Halpin, with a further email being sent to her on 8 June 2020 asking if Dr Parker can be removed from module 7002BEPG and have this workload re-tasked, (p1067, p1101, p1010 and p1011). On 16 June 2020, Dr Loffill emailed Dr Parker to remind him that he had still not provided the marks and feedback on course 7002BEPG and that he had not provided marking or second marking for module 6205CIV dissertations, (p1142). This was a real concern for Dr Loffill as it related to student work which needed to be marked and feedback given upon. It resulted in Professor Al Khaddar being forced to make contingency plans for the outstanding marking to be carried out by somebody else.

123. This was followed with further failures on the part of Dr Parker in that he had not organised meetings with Degree Apprenticeship students and steps had to be taken on 19 June 2020 to reassign their supervision as discussed in an email between Mr Wilkinson and Dr Loffill on 19 June 2020, (p1149).

<u>July to December 2020</u>

124. On 3 July 2020, Dr Parker received an electronic greetings card, (p1159). The card consisted of images that might typically be associated with Canada. They were affectionate and nostalgic in nature rather than derogatory. It was provided by Linda Howes and the Tribunal accepted Dr Loffill's evidence that it was not created or sent by him. But regardless of who sent the card, the way it was sent and the nature of its content would suggest it was sent affectionately and out of kindness and that no hostility or unpleasantness could be discerned from it.

125. On 27 July 2020, Dr Parker lodged an appeal regarding the Research Excellence Framework (REF), (p1218). This complaint was withdrawn on 9 September 2020, (p1300). The Tribunal understood that the REF was a UK government framework which determined how much funding universities would receive. JMU decided which academics should be included within the list of those with Significant Responsibility for Independent Research, (SRIR). Each university would have its own criteria, but understandably they wanted to be confident that the right academics were included within their SRIR as this would assist them in securing the best possible funding under the REF.

126. Dr Parker was not included within the SRIR and he conceded during cross examination that this was a big concern for him. He disputed that this his appeal/complaint was motivated by JMU's failure to include him within the SRIR. The Tribunal was not given evidence regarding the funding system and we were not taken to any policy documents concerning the way in which the SRIR worked and how it interacted with the REF. having considered the limited evidence available and the subsequent withdrawal of the appeal, the Tribunal on balance concluded that the appeal/complaint was motivated by Dr

Parker feeling a personal slight concerning how he perceived his prestige and not because of any failure of legal obligations by JMU.

127. By 31 July 2020, Dr Parker's PDPR appraisal remained outstanding and he had not yet completed the documentation that had been sent to him by Dr Loffill, (p1755). The same day, he was notified of the commencement of a disciplinary investigation into his alleged misconduct by Greg Thompson, Head of HR Business Services and Employee Relation, (p1233). Five matters were identified in this letter dated 31 July 2020 as being the issues under investigation:

a) Failure to provide marks and feedback for students on module 7001BEPG and 6205CIV.

b) Failure to provide an up to date list of student topics and progress to Programme Leaders for 7002BEPG.

c) Failure to engage with the Degree Apprenticeship process and contract your designated apprentices.

d) Failure to engage with the University's appraisal process.

e) Concerns raised in relation to the appropriateness of his communication.

The letter explained that initially an investigation would take place using an independent investigator and that Dr Parker could be supported by a trade union representative.

128. The Tribunal noted that the investigation began during the summer when the university had its long vacation and in addition Covid remained an ongoing issue. Before the investigation began, Dr Loffill complained to Ms Halpin about Dr Parker *'…raising his voice repeatedly and shouting at the dept SMT in a team's meeting.'* The Tribunal noted that this was an online meeting using Teams software. Professor Al Khaddar who was copied into this email then sent a further message agreeing with Dr Loffill's recollection, (p1302). This incident was brought to the attention of the investigating officer and included as an additional disciplinary matter to consider, (which we describe as 'allegation f' using the numbering in paragraph 127 above).

129. Zia Chaudhry, Director, LJMU Foundation for Citizenship was appointed as the investigating officer and he began the process of interviewing a number of witnesses including Dr Parker, Professor Al Khaddar, Dr Loffill and Dr Lee, between 21 October and 10 December 2020. Although until this stage, the disciplinary investigation had taken a long time to process, Mr Chaudhry completed his report very quickly by 16 December 2020, (pp1124-1135 plus appendices). However, this document was not actually sent to Dr Parker until 10 February 2021, (p1566 and 1568).

2021

130. Mr Chaudhry produced a detailed report with a clear methodology concerning how he arrived at his recommendations. His conclusion was that all six allegations should proceed to a formal disciplinary hearing. An invitation to a disciplinary hearing on 1 March 2021 was sent to Dr Parker on 15 February 2021, (p1575 & pp1576-7).

131. The disciplinary hearing actually began on 20 April 2021 and was chaired by Tim Nicol, (Pro Vice Chancellor for the Faculty of Business and Law). Dr Parker was present together with his union representative Jim Hollinshead. He also called Mr Saul and Claire Harris as witnesses. Mr Chaudhry appeared as investigating officer and a HR caseworker Maureen Lee attended as well as notetakers for the hearing, (pp1669-1712).

132. The hearing followed the usual format of management presenting their case and answering questions from the employee side and Mr Nicol and then Dr Parker presented his case with management and Mr Nicol asking questions of him. Mr Saul gave evidence about the Teams meeting on 10 September 2020 and recalled it being *'…a robust discussion'* and that *'There were four members of staff talking over each other during the meeting as it was a frustrating conversation as employees were asking senior management questions that they were not able to answer', (p1681).* The hearing was adjourned until 29 April 2021 due to time constraints, (p1683). There was a further adjournment until 6 May 2021 (p1694) and then again until 17 May 2021, (pp1702-3) with a final further adjournment until 24 May 2021, (p1705). The hearing concluded with Dr Parker being permitted to provide a closing summary and Mr Nichol confirmed that he would arrange for additional documentation that had been identified to be provided to him and he hoped to be able to have a reached a decision on 3 June 2021, (p1711).

133. Dr Parker provided additional documentation to Mr Nichol by 1 June 2021 and on 15 June 2021, Mr Nichol provided his written decision in the disciplinary matter to him. His decision letter was lengthy and dealt with each allegation in turn. However, in summary (and using the order described above), allegations a), b), c), d) and e) were upheld, whereas the additional allegation f) was dismissed. This latter allegation related to the Teams meeting and Mr Nichol considered that *'…there were clearly different impressions of the nature and tone of the meeting.'* His conclusion was that the sanction of a final written warning was justified which would remain on Dr Parker's employment record for a period of 12 months. He was advised of his right of appeal, (pp1752-6).

134. Dr Parker gave notice of an appeal on 20 June 2021 challenging the investigation, the conduct of the hearing, that incorrect facts were stated, that JMU policies and procedures were not followed and ACAS Codes of Practice were not followed, (p1758). The appeal was acknowledged by HR and an appeal hearing was arranged for 6 October 2021, (p1808). Professor Mark Power was appointed as the appeal hearing officer, (Registrar and Chief Operating Officer at that time), (p1760).

135. In the meantime, Dr Loffill invited Dr Parker to an appraisal meeting on 9 September 2021. This did not take place, (p1791). Although when challenged by Dr Loffill, Dr Parker then attempted to argue on 10 September 2021, that no meeting had been scheduled because he had not accepted the invitation, the Tribunal considered this to be prevarication and unreasonable behaviour. Dr Parker knew very well by this time that there was an expectation that he would attend an appraisal meeting and he was using every tactic that he could think of to justify his non-attendance, (p1792-3).

136. At this time on 9 September 2021, Dr Loffill was requesting that Dr Parker complete outstanding TRAC forms which the Tribunal understood to be forms providing time recording spent by Dr Parker on various duties, (p1795). This request was described as a management instruction and failure to comply with it, would result in HR involvement. Dr Parker attempted to follow a familiar pattern of questioning what was being asked for. Dr Loffill had to remind him that the requests for TRAC forms had been made previously and the next day following several unhelpful emails from Dr Parker arranged for a colleague to send up to date forms to him for signature, (pp173-4).

137. It is not surprising that by this point, Mr Loffill was completely exasperated by Dr Parker's way of communicating with him and on 13 September 2021, he emailed Professor Riley (who had replaced Professor Al Khaddar as Head of Department following his retirement in March 2021). He described the:

'…manager-staff relationship with Geoff to be entirely broken down.'

He recorded that no appraisal had taken place and that TRAC forms had not having been completed and that all of the other members of staff whom he managed had completed these tasks already, (p1821). Professor Riley replied to Dr Loffill and explained that it was now time to consider whether Dr Parker's behaviour had triggered:

'…the procedures associated with his warning and escalate accordingly.' He proposed a further discussion with Dr Loffill the next day, (p1822).

138. On 14 September 2021, Dr Loffill wrote to Dr Parker and recorded that he had failed cooperate with the appraisal process and engage with the TRAC process and that he had now escalated these matters to HR. He gave him a further ultimatum that he confirm his intention to return to work by 5pm the next day or he would inform HR of his failure to cooperate and that he was absent without leave, (p1826). The Tribunal are aware that by this date, the new academic year for 2021/22 was about to begin and JMU were under a great deal of pressure to ensure that everything was ready to welcome new students and to begin their induction which would begin on 20 September 2021.

139. Dr Parker's behaviour did not improve and on 15 September 2021 he sent an email to Dr Loffill accusing him of:

'…acting coercively and while continuing to make unwarranted threats of dismissal rather than engaging in good faith consultation.'

He argued that the appraisal:

'…bears no resemblance to the approved university process.' He then said *'If you want me on site Monday [sic] in preparation for student return you better have a plan for a real consultation phase later this week…'*

and this was followed with a series of demands including that JMU:

'…cease and desist all coercive behaviour.'

This was the tone of the entire email and he concluded by saying:

'…I have no confidence that you will be able to meet written commitments to students, to trade unions, to the trustees, and to the public – including adequate protection of students…'.

It was plain from this email that Dr Parker had no intention of cooperating with management concerning the long outstanding matters and that he would follow management instructions required so that he could fulfils his duties in the 2020/21 academic year, (p1831).

140. On 16 September 2021, Professor Riley met with Ms Halpin and Dr Loffill to discuss how JMU should deal with the ongoing challenges involving Dr Parker. It was decided that instead of proceeding to a further disciplinary process, the university would initiate an SOSR process which would consider whether Dr Parker's employment should be terminated due to the breakdown of the employment relationship, which they felt was no longer viable. This would involve a review meeting and Ms Halpin asked that in the meantime, Dr Loffill provide her with copies of the email exchanges that he had recently had with Dr Parker. These were the emails which had previously been exchanged between them and did not involve any new emails being drafted and sent to her expressing views about Dr Parker. All three respondents gave credible evidence concerning this decision and the Tribunal accepted that the reason for the decision to proceed with an SOSR process was because of Dr Parker's behaviour and was unrelated to any possible protected disclosures that might have taken place.

141. The Tribunal also on balance accepted Professor Riley's evidence that due to concerns that Dr Parker would continue to send inappropriate emails based upon his previous behaviour, the decision to suspend was a reasonable one while the SOSR process took place.

142. Before the suspension took place however, Dr Parker sent an email to Professor Alison Cotgrave (Interim Director of the School of Civil Engineering and Built Environment) on 17 September 2021 raising various concerns regarding risk assessments at JMU relating to the ongoing Covid pandemic. He had not been attending the university to work at this point and rather than communicating clear concerns regarding health and safety, it involved him

questioning whether particular risk assessments had taken place in relation to certain activities and did not identify what health and safety hazards were present, (p1835-6). JMU had produced a risk assessment for the forthcoming academic year relating to Covid and it was in the process of being circulated with trade unions. It was simply not clear what additional insight or concerns that Dr Parker was able to identify at this point.

143. Moreover, it is interesting to note that as the inevitably lengthy email continued with Dr Parker referring to Dr Loffill threatening to begin disciplinary processes against him *'…for the past few weeks, on repeated occasions.'* He then went on to say the following:

'…this appears to me, and I believe would appear to any reasonable person, to be done coercively and/or in response to the raising of legitimate concerns about malpractice including the health and safety and the signing of financial documents used in the public interest. This is consistent with his past actions, of which the university and department are and should be aware. Any such action would be what Section 44 [presumably Employment Rights Act 1996] would call 'a detriment' and I believe the pervasive threat of such action is also a 'detriment'. (p1835-6).

