EMPLOYMENT TRIBUNALS

Claimant: Dr E Vargo

Respondent: Kingston University Higher Education Corporation

Heard at: **London South Croydon** **On: 16-18 April, 18-19 July & 20, 23 July & 8 August 2018 (in chambers)**

Before: **Employment Judge Tsamados**

Members: **Ms C Edwards**
Ms S Campbell

Representation
Claimant: Ms L Millin of Counsel
Respondent: Ms A Beale of Counsel

JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

1) The claimant did not suffer detrimental treatment for making protected disclosures;
2) The claimant was not automatically unfairly dismissed for making protected disclosures;
3) The claimant has insufficient qualifying service to bring a complaint of ordinary unfair dismissal;
4) Her claim is dismissed.

REASONS

Claims and issues

1. By a claim form presented on 13 July 2017, the claimant brought complaints of unfair dismissal and protected disclosures ("whistleblowing") against the respondent. In its response presented on 10 August 2017 the respondent

defended the claim.

2. A closed preliminary hearing was held on 21 September 2017 at which case management orders were made and the issues were agreed as set out in the appendix within R1 54-57. The individual complaints were identified as follows: automatic unfair dismissal for making protected disclosures; detrimental treatment short of dismissal for making for making protected disclosures; and ordinary unfair dismissal. The issues also included consideration of whether the tribunal has jurisdiction to hear all or any of the claims because of the requisite time limits (although this was subsequently agreed not to be a live issue) and identified the various protected disclosures that the claimant relied upon.

3. The full hearing was initially listed to take place over two days on 17 and 18 January 2018. That hearing came before me and two other members. Prior to the start of that hearing, the parties requested that the hearing be adjourned on the basis that two days was insufficient and they requested a further listing for three days. I relisted the hearing for 16 to 18 April 2018. In addition, the claimant's counsel agreed to provide the respondent with further particulars of the public interest disclosures relied on R1 58b(i)).

4. The claimant provided details of her whistleblowing allegations to the respondent on 5 February 2018 (R1 58c-d). She provided further details of her detriment allegations to the respondent on 15 February 2018 (R1 58e-g). The respondent requested further and better particulars of the claimant's whistleblowing allegations on 22 March 2018 (R1 58h-k). The claimant resisted this request. The matter came before me on the papers on 28 March 2018. I ordered the claimant to respond to the request which I determined was simply seeking more precise details so as to understand the claim and to facilitate an expeditious use of time at the full hearing (R1 58m-n). The claimant provided her response to the request for further and better particulars on 12 April 2018 (R1 50o-s).

5. The matter came before this Tribunal panel on 16 to 18 April 2018. However, this proved to be insufficient time and we heard the case on further days on 18 to 20 July and in chambers partially on 20 July and on 23 July and 8 August 2018.

The evidence

6. During the course of the hearing we heard evidence from the claimant and on behalf the respondent from Professor Andrea Petroczi, Doctor Elizabeth Opara, and Mrs Paula Bruton. This was by way of witness statements (in the case of Professor Petroczi two statements) and in oral testimony.

7. We were provided with a main bundle of documents, which we refer to as "R1" where necessary. We were also provided with the following additional documents from respondent: a Table to Identify Papers; a Chronology and Cast List; a Table of Alleged Disclosures; email correspondence relating to Lazuras L et al (2017): "I Want It All, and I Want It Now", which we refer to as "R2"; Doctor Petroczi's offer of employment and statement of particulars, which we refer to as "R3"; further email correspondence relating to Lazuras L et al (2017): "I Want It All, and I Want It Now", which we refer to as "R4";

email correspondence between Professor Petroczi and Mr Paul Griffiths, which we refer to as "R5". The claimant also provided us with a number of policy documents: "The Concordat to Support Research Integrity - Universities UK" July 2012; the respondent's "Procedures for dealing with misconduct in research (staff)" 2015-2016, "Guide to Good Research Practice" updated October 2016, "commitment to the Concordat to Support Research Integrity and Ethics Policy". We refer to these as "C1" where necessary.

8. At the end of the evidence we were provided with written submissions from both parties' Counsel and copies of Beatt v Croydon Health Services NHS Trust [2017] EWCA Civ 401 and Pulse Healthcare Ltd v Carewatch Care Services Ltd and others UKEAT/0123/12/BA.

Our findings

9. We set out below the findings of fact that the Tribunal considered relevant and necessary to determine the issues we are required to decide. We do not seek to set out each detail provided to the tribunal, nor make findings on every matter in dispute between the parties. We have, however, considered all the evidence provided to us and we have borne it all in mind.

10. The claimant commenced her studies as a PhD student at the respondent University on 1 October 2011. The letter at R1 152 indicates that she was offered a full-time, fully funded, PhD studentship in the Faculty of Science Engineering and Computing. She received a tax-free maintenance grant of £15,590 per annum (payable quarterly in advance) plus tuition fees.

11. The claimant was under the supervision of Professor Andrea Petroczi, the Director of Studies, between 2011 and 2015. Professor Petroczi is a Professor of Public Health based at the School of Life Studies, Pharmacy and Chemistry which is part of the Faculty of Science, Engineering and Computing.

12. The respondent operates a Staff Bureau which provides it with a register of the names of those personnel, including students, who have indicated their availability for temporary or casual work. We were referred to the Statement of Terms and Conditions for Staff Associates at R1 142-151. This document indicates that those undertaking such work are not generally considered to be employees, there being no mutuality of obligations. However, we note paragraph 3.1 at R1 145, which does indicate circumstances in which staff associates could obtain "continuity of service/employment rights" dependent on the pattern of work assignment, which we take to be an indication of potential employee status.

13. The claimant registered with the Staff Bureau on 22 January 2013. We were referred a document, the heading of which appears to say "Staff Bureau Membership" (part of the copy being obscured by a post-it sticker on the original document) at R1 164-165. It is stamped February 2013, although the actual date is unclear. This sets out the claimant's personal details, including her bank account details, and her availability for work. It also sets out an entitlement to holiday pay and details of how to join the respondent's

occupational pension scheme should the Bureau member wish to do so. The claimant joined the Staff Bureau in order to be considered for temporary work.

14. The claimant's position is that she was working continuously from 1 February 2013 until her employment terminated on 28 February 2017. This belief may well have arisen from the respondent's later letter of appointment which indicates that her continuous employment started on that date (at R1 203).

15. However, on reviewing its documentation for the purpose of these proceedings, the respondent discovered that this date was incorrect. It has no record of the claimant undertaking any work for the Staff Bureau during 2013 and 2014. Moreover, the claimant could not recall whether she undertook any for the Staff Bureau during that period of time.

16. We have been provided with copies of the claimant's pay-slips which are at R1 171-198. These indicate that the claimant undertook paid work during January, February, April, May, June and July 2015. There is a pay-slip dated 18 December 2014 which shows nil payments (at R1 172). There is a pay-slip for August 2015 which purely records payment of a tax rebate.

17. The respondent's position is that prior to 1 September 2015, the claimant undertook a number of discrete assignments through the Staff Bureau. In January 2015 the claimant was paid for 15 hours work in an administrative and clerical role and for 6 hours work as a Visiting Lecturer. In February 2015 the claimant was paid 21 hours as a Visiting Lecturer. In April 2015 the claimant was paid 28 hours as a Visiting Lecturer. On 2 April 2015 the claimant commenced a fixed-term work assignment as a Research Assistant for Professor Petroczi on the Hampshire Project (at R1 167). This last assignment ended on 31 July 2015.

18. The respondent's further position is that the claimant was then appointed to a substantive post of Research Assistant on a fixed-term employment contract on 1 September 2015 with a termination date of 31 December 2016. We were referred to R1 203-211 which is the claimant's offer of appointment as Research Assistant and which sets out her terms and conditions of employment. This document records the claimant's continuous service date as 1 February 2013.

19. The respondent accepted that the claimant was an employee from 1 September 2015 onwards and that continuity of employment also ran from this date. The respondent avers that it erroneously recorded the claimant's continuous service as commencing on 1 February 2013 (the date she registered for the Staff Bureau). Flowing from this, the respondent erroneously believed that the claimant was entitled to a redundancy payment at the end of her employment.

20. The respondent's position is that between 1 to 31 August 2015 the claimant was not employed by the University, she went on holiday to Italy to see her family and during that time her staff e-mail account was deactivated. We were referred to e-mail correspondence between Professor Petroczi and the claimant dated 30 July to 8 August 2015 (at R1 213-215). We note the

contents of the e-mail from Professor Petroczi in the e-mail of 1 August 2015, at R1 214, in particular: *"Have a well deserved break and see you in September!"* and "*With your contract, it will be reinstated in September".*

21. The claimant's initial position was that whilst she was not paid continuously during 2015 this did not mean that she was not working continuously or was not working during her holiday. However, in cross examination she accepted that if she was not paid for a particular month it was because she did not submit any work.

22. On balance of probability, our view is that the fixed-term contract which commenced on 1 September 2015 was as an employee working in a substantive post. The previous periods of work during 2015 were assignments through the Staff Bureau. We heard no evidence as to mutuality of obligation beyond what was set out in the Statement of Terms and Conditions for Staff Associates. We heard only the briefest of evidence about what the assignment work during 2015 involved and could not form a view that this amounted to employment as an employee. We had no evidence of any work undertaken during 2013 and 2014.

23. Whilst the respondent has stated in documents that the claimant's continuous service date is 1 February 2013, on balance of probability we accept that this was erroneous. We find that the claimant's continuous employment began on 1 September 2015. Prior to 1 September, there were two distinct gaps in the claimant's employment whilst she was engaged by the Staff Bureau in any event – March and August 2015.

24. We were concerned that the work undertaken during the first fixed-term contract, through the Staff Bureau, and the second fixed-term contract, as an employee, involved similar work. We therefore considered whether in fact the earlier contract was in reality employment as an employee and that the two contracts were linked during what was a temporary cessation of work over the Summer vacation (pursuant to section 212 of the Employment Rights Act 1996), as occurs with teachers and lecturers. However, even if this were so, the claimant's continuous service would only then begin on 2 April 2015 and she would still not have two years' continuity required for the purposes of bringing an ordinary unfair dismissal claim.

25. We were provided with a table to identify project and paper by the respondent's counsel. Whilst this was helpful, we only need identify the names of the principal projects and papers that came up in the evidence before us:

    25.1 The Hampshire Drug Scope Project
    25.2 The Co-creation Workshop paper
    25.3 The Frontiers paper (Lazuras L et al (2017): "I Want It All, and I Want It Now")
    25.4 The Safe You project
    25.5 The DNP paper
    25.6 The LEGIT project.

26. We were referred to the claimant's job description at R1 199-201 which sets out her job purpose, roles and responsibilities, amongst other things. The

claimant's evidence was that she had not seen this during the period of her employment. However, it was referred to in her appointment letter as an attachment (R1 293 Duties of Post). We find it surprising that the claimant did not pursue this matter if she had not received the document at the time.

27. The job purpose is set out as follows:

"The fixed term research assistantship post entails providing research and administrative support to Professor Andrea Petroczi in delivering two externally funded projects:

1. *The "Strengthening the Anti-doping Fight in Fitness and Exercise in Youth, SAFE YOU", is funded by the Commission of the European Union through its Erasmus+ programme and involves five European Countries: Cyprus, Germany, Greece, Italy and UK. The project aims to investigate the motives behind and the lived experiences of adolescents and young people in fitness/amateur sports with respect to access, availability, promotion, marketing, purchase and use of performance and appearance enhancement substances; and to develop an online tool to educate adolescents and young adults involved in amateur/fitness sport about the substances.*
2. *The aim of the "Hampshire Drug Scope Project", funded by Hampshire County Council, is to provide a comprehensive view of non-problematic drug use among adolescents and young adults in Hampshire to identify problem areas; and to explore how drug use is seen by adolescents and young people today; and reasons by which they justify their drug-related behavioural choices.*

This post is jointly funded through the above projects."

28. The claimant disputed knowing that her post was purely funded to work on the Safe You Project and the Hampshire Drug Scope Project. She stated that she was employed to work on other projects. However, the Research Assistant Workplan at R1 217 dated 4 September 2015 indicates that the work was slightly wider. The properties page at R1 216 indicates that it was created by Professor Petroczi on that date. The claimant accepted that she received it. We note that the work on the Frontiers' paper (which we deal with later) was to provide "help".

29. Professor Petroczi's evidence was that she met with the claimant and they discussed the workplan at R1 217 on her first day of work. During that time, the claimant worked on projects but she did not work independently and relied heavily on Professor Petroczi's help with most aspects of work apart from conducting qualitative interviews and analysing qualitative data. Parallel to this work, Professor Petroczi was part of a pan-European consortium which in November 2015 successfully bid to the International Olympic Committee with the LEGIT project. This was a project that focused on how elite competitive athletes perceive the legitimacy of anti-doping policies and procedures and how they can support the anti-doping. The claimant worked on this project under Professor Petroczi's supervision and her salary was funded from this project during September to December 2016. This represented the best use of resources because at that time the Safe You project no longer had sufficient funding and the second phase of the Hampshire County Council project was on hold.

30. In her evidence, the claimant alleged that the collection of qualitative data for the LEGIT project was not part of her contractual duties and it was untrue for Professor Petroczi to say that it was. We find this assertion to be disingenuous. If the funding for her to do the LEGIT project had not been available, her contract would have ended in September 2016.

31. We were referred to various matters relating to the Safe You project which as best as we can discern included a quantitative study, a qualitative study, a booklet called "The Safe You Tool Introduction and Guide" relating to those studies and an article called "I Want It All and I Want It Now" flowing from those studies, which was published in the journal Frontiers.

32. The claimant's evidence was that she became concerned about the reliability of the Safe You Project quantitative dataset and the insistence of some consortium members, including Professor Petroczi, to nevertheless use it. She relied on this to preface her concerns that the dataset was fabricated. She referred us to an exchange of emails in May 2016 in which Professor Brand refers to "holes and missing data" in field data. In evidence, Professor Petroczi explained that such holes arise where participants do not complete every question in a long questionnaire and that this is quite common. She further stated that it does not render the dataset unreliable. We accept Professor Petroczi's evidence and we find that the exchange of emails between her and Professor Brand is an intellectual debate as to how to best to deal with the imperfect data.

33. The claimant's further evidence is that she met with Ms Milena Muzi in September 2016, at a Safe You meeting in Thessaloniki in Greece, who told her that there were several duplicate questionnaires in the Cypriot and Greek dataset which inflated the prevalence rates of drugs users in those countries. We were referred to email correspondence at R1 455-460. The claimant is in involved in these exchanges. There is an email from Ms Muzi dated 17 August 2016 which refers to a *"big incongruence in Cyprus data"* at R1 455. This is expanded on at R1 457-458 indicating that certain data is duplicated. At the top of R1 456 Doctor Barkoukis states that it is puzzling but *"the obvious solution is to delete these [duplicate] cases".* There is no mention of Greek dataset.

34. Whilst the claimant's evidence is that Ms Muzi was very upset about this issue and decided to no longer work in academia, the email correspondence does not support this. Ms Muzi identified an issue and Doctor Barkoukis suggested the obvious solution.

35. We were referred to an exchange of email correspondence between Professors Brand and Petroczi on 16 November 2016 in which Professor Brand appears to be telling Professor Petroczi about the corrected Cypriot data and its impact on the outcome figures within the shortly to be published Safe You booklet (R1 483-484). Professor Petroczi expresses extreme surprise in her response at R1 483 and it appears from the final email that Professor Brand indicates that he it had taken a long time to sort the issue out, but it was sorted out (R1 483). Professor Petroczi gave evidence that the booklet included the corrected dataset. We were referred to R2 and an email from Ms Senja Pallowski dated 16 November 2016 indicating as

much.