144. Professor Cotgrave did not respond and on 19 September 2021 he sent an email which was ill tempered and inappropriate opening with the comment, *'…I am assuming this has not been dealt with',* (p1841). He then went on to say:

'I will not facilitate or abide people who are incompetent or who misrepresent their own competence/actions.

'And I will hold those who should be held accountable, accountable.

'Good luck this week. I hope at some point your office chooses to engage so that an environment consistent with the representations made might exist.'

The Tribunal concluded that Dr Parker had become very angry because he was trying to attribute the threatened disciplinary action made by Dr Loffill with disclosures which he was arguing had been made by him raising issues of concern relating to health and safety matters. He was simply trying to draw in other members of staff to provide a distraction and to delay or prevent management action against him.

145. The Tribunal noted that the decision to proceed with the SOSR process had already taken place and on 20 September 2021 Dr Parker was notified in writing that he would be suspended with immediate effect and that his access to JMU IT systems would be restricted. He had been invited that morning to a meeting at 13:00 and could be accompanied by a representative. He was informed that Atif Waraich (Director of School, Computer Science and Mathematics) would chair the meeting and Dr Waraich had been delegated by Professor Mark Power Vice Chancellor on 20 September 2021 to suspend Dr Parker, (p1857). However, Dr Parker said in an email sent at 11:24 that no

representative was available and the suspension letter was sent to him and actioned upon at 13:29, (p1847 and pp1848-9).

146. Dr Parker was invited to a review meeting on 6 October 2021 which would be chaired by Professor Joe Yates (Faculty Pro Vice Chancellor, Arts Professional and Social Studies). He was informed that he could have a union representative supporting him and warned that he could be dismissed. The 'areas of concern' that would be addressed at the meeting were:

a) Working relationship with management in the school.

b) Management time and University resources being disproportionately diverted.

c) Disruption to the operations of the school and impact of the breakdown on students.

d) Working relationships with colleagues and the wider university.

e) Loss of trust and confidence, (p1863-4).

147. The meeting took place on 6 October 2021 and it was chaired by Professor Yates. Dr Parker was supported by Mr Hollinshead. Naomi Scharf attended on behalf of HR and Professor Riley on behalf of management. A note taker was also present. No investigation report had been prepared before the meeting, but a Management Case document was read out. The Tribunal noted that this hearing involved some other substantial reason process and not one relying upon misconduct. In advance of the meeting a Chair's Script document was prepared which consisted of several headed sections including potential procedural challenges that might be raised and providing background information and suggested answers. The Tribunal understood that this document was drafted by Ms Scharf but having heard the evidence of the witnesses in this case and particularly that of Professor Yates who was a credible and reliable witness, concluded that he had not been instructed to reach a particular decision and remained an independent decision maker throughout his involvement with the process, (pp1878-93, pp1895-98, pp1874-7).

148. The SOSR meeting began with process being discussed and the matters under consideration. There were several adjournments concerning the provision of copies of email correspondence when he could not access his IT system because of his suspension. He was offered an adjournment overnight and that HR could provide copies of any documents that Dr Parker might require, but Mr Hollinshead was instructed by him to proceed with the hearing. Having considered the hearing notes, the Tribunal considered that Dr Parker was able to fully engage but did not respond to any of the substantive issues being considered. Professor Riley placed great emphasis upon the emails provided by Dr Loffill as evidence of why the employment relationship was fundamentally broken. Professor Yates concluded the meeting by confirming that he would need to review the evidence and consider his decision.

149. On 6 October 2021, it was clear that Professor Yates had adopted a preliminary and provisional view that Dr Parker's employment relationship with JMU could no longer continue. However, he credibly gave evidence about his concern that this decision was correct and decided to make some further enquiries before a final decision could be made. This involved seeking further information through HR from Professor Riley that day and which was provided on 11 to 12 October 2021, (pp1899-1900, p1901, 1902, 1904 & 1905). Professor Yates felt that there was a breach of trust and confidence and that dismissal was the likely outcome, but he wanted to explore whether there was any possibility of rectifying the situation through mediation. He was aware that Mr Hollinshead had argued on Dr Parker's behalf that the issue was not a breakdown in trust between JMU and him, but with line managers. Professor Yates described this process as *'stress testing'* his decision.

150. What followed was Professor Riley asked Dr Loffill to provide a timeline of management's attempts to engage with Dr Parker and he provided a chronology of events describing every incident of challenge and recording the involvement of several managers. This was sent to HR so that it could be provided to Professor Yates for consideration, (1908).

151. Professor Yates made his decision on 14 October 2021 and concluded that Dr Parker's employment should be terminated. He sent a letter with the same date and which was 3 pages in length, (pp1910-12). He recorded the following decision based upon the evidence that he had heard:

a) 'There has been a clear and fundamental breakdown in the relationship between yourself and the University to such an extent that all trust and confidence is lost.

b) 'There is significant evidence that the working relationship with management in the school has broken down.

c) 'Management time, from across the University was being disproportionately diverted to deal with this.

d) 'On balance of probabilities, this was serving to disrupt the operations of the school and the breakdown in the relationship was impacting negatively on students.

e) 'Your working relationships with colleagues in the wider University were problematic and that there was a fundamental loss of trust and confidence.'

He noted that in making his decision he had considered whether any actions could have been taken to restore the relationship but observed that Dr Parker had not provided any strong or meaningful arguments in his defence and that the working relationship could not be restored. He was dismissed with immediate effect with two months' pay in lieu of notice. He was informed of his right of appeal.

152. On 20 October 2021, Dr Parker gave notice of his appeal, (pp1917-8). His grounds challenged the fairness of the hearing in a very general way

without specific failures of process being identified. His concern seemed to focus upon the decision to determine his employment using an SOSR process rather than it being a disciplinary matter. He did not address the underlying issues which resulted in his dismissal, namely his overall behaviour under investigation or whether something could have been done by management which could have restored the employment relationship. The appeal was accepted and an appeal hearing arranged for 4 November 2021. However, Dr Parker did not attend and Professor Power who chaired the appeal reviewed all the documentation available. He decided not to uphold the appeal and confirmed his decision in his letter dated 8 November 2021, (p1936).

Law

Time limits

Equality Act 2010

153. Section 123(1) of the Equality Act 2010 provides that a complaint may not be brought after the end of:

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the Tribunal thinks just and equitable.

Under section 123(3) conduct extending over a period is to be treated as done at the end of the period; and failure to do something is to be treated as occurring when the person in question decided on it. Under section 123(4) in the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something:

(a) when P does an act inconsistent with doing it; or

(b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

154. In *Robertson v Bexley Community Centre* [2003] IRLR 434 the Court of Appeal stated that when Employment Tribunals consider exercising the discretion under section 123(1)(b) there is no presumption that they should do so unless they can justify failure to exercise the discretion. A Tribunal cannot hear a complaint unless the Claimant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

155. In accordance with *British Coal Corporation v Keeble* [1997] IRLR 336 a Tribunal *may* have regard to the following factors:

a) the overall circumstances of the case;

b) the prejudice that each party would suffer as a result of the decision reached;

c) the particular length of and the reasons for the delay,

d) the extent to which the cogency of evidence is likely to be affected by the delay;

e) the extent to which the Respondent has cooperated with any requests for information;

f) the promptness with which the Claimant acted once he knew of facts giving rise to the cause of action;

g) the steps taken by the Claimant to obtain appropriate advice once he knew of the possibility of taking action.

The relevance of each factor depends on the facts of the individual case and Tribunals do not need to consider all the factors in each and every case.

Employment Rights Act 1996

156. Sections 48 and 111 provide that a Tribunal shall not consider such a complaint unless it is presented to the Tribunal:

(a) before the end of the period of three months beginning with the date of termination; or,

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Where the termination of employment relates to acts extending over a period of time, the relevant date is the last day of that period. The burden of proof in showing that it was not reasonably practicable to present the claim in time rests upon the Claimant.

Unfair dismissal

157. Part X of the Employment Rights Act 1996 ('ERA') deals with complaints of unfair dismissal. Section 94 of the ERA confirms that an employee has a right not to be unfairly dismissed.

158. Under section 98(1) of the ERA, it is for the employer to show the reason for the dismissal (or if more than one the principal reason) and that it is either a reason falling within section 98(2) or for some other substantial reason of a kind such as to justify the dismissal of the employee holding the position he held.

159. The reason for the dismissal is the set of facts or the beliefs held by the employee which caused the employer to dismiss the employee. In determining the reason for the dismissal, the Tribunal may only take account of those facts or beliefs that were known to the employer at the time of the dismissal.

160. Under section 98(4) of the Employment Rights Act 1996, where the employer has shown the reason for the dismissal and that it is a potentially fair reason, the determination of the question whether the dismissal was fair

or unfair depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and must be determined in accordance with equity and substantial merits of the case.

161. The requirement for procedural fairness is an integral part of the fairness test under section 98(4) of the Employment Rights Act 1996. When determining the question of reasonableness, the Tribunal will have regard to the ACAS Code of Practice of 2015 on Disciplinary and Grievance Procedures. That Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most cases. Under section 207 of the Trade Union & Labour Relations (Consolidation) Act 1992, in any proceedings before an Employment Tribunal any Code of Practice issued by ACAS shall be admissible in evidence and any provision of the Code which appears to the Tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

162. Section 103A provides that where an employee is dismissed, they shall be regarded as unfairly dismissed if the reason or if more than one, the principal reason is that the employee made a protected disclosure within the meaning of section 43B, (see below).

Protected disclosures (s43B ERA)

163. Section 43(1) provides that a qualifying disclosure means the disclosure of any information, which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one of the following things:

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

(b) That a person has failed or 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 and 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.

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

164. Under section 43C, a qualifying disclosure to an employer can be made directly to an employer or other responsible person authorised by the employer.

Detriments

165. S47B of the ERA provides that a worker has a right not to be subjected to any detriment or act or deliberate failure to act by his employer done on the ground that the worker made a protected disclosure. Section 47B(1A) extends this provision to acts of workers in the course of their employment or agents of the employer with their authority and if done, section 47B(1B) treats those acts as also done by the worker's employer. Section 47B(1C) further provides that it is immaterial whether the acts done where carried out with the knowledge or approval of the employer.

Breach of contract/notice pay

166. The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment.

167. A claim for notice pay is a claim for breach of contract; *Delaney v Staples* 1992 ICR 483 HL.

168. In *Neary v Dean of Westminster* [1999] IRLR 288, it was held that conduct amounting to gross misconduct justifying summary dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.

169. In cases of wrongful dismissal, it is necessary for the Respondent to prove that the Claimant had actually committed a repudiatory breach of contract. See: *Shaw v B & W Group Ltd* UKEAT/0583/11.

Equality Act 2010 (EQA)

Direct discrimination

170. Section 39 of the Equality Act 2010 provides that an employer must not discriminate against an employee of his by, amongst other things, subjecting him to a detriment.

171. Section 13 of the Equality Act 2010 sets out the legal test for direct discrimination. A person (A) discriminates against another (B) if, because of a protected characteristic (race in this case), A treats B less favourably than A treats or would treat others. The test to be applied when determining whether a person discriminated "because of" a protected characteristic. If the act is not inherently discriminatory, the Tribunal must look for the operative or effective cause. This requires consideration of why the alleged discriminator acted as he did. Although his motive will be irrelevant, the Tribunal must consider hat consciously or unconsciously was his reason? This is a subjective test and is a question of fact.

172. For the purposes of direct discrimination, section 23 of the Equality Act 2010 provides that on a comparison of cases there must be no material difference between the circumstances relating to each case. In other words, the relevant circumstances of the complainant and the comparator must be either the same or not materially different. Comparison may be made with an actual individual or a hypothetical individual. The circumstances relating to a case include a person's abilities if on a comparison for the purposes of section 13, the protected characteristic is disability.

173. In constructing a hypothetical comparator and determining how they would have been treated, evidence that comes from how individuals were in fact treated is likely to be crucial, and the closer the circumstances of those individuals are to those of the complainant, the more relevant their treatment.

Indirect discrimination

174. Section 19 of the Equality Act 2010 provides that a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice (PCP) which is discriminatory in relation to a relevant protected characteristic of B, (in this case his race/nationality under section 9).

175. However, a PCP is discriminatory if A applies or would apply it to persons who do not share B's protected characteristic, it puts B or those with whom he shares the characteristic at a particular disadvantage, when compared with those whom B does not share the characteristic, it puts B (or would put B) at that disadvantage and A cannot show it to be proportionate means of achieving a legitimate aim.

Harassment

176. Section 40 of the Equality Act 2010 provides that an employer must not, in relation to employment by him, harass an employee. The definition of harassment is set out in section 26(1) of the Equality Act 2010. A person (A) harasses another (B) if:

(a) A engages in unwanted conduct related to a protected characteristic (race in this case); 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.

177. Section 26(4) provides that 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.

178. Thus, the test contains both subjective and objective elements. Conduct is not to be treated as having the effect set out in section 26(1)(b) just because the complainant thinks it does. The Tribunal is required to take into account the Claimant's perception, the other circumstances of the case, and whether it is conduct which could reasonably be considered as having that effect.

Victimisation

179. Section 27 provides that a person (A), victimises another person (B) if A subjects B to a detriment because B has done, or A believes that B may do a protected act. Section 27(2) provides that a protected act covers bringing proceedings under the EQA, giving evidence in connection with proceedings under the EQA, doing anything for the purposes of or in connection with the EQA or making an allegation that A or another person has contravened the EQA.

Case law

180. Ms Masters relied upon a number of cases in her closing arguments and these are included below:

a) *Kong v Gulf Intl Bank* [2022] ICR 1513. In relation to the question of what the real reason for a dismissal was where the claimant had previously made a protected disclosure under section 43B ERA. In other words, what was the motivation did the decision have in dismissing an employee? This case involved the question of separation of an employee's conduct from the fact that they had made a protected disclosure.

b) *Land Registry v Grant* [2011] ICR 1390. The asserted principle being that Tribunals must exercise care not to cheapen the test of harassment by making findings in relation to trivial matters. In this case, the claimant's line manager had revealed to colleagues that he was gay when he was transferred to another office and before he could tell them himself. Elias LJ was concerned that discrimination law was not used as a means of enforcing privacy and that putting their characteristics into the public domain, ran the risk that they may become the focus of conversation or gossip.

c) *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337. This significant case heard by the House of Lords (Northern Ireland) concluded that in some cases it is not possible to resolve questions of less favourable treatment sequentially with less favourable treatment being identified, followed by the reason why it happened. Sometimes the questions can be intertwined. It also considered the question of using a hypothetical comparator and what constituted unfavourable treatment. However, it was in relation to the question of harassment that Miss Masters addressed the Tribunal referred to this case. She noted that the House of Lords felt that an unjustified sense of grievance could not amount to a detriment. It should be noted in relation to this matter that they did emphasise that whether a claimant had been disadvantaged should be viewed subjectively.

d) *Chatterjee v Newcastle Upon Tyne Hospitals NHS Trust* UKEAT/0047/19/BA. Miss Masters referred the Tribunal to the decision of HHJ Auerbach and paragraphs 53 and 54, where he reminded Tribunals that they should give consideration to the mental processes of the individual(s) making the alleged detrimental act in a protected act/detriment case. He noted that there may be a number of influences at play and also in relation to section 48(2), Tribunal should show awareness of the of the guidance that authorities have provided concerning this provision.

e) *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] EWCA Civ 451, which held that reasonableness under section 43B(1) ERA involves applying an objective standard to the personal circumstances of the discloser when considering the discloser's belief. But it must be based upon some evidence and that rumours, unfounded suspicions, uncorroborated allegations amongst other things will not be enough to establish reasonable belief. In effect the test is a mixed subjective/objective one.

f) *Timis v Osipov* [2019] ICR 655. The Court of Appeal held that it was possible for an employee who had been dismissed for making a protected disclosure to bring a complaint under section 47B ERA against an individual co-worker for subjecting them to the detriment of dismissal and to bring a claim of vicarious liability for that act against the employer. In referring to this case however, Miss Masters submitted that the respondents qualified this acknowledgement by reserving the right to rely upon the case of *Rice v Wicked Vision Limited* [2024] EAT 29. This has currently been heard by the EAT and is understood to be the subject of an appeal to the Court of Appeal, although no decision has yet been made by that court. While confirming that a claimant can claim for detriments preceding a dismissal and the detriment of dismissal against co-workers, they are unlikely to be able to claim for the detriment of dismissal against a corporate employer. However, it is noted that in the case before this Tribunal, Dr Parker was an employee and is able to rely upon section 103A ERA in respect of whether he was unfairly dismissed.

g) *Ezsias v North Glamorgan NHS Trust* UKEAT/03/09. The EAT warned Tribunals to consider whether an employer relied upon the SOSR as a pretext to conceal the real reason for an employee's dismissal. This includes an employer seeking to avoid a detailed contractual disciplinary procedure by using SOSR instead. In *Ezsias* the EAT accepted the distinction between between dismissing a claimant for their conduct in causing the breakdown of the working relationship and dismissing an employee because those relationships had broken down.

h) *Perkin v St George's Healthcare NHS Trust* [2006] ICR 617. In this case, which the Court of Appeal involved an unusual factual background, it concluded that a Tribunal was entitled to conclude that an employer had a potentially fair reason to dismiss if there was material to support that conclusion. In this case, the Court of Appeal felt that the potentially fair

reason should have been treated as some other substantial reason, but that the Tribunal's reasoning supported their finding of conduct. It was also determined that while the well known case of *British Home Stores Ltd v Burchell* [1980] ICR303 was a conduct unfair dismissal case, there was no reason why the principles it set out relating to fairness should be limited to those cases falling under section 98(2) ERA 1996, (i.e. the conduct of the employee). Finally, a 100% *Polkey* reduction was an assessment that depended critically upon the available facts in the case under consideration.

i) *Sainsburys v Hitt* [2003] ICR 111. This well known Court of Appeal decision involved an employee dismissed for gross misconduct. It held that the *range of reasonable responses test* when considering an unfair dismissal complaint, required the Tribunal to consider whether the investigation into the suspected misconduct was reasonable in all the circumstances as well as the decision to dismiss. In other words were there reasonable grounds for the dismissing manager's belief that the potentially fair reason applied and that the decision to dismiss was a reasonable response to that belief.

j) *Software 2000 Ltd v Andrews* [2007] ICR 825. Once there has been a finding of unfair dismissal, a Tribunal should consider whether there is any reliable evidence that might have justified a *Polkey* reduction in compensation. A Tribunal could conclude that evidence was too unreliable to allow a determination that a dismissal would have occurred on balance of probabilities, but it must properly direct itself that this was the case.

k) *Abbey National plc v Chaggar* [2010] ICR 397. This judgment covered a number of matters. Of relevance to this case, an employee must be compensated for the full loss flowing from an unlawful act. In this case of race discrimination, it is necessary to ask what would have occurred had there been no unlawful discrimination. If there is a chance that dismissal would have happened in any event, even if there had been no discrimination, that would be factored into the calculation of loss arising from the discrimination. However, it is necessary to consider the extent to which the discrimination affected an employee's career prospects. Stigma loss could in principle be recovered even if it arose from the decisions of future potential employers, (i.e. third parties).

Discussion

181. The Tribunal in considering its findings of fact and applying them to the legal tests described within the list of issues, felt generally the individual respondents gave credible and reliable evidence. It was consistent with relevant parts of their statements which made specific reference to those issues where they felt they had relevant knowledge. Many of them were the subject of lengthy cross examination by Dr Parker and despite considerable challenge, they gave evidence which was measured and reasonable and was supported by the relevant documentation within the hearing bundle.

182. The claimant of course had failed to provide a detailed witness statement. He had only provided the short statement that was available immediately before the hearing had taken place and sometime following his receipt of the respondents' statements. He therefore was subject to a lengthier cross examination by Miss Masters than might have been required had a full statement been provided which addressed the allegations within the list of issues.

183. He was generally polite in answering questions, but his answers would often lack focus and there was an unwillingness to simply give short answers to questions which appeared uncontroversial and clearcut when other evidence was considered. To some extent, this might have been simply the way that his mind worked. However, having considered his evidence during 4 days of the 10 day Tribunal hearing, we were left with the impression that the claimant tried to second guess the 'route' that questions in cross examination were going. This meant that his answers were often unnecessarily equivocal. It also meant that cross examination needed to go into more detail because questions regarding uncontroversial matters would not be accepted by him.

184. Even considering the claimant's personality (and it should be noted that no specific learning disorder or neuro diverse condition was relied upon by him and no reasonable adjustments were sought), the Tribunal were left with the conclusion that Dr Parker's evidence was less credible and reliable than the respondents who gave evidence during the final hearing.

Time limits

185. Dr Parker presented his claim following a period of early conciliation with ACAS who were notified as part of early conciliation on 12 January 2022, (Date A). The claim form was presented in time on 18 March 2022 following the issue of the early conciliation certificate on 22 February 2022, (Date B). But any act which took place more than 3 months before Date A is likely to be out of time.

186. This means that any act which took place before 13 October 2021 (i.e. 3 months before 12 January 2022) is out of time. It should be noted that the date of termination of employment is 14 October 2021 and the claims arising from Dr Parker's dismissal are therefore in time. However, the 13 October 2021 time limit date does cause potential difficulties for the earlier allegations which cover a period of several years prior to this date.

187. There is of course the potential argument that any allegations which began before 13 October 2021 were continuing acts which continued and concluded on a date on or after 13 October 2021. In effect, the claimant would argue that one or more of the old allegations continued up until the decision was made to dismiss him on 14 October 2021.

188. There is also the argument the time should be extended if the Dr Parker as claimant can persuade the Tribunal that it was not reasonably practicable for him to present the claim at an earlier date in relation to those complaints (brought as breach of contract or detriments under Part IVA ERA),

or that it was not just and equitable to present a claim in time in relation to the complaints brought under the EQA. The reasonably practicable test is a much more difficult test for a claimant to succeed with given the emphasis upon practicability and feasibility. This can be contrasted with just and equitable factors where the Tribunal is expected to look at more broadly the background to the complaints.

189. However, caselaw is clear that a claimant should not approach any such application seeking an extension of time with the expectation that it should be granted. Time limits after all, exist for a reason and are expected to be followed in order that there is certainty to disputes and parties can have a reasonable expectation that a point will be reached where they will no longer have to prepare to defend a claim. The burden of persuading the Tribunal that a complaint is in time or that an extension should be given rests with the claimant.

190. During his cross examination Dr Parker accepted that there was nothing preventing him from commencing legal proceedings as early as September 2018 which is when the earliest disputes with management began and when he began to believe that his managers wanted him to leave JMU. He was an intelligent and educated man and from the correspondence described in the findings of fact and contained within the hearing bundle, it was clear to the Tribunal that Dr Parker had a strong awareness of his legal rights. There was nothing to suggest that he lacked insight or knowledge of his right to bring complaints within the Employment Tribunals, or indeed that he lacked the ability to discover the jurisdictions of the courts and tribunals in England and Wales.

191. Dr Parker gave evidence of an awareness about asserting his legal rights in July 2018 and had spoken with friends and make enquiries with ACAS and the Citizens Advice Bureau. He eventually joined a trade union in late 2020/early 2021.

192. Dr Parker did not provide any meaningful submissions upon the issue of time limits and his witness evidence did not provide any arguments in support of continuing acts or applications to extend time. While the Tribunal acknowledges that the eventual dismissal related to failures and behaviours stretching back several years, we are concerned with the acts complained of as being detriments, acts of discrimination or harassment. Many are isolated events or concluded long before 13 October 2021. However, each will be considered within the list of issues so there is clarity as to the Tribunal's position concerning the application of time limits.

<u>Protected disclosures (s43B ERA)</u>

193. It is first of all necessary to consider these allegations because their determination impacts upon the prospects of success for the alleged detriments.

PID1

194. The allegation is that Dr Parker made a protected disclosure when he sent an email to Sara Rioux (Head of Operations), concerning construction dust in September 2018. Despite several efforts being made to locate this email, neither party has been able to produce a copy of this document. During the final hearing Dr Parker confirmed that he could not locate it and struggled to recall precisely when the email was sent.