36. The claimant did not raise any concerns about this matter at the time despite her evidence that she realised at that point, after speaking with Ms Muzi in September 2016, that collaborating on Safe You was not safe professionally. Her evidence was that she had invested a lot in the project but believed she could continue but distance herself from the issues.

37. The claimant's case is that from November 2016 onwards, Professor Petroczi's demands and research initiatives became more erratic and non-scientific. She referred to R1 281-286 in support of this. However, on reading those emails they appear more to be simply discussions around matters relating to the publication of the Safe You booklet and Professor Petroczi exercising leadership on them.

38. The claimant's case is also that Professor Petroczi improperly involved her own daughter in the Safe You Project disregarding the scientific procedure it was claimed to use. By this she meant that the project claimed to use real life stories of Safe You research participants. The claimant alleged that the Professor's daughter was held out to be one of the research participants.

39. Professor Petroczi's daughter, Ms Annie Bachmann, is a circus performer. The respondent's position was as follows. The target population of the Safe You projects is adolescents and young adults involved in regular exercise, but not involved in competitive sport undergoing anti-doping regulations. Ms Bachmann fitted the study profile. Her story added an interesting dimension to the project and she was available to participate. The case studies and videos had to be produced under great time pressure and on a limited budget. Friends and family members were involved (including the claimant's partner and the Associate Dean's (Mr Andy Hudson's) son – R1 449-450). The participants were not paid for their involvement. There were female participants in the project, but the participants nominated for use in the case studies and videos by the countries involved were all male. This was why Professor Petroczi's suggested that a female was needed as a case study in the video.

40. The claimant interviewed Ms Bachmann for the case study, had the interview transcribed and attended the filming of the video at which she acted as producer/assistant (R1 446-449). The claimant accepted in evidence that she did not raise any concerns about Ms Bachmann's involvement at the time. We note that the claimant did not raise any concerns at that time or thereafter about the use of Mr Hudson's son.

41. There was no evidence that Ms Bachmann was stated to be a participant in the study. Professor Petroczi gave evidence that there was no such statement. Moreover, the claimant admitted that she had not read the promotional booklet. We have seen Annie's Story at R1 447A and there is nothing there to indicate that Ms Bachmann is a participant. Indeed Ms Bachmann was not paid for her role in the case study. We accept the respondent's evidence as to Ms Bachmann's involvement and see nothing obviously wrong with this in the circumstances. We did feel that perhaps there was the possibility that it might be assumed that Ms Bachmann was a participant even if this was not expressly held out to be the case.

42. The claimant made a number of other allegations at paragraph 9 of her witness statement. However, these were not put to the respondent's witnesses in cross examination and were untested. We therefore do not make any finding on them.

43. The claimant's further case is by December 2016, she was quite appalled by Professor Petroczi's behaviour because she was dismissing any kind of rule or procedure. She had serious concerns about the appropriateness of continuing to collaborate with her. This arose from Professor Petroczi taking the claimant's name off the authorship of the Safe You Co-creation paper (at R1 319-320) and returning her first-author manuscript with substantial amendments such that was completely differently and without tracked changes (R1 313-315). This she stated was in breach of authorship etiquette.

44. We found this was a reference to two papers. With regard to the first paper, this appears to the paper which was published in Frontiers journal (Lazuras L et al (2017): "I Want It All, and I Want It Now"). We heard evidence from Professor Petroczi that they were only allowed to credit two authors from each country and given the level of work that the claimant had undertaken it was not appropriate to include her as one of the two. Professor Petroczi suggested a way round this was to add those who did not make it to the two per country limit as acknowledgments and this was accepted (R1 317).

45. With regard to the second paper, this is at R1 312A and is in fact the WP5 Co-creation paper. The claimant was credited as first author on this (at R1 313), but her concern was that the manuscript was changed by Professor Petroczi to the extent that she did not want to be associated with it. She complained about this to Professor Zelli on 24 December 2016 (at R1 309-312), who suggested that she speak to Professor Petroczi about it. We can see at R1 313-316 that there is a discussion regarding the length of the paper. Ultimately the claimant wrote to Professor Petroczi: *"I understand that you primarily leaded (sic) the process and you know best so I am happy to leave the paper as is"* (at R1 313). Whilst the claimant suggested in evidence that the other consortium collaborators were obviously annoyed by the Professor's demands and procedural impositions and limited their intervention to refusing to contribute, this is not borne out by the correspondence referred to at R1 314. In fact Professor Brand states that he did not have time over Christmas and the New Year to deal with the matter and expressed his thanks to Professor Petroczi for all her efforts.

46. This paper was submitted to the International Journal of Drug Policy in December 2016 but was rejected on 20 February 2017 (R1 366). The paper has still not been published, but Professor Petroczi gave evidence that she will revise it as corresponding author and if it is published the claimant will continue to be credited as first author. This is also what Professor Petroczi stated in her e-mail to the claimant of 13 April 2017 at R1 411 to which the claimant responded *"I totally agree with your work plan"* at R1 410b.

47. Doctor Elizabeth Opara became the claimant's line manager in November 2016. On 15 November 2016, the respondent's HR department alerted

Doctor Opara to the upcoming end date of the claimant's fixed-term contract on 31 December 2016 and provided information as to the procedure she needed to follow (at R1 278A-E). Further discussions revealed that the respondent was required to provide the claimant with one month's consultation and then one months' notice. The HR department suggested that in order to achieve this, the claimant's contract should be extended until 11 February 2017 (R1 296A). This would appear to be two months less one day beginning from the commencement of the consultation on 12 December 2016. At some point thereafter the expiry date was changed to 28 February 2017 but we heard no evidence as to why.

48. It would appear that the claimant was invited to a meeting with Doctor Opara and Professor Petroczi on 9 December 2016 to discuss her contract renewal. This was not put to the respondents' witnesses and we cannot find any other reference to it in the documents before us. Mr Lunson, the respondent's HR Adviser states in an email dated 13 December 2016 (at R1 296A) that the consultation commenced on 12 December 2016 and so it might be that this meeting took place then. At the meeting the claimant's evidence is that she was told that they wanted to offer her an extension but the Dean insisted on terminating her contract for administrative reasons. The claimant's further evidence is that she went away on 14 December 2016 not knowing whether she would be able to stay in Kingston after Christmas 2016.

49. However, Doctor Opara wrote to the claimant on 21December 2016 inviting her to a meeting to review the expiry of her fixed-term contract on 9 January 2017 (R1 297-298). The contract was expressed to expire on 28 February 2017 in that letter. The claimant accepted that she received this letter. The letter set out the purpose of the meeting as follows:

- *The reason(s) why your employment is likely to come to an end at the end of your Fixed-Term Contract on 28 February 2017;*
- *Whether you believe that your employment could be continued;*
- *What alternative work may be available at Kingston University and whether you are interested in being placed on the Redeployment List;*
- *Your entitlements if your employment cannot be extended."*

50. The respondent also wrote to the claimant on 3 January 2017 stating that her contract had been extended to 28 February 2017 and asking her to sign and return the letter (R1 321). The claimant did not do so but asked to wait until after she had spoken to her line manager.

51. In cross examination the claimant accepted that both Doctor Opara and Professor Petroczi were very supportive of her at that time and that whilst HR were *"fussing around"* they would do their best to ensure that she could return to work in January 2017. She further stated that for this reason she did not open the e-mail that they sent her in January 2017.

52. Discussions surrounding extension of the claimant's employment had been going on for from at least October 2016. In October 2016, Professor Petroczi was approached by Professor Naughton, the Interim Assistant Dean, with an offer of two and a half months' funding to employ the claimant as an Early Career Researcher ("ECR") (R1 269). However, Professor

Petroczi's intention had been to extend the claimant's employment on the second phase of the Hampshire County Council project. The set conditions for the ECR funding were: it required a formal proposal; it could be taken up at any time between January and May 2017; it must be paid from the Staff Bureau; it must be spent on a project that was independent of the ongoing externally funded research; it must have an element of "step change" and benefits to the Faculty.