195. There was an issue regarding concrete dust within certain buildings on the JMU campus at around that time. But there is simply no evidence available that persuades the Tribunal that a disclosure of information was made by Dr Parker to managers at the university which tended to show that JMU was failing in its legal obligations or that there were breaches of health and safety. Consequently, we do not accept that this allegation occurred and it must therefore fail. This of course has implications for detriments D1 to D6 (below), which rely upon PID1 and predate the date when PID2 allegedly took place.

PID2

196. Miss Masters identified in her closing submissions that Dr Parker had sought to expand the subject matter of PID2 during September 2024. As Judge Johnson explained at the beginning of the final hearing, this alleged protected disclosure must remain as it was drafted within the list of issues finalised at the PHCM before him in May 2024. To do otherwise would be disproportionate and place the respondents to an unreasonable amount of prejudice. After all, they must be able to understand the case being made against them so that they prepare their evidence accordingly. Even so, it was still a lengthy matter to consider and was hardly ideal given the expectation that a list of issues should be concise so that it can be used as an aid to parties and the Tribunal during the proceedings.

197. PID2 is derived from Dr Parker's grievance and taking account of the list of issues accepted by the Tribunal, the following matters/disclosures were covered:

a) Timetabling which expected lecturers to be in two places at once.
b) Lecturers being responsible for student welfare.
c) Dr Norton submitting a report of 3 July 2018 with warnings about the students at the Sri Lanka being at risk because of health and safety failures at that campus.
d) Ms Lorraine Buchan writing in March 2017 about concerns to the Henry Cotton Concrete lab and that 3 members of staff had suffered skin or respiratory issues.
e) A growing body of documentary evidence of dangerous working conditions.

198. Dealing with each allegation in turn, there was a reference made regarding timetabling within the 'Exhibit Theme Map' at point 2, (p1357). Unfortunately, with limited written witness evidence from Dr Parker and an

absence of evidence being given orally during his cross examination that he had disclosed information regarding this subject which tended to satisfy section 43B(1) ERA, he failed to persuade the Tribunal that he held reasonable and genuine concerns that there were health and safety failings.

199. In terms of the Henry Cotton Concrete Laboratory, Dr Parker was referring to the disclosure of information by another person, Ms Buchan (p357), and he did not make the disclosure. During cross examination on the afternoon of day 3, Dr Parker was asked about this matter and sought to rely upon *'a pervasive culture of indifference remained',* once he accepted that the problem in the lab had been resolved in 2017. This was not the allegation under PID2 and effectively Dr Parker was seeking to rely upon a historic concern raised by another member of staff on 3 March 2017. The Tribunal do not accept that he actually believed he had made a relevant disclosure of information tending to show health and safety failures, that objectively he could not have reasonably held that view.

200. Dr Norton's report was written by her and submitted in July 2018, (pp420-433). It is not Dr Parker disclosing information at this time and his disclosures during the grievance process could not amount to a protected disclosure consistent with section 43B, (p1357). During his cross examination Dr Parker gave inconsistent evidence about the part he played with Dr Norton's report expressing knowledge and responsibility of its initial draft. But he was unable to give convincing evidence concerning the resolution of the identified health and safety issues.

201. Ed Loffill gave more credible evidence within paragraphs 9 and 10 of his statement and the Tribunal accepted that Dr Parker's communications did not involve the raising of health and safety concerns in July 2018. (pp436-7). The Tribunal must conclude that on balance, there was no disclosure of information by Dr Parker in July 2018 or when he produced his grievance and that any issues in the Sri Lanka campus had been resolved. In many ways, this allegation illustrated the way in which Dr Parker would use vague knowledge of matters raised by others. This was with the purpose of building a case which would allow him to go on the attack rather than cooperate with reasonable management instructions to attend meetings or participate in an appraisal. He could not have a reasonable belief in November 2019 when he raised this grievance that genuine health and safety issues remained within the Sri Lanka campus.

202. The Tribunal must conclude that this grievance was not genuinely raised by Dr Parker and served as a vehicle to distract JMU away from their managers' attempts to manage him. We are not sure that his intention was to secure *'leverage'* in any discussions regarding his leaving JMU as submitted by Miss Masters. But we agree that this process was raised unreasonably and not because of any genuine or reasonable belief that ongoing health and safety matters subsisted at that time both at home and abroad in Sri Lanka.

PID3

203. This related to allegations of financial misconduct disclosed within the grievance dated 3 November 2019, (1358 point 4). This allegation was considered in detail during cross examination and Dr Parker argued that financial records were being produced to account for the spending of funds in respect of work not actually carried out and purchases that had not been made. He also said that staff were being pressurised to sign off records confirming the expenditure. It was a very serious allegation.

204. The allegation appeared to be derived from an EU European Regional Development Fund (ERDF), which involved JMU opening laboratories and facilities to local businesses so that they could develop products. Dr Parker was referred to a number of timesheets (such as that provided on p2026) and other documents. But there was no evidence that he had been pressurised to sign the documents which dated from 2017 and there was no complaint made about the concerns of financial irregularities when he said he became aware of them from this date. He did not raise them as concerns until he commenced his grievance in 2019 and the Tribunal does not accept that there was a genuinely held belief that there concerns regarding financial irregularities. If he did have a genuine belief, it was not one that could reasonably and objectively held by him.

PID4

205. This involved Dr Parker's appeal regarding the Research Excellence Framework dated 20 July 2020. He was unhappy about the decision not to profile him as a person with Significant Responsibility for Independent Research (SRIR). (p1218).

206. The decision he referred to was communicated in a letter dated 23 June 2020. In his appeal, Dr Parker recorded that JMU had concluded that in his case,

'The volume and quality of the research outputs you have produced do not consistently meet the institution's minimal expectations (LJMU Code of Practice, paragraphs 16-21).'

A right of appeal was allowed where a JMU academic could challenge the decision in question.

207. In his appeal, Dr Parker requested information from JMU on 1 July 2020 and all documents which they relied upon when considering his suitability for SRIR. A reply was provided the next day on 2 July confirming that:

'…you do not have the sufficient number of research outputs of quality that is recognised internationally over a four-year rolling period (the threshold is 2 in the Code of Practice, you have 1). You were given an opportunity to validate your research output data before the panel meeting on 27/5/2020. You can

talk to Prof. Rafid Al Khaddar for more detailed information since he was involved in the whole process.

'A rigorous process has bee followed to reach a decision on each individual's SRIR status. Each individual's status was determined with the record being kept during the panel meeting. However, we cannot provide you with any part of the meeting minutes at this stage.' (p1218-9).

208. The Tribunal concluded that this process and the Dr Parker's challenge was an appeal regarding a decision where he had failed to secure the prestige and respectability that comes with achieving SRIR status. Dr Parker was equivocal when he was cross examined by Miss Masters on Day 6 (9 September 2024) of the final hearing concerning JMU's motivations regarding scoring for SRIR status. Logically and based upon the evidence before the Tribunal we accepted that if JMU behaved cynically, it would be in their interests to overstate and inflate academic research performance as Dr Parker acknowledged that good scores increased access to UK government's £9 billion research funding that was available to UK universities. This meant that by refusing SRIR status, JMU would undermine their access to available funding.

209. Consequently, Dr Parker's allegation that the document dated 20 July 2020 and what he described as his *'originating document'* for PID4, amounted to a disclosure of information showing fraud on the part of JMU. However, during cross examination he said that he was not making such a disclosure *'…when I launched the appeal, I did not think deliberate attempt to omit people against the University Code of Practice.'* This was a particularly confusing part of his evidence and it did not assist his case I relation to PID4.

210. Dr Parker's evidence left us with the conclusion that the document relied upon in this allegation did not demonstrate a reasonable belief that this disclosure revealed that a criminal offence or breach of legal obligation was taking place under section 43B(1)(a) or (b). His evidence demonstrated that he did not believe he was making such a disclosure. But even if he did, it could not objectively be considered as a relevant disclosure of information protected by section 43B. It was not made in the public interest or in good faith. This allegation simply involves a reflection of his unhappiness (which in many ways is understandable), that he had not secured the SRIR status. However, there was no suggestion that he could not achieve this status in future and this disclosure simply involved an internal appeal against a process and did not involve anything sinister.

PID5

211. This alleged disclosure involved an e-mail which was sent on the 17 of September 2021 to Professor Cotgrave the acting head of department and Sarah Rioux the Head of Operations. A separate e-mail was also sent the same day to Maria Burquest who was the designated whistle blowing contact at JMU. Dr Parker asserted that his concern was that local management were not following risk assessments at JMU and that his disclosure took place within the context of his earlier email sent on 14 September 2021 where he

identified a number of requirements from JMU management before he could return to work.

212. Although there was some uncertainty as to which document within the bundle related to this disclosure it appears that it could be found at page 1835 and this fits the description of the alleged disclosure. During his evidence and as the case progressed, it became clear that Ms Burquest was blind copied into this correspondence. However, the Tribunal accepted Ms Burquest's evidence that the nature of the email did not suggest a protected disclosure, but involved an expression of personal concerns rather than a disclosure of personal information.

213. The email in question made reference to Dr Parker being very concerned *'…that local management is not abiding, or is incapable of abiding, by the university's institutional risk assessments…'.* Reference was made to Covid 19 and health and safety issues and the email appeared to be prompted by the JMU institutional risk assessment having been approved and circulated to trade unions and that staff must be consulted on risk assessments before tasks began.

214. Dr Parker did not give evidence of any approaches being made by him to trade unions and their safety representatives concerning any concerns that he might have or asking if they had any concerns. The Tribunal heard considerable evidence from Dr Loffill regarding this matter which it found to credible and reliable as reference was made to risk assessments within the hearing bundle. Moreover, this issue took place against the background of Dr Loffill's attempts to manage Dr Parker and that because he had failed to comply with management instructions, he was going to be subject to a formal HR process, (p1826). It was noticeable that Doctor Parker became very antagonistic when management failed to quickly reply to the alleged protected disclosure e-mail and sent a number of emails to Dr Loffill, Ms Cotgrave and others, culminating with an email to Ms Cotgrave on 19 September 2021, where he made the following unpleasant statement:

'…I will not facilitate or abide people who are incompetent or who misrepresent their own competence/actions.

'And I will hold those who should be held accountable, accountable.

Good luck this week. I hope at some point your office chooses to engage so that an environment consistent with the representations made might exist.' (p1841)

This was a case where PID5 as alleged did not reflect a person making a genuine disclosure of information suggesting health and safety failures under section 43B(1). It was not made in good faith or in the public interest, but reflected a diversion and a desperate attempt by Dr Parker to avoid management's increasing efforts to manage him and to deal with the long running failure on his part to follow what were reasonable instructions. Even if he genuinely believed that he was making a valid disclosure, the context of his other emails sent at the time, their tone and the ongoing management

issues, objectively demonstrated that this was a view that could not be reasonably held by him.

PID 1 to 5 – summary

215. For the reasons given in relation to each alleged disclosure, the Tribunal is unable to accept that any amount to relevant disclosures protected by section 43B all the Employment Rights Act 1996. As a consequence, the claimant Doctor Parker is unable to advance a case of detriments arising from an act or deliberate failure to act by JMU or any of the individual respondents in this case contrary to section 47B. Nonetheless each detriment will be considered briefly below for completeness in full.

Unfair dismissal

216. This was a case where there was no dispute that Dr Parker had been continuously employed by JMU for more than two years at the date when he was dismissed. His employment began on 15 June 2016 and his termination of employment took place on 14 October 2021.

217. Importantly, there was no dispute between the parties that Dr Parker had been explicitly dismissed, even if the fairness of the dismissal remained in dispute. The respondent asserted that the decision to dismiss Dr Parker followed a fundamental breakdown in the employment relationship constituting dismissal for some other substantial reason, (SOSR). This is a potentially fair reason for dismissal within the meaning of section 98(1)(b) of the Employment Rights Act 1996.