53. We were told that these conditions slowly emerged as Professor Petroczi kept submitting proposals that were not accepted. She gave evidence that there was a strong push towards using the time to write a grant but given that the claimant had no experience in writing grants it meant in practice that the Professor would have to undertake the work.

54. The claimant was fully consulted throughout this process. She decided to take the ECR offer and so Professor Petroczi prepared a feasible research proposal (at R1 276-278) which she sent to Professor Naughton on 26 November 2016 and which was finally approved on 1 December 2016 (R1 275-276). The claimant was copied into this e-mail correspondence by an e-mail of 7 December 2016. Thus the claimant knew that there was an offer of employment for two and a half months commencing on 1 January 2017 paid for by the Staff Bureau.

55. The proposal was for a short-term project centred on writing up the existing Hampshire County Council data from phase one for publication. It was devised to allow progression to phase 2 of the project, for which Professor Petroczi had funding. The idea was for the claimant to work on phase 2 following the ECR funded period. At this time the claimant was in agreement with this proposal.

56. Professor Petroczi was concerned about the effect of using the Staff Bureau and the impact on the claimant's employment status. However, this was an insistence coming from Professor Mike Sutcliffe, the Dean (R1 271-272).

57. In an email to the Dean at R1 301, Professor Petroczi expressed her concerns about the extension of the claimant's contract to 28 February 2017. She states:

"I am very concerned about this situation because we made significant effort to meet the constantly evolving conditions this short term ECR funding, which was offered to ask (sic). Until now, we were under the impression that our proposal finally received approval and Julie [the claimant] would continue working with me on various projects in 2017, including the ECR project and other externally funded work.

I intended to continue with Julie's contract for at least another 10 – 10,5 months from external funding and I confirm this to Raid (Professor Alany) and to Declan [Professor Naughton] (both reads in cc) on several occasions in the past three months.

In October, Declan has approached me on your behalf about the possibility for a 2,5 months ECR funding in exchange for a bespoke, stand-alone project (email attached). Julie appreciated this offer and she was keen on

taking this opportunity, we submitted three proposals and finally received an approval on December 19th for 2,5 months on condition that it had to be paid on staff bureau but with flexibility and time 2 July 2017 (email attached).

Because Julie had a contract which I intended to extend on external funding regardless of the ECR 2,5 months funding, I repeatedly asked Declan to discuss the possibility of simply extending Julie's contract to avoid unnecessary bureaucracy, confusion and the need for a 2 months consultation/redeployment and Notice period now – with 2,5 months paid by the Faculty and 10,5 months paid by my external funding. I do not understand why Julie's contract two months only to be terminated after February 28th 2017.

I was informed that I need your explicit permission to extend Julie's contract thus I would appreciate the opportunity to discuss this with you at your earliest convenience. I am available tomorrow (23rd of December); or on and after January 9th; and via Skype and email at any time."

58. There was further email correspondence between Professor Petroczi and the Dean that evening which ended with Professor Petroczi again asking to meet with him (R1 299-301). Doctor Opara emailed Professor Petroczi on 23 December 2016 asking whether she had heard anything from the Dean. In response to Professor Petroczi's reply that she had heard nothing and asking for her suggestions, Doctor Opara states (at R1 305):

"Yes, his take on all of this is 'interesting'!. I am going to send an email clarifying the reason for the so-called 'poor' handling of Julie's contract and back up your suggestion regarding the extension of the contract but I do not think Mike will budge and he has the final say."

59. In response, at R1 304, Professor Petroczi agrees and states:

"Just to add (explain) my frustration… Julie and I in the middle (sic) of a data collection for the IOC grant (she did two focus groups and plans for the third one in January). If her contract is finished, I either has to ask her (sic) to do it 'free'; or pay her on staff bureau. Recruiting somebody else to do it in January will not only add a significant delay (which is already bad because the ethics) but ruins the entire data.

Plus, we are still finishing and doing the evaluation for the EU grant and about to start the Hampshire project (on which she would be paid).

Thanks for your support. I'm prepared to take it up one more level (to MMQ) if you think it's worth a shot."

60. In further response, Doctor Opara states that she sent her email to the Dean and Professor Petroczi responds thanking her and asks *"does Julie know about this at all?"* (at R1 303).

61. At R1 302 there is an email from the Dean to Mrs Paula Bruton in the respondent's HR department from earlier that morning on 23 December 2016, effectively asking her to disentangle the situation concerning the claimant's contract extension/ECR funding which she describes as

something that *"seems to have become extremely messy".*

62. At R1 306-307 Doctor Opara emailed Professor Petroczi and the Dean (as she indicated above), cc'ing various people including Mrs Bruton, later that morning, expressing her concerns about the claimant's contract extension/ECR funding. The email states that she will be meeting with the claimant on 28 February regarding her contract and in her mind "*it would make sense to extend the contract to whenever the external funding, which Prof Petroczi has, ends."*

63. In response to everyone, Mrs Bruton sent an email later that morning (at R1 307) in which she states that she thinks that they may have ended up over-complicating the situation which in essence is very simple and she suggests that the solution now is to treat the extension to accommodate the consultation period as a *"'normal' extension"* without the need to go through a consultation and end of contract process. She further states:

"*What needs to be decided in the light of the remaining funding is the extent to which the contract can now be extended beyond March, if appropriate."*

64. Mrs Bruton ended her email by indicating that in the New Year a number of them need to get together *"to carry out a bit of a lessons learned exercise around this example."*

65. On 8 January 2017, Professor Petroczi emailed the claimant to welcome her back (after the Christmas and New Year holidays) and stating that she hopes she had a good break (R1 328-329). In her email she summarises the position with regard to the various projects that they were working on. We note that in the email, Professor Petroczi mentions the position regarding the Hampshire Drug Project and the claimant being the corresponding author on the DNP paper.

66. In response, the claimant emails Professor Petroczi later that day as follows (at R1 328):

"I hope you had a good break as well!
I am meeting with Liz at 10 am tomorrow. I can pop in to discuss future plans as soon as I finish with her if you're around."

67. Professor Petroczi replied that she would be available (at R1 328).

68. The claimant attended her meeting with Doctor Opara on 9 January 2017. The account of each person as to what was discussed at this meeting is markedly different. The claimant relies on this meeting as where she first raised a number of protected disclosures relating to nepotism, fraud and data fabrication. Doctor Opara denies that these matters were raised at that meeting.

69. The claimant's evidence in her witness statement was that this was the first opportunity that she had to discuss her future work relationship with someone other than Professor Petroczi. She stated that she expressed various concerns around the continuation of her work and in particular that she did not want to work with Professor Petroczi anymore because she did

not share her research practices. She further stated that she specifically referred to the following: Professor Petroczi involving her daughter in research studies; that she was excluded from drafting a manuscript which potentially contained fabricated data; and that she could not progress with her own work because some countries in the Safe You consortium (Greece and Cyprus) were not delivering the transcripts that she needed to analyse the WP4 focus groups. In oral evidence, the claimant said that she only phrased these concerns using the words *"the usual misconduct and fabrication"* and did not go into further detail. In answer to our questions she said she referred to *"the usual academic misconduct".*

70. Doctor Opara's written evidence was that she informed the claimant again that her contract was due to end on 28 February 2017 and advised her of the availability of funding for a further six month contract from phase 2 of the Hampshire County Council project. She said that the claimant was already aware of this. Doctor Opara stated that the claimant told her she was planning to apply for jobs during the extension period which would advance her career and that she was not seeking an extension of her current contract but looking to move on. She would be applying for lecturing posts either at the University or elsewhere and asked to be put on the Redeployment List for academic jobs only. Doctor Opara further stated that she got the impression that the claimant did not want to continue working with Professor Petroczi. However, she advised the claimant to rethink her decision because funding was available to allow her to stay and this would enable her to look for another job whilst she was working.

71. In oral evidence, Doctor Opara stated that their discussion was primarily about setting up a new contract. In the meeting, the claimant she said she did not wish to work at Kingston beyond 28 February. Doctor Opara was surprised and asked her why and the claimant replied that it was around the way the contract extensions had been agreed and she wanted to move on. Doctor Opara told the Tribunal that she understood this because employment is not certain. The claimant also said that she did not believe her pay was high enough for a level 7 Research Assistant. At this stage, she then said that she was not happy with Professor Petroczi. Doctor Opara asked why and the claimant said it was in relation to certain research practices. Doctor Opara asked why and the claimant replied that her name was taken off a paper. But Doctor Opara stated that the claimant did not mention nepotism, fraud or data fabrication at that meeting. There was a discussion about what the claimant would do, because Doctor Opara was very concerned that the claimant wanted to leave when there was money available and she had nothing to go to. They discussed other jobs she could do, including Psychology.

72. After the meeting, Doctor Opara sent an email to Mr Lunson at 12.53 (on 9 January 2017) summarising their discussion. This is at R1 326-327 and states as follows:

"I had my meeting with Elisabeth (Julie) Vargo today and in summary:

She is planning to apply for jobs during the extension period which will be an advancement in respect to her career. Essentially she will be looking to apply for lecturing posts either here at Kingston (and so she wishes to

wishes to (sic) be placed on the Redeployment List although she would only be interested in academic jobs) or elsewhere and thus will not be seeking an extension of the current contract. I reminded her that the notice period is one month."

73. We prefer the evidence of Doctor Opara as to what occurred at their meeting on 9 January 2017. We found her written evidence, her oral evidence in cross examination and in answer to questions from the Tribunal to be clear and consistent. We found her to be a very credible witness. We also take into account her contemporaneous record of the meeting in her email to Mr Lunson. The claimant's evidence on what is at the core of her claim was inconsistent between her written evidence which was quite emphatic and what was said in cross examination and in answer to our questions, which ended up being a description of a very general discussion, at its highest referring obliquely to the matters set out in her witness statement as *"the usual academic misconduct".* On balance of probability we find that the claimant did not raise the specific issues of nepotism, fraud or data fabrication as she alleged.

74. Immediately after leaving Doctor Opara's office when their meeting had ended, the claimant went to see Professor Petroczi in her office, which is next door to Doctor Opara's.

75. Doctor Opara and Professor Petroczi met at lunchtime as they were both coincidently leaving their respective offices. This was after the claimant's meeting with Professor Petroczi. Professor Petroczi said to Doctor Opara*: "she's leaving"* (referring to the claimant) and Doctor Opara replied: *"I know".* Under extended cross examination both Professor Petroczi and Doctor Opara emphatically denied having any discussion as to what had happened in the meeting between Doctor Opara and the claimant. The claimant's position was that they must have spoken to each other about it, but there is no evidence other than inference that they did. We accept the respondent's evidence that there was no such discussion.

76. We are further persuaded by the evidence of the claimant's email to Doctor Opara dated 13 March 2017 (at R1 523) which raises her concerns about Professor Petroczi but makes no mention of the allegations of nepotism, fraud and data fabrication which she claims to have raised at their meeting on 9 January 2017. The thrust of her email is concern about work and authorship.

77. On 13 January 2017, Doctor Opara wrote a letter to the claimant confirming their discussion on 9 January 2017 (at R1 341) as to redeployment and that her contract will end on 28 February 2017. The letter confirmed that the claimant had two years' continuous service and qualified for a redundancy payment.

78. On 19 January 2017, Professor Petroczi emailed Doctor Opara (at R1 342) as to the offer of funding for 6 months for the claimant to finish the Hampshire Drug Project. It was put to Professor Petroczi in cross examination that the final paragraph of this e-mail was proof that she was aware of the allegations that the claimant had made about her. The final paragraph states:

"I am sending this because I'm keen on finding solution (sic). Nonetheless, I am very frustrated and upset about the whole thing - but willing to move forward in a constructive way to benefit all involved."

79. In answer, Professor Petroczi explained that she was frustrated about the situation in which she had been fighting with the University to find funding and a way of keeping the claimant in employment and upset by the claimant's decision to leave immediately. She was seeking a solution that she believed was in the interests of her and the claimant. She felt it was not in the claimant's best interest to leave straight away. It was put to her that this was not a genuine offer but was *"a pseudo contract".* Professor Petroczi responded that the offer was *"serious and genuine".* We do not accept the claimant's assertion.

80. Doctor Opara passed the details of this offer of funding onto the claimant on 24 January 2017 and the claimant responded saying she has contacted Professor Petroczi and accepted it (R1 344). We do note that the claimant's acceptance of the offer does appear greatly at odds with her assertion that the offer was not genuine. On balance we accept Professor Petroczi's evidence and find that the offer of employment was a serious and genuine one.

81. On 26 January 2017, the claimant emailed Professor Petroczi with her proposed work plan (at R1 353). In reply Professor Petroczi responded to each point and in particular she reminded the claimant that writing up the Hampshire paper and undertaking a few workshops/seminars was part of the funding she received for January and February.

82. On 27 January 2017 the claimant e-mailed Professor Petroczi with her revised work plan (R1 352). In particular, she stated that she could not start a new Hampshire study from scratch and was offering three months' work on other tasks and 3 months' work producing the Hampshire paper and workshops. In reply that same day, Professor Petroczi stated that whilst her proposed work plan made perfect sense, she could not fund it from the Hampshire project money and she indicated that she had copied in Professor Naughton and Doctor Opara to see if 6 months' general funding is available (R1 352). Doctor Opara responded that same day indicating that the Dean had to approve arranging a new contract first and Professor Petroczi replied stating that the claimant did not appear keen on doing the Hampshire project work or starting anything new and that she was not in a position to fund her for 6 months to finish writing papers, hence copying in Professor Naughton in case there was more generic funding available.

83. At R1 364-365 is the claimant's completed fixed term contract review form which has been signed off by Doctor Opara and the Dean/Director confirming the non-renewal of the fixed term contract.

84. In written evidence, Professor Petroczi said that after her email to the claimant on 27 January 2017, the claimant did not raise the matter of the contract with her further either verbally or in writing. She assumed that the claimant had reverted to original decision to leave the University because she did not want to work on the Hampshire County Council project and

wished to pursue an academic career elsewhere.

85. On 28 February 2017, the claimant emailed Professor Petroczi and Professor Naughton attaching first draft of the Hampshire paper and expressing her keenness to complete it and send it for publication even if she no longer works for the University. She ends her email with the words *"thanks for everything keep in touch"* (R1 368A).

86. In written evidence, the claimant' evidence at paragraph 16 of her witness statement was, in essence, that she did not raise the matter further. In oral evidence she said that she was waiting to hear from the respondent and did not believe it appropriate to prompt them for a response even though she wanted to stay at the University. However, at R1 384 the claimant did approach Professor Naughton about her work commitments for the remainder of her contract but she does not raise the issue of staying or further funding.

87. On 30 January 2017, Mr Lunson emailed the claimant at R1 358 advising her as to the amount of her redundancy payment of £2,424.20 representing 4 weeks' pay payable after her last day with the respondent. The e-mail attached the letter at R1 359 from Dr Opara previously sent dated 13 January 2016 (in error because this should read 2017). The claimant did not respond to this email.

88. Turning them to the end of the claimant's employment with the redundancy. Having considered all of the circumstances we find on balance of probability that the claimant's employment terminated on 28 February 2017. This was by way of the expiry and non-renewal of her fixed-term contract. This is a dismissal in law. The respondent offered to continue her employment by offering an alternative position. The claimant agreed but then changed the terms on which she was to be employed. Funding was not available to accommodate this and there was no further agreement between the parties. After the lack of agreement, the claimant took no steps to challenge the position or to query it further. In effect she acquiesced in the expiry and non-renewal of her fixed term contract. This is supported by her approach to the emails at R1 358 and 384.

89. The claimant applied for the position of Lecturer in Social Psychology (Maternity Cover) at the University of Surrey and was invited for interview on 15 March 2017. We were referred to the email correspondence with the University at R1 392. On 9 March 2017, Professor Petroczi was asked by the University by email to provide a reference for the claimant (at R1 398). The University of Surrey repeated its requests on 16 and 23 March 2017 having received no response (R1 399 & 402).