218. As has already been mentioned above, the claimant Dr Parker has been unable to persuade the Tribunal that any of the asserted disclosures that he has identified amounted to protected disclosures within the meaning of section 43B of the Employment Rights Act 1996. For this reason, any complaint of automatic unfair dismissal contrary to section 103A of the 1996 Act cannot succeed. This is because Dr Parker is unable to demonstrate that his dismissal arose for the reason or the principal reason that he had made a protected disclosure.

219. It should be noted that during this case, Dr Parker did not identify which of the asserted disclosures triggered his dismissal and instead gave evidence expressing concern that the dismissing Chair Professor Yates did not display sufficient curiosity concerning the disclosures. Given that Dr Parker was effectively saying that Professor Yates did not have much or indeed any knowledge of the asserted disclosures, it is difficult to understand how this could demonstrate that they played a role in the decision to dismiss. Consequently, this is an ill-conceived complaint.

220. Professor Yates was informed of the previous whistleblowing disclosures which Dr Parker had made when being instructed to assume the role of Chair hearing the SOSR case, (p1876). It formed part of the ‘Chairs script/Order of hearing/points of reference’ so that Professor Yates could understand the context of the whistleblowing allegations should Dr Parker

argue that they form part of the hearing process. Professor Yates was informed by HR that it was not appropriate that they should not form part of the SOSR process and while this was an understandable precaution given Dr Parker's historic tendency to utilise diversionary complaints to avoid being managed, Dr Parker did not raise whistleblowing as a concern at the first hearing on 6 October 2021. There was simply insufficient evidence before the Tribunal to persuade us that Professor Yates was dwelling upon those disclosures when considering the case, even if we assumed that one or more were protected by section 43B, (which of course we do not accept).

221. This leaves the Tribunal with the need to consider the overall reasonableness of JMU's decision to dismiss Dr Parker in accordance with section 98(4) of the 1996 Act. Professor Yates gave credible and reliable evidence regarding the process he adopted when considering Dr Parker's case. We accept that JMU relied upon SOSR for genuine reasons and not as a pretext to conceal the real reason for Dr Parker's dismissal. This was not a case where SOSR was deployed as a means of avoiding a formal process as one clearly took place and a point had been reached in the employment relationship where there had been a fundamental and irretrievable breakdown between employer and employee.

222. As has been described in the findings of fact above, there was a lengthy period of management seeking to gently engage with Dr Parker and to patiently allow him time to comply with what were reasonable instructions. By the summer of 2021 a clear situation had been reached where Dr Parker's behaviour despite being prompted by line managers to the contrary, had not improved and continued to be antagonistic so as to avoid and delay compliance with the expectations of his role as lecturer.

223. This was also a case where JMU ensured that evidence was gathered which demonstrated that the employment relationship was untenable. This was evidenced by the convincing evidence provided by Professor Yates as Chair of the disciplinary process. He clearly did not take the decision to dismiss lightly and wanted to be fully satisfied that there were no other lesser options that could be deployed to avoid the need to dismiss Dr Parker.

224. There was objectively a fair process utilised. Dr Parker was invited to a meeting which clearly set out matters that were going to be considered by the hearing panel. He was also sent a file of evidence which demonstrated the history which led to the breakdown in trust and confidence. Moreover, he was given the opportunity to provide additional evidence if he wished.

225. It is correct that he was suspended from access to the JMU IT system during his suspension. However, Dr Parker did not indicate during the process that he required particular documents from HR and it was understood that he had kept copies himself on a personal basis of documents which had been generated while he was working for JMU and that these were considerable I number.

226. Professor Yates confirmed that if Dr Parker had requested during the hearing that he have access to particular documents which could only be

accessed from the JMU IT system, such access would have been provided and an adjournment allowed so that he could obtain and consider this information.

227. It should be noted that throughout the process Dr Parker was permitted to be represented by a member of a trade union. Indeed, when Dr Parker attended the meeting without a union representative both Professor Yates and Miss Scharf of HR ensured that arrangements could be made so that they could attend, even though it appeared that Dr Parker had not informed his union representative that the SOSR or meeting was taking place. Due to the lack of preparedness by Dr Parker's trade union representative, Professor Yates offered to postpone the hearing and provide adjournments as appropriate.

228. There was no evidence before this Tribunal to suggest that Dr Parker was prevented from responding to the case presented by management by Professor Mike Riley. This was a process where he was able to contribute and put forward his side of the story so that full consideration could be given by Professor Yates concerning the context to the commencement of the SOSR process. Professor Yates produced a detailed dismissal letter which explained the reason for his decision to dismiss Dr Parker and also provided him with a right of appeal.

229. This was a process which took place shortly after an earlier disciplinary hearing whereby a final written warning had been imposed. There was also an outstanding appeal against the final written warning. But having heard the evidence in this case the Tribunal accepted that the SOSR process was treated separately by JMU and management from the earlier disciplinary process. The SOSR hearing took place outside of the JMU disciplinary procedure. That is not to say that due process was not followed, however. It was simply that an approach was used that was different in concept and this ensured that as far as possible the earlier disciplinary matter would not become mixed up with the later SOSR matter. As dismissing Chair, Professor Yates understood that he was dealing with a separate process and he was considering whether it was reasonable to dismiss based upon the information before him regarding Dr Parker's behaviour as outlined in the evidence before him. He was also from a different JMU department to that occupied by Dr Parker and his managers and could therefore consider this matter with a degree of independence having never had to manage him in the workplace.

230. It might have seemed logical for JMU to have actually relied upon the earlier disciplinary process with the final written warning which had been previously imposed. But having considered the evidence in this case the Tribunal understood that Dr Parker had become an exceptionally problematic employee for JMU and his behaviour went beyond simple matters of conduct. Despite many attempts from managers over several years he had simply become unmanageable and consideration needed to be given to whether this was something which could be resolved or whether the relationship was irretrievable. There was indeed some overlap between conduct and SOSR as potentially fair reasons in this case. But there was nothing to suggest that SOSR was the easy option for JMU. Indeed, it could well be assumed that

the utilisation of a disciplinary process would be much easier for JMU to adopt given it is a more frequently used process by large employers and with clear guidance provided by the ACAS's code of practise and well established HR policies and procedures. What made S0SR appropriate in this case was the lengthy history and unusual circumstances of Dr Parker's behaviour.

231. Doctor Parker did challenge the decision to suspend him. But having considered the evidence of management in this case, a correct process was followed and in any event, it had no material impact upon the overall fairness of the decision to dismiss him.

232. There was also an issue raised regarding the way in which Professor Yates sought more information following the SOSR meeting on the 6th of October 2021. Professor Yates confirmed that he had already reached a provisional view concerning the case and that dismissal was appropriate. But he described himself having to *'stress test'* his conclusion so that he could see whether it would be possible for mediation to take place. In effect this was an exercise whereby a disciplinary hearing Chair was questioning himself to see whether the initial decision to dismiss could be replaced with a less serious decision. He explored the possibility of mediation as an alternative to dismissal, but unfortunately the inquiries that he made did not persuade him that he could step back from deciding to dismiss.

233. The decision to dismiss was made by Professor Yates alone and was not influenced by other colleagues within JMU. He knew that he was expected to consider the question of dismissal on grounds of SOSR ad approached his meeting in a fair and open minded way. This was certainly not a case where a Chair was appointed with the understanding that he was instructed to terminate somebody's employment. He reached his decision following a fair process and as having given Dr Parker the opportunity to put forward his views concerning the matters under consideration.

234. This was a case where the overall reasonableness of the process and the decision making by Professor Yates was proportionate and it reasonable for him to determine to dismiss Dr Parker for the reason of SOSR.

Detriments related to the making of protected disclosures

235. Dr Parker relied upon 14 detriments relating to the making of protected disclosures and they were identified as D1 through to D14 and each is considered in turn.

Detriment D1

236. This alleged detriment began on 27 September 2018 and Ms Halpin invited Dr Parker to a meeting with Professor Al Khaddar and he was informed that he could be accompanied. No indication was given that a formal process was about to be commenced and following enquiries by Dr Parker, Ms Halpin explained that the meeting concerned issues arising from his communication style and complaints that had been received from students. Despite several emails being exchanged and what appeared to be

reassurances being given that it was intended to be an informal meeting, no progress was made by January 2019.

237. This invitation related to a clear pattern of inappropriate emails from 11 March 2017 when he reacted poorly to Professor Khaddar's apology with many subsequent unpleasant emails being sent up to and including September 2018 and students' complaints also being received about Dr Parker. His behaviour was undoubtedly an ongoing concern for management and it was reasonable for HR to become involved with this matter. It was not a malicious act and was a genuine attempt to improve workplace relationships given the impact of Dr Parker's communication style upon others.

238. The Tribunal does not accept that Ms Halpin failed to clarify what formal procedure the meeting would be under as she was clear what the meeting was about and that it was informal. Despite Dr Parker believing there to be a threat of dismissal, the Tribunal cannot accept that this was the case. While he may have believed there was an agenda behind this meeting invitation and that it was therefore a detriment, the Tribunal cannot see how this was logically the case. Significantly it was not connected with the asserted PID1, (which in any event is not accepted by the Tribunal as amounting to a valid protected disclosure under section 43B). Finally, it did not form part of a series of continuing acts ending after 13 October 2022 and it is out of time.

Detriment D2

239. This alleged detriment took place on 8 January 2019 when Professor Al Khaddar informed Dr Parker that he was being removed from the role of acting programme leader in relation to the ICBT in Sri Lanka. This was a role that involved no additional pay and the management decision made because of staffing changes within JMU. It was not a detriment and, in many ways, would have allowed Dr Parker additional time to devote to other areas of his work. There were some concerns on the part of management regarding Dr Parker's communication style and that he did not have the best of relationships with staff working with the ICBT. But this decision was not connected with the alleged PID1 disclosure.

240. This allegation contained a second limb concerning a meeting which took place on 8 March 2019 involving Professor Al Khaddar, Dr Parker, Ms Halpin and Dr Ruddock. It was alleged that inappropriate comments were made by the Professor. These were alleged to be *I can do whatever I want',* that *'Nobody can force you to stay'* and threatened further punishment or dismissal through restructuring the department.

241. Dr Parker subsequently raised a grievance regarding what was said and the other attendees were questioned about whether any threats were made during the meeting and they all denied having any recollection of anything being said of this. Ms Halpin further denied this to be the case in her witness evidence. It was also noticeable that Dr Parker did not make any complaints of poor behaviour and only made reference to Professor Al Khaddar saying that *'no one can force you to stay.'* There was simply no

evidence to persuade the Tribunal that Dr Parker was subjected to a detriment and any comments made towards him at the meeting were objectively reasonable and could not be considered threatening. This was an innocuous comment and not involving surrounding circumstances that Dr Parker was being nudged into leaving JMU. It was a practical and genuine statement for a manager to make.

242. In any event, this allegation preceded 13 October 2021, was an isolated event and was therefore out of time. Dr Parker advanced no arguments to explain why he could not reasonably have presented claim within the relevant time period under section 48 ERA 1996.

Detriment D3

243. This alleged detriment was that Ms Halpin did not challenge the alleged remarks by Professor Al Khaddar in D2. For the reasons given above in relation to that detriment, there was no evidence of that a detriment took place in the way described by Dr Parker. Ms Halpin's evidence resisting this allegation was credible and reliable when considered in conjunction with the grievance investigation and we cannot accept that there was anything inappropriate being said that she should challenge. The same principles also apply in relation to D3 as have been identified in relation to D4.

Detriment D4

244. Detriment D4 simply continued from D3 and argued that Ms Halpin concealed what was allegedly said by Professor Al Khaddar at the meeting described in D2 from the hearing notes or minutes produced. For the reasons given already, the incident did not take place as alleged and no detriment took place. The Tribunal concluded that just because something was not in the minutes must not be construed as evidence of concealment as this would create an impossible situation for parties. It is the Tribunal's finding that no record of a detriment took place. It is also outside the relevant time limits as discussed in relation to D2 and D3 above and no arguments were advanced by Dr Parker supporting an extension of time.

Detriment D5

245. Dr Parker asserted that documentation relating to his employment was deliberately lost by Professor Al Khaddar, Ms Halpin or Dr Ruddock. In relation to the 2017 and 2018 appraisal documents, Dr Ruddock admitted losing the documents accidentally and this was discussed in several emails.