90. The claimant was unsuccessful in her application and was informed of the outcome in an email from the University of Surrey on 27 March 2017 (at R1 396). The claimant requested feedback and a copy of the reference letter received (at R1 395). Feedback was provided on 30 March 2017 (R1 394) giving reasons which related to her performance at her interview.

91. Professor Petroczi belatedly responded to the requests from the University of Surrey for a reference on 11 April 2017 (at R1 401) in which she explained

that she was not able to provide one because of a conflict of interest. She further explained that her daughter is currently studying in the Social Psychology class that the advertised post covers and her daughter knows the claimant. Professor Petroczi said in evidence that she felt it inappropriate to provide a reference for this reason and had the claimant informed her before giving her name as a referee, she would have advised her accordingly. In reply, the University of Surrey stated that it understood Professor Petroczi's reasons (R1 401). We find that whilst the response from Professor Petroczi was belated, the decision not to offer the claimant the position had already been made by the University of Surrey on 27 March 2017, that the claimant was aware of it and there is nothing to indicate that the lack of a reference from Professor Petroczi played any part in that decision.

92. On 10 March 2017, the claimant sent an email to Doctor Opara requesting a meeting *"regarding the pending work I am doing for Andrea (and Kingston)"* (at R1 524). In the claimant's witness statement, she stated that this email was intended to arrange a meeting to discuss payment of outstanding invoices (at paragraph 18 of her statement). Doctor Opara responded on 13 March 2017 suggesting a date of 24 March 2017 for the meeting (R1 523).

93. On 13 March 2017, the claimant send a further email to Doctor Opara which she alleges contains protected disclosures (at R1 523). The content of the email is as follows:

"Dear Liz,

I wanted some reassurances regarding the work I'm still carrying out for Andrea. We have three manuscripts in preparation and a manuscript waiting for resubmission but unfortunately she has dramatically changed her attitude in my regards since I told her that I no longer wished to work at Kingston University. Besides being displeased with the work I did in the last two months, she has also cut me out from formal communication regarding the projects I was involved in. She has also changed authorship agreements on these papers so at this point, I am very concerned about her future behaviour.
It is a very unhappy situation and I kindly ask you to keep confidentiality. My initial intent was to let things go and hope tempers will cool off but I'm seeing that the situation is not improving. I am worried about investing a lot of time and energy into the papers and not getting acknowledgement for it. Should I continue working on these papers? Is there any way for a third party to guarantee that agreements between me and Andrea are kept intact?
I apologize for getting you involved. Perhaps I could call you in a time when you can squeeze in a quick chat?
Thank you in advance."

94. We again note, as earlier, that if, as the claimant has claimed, she had made previous allegations of protected disclosures to Doctor Opara on 9 January 2017, one would have expected some cross reference to them in this email and some enquiry as to what action Doctor Opara had taken since then.

95. The claimant stated in her further particulars (at R1 58d) that the email of 13 March 2017 contained protected disclosures in respect of breach of contract. In her subsequently further and better particulars she stated that this email contained protected disclosures in respect of both breach of contract and fraud (at R1 58r). However, in cross examination she said that this email (and her earlier one of 10 March 2017) did not contain protected disclosures. We find that clearly the 10 March 2017 email contains no protected disclosures, it is just a request to have a meeting to discuss pending work. Further, the email of 13 March 2017 simply raises her concerns about her relationship with Professor Petroczi and the work she was doing which she attributes to her telling the Professor that she no longer wishes to work for the respondent.

96. Further email correspondence at R1 522 on 17 March 2017 between the claimant and Doctor Opara indicates that the claimant met with Professor Naughton the previous week regarding the Hampshire County grant manuscript and her concern was that she could not work on it because she was awaiting a dataset from Professor Petroczi and the Professor had not replied to her correspondence for weeks now. A meeting was arranged for 12:30 pm on 24 March 2017.

97. The meeting between the claimant and Doctor Opara took place on 24 March 2017. At the meeting, the claimant complained that Professor Petroczi was not communicating with her regarding the projects and papers she was finishing off. Doctor Opara suggested that she speak to Professor Petroczi. However, we note that on 17 March 2017 the claimant had emailed the Professor Petroczi and asked if she could attend the Safe You consortium meeting the following Monday to meet up and discuss the pending manuscripts and the Professor responded that the agenda was tight, but if she could come at 3 pm for 10 minutes to give a brief update on the qualitative paper that would be beneficial (R1 390-391). That meeting took place on 20 March 2017. It therefore does not appear to be the case that Professor Petroczi was not communicating with the claimant as she represented to Doctor Opara at the meeting on 24 March 2017.

98. Also at the meeting on 24 March 2017, the claimant mentioned that she had given Professor Petroczi's details as an employment referee but was concerned that Professor Petroczi had not responded to her emails (it was not clear what emails she was referring to). Doctor Opara asked her if she had spoken to Professor Petroczi to ask if she was willing to be a referee and the claimant said she had not. Doctor Opara offered to speak to Professor Petroczi about this.

99. On 27 March 2017, the claimant was informed by the University of Surrey that her application was unsuccessful and on 30 March 2017 she received the requested feedback.

100. We note the subsequent e-mail correspondence between the claimant and Doctor Opara at R1 518-521 dated 31 March and 5 April 2017 in which the claimant complained that she had still not heard from Professor Petroczi regarding her reference. We further note that by this time, the claimant had already been told by the University of Surrey that her application was unsuccessful and given the reasons why. We would express our concern

that again the claimant appears to have been disingenuous in what she said to Doctor Opara at that time about Professor Petroczi. The claimant was indicating that she had some reliance on the reference for a job that she already knew she had not got and had been given reasons that indicated that this was not connected to the reference.

101. On 11 April 2017 the claimant met with Professor Petroczi at the claimant's request. At the meeting the claimant raised her concerns that Professor Petroczi had not provided her with a reference for the position with the University of Surrey. Professor Petroczi stated in her witness evidence that she explained why she was unable to do so and the claimant became verbally abusive, very agitated and upset, and screamed at her. She further stated that the claimant's shouting was overheard by two colleagues in an adjacent office and caused considerable concern. Further, that the claimant accused her of deliberately blocking the claimant's career and made very serious accusations about her professional integrity. Professor Petroczi stated that the claimant threatened to report her to her bosses for academic misconduct unless she gave her a positive reference. She further stated that she had no idea what the claimant was talking about, that she attempted to reason with her, and failing that, she simply asked her to stop and refused to engage further.

102. In oral evidence the claimant stated that Professor Petroczi told her that she did not deserve a reference for not speaking to her in the corridor. Professor Petroczi said in oral evidence that what she said was why did the claimant not ask her about the reference when they passed in the corridor and she would have provided the explanation why she was not able to. The claimant accepted that she had screamed at Professor Petroczi but only because she was upset that she had lost a job opportunity because of the Professor's failure to provide a reference. However, at this stage we note that the claimant knew why she had not got the job and was assuming that it was to do with the lack of a reference rather than being rejected on merits as the feedback she had received indicated.

103. We note that later that evening, Professor Petroczi emailed the University of Surrey as to her inability to provide a reference (R1 401). The response from the University of Surrey (at R1 400 and 401) does not indicate that they had drawn any adverse inference from this and moreover by this time the decision to reject the claimant's application had already been made on the basis of her performance at interview.

104. Professor Petroczi stated in evidence that she found the whole episode (at the meeting) very disturbing and reported it to Mrs Bruton in an email that she sent that evening (at R1 406):

"I am sending this email to you because I think you are the SEC HR Business Partner. If not, please forward it is appropriate.

I am writing this email out of grave concern. This afternoon, I had an ad hoc meeting with Dr Elizabeth Julie Vargo, which she initiated, about giving her reference in job applications. The meeting took place after a research meeting in TB8002 around 5:15pm.

During this meeting, she was abusive, unreasonably aggressive, loud, emotional and shouting which was overheard by two colleagues in the adjacent office and caused considerable concern. During the course of this, she accused me of deliberately blocking her career and made serious accusations about my professional integrity.

In order to keep the meeting under control I asked her to stop repeatedly and offered to continue the discussion at some other time, but she kept interrupting and left threatening me with legal actions unless I agreed to write a positive reference for her.

For now, I do not wish to take it any further but if I need to meet with her for any reason in the future, I respectfully request to have arrangements for a third person present in the room. Although Dr Vargo is no longer employed by Kingston University, there are ongoing projects to finish which we agreed to carry on when she decided to leave the University in February this year. For this reason, I copy my line manager, Dr Opara and Prof Naughton on this email (sic)."

105. On 13 April 2017, Professor Petroczi sent an email to the claimant (at R1 408-409) in which she said as follows:

"Following the meeting on April 11th, and your approach and attitude toward (sic) me, I am sending this email to inform you that I would prefer not to work with you directly in the future. I am very disappointed by the way you handled the meeting you initiated. Because you did not let me finish a single sentence, I wish to take this opportunity to emphasize that it is not the fact that you left Kingston I am disappointed with but the way you chose to do it; and your attitude since.
Questioning my professional integrity and making false accusations are not appreciated and your tone, overheard by colleague in the next office, caused concerns."

106. The email went on to set out arrangements regarding outstanding projects and ended as follows:

"Regarding the reference request for Surrey university, I have informed them that I have a conflict of interest (my daughter who you know socially being the class the maternity cover was advertised for); thus I felt uncomfortable providing a reference. If you would have asked before putting my name as reference, I would have advised you the same.

I look forward to reading your manuscripts from the above projects and wish all the best in your future endeavours and career."

107. The claimant emailed Professor Petroczi on 13 April 2017 (at R1 408) in which she apologised for her behaviour at the meeting and stated that she raised her voice in despair finding out that she had lost a job opportunity because of false claims. Her email continues:

"Indeed, I have met your daughter because you brought her to a work meeting in Thessaloniki. It is contradictory though that employing your other daughter at Kingston University and/or using her as a case study in the

promotional videos you are producing for the EU is not seen as a conflict of interest to you. Indeed it was impossible to talk about references during encounters as you have been extremely non-collaborative and abusive both via our email correspondence and at formal/ informal encounters. Yet as a Professor you do have a duty of care in regards to your students and employees (I have been both!) and could have consulted me and/or HR before refusing. I feel that you acted in bad will when you refused to give reference (sic) and you have damaged me professionally and financially. This amounts to emotional damage I suffered because of your abusive behaviour over the last months.
I have informed the Dean (cced) that I intend to start a dignity at work protocol but hope that he can resolve the issue internally.
I have requested that the University guarantee a fair reference of my professional performance at Kingston University to future employers. I should not be discriminated by immoral behaviour and power abuse; the Institution you work for should guarantee that I be treated with dignity. Before not accepting your offer, in different occasions (sic) you described my work as exceptional and outstanding. Even after not accepting your contractual offer I have showed goodwill in continuing our pending projects (for free!), even after your mistreatment, which has escalated now to the serious negligence. Many people are aware of the distress I went through and attempted to negotiate our agreements. Over the months, I have tried in several occasions (sic) to prove my goodwill. It is very unfortunate that did not reciprocate.
I completely agree with your work plan and will continue working on pending projects with Neha, Declan and Vassilis.
I apologize again for raising my voice at our last encounter. I only expect to be treated fairly."

108. On considering the evidence, we accept Professor Petroczi's account of the meeting which clearly was a most unpleasant encounter for her. We do not accept that there is any basis for the rather wild allegations that the claimant made in her subsequent email. Her focus is essentially on the reference and the alleged harm that she believes this has caused to her. But by this stage the claimant was already aware that she had not got the Surrey job and had been given feedback as to why and there is no reasonable basis for her contentions.

109. On 13 April 2017, the claimant wrote by e-mail to Professor Sutcliffe, making a complaint under the respondent's Dignity at Work procedure (R1 407):
"Dear Prof Sutcliffe,
My name is Julie and I recently finished a contract with Kingston University (28th of February). I was employed as a research assistant by Prof Andrea Petroczi, who was also my PhD supervisor.
I am writing to ask for your help regarding an unfortunate situation that was created because of my decision not to accept a contract offered by Andrea for 2017. It appears that Andrea is very angry with me for this decision and has decided to retaliate and undermine my career.
Since I informed Andrea, her attitude in my regards changed completely. The last three months have been emotionally very straining for me. Andrea is impeding me to finish (sic) writing three manuscripts, refusing access to datasets and changing authorship agreements. She has outstanding payments with a transcription company and blamed me for them, thus the

company has chased me for the payments. She ignored my query regarding reference requests.
For this last issue I was advised by Liz Opara to personally speak to Andrea on the 11th April, as we were both attending the same meeting. Unfortunately, even on this occasion Andrea maintained her non-collaborative stance. Of particular relevance, was her statement that I didn't deserve reference because I didn't say hello and when I saw her in the Picton (the local public house).
Nonetheless, my attempts to understand why she is behaving like this resulted in her stating that she has already rejected a reference request for a job I applied for at the University of Surrey. This she stated, was on the basis of conflict of interest, as a daughter is studying at this institution.
Not only is the damage caused by this situation emotional (Andrea and I have worked very well over the years, and the advantages have been mutual) but this situation is now undoubtedly damaged my career and my finances.
I have searched for legal advice and it was suggested that I collect evidence (which I have over the months) and start off by raising a grievance, or better, a dignity at work procedure.
Before doing so, I still wanted to attempt resolving the issue in a straightforward manner by speaking to you. All I ask is that the university provides me with evidence for future employers that I am a suitable employee and I have no responsibility whatsoever for Andrea's unwillingness to provide feedback on my performance.
Obviously, I would be happy to meet and discuss the issue person. I am pretty much always available in the following weeks.
Thank you in advance."

110. The claimant initially relied upon this email as containing protected disclosures but without specifying which part or parts. However, in cross examination she stated that the only part of it which relied upon was Professor Petroczi's failure to provide her with a reference. In answer to Tribunal questions she accepted that she was aware that there was no legal obligation upon the respondent or Professor Petroczi to provide a reference although there was a common expectation to do so. She did add that it could have an adverse impact if one was not provided.

111. On 18 April 2017, the claimant emailed Doctor Opara, Mr Lunson and Professor Petroczi seeking clarification as to whether her fixed-term contract was terminated or if she was made redundant and how they proposed to progress the Dignity at Work procedure with Professor Petroczi (R1 412).

112. On 26 April 2017, the claimant attended a meeting with Doctor Opara and Mrs Bruton. We were referred to Doctor Opara's handwritten notes at R1 415A-F.

113. In written evidence the claimant stated that her intention at this meeting was to discuss her *"so-called redundancy*". However, she said they spoke very little about it because Mrs Bruton would not provide details. The claimant further stated that she told them that she was preoccupied with Professor Petroczi's *"pervasive and systemic misconduct which was completely out of control".* The claimant stated that she provided examples of Professor

Petroczi's misconduct and that she asked to view a research proposal to rule out the suspicion of plagiarism and fraud. She further stated that she explained to them that it become common practice on Professor Petroczi's part to plagiarise her intellectual material. The claimant's evidence continued that she *"disclosed all of these details because [she] hoped to gain credibility by providing more evidence of Prof Petroczi's misconduct".*

114. Doctor Opara said in her written evidence that the purpose of meeting was to discuss allegations that the claimant had made against Professor Petroczi following their meeting on 11 April 2017. She stated that at the meeting the claimant raised with her for the first time that Professor Petroczi had fabricated data but she provided no detail about it. Doctor Opara further stated that the claimant also raised concerns regarding Professor Petroczi's performance. This shocked her because the claimant had never mentioned it before and she had worked with Professor Petroczi for 16 years and never doubted her integrity or heard of any other such allegations against her. In oral evidence, Doctor Opara stated that the claimant raised concerns about her authorship on a number of papers and that she believed that Professor Petroczi had appropriated her skillset. Doctor Opara told us that she told the claimant that these were very serious allegations and they would investigate them. Doctor Opara told the claimant that the first thing they needed to do was to have a meeting with Professor Petroczi, when she returned to work, as she was on study leave at that time.