246. The Tribunal accepts that there was no deliberate concealment and in fact she was clearly embarrassed and apologised which rather than assuaging Dr Parker led to the unattractive behaviour on his part of making sure that Dr Ruddock was humiliated for its loss. Dr Parker actually had in his possession the drafts of these documents and his behaviour in relation to the grievance was to behave obstructively and to use the loss of the completed versions as a means for avoiding the resolution of the long outstanding successive reviews. Indeed, had he embraced the whole appraisal process,

by the time of his dismissal he would have had several further appraisals which would have been of assistance to him and eliminated the difficulties arising for the earlier missing appraisal documents. This allegation did not involve any deliberate acts upon the part of managers or HR and Dr Parker's conduct in relation to this matter was evidence of his poor conduct and his unwillingness to be managed.

247. Although D5 also related to probation documentation, the Tribunal were not provided with evidence that Dr Parker had been asking for this documentation from those named. It was not connected with the appraisal process. It was only suggested by management as a possible means of breaking the impasse connected with the delayed appraisal and which Dr Parker would not progress. Dr Parker further referred to duty roster spreadsheets and task assignments and during his evidence he confirmed that this referred to a spreadsheet produced by Ms Ruddock of bar charts categorising workload levels. Some reference was made to a work plan on 12 April 2019 in his email to Ms Ruddock but there is simply no evidence that these documents were being withheld, (p581).

248. This nebulous allegation did not amount to a detriment and while Dr Parker may have believed it to be the case, it could not reasonably held to amount to one. Even if it was, there was simply no evidence that the loss or failure to know that certain documents should be disclosed amounted to a detriment for the reason that a protected disclosure had been made, (which of course could only relate to D1 and which has been rejected as complying with section 43B ERA 1996 above). He may have thought that there was a deliberate attempt to lose the appraisal documentation, but this was based on an irrational belief and not supported by any evidence to suggest deliberate concealment or destruction by the managers identified. Moreover, although the appraisal process was an ongoing issue, it became clear from September 2019 that the documentation in question was lost, that Ms Ruddock had lost it and she was willing to be open and honest about this mishap. PID1 is not accepted by the Tribunal and this allegation cannot succeed.

Detriment D6

249. This allegation covered two matters, firstly from August to November 2019 and then on 27 September 2019 but both involved Dr Parker's second line manager Bill Atherton.

250. Dr Parker alleged that from August to November 2019, Dr Atherton subjected him to a series of instructions which he described as being '*directives'*. He believed that he was being restricted from sending emails and asserting his rights within the workplace. Dr Atherton had been appointed as Dr Parker's line manager from August 2019 and he had inherited the ongoing problem of arranging an appraisal with him, which Dr Ruddock had been unable to resolve.

251. What happened during this period was that Dr Atherton was designated as a single point of contact and this was an appropriate measure given the difficulties which had previously been experienced with Dr Parker in

relation to the way that he sent emails to many recipients and which could be unreasonable in tone. There was no restriction upon him being able to raise complaints or grievances within JMU. As a new manager, Dr Atherton was simply trying to progress the appraisal process.

252. Dr Parker may have believed that he was being subjected to a detriment by the way he was being managed by Dr Atherton. He clearly appreciated the freedom to say what he liked, when he liked to whom he liked. But objectively, his behaviour had been difficult, he had been obstructive in engaging with more gentler approaches of management and Mr Atherton was behaving appropriately given the circumstances surrounding Dr Parker's way of communicating with others.

253. In relation to the alleged failure to alert the ICO to documents going missing, Dr Parker had failed to grasp that the missing appraisals from 2017 and 2018 had been lost on Dr Ruddock's computer and it was not a case of a data breach arising from a mis sending of data. But regardless of these circumstances, there was no restriction placed upon him to alert the ICO himself.

Detriment D7

254. This allegation was divided into two parts. The first involved Dr Parker alleging that no 16 January 2020, Professor Andy Tattersall provided probationary review documentation on 16 December 2019 as part of the grievance process. It is not entirely clear what this detriment was, but it related to Dr Parker's ongoing unhappiness with the missing appraisal documentation which Dr Ruddock confirmed had been lost. There was no logical basis upon which Dr Parker could argue that Professor Tattersall had deliberately waited until their meeting on the 16 of December 2019 to disclose this other documentation. During cross examination doctor Parker conceded but he had been *'slightly unfair'* on Professor Tattersall. While Dr Parker said that he stood by this allegation, the Tribunal are unable to find that this could reasonably be considered in all the circumstances to reasonably amount to a detriment.

255. The second part involved Dr Parker alleging that Professor Andy Tattersall blocked him from applying for a Programme Leader role in December 2019. This was the Programme Leader in Civil Engineering – Interim and an email was sent to all Civil Engineering academic staff from Professor Al Khaddar informing them on 13 December 2019 that applications could be made, (p782). This role arose as a consequence of the retirement of Dr Ruddock and Dr Atherton, who had both line managed Dr Parker before Dr Loffill was appointed.

256. Dr Parker did not apply for this interim role and in an email sent to Professor Al Khaddar stating that *'For reasons that need not be detailed here, I am not able to submit a formal application for the 6-month interim posts announced last Friday',* (p783). No reason was given by Dr Parker to explain that this process involved any detriment and we do not accept that he

believed this to amount to a genuine detriment, but if he did, he could not reasonably have reached this conclusion.

257. There was also reference made to data protection issues regarding the failure to raise the question of missing documents (the appraisal documents), as data breaches as explained elsewhere in this judgment. Dr Parker had raised the issue with Tina Sparrow at JMU who had concluded in her email 29 May 2020, that either the GDPR was not in force at the relevant time and even if it was, the complaint did not involve relevant disclosures, (pp1097-2000). The Tribunal do not accept that this amounted to a detriment even if it could be attributed to a valid protected disclosure.

Detriment D8

258. D8 involved an allegation concerning Dr Loffill when in July 2020 he informed Dr Parker that he would face a disciplinary investigation into alleged misconduct. This actually involved discussions between Dr Loffill and Greg Thompson, with the latter notifying Dr Parker of the investigation on 31 July 2020. However, while this could be considered a detriment in that it related to disciplinary action, the Tribunal accepted that this arose because of failures to provide marks and feedback as required by his role and despite having been asked on several occasions, (p1242). There was no evidence available which persuaded the Tribunal that the disciplinary process began because of the earlier disclosures which had been made by Dr Parker. The timing of the action was a clear and direct consequence of the failures which arose in the immediately preceding term and arose from Dr Parker's behaviour.

Detriment D9

259. This allegation was that JMU deliberately failed to conclude Dr Parker's grievance appeal. We recalled that from the findings of fact, the original grievance was rejected. An appeal was brought but that Dr Parker decided to withdraw it on 30 April 2020, (p1049). While Dr Parker argued during the hearing that management could not rely upon the use of the words *'dispose of this one now'* when treating this email as being notice of withdrawal of the appeal, the Tribunal concluded that he could not reasonably assert this to be the case. Management was entitled to treat his email as a withdrawal and his writing style was consistent with the oblique way I which he presented himself. Nonetheless, the reasonable reader would conclude he wanted to withdraw and he did not actively pursue the appeal immediately afterwards, which suggested that this was his intention at that time. This allegation was caused by Dr Parker and nobody else.

Detriment D10

260. This allegation asserted that Dr Loffill deliberately delayed the start of the disciplinary investigation from July 2020 until October 2020. Dr Parker was notified of the investigation on 31 July 2020, but it was not until 21 October 2020 when Mr Chaudhry was appointed. We accepted Dr Loffill's evidence that he did not influence the timing and that considering that this process took place during the height of the Covid pandemic and the JMU

summer vacation period, some delay was inevitable. There is certainly nothing to suggest any of the asserted disclosures being connected with the period of delay, which was longer than should have normally been allowed by an employer.

Detriment D11

261. Dr Parker argued that Dr Loffill provoked him into misbehaviour so that further disciplinary action could be brought against him. This allegation lacked any credibility and Dr Loffill behaved in a reasonable and patient way. The evidence available within Dr Parker's emails in the hearing bundle, demonstrate a lack of self-restraint and insight on his part when dealing with colleagues and there was no need for management to provoke him as a consequence.

Detriment D12

262. At the video meeting in September 2020, it was alleged that Dr Loffill took the opportunity to build a case against Dr Parker and use his behaviour to add to the list of disciplinary matters under investigation.

263. What actually happened was that a number of Dr Parker's colleagues including Dr Loffill felt that he had been shouting and that this was inappropriate. Edward Saul who was also present gave evidence at the disciplinary hearing that the overall discussion within the video meeting had been *'robust'* and this allegation was not proven when the disciplinary decision was given. Nonetheless, the Tribunal could not on balance conclude that this demonstrated any cynical motives on the part of Dr Loffill as it was a perception of a number of those who were present.

264. In any event, this matter was unconnected with the alleged disclosures made by Dr Parker.

Detriment D13

265. D13 alleged that Mr Chaudhry deliberately failed to conduct a comprehensive investigation before completing his disciplinary investigation report dated 16 December 2020. It should be noted that Mr Chaudhry interviewed seven witnesses in relation to the allegations that he was asked to investigate. His report was detailed and contained a number of appendices, (pp – 1124-36). He considered the issues under investigation, identified potential witnesses, explained his methodology in report.

266. The Tribunal found the report to be fair and there was nothing to prevent Dr Parker from calling his own witnesses to the disciplinary hearing. This was therefore not a detriment and there was no evidence to persuade us that the way the investigation was carried out, was in any way connected with earlier disclosures that Dr Parker has relied upon.

Detriment D14

267. Dr Parker alleges that Professor Riley decided to proceed with the SOSR investigation on 16 September 2021 and that this was a relevant detriment.

268. The Tribunal accepted that the SOSR process was begun because following many attempts to persuade Dr Parker to follow reasonable management instructions and to communicate in a reasonable way, the employment relationship had become seriously undermined and its viability was seriously in doubt. In many ways, the commencement of this process had taken much longer than might reasonably have been expected. But its timing was not related with the asserted disclosures.

Detriment D15

269. This final alleged detriment was that Professor Riley caused Professor Yates to make the decision to dismiss Dr Parker.

270. This allegation involved Professor Riley deciding that the SOSR process should begin on 16 September 2021 and this took place before PID5 occurred on 17 September 2021. Professor Riley gave clear evidence that the decision was based upon a belief that the employment relationship had broken down and that it was unrelated to the disclosures that had been made by that date.

271. The Tribunal have already determined that Professor Yates had made his decision independently and was not subjected to any influence from Professor Riley or indeed from anyone else at JMU. There were many examples of behaviour identified within the findings of fact and available before Professor Yates which demonstrated a breakdown in the employment relationship over several years. This was not an occasion where because of unhappiness with an employee making disclosures, Professor Riley had exerted influence upon Professor Yates to make a decision to dismiss. There was no evidence to persuade the Tribunal that this could be the case and we noted that during the SOSR hearing these concerns were not raised by Dr Parker or his union representative.

Summary concerning the detriments

272. The Tribunal of course were unable to accept that any of the alleged disclosures were protected by section 43B. For this reason, the alleged detriments could not amount to protected detriments under section 47B if proven.

273. But even when taking this into account, the alleged detriments have largely been found to be ill conceived and in most cases, could not be considered reasonably to be detriments. None related to the alleged disclosures.

274. The Tribunal did consider the mental processes of the managers involved but in what was a lengthy case with a great deal of documentary ad witness evidence, we preferred the case advanced by the respondents. What really troubled them was Dr Parker's way of communicating with others which was often insensitive and unkind and his failure to improve his behaviour despite management encouragement. Additionally, it was his ongoing resistance to accepting line management and refusing to behave proportionately and reasonably to management instructions. The alleged disclosures took the form of grievances and complaints which actually did not reveal genuine disclosures of information under section 43B and from the evidence of the respondent witnesses, they played little if any part in the processes which led to Dr Parker's ultimate disciplinary process and SOSR dismissal.

275. Objectively, they were not reasonably brought and were unrelated to the detriments asserted, the majority of which were presented out of time (anything happening before 13 October 2021), were unconnected with the decision to dismiss and where Dr Parker had not sought to provide a case to demonstrate it was not reasonably practicable to extend time under section 48.

Breach of contract

276. This complaint was found within section 4 of the list of issues, (p232). Two allegations were made of the first respondent breaching the contract of employment.

277. Issue 4.1 relies upon clause 15.4 of Dr Parker's contract of employment which relates to the preservation of academic freedom. This allegation requires little consideration because the decision to dismiss Dr Parker was unrelated to any occasion where he exercised independent academic thought. The SOSR case relied upon numerous allegations of poor behaviour in the way that he communicated with others and his failure to cooperate with management. This related purely to a lack of decent behaviour and was unrelated to academic opinions. This allegation is not proven.

278. Issue 4.2 involves JMU's disciplinary procedure, (pp250-266). The Tribunal were not provided with evidence which demonstrated that this procedure was a contractual provision of Dr Parker's contract of employment. Even if it was, however, the decision to dismiss him arose not from the disciplinary procedure but from an SOSR process. This did not form part of the disciplinary procedure.

279. Accordingly, the breach of contract complaint must fail.

Harassment (section 26 EQA)

280. This complaint consisted of 9 allegations (numbered within the list of issues as H1 to H9) and were made against JMU as first respondent and in

some cases, against one or more of the individual respondents in these proceedings.

Harassment H1

281. This allegation referred to an email sent in January 2017 which was sent to many recipients including Dr Parker seeking their help with the Faculty International Day. The Tribunal noted that Dr Parker maintained that being asked to attend this event as a Canadian national was degrading. We acknowledged this belief and while the incident took place and did relate to Dr Parker's nationality, it could not reasonably be considered harassment being a celebration of the diverse make up of JMU and indeed at the time the event took place, he was recorded as describing the event as *'nice'.*

282. While Dr Parker maintained that this allegation amounted to unwanted conduct relating to his protected characteristic and had the purpose or effect of violating his dignity etc' (applying the provisions of section 26(1)), the Tribunal were unable to accept that he credibly believed that this was the case. This was because his perception at the time that the event took place was positive and even if there was an underlying and heavily disguised unhappiness with what he was being asked to do (which we do not accept), the Tribunal cannot accept that objectively it would have been reasonable to hold this belief. Ms Masters referred to the case of *Land Registry v Grant* (above) and we agreed that this allegation involved a trivial matter with no underlying conduct that degraded or humiliated Dr Parker as a Canadian national.

Harassment H2

283. H2 referred to an email sent in February 2017 which was sent to Dr Parker and others thanking them for their assistance with the Faculty International Day. This allegation related to the events described in relation to H1 and for the same reasons as provide by the Tribunal concerning that event, the Tribunal does not accept that this can amount to harassment within the meaning of section 26 and in any event, it has been presented out of time.

Harassment H3

284. H3 involved Dr Parker's reference to a meeting which took place on 8 March 2019 which was the same meeting described above as a whistleblowing detriment. Dr Parker alleged that he was told by Professor Al Khaddar that, *'No one can force you to stay'* and made references to *'Canada'.* The Tribunal does not accept that there was any unwanted conduct relating to his race and any comments made about not being forced to stay involved Dr Parker's role within JMU and not UK academic institutions. It is not accepted that on balance, reference was made to him returning to Canada and from the context of what has been heard, this cannot reasonably be considered an instance where what was said could be considered a violation of Dr Parker's dignity or creating an intimidating or hostile environment. At its highest, Dr Parker was being reminded by Professor Al Khaddar that if he was unhappy with his role at JMU he could explore options elsewhere. While he

might have believed this to be unwanted conduct, we do not accept that he could not reasonably conclude that there was an implicit threat and that his time with JMU would soon come to an end. It was not an instance of harassment and in any event is isolated event presented well out of time. No arguments were advanced by Dr Parker supporting an extension of time under section 123 EQA 2010.

Harassment H4

285. H4 related to H3 in that it was alleged that Ms Halpin who was present at the meeting, failed to challenge Professor Al Khaddar's remarks. Accordingly, the Tribunal repeats its findings relating to that allegation (H3 above) and does not accept that the event happened as alleged and amounted to harassment. Moreover, it was out of time.

Harassment H5

286. H5 continued with this subject (raised in H3 and H4), alleging that Ms Halpin then omitted these remarks from the minutes of that meeting. The Tribunal does not accept that there is evidence to support this allegation and Ms Halpin gave credible evidence in relation to this matter. This allegation of harassment must therefore also fail and like its predecessors above, is also presented out of time.

Harassment H6

287. H6 alleged that in April 2019, Professor Ahmed Al Shamma who was the Head of Facilities at JMU, told Dr Parker that when he was recruited, there was an expectation that he would *'cultivate Canadian options'* and that his earlier conversation with Professor Al Khaddar (see H3 above) had been discussed in this context. Professor Al Shamma has since left JMU but Dr Parker simply did not provide any credible witness evidence that this matter happened in a way which caused him upset. None of the available emails indicated that he was unhappy with what had been discussed. However, even if this conversation did take place in the way described within the list of issues, it could not reasonably be construed as unwanted conduct with the purpose of subjecting him to a degrading or humiliating etc' environment as this conversation is typical of what might be suggested amongst academics. This is not a credible allegation and cannot succeed.

Harassment H7

288. H7 alleged that from August to November 2019, Dr Atherton placed Dr Parker under pressure and limited his ability to seek other support and that in addition he had suggested to him that going back to Canada could be an option and soon might be his only option.

289. This allegation mirrored the first part of detriment D6 above (in relation to protected disclosures) and involved Dr Parker's second line manager Bill Atherton. It is not necessary to repeat our findings made above but would note that Dr Atherton had been appointed as Dr Parker's line manager from

August 2019 and he had inherited the ongoing problem of arranging an appraisal. He was designated as a single point of contact but there was no restriction upon Dr Parker being able to raise complaints or grievances within JMU.

290. These actual management steps were proportionate given the way Dr Parker had been communicating with others and even if he believed it was connected with his Canadian nationality, it objectively could not be the case.

291. The Tribunal did not accept that Dr Atherton said to Dr Parker '*why don't you go back to Canada'* during a meeting on 27 September 2019. This was asserted during Dr Parker's cross examination, but if any comment was made, it was similar to allegation H3 above and while he may have been unhappy with this comment, we do not accept that objectively it could be considered as having the purpose or effect of violating Dr Parker's dignity or creating an intimidating or hostile environment.

292. In any event, this was an isolated matter which did not form part of a series of continuing acts and is out of time under section 123 as it occurred before 13 October 2021 and no submissions have been made seeking an extension of time.

Harassment H8

293. H8 involved an allegation that on 5 February 2020, during a department wide meeting on Degree Apprenticeships, Larry Wilkinson had asked Dr Parker why he was there and joked that he *'must have gone back to Canada by now'.* No complaint was recorded as being made at the time of the meeting and the Tribunal were left to consider Dr Parker's allegation and that of Dr Loffill. On balance, the Tribunal considered Dr Loffill's evidence to be more credible and we are unable to accept that this comment was made at that meeting. In any event, this allegation is out of time and as previously mentioned, no submissions have been made by Dr Parker seeking a extension of time on just and equitable grounds under section 123.

Harassment H9

294. This final allegation of harassment is H9 and it is alleged that in July 2020 Dr Parker was sent an electronic greetings card with ironic Canadian images and believed the card was sent to mock him. He accepted that the card was sent by Linda Howes but argued that responsibility for the decision to send the card lay with Professor Al Khaddar and Dr Loffill.

295. There was no convincing evidence that could persuade the Tribunal that was any underlying irony or sarcasm when this card was sent to him and we accepted that it was a decision made independently by Ms Howes. Even if Dr Parker felt this amounted to unwanted conduct, it could not reasonably be considered as hostile or intimidating.

296. He may well have considered the illustrations used on the card to be reductive in terms of his Canadian nationality but they amounted to nothing

more than affectionate stereotypes that could not reasonably be considered demeaning or unkind. This really is a trivial allegation even when taking into account the surrounding circumstances.

297. Moreover, the complaint was made out of time and no submissions are made seeking an extension of time.

Summary of harassment allegations

298. For the reasons give above, these allegations are not well founded and are out of time. This complaint of harassment on grounds of race must therefore fail.

Direct race discrimination (section 13 EQA)

Treatment 1 – DD1

299. DD1 largely reflects allegation D5 where Dr Parker asserted that documentation relating to his employment was deliberately lost by Professor Al Khaddar, Ms Halpin or Dr Ruddock. In relation to the 2017 and 2018 appraisal documents, Dr Ruddock admitted losing the documents accidentally and this was discussed in several emails. There was no deliberate act of concealment by her and in terms of background, the Tribunal refers to its discussion in relation to D5 above.

300. Dr Parker asserted that documentation relating to his employment was deliberately lost by Professor Al Khaddar, Ms Halpin or Dr Ruddock. In relation to the 2017 and 2018 appraisal documents, Dr Ruddock admitted losing the documents accidentally and this was discussed in several emails.

301. The Tribunal accepted that Ms Halpin actually tried to resolve this issue during late 2019 with Dr Parker and tried to arrange a meeting between him, her and Professor Al Khaddar. There was no evidence that this amounted to detrimental treatment and in any evet, Dr Parker failed to demonstrate that this treatment was in any way connected with his Canadian nationality. It was actually a genuine concern from a HR professional that an employee was troubled regarding the loss of documentation and given that it could not be found, was an attempt on her part to progress matters so that future appraisals could take place.

302. This was not a credible allegation of direct race discrimination and for reasons already explained, was presented out of time.

Treatment 2 – DD2

303. DD2 was that Professor Riley initiated the SOSR process against Dr Parker. This was treatment which was detrimental to him in that it resulted in his dismissal for SOSR reasons.

304. However, this action was in no way connected with his Canadian nationality and was very much relating to his unreasonable behaviour over a

number of years. A hypothetical comparator who did not share Dr Parker's nationality but who behaved in the way that he had done, would have been treated in exactly the same way as he was and there is no direct race discrimination in relation to this allegation.

Treatment 3 – DD3

305. DD3 involves the allegation that Dr Loffill provided evidence to Professor Yates for the purpose of the SOSR procedure following a request made by Professor Yates.

306. This allegation relates to information provided by Dr Loffill following an approach by Professor Yates after he had finished the SOSR review hearing. He was wondering whether it was not possible for management to look at restoration work to improve the working relationship with Dr Parker. Dr Loffill gave convincing evidence of being approached by either Professor Yates or HR to provide an overview of the attempts that he had made to engage with Dr Parker and which ultimately led to an SOSR process being commenced. He accepted that he did provide additional information which was not initially part of the disciplinary process. However, the Tribunal heard evidence from Professor Yates which credibly explained that he had already made his decision regarding dismissal. When seeking information from Dr Loffill, he was simply exploring whether it was possible to step back from dismissal by exploring whether mediation between management and Dr Parker could produce a meaningful improvement in relations. The Tribunal accepts that Dr Loffill provided relevant evidence which demonstrated that such restoration work would not be productive.

307. While this clearly was treatment which could reasonably be considered detrimental to Dr Parker, it was not something which could be attributed to his Canadian nationality. There was simply no evidence to suggest that this was actively or indeed subconsciously a reason for the treatment. As has already been mentioned on several occasions the SOSR process was purely connected with Dr Parker's behaviour during several years. A comparable hypothetical employee who did not share his protected characteristic would have been treated in exactly the same way as he was. For this reason, this allegation of discrimination is not well founded.

Treatment 4 – DD4

308. This alleged treatment involved Dr Parker complaining that Professor Riley instructed Professor Waraich to cut off his email access in September 2021 when he was suspended.

309. There was no dispute that this detrimental treatment took place. However, there is no credible evidence that it was carried out because of Dr Parker's nationality. The decision was connected with the SOSR process and his behaviour. A comparable hypothetical employee who did not share his protected characteristic would have been treated in exactly the same way as he was. For this reason, this allegation of discrimination is not well founded.

Treatment 5 – DD5

310. DD5 is the same allegation as DD4 and this time asserts discrimination on the part of Professor Waraich when he cut off Dr Parker's email access. The Tribunal repeats its findings in relation to DD4.

Treatment 6 – DD6

311. This allegation mirrors that brought under detriment 15. Professor Riley decided that the SOSR process should begin on 16 September 2021. Professor Riley gave clear evidence that the decision was based upon a belief that the employment relationship had broken down and that it was unrelated to the disclosures that had been made by that date.

312. There is no convincing evidence that Professor Riley peruaded Professor Yates to dismiss Dr Parker and he had made his decision independently as SOSR review Chair. There was a discussion between these respondents regarding the relationship between Dr Parker and his colleagues and ultimately Dr Loffill provided further information as explained above at DD3.

313. Importantly however, none of these allegations were in anyway motivated by Dr Parker being Canadian and the focus was very much related to his past behaviour. A hypothetical lecturer who did not share his protected characteristic in the same circumstances would have been treated the same. Accordingly, there was no less favourable treatment on grounds of race.

Treatment 7 – DD7

314. This complaint was that Dr Parker was dismissed by Professor Yates because of his nationality. Professor Yates had little involvement with Dr Parker prior to this process and this detrimental treatment was not supported by any evidence that suggested his nationality played a part in this decision. Once again, behaviour is the key ingredient which led to the decision as described above. Professor Yates gave credible evidence that he did not know anything about Dr Parker's nationality. A hypothetical lecturer who did not share his protected characteristic in the same circumstances would have been treated the same. Accordingly, there was no less favourable treatment on grounds of race.

Treatment 8 and 9 – DD8 and DD9

315. DD8 involves an allegation that Ms Scharf and Ms Costello from HR deliberately waited until Dr Parker submitted his grounds of appeal before disclosing the minutes of the SOSR hearing and DD9 involves the disclosure of additional information requested by Professor Yates following the SOSR review meeting.

316. Dr Parker was provided with all of the relevant SOSR hearing documentation by Employee Relations when he was dismissed including the hearing notes. On 28 October 2021 one week before the appeal hearing was due to take place the additional notes were sent, (p2001). This email came from the general HR email account although it was not possible to identify who sent it, although Ms Costello confirmed that she was on leave that week.

317. There was no acceptance of a deliberate withholding of evidence as alleged from either witness and the Tribunal accepts that HR provided disclosure in the usual way. They would have done so for any employee in this situation based upon the available evidence and we cannot conclude that nationality played a role in the disclosure process.

Treatment 10 – DD10

318. DD10 involved the appeal against dismissal being dismissed by Professor Mark Power. The Tribunal noted that Professor Power considered the appeal even though Dr Parker did not attend and rejected the grounds of appeal following a consideration of them. He was unaware of Dr Parker's race and a comparable lecturer who did not share his nationality would have been treated no differently.

Treatment 11 – DD11

319. Allegation DD11 argued that Dr Parker suffered less favourable treatment because Ms Burquest failed to intervene in the SOSR procedure and that she should have told Professor Yates that he had a responsibility to protect whistleblowers from retaliation.

320. The Tribunal accepted Ms Burquest's evidence that she was unaware that he was a Canadian national at this time and accordingly this alleged treatment cannot succeed in relation to a complaint of direct race discrimination.

321. But the Tribunal also recognised that the SOSR process was not a matter that she was dealing with. JMU has a large HR team and other officers were dealing with Dr Parker's case. He assumes a degree of omniscience that Ms Burquest cannot be expected to have and in any event, it was not her role to step into this process as alleged.

322. Dr Parker had copied Ms Burquest into numerous emails and which Ms Masters referred to in her closing arguments, with 21 emails being identified between 2019 and 2021. However, she was indirectly involved and on the single occasion that reference was made to whistleblowing on 7 July 2021, Ms Burquest responded on 9 July 2021, (pp1773-4).

323. Dr Parker was concerned about the existence of a register of whistleblowing complaints and cross examined the HR witnesses concerning its existence. Ms Burquest was clear that such a procedure would be problematic as it is important that whistleblowers are able to make confidential complaints. It was entirely reasonable for Dr Parker to be expected to raise

the question of whistleblowing during his review meeting with Professor Yates. It is correct that he had been made aware of possible whistleblowing issues in his briefing note referred to above. However, it was clear that at the time of the SOSR review, it was not a matter of concern raised by Dr Parker and had he done so, a discussion would have taken place with Professor Yates and potentially the review would have been paused to resolve the matter had Dr Parker disputed it being irrelevant to an SOSR review.

324. The Tribunal is unable to conclude that in a similar situation involving the background which had provoked the SOSR process, a person who did not share Dr Parker's protected characteristic would have been treated any differently. Consequently, this allegation must fail.

Treatment 12 – DD12

325. DD12 is the final allegation of less favourable treatment and involves Ms Halpin writing to Dr Parker in an email dated 27 September 2021 and stating that:

'The current review of your continued employment with the University deals with separate issues to those contained in the disciplinary and grievance appeals. […]. We remain committed to concluding those procedures and the meeting of 6 October does not in any way replace or prejudge the outcomes to those.'

Dr Parker argues that Ms Halpin was acting deliberately to mislead him when she made these comments.

326. This email could not be related to Dr Parker's race and the Tribunal accepted Ms Halpin's credible and reliable evidence that she was attempting to reassure Dr Parker when she sent this email. Essentially, she wanted him to understand that the SOSR review was not prejudged and it was not inevitable that he would be dismissed. She was not involved in the organisation of the disciplinary and grievance appeal processes and was unable to express a view concerning them other than that she was aware that Dr Parker did not continue with his grievance appeal. We accepted that Dr Parker's race was relevant to this communication and the allegation must fail as a complaint of direct race discrimination.

Indirect race discrimination (section 19 EQA)

327. The consideration of complaints of indirect discrimination requires an employee to first of all identify a provision, criterion or practice (known as a 'PCP') as described by section 19(1). The PCP becomes discriminatory if in relation to the asserted protected characteristic within the claim, it applied to those who do not share the claimant's characteristic and puts those who share the characteristic at a particular disadvantage compared with those not sharing it.

328. If the PCP appears to be discriminatory because it puts the employee at a disadvantage, the employer may escape liability if they can demonstrate

that it was to achieve a legitimate aim and that its application involved proportionate means being used, (section 19(2)(d)).

329. PCP1 involved an allegation that JMU failed to keep lecturer's records of appraisals and probation documents. Having considered the evidence in this case, the Tribunal is unable to find that such a PCP existed at the relevant time. It is correct that Dr Parker's appraisal documents for 2017 and 2018 could not be found. As has already been discussed above on a number of occasions, this happened not because of a PCP, but because of an error. If there was a practice (or more generally a PCP) existing at the time, it was that appraisal records should have been uploaded and stored on the appropriate JMU database to ensure its preservation.

330. In terms of the probationary documentation, this was correctly saved and provided during the grievance process potentially as a means of moving forward the issue of the outstanding subsequent appraisals which Dr Parker was refusing to engage with. PCP1 did not exist and Dr Parker cannot rely upon this as part of his indirect race discrimination complaint.

331. PCP2 involved an allegation that JMU's minutes of disciplinary and grievance meetings were summaries based on handwritten notes rather than verbatim transcripts. It was accepted by JMU that PCP2 reflected their practices in relation to these hearings.

332. What JMU dispute was that this PCP2 placed Dr Parker at a particular disadvantage because of his Canadian nationality or more generally in relation to foreign born nationals from outside of the UK. Unfortunately, Dr Parker was unable to provide any persuasive evidence that such a disadvantage existed or any notes where a particular problem arose. He did suggest that his Canadian accent may have caused difficulties to the person keeping the note. However, a theme throughout this case was the convincing evidence from a number of witnesses that they were unaware of Dr Parker's nationality until he brought this claim and in any event it is clear from his oral evidence given during this hearing (as well as his submissions and questioning of respondent witnesses), that there was no difficulty in understanding him. He gave no evidence that other non UK born staff were disadvantaged by this PCP either.

333. For these reasons, neither PCP support the complaint of indirect discrimination. There is no need to consider the asserted legitimate aim in detail however, the Tribunal accepted that those asserted in JMU's solicitor's email to the Tribunal and Dr Parker dated 14 July 2023 demonstrated that PCP2 was a proportionate means, (pp160-1). In particular, the meeting notes are designed to record the salient points that have arisen and that because HR professionals are the usual note takers, they are competent in carrying out this function. There was no reason why employees could not make separate notes and they would not have been prevented from doing so had they wanted to adopt such a measure. The use of recording equipment or verbatim notes were described as placing an employee in a position of unease and might affect the willingness of employees to be open. Moreover, any possible prejudice could apply to anyone who had an accent and many

strong accents can be found amongst the UK population. This was not a case where the PCP placed non British nationals at a particular disadvantage and in any event HR were sufficiently flexible to allow others to make a record of the hearing if they so wished. The complaint of indirect discrimination must therefore fail.

Victimisation (Section 27 EQA)

334. The protected act relied upon is the meeting which took place on 8 March 2019 involving Dr Parker, Dr Ruddock, Professor Al Khaddar and Ms Halpin. As has been already discussed above, there was reference to Dr Parker sending emails following the meeting referring to the alleged comment *'no one can force you to stay'* although this did not appear to be raised as a concern in relation to race at the meeting itself. However, even if this comment was made, it had to relate to Dr Parker's race/nationality as a Canadian. This cannot reasonably be considered a comment which is related to race and simply involves an employee being reminded that if they are very unhappy with the situation in JMU, they were free to leave. There is no connection with race and importantly, there is no actual disclosure taking place at the meeting itself.

335. Dr Parker relies upon the same detriments as those asserted in relation to the complaint of detriments arising from the alleged protected disclosures. The Tribunal would repeat its findings concerning those allegations concerning whether they happened as alleged and whether they could be considered detriments, but also in relation to whether they could be considered to have been brought in time.

336. But of course, because the Tribunal is unable to accept a protected act was made in accordance with section 27 EQA, it is not possible for Dr Parker's complaint of victimisation to succeed as there is no section 27 act upon which he can link the alleged detriments to.

Conclusion

337. Consequently, the outcome of this case is that none of the complaints brought by the claimant are successful and the claim that he has brought in these proceedings fails in its entirety.

338. The Tribunal felt that this was predominantly a claim arising from a dismissal and involving ongoing difficulties experienced by JMU with Dr Parker in relation to their ability to manage him. Over a number of years various line managers attempted to renew the management/employee relationship and despite initial positive replies from Dr Parker, he consistently displayed and unwillingness to be managed and to deal with his situation as it was and cooperate in moving forward.

339. The numerous overly pedantic, questioning and often sarcastic and unpleasant emails left this Tribunal with the impression that Dr Parker had little respect for his managers and disliked intensely being given management

instructions, even for the most basic and routine processes involving completing forms and significantly participating in an appraisal.

340. It is understandable that at times an employee, especially when working as an academic, can find these requests tedious and a distraction from what they feel their job is about. But in this case, Dr Parker's behaviour went beyond that and he behaved in a wholly disproportionate way which served to cause considerable stress and upset to those who were seeking to manage him. Surprisingly, and disappointingly, he did not reach a moment of clarity or reflection where he realised that he had to cooperate and move forward in his working relationship with managers and effectively *play the game according to the rules of the workplace* and put his displeasure with these expectations to one side.

341. It was also noticeable that Dr Parker struggled with any pressure or criticism of him by managers in terms of his ongoing failure to cooperate with the reasonable instructions given to him and where it became necessary to involve more senior managers or HR.

342. By way of conclusion, this means that the judgment of the Tribunal in these proceedings will be as follows:

a) The complaint of unfair dismissal brought in accordance with Part X of the Employment Rights Act 1996 is not well founded which means it is unsuccessful.

b) The complaint of breach of contract is not well founded which means it is unsuccessful.

c) The complaint of detriments arising from the making of protected disclosures contrary to Part – Employment Rights Act 1996 is not well founded which means it is unsuccessful.

d) The complaint of harassment relating to race contrary to section 26 of the Equality Act 2010 is not well founded which means it is unsuccessful.

e) The complaint of direct discrimination relating to race contrary to section 13 of the Equality Act 2010 is not well founded which means it is unsuccessful.

f) The complaint of victimisation of contrary to section 27 Equality Act 2010 is not well founded which means it is unsuccessful.

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Employment Judge Johnson

Date 26 November 2024

JUDGMENT SENT TO THE PARTIES ON
3 December 2024

FOR THE TRIBUNAL OFFICE

Notes

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