115. Mrs Bruton said in her written evidence that at the meeting the claimant talked mainly about authorship rights and the claimant seemed to think that she was entitled to something from projects she had worked on whilst employed. Mrs Bruton further stated that the claimant also made of a vague allegation about fabricated data but gave no detail and did not say which project this related to who was involved or what the fabrication was. Mrs Bruton stated in oral evidence that the claimant raised general concerns about fabricated data and that she was very unhappy working with Professor Petroczi. She further stated that she found the fabricated data issue very confusing because the claimant mentioned a number of papers and projects and it was very unclear what she was talking about. Mrs Bruton said that she and Doctor Opara attempted to get this clear and that was what they wanted to talk to Professor Petroczi about.

116. On 5 May 2017, the claimant e-mailed Mrs Bruton, Doctor Opara and a number of others (at R1 417-418) as to their meeting on 26 April 2017:

"On Wednesday, the 26th April Liz Opara, Paula Bruton and myself had a meeting in regards to the abuse and mistreatment I suffered because of Andrea's behaviour.
During our informal meeting, we discussed the reasons behind the abusive behaviour and the fact that this is happening while being unfairly dismissed by HR. I am aware that Andrea has plagiarized my work throughout my postdoc and has claimed my skillset on several successful grants she is involved in. Liz and Paula acknowledged my concerns and suggested I replace Andrea's performance reference with Prof Naughton's (as she has already refused to give reference justifying her decision with a malicious falsehood) and agreed that authorship agreements for two qualitative research papers I have produced for SafeYou project (led by Prof Vassilis

Barkoukis) be restored. Having designed the studies, collected the data for England, interpreted and reported results, it is only fair that I be first and corresponding author for these manuscripts. This is a fair and very reasonable request and would allow me to disentangle from this unfortunate situation. In particular, this would also allow me to follow ethical standards in the publication process, as Vassilis Barkoukis has invited me to produce a research article with fabricated data for the SafeYou Consortium. Moreover, Liz and Paula agreed that disciplinary action would be carried out (as I'm concerned that Andrea will continue with her attempts to stifle my career) and the plagiarism matter would be be investigated.

Unfortunately Declan does not feel comfortable providing a reference and once again, Kingston University does not guarantee that I am treated fairly within an unfair dismissal that is getting uglier by the minute. Liz has told me that Andrea is on sabbatical and is not reply to emails so she would have to wait for her return (end of May) to discuss the matter.
Unfortunately I cannot wait for when Andrea decides to acknowledge this issue as I only have a couple of weeks to bring the issue to an employment tribunal. I do would like (sic) to specify that Andrea is selectively replying to emails. She had been in touch with the Birmingham research group throughout the week and has been sending us emails.

Following Kingston University's grievance procedure, I will wait 10 working days from our informal meeting before raising a formal grievance. This means that if the informal resolution process does not produce a positive outcome by Wednesday, the 10th of May, I will proceed with the formal stage on Thursday, the 11th May. Since the range of responses available to me are time limited (both the formal grievance procedure and a hearing at the employment tribunal) I am forced to highlight the importance of resolving this matter swiftly. If I can make a suggestion, you can arrange a skype call with Andrea."

117. Doctor Opara and Mrs Bruton replied to this email at afternoon (at R1 416) as follows:

"We acknowledge receipt of your email below, and would like to make the following responses to clarify some of the points you made:

- *There has not been an 'unfair dismissal by HR'. You were offered an extension to your fixed term contract which you turned down. From that point, due process was followed to end your contract.*
- *We did acknowledge that you had concerns regarding Andrea's performance and that you should seek a reference from another source. We did not agree that authorship agreements should be changed; we asked you to tell us what resolution you are seeking to situation, which you outlined as being changes to the authorship arrangements, and we undertook to discuss these with Andrea.*
- *We did not guarantee that disciplinary action be carried out; we said that investigation will take place to assess if the disciplinary process and warranted. We were clear that any misconduct would be dealt with internally.*
- *We are seeking to ensure that you are treated fairly within the scope of our obligations to you regarding references; no unfair treatment as taken*

place and no unfair dismissal has taken place.

We also investigated further the matter of your ability to raise a grievance outside of employment with the organisation. It is now clear that you cannot invoke an organisational procedure after leaving its employment. Therefore, we would not be able to accept or deal with any grievance you might raise. Our apologies for giving you the wrong information at our informal meeting.

We will, however, do what we can to help resolve the issues around authorship. As we had already said, we will meet with Andrea when she returns to work and discuss the details with her."

118. On balance of probability we accept the respondent's evidence as to the meeting. In particular, the issues raised by the claimant were not set out clearly as her evidence suggests and this was why Doctor Opara and Mrs Bruton felt it necessary to approach Professor Petroczi to seek clarification. We would express our concern as to the way in which the claimant has misrepresented what happened at the meeting in an email which she has sent to parties other than just Mrs Bruton and Doctor Opara.

119. On 25 May 2017, Mrs Bruton and Doctor Opara met with Professor Petroczi. Mrs Bruton's written evidence was that she and Doctor Opara explained to Professor Petroczi that the claimant was very unhappy with their relationship and the recognition that she was given for various projects. In particular, that the claimant claimed authorship rights were not what they should be. She stated that they asked questions of Professor Petroczi as best they could with the limited information they had from the clamant. They were satisfied with Professor Petroczi's answers and deemed no further action necessary.

120. We note the contents of Professor Petroczi's second witness statement which deals with the claimant's allegations as to the denial of authorship rights. In addition, the authorship issue appears to have been dealt with in January 2018 – as the communications from R1 532-538 indicate.

121. We would also note that the dataset issue as defined by the claimant in her replies to the respondent's request for further and better particulars at R1 58q-r is not that she did not receive the information she requested but there was a delay in receiving it (at R1 58r). Indeed it is clear from Professor Petroczi's email at R1 404 that the claimant was given information as to how to access to the dataset.

122. We note that Mrs Bruton provided a reference for the claimant to the University of Florida on 13 November 2017 (at R1 441). The claimant had put Professor Petroczi's name down as a reference in error. Professor Petroczi stated in evidence that at this time the respondent was involved in this employment tribunal case and she was not prepared to write a reference that did not include the bad relationship that developed. So the compromise was that she prepared a statement indicating the projects that the claimant was involved in, the reference was agreed with HR and sent out. We find nothing untoward arising from this. There was nothing to suggest that the claimant had lost this job opportunity as a result.

123. At the end of our hearing on 18 April 2018 Professor Petroczi stated in evidence that she had received a further request for a reference from The European Drug Network, to which the claimant had applied for a job as a scientific writer. On hearing this evidence, we could see that the claimant was very surprised and that she became very agitated. She said that she did not put the Professor down as referee and did not want her to provide a reference. I explained that this was not a matter for the Tribunal but one for the parties to sort out between themselves. Our further recollection is that the claimant stated that she would contact the European Drug Network.

124. At our resumed hearing on 18 July 2018, it became apparent in evidence that Professor Petroczi had responded to the reference request from the European Drug Network. In an email to them she stated that "*It is my understanding from the applicant (Dr Vargo) that my reference is no longer required"* (at R5). The claimant's Counsel asserted that the claimant had lost another job opportunity as a result of Professor Petroczi's actions. However there was simply nothing to support this assertion.

125. The claimant made a complaint directly to Frontiers magazine raising concerns about the validity of the data used in the "I Want It All, and I Want It Now": Lifetime Prevalence… paper, not being satisfied with the explanation given by the respondent and the Safe You Consortium to her concerns. This appears to first be raised by the claimant to Doctor McNamara at Frontiers on 9 November 2017 (at R1 488 -the first email in the chain is not in the bundle).

126. We were also referred to the various emails in R2 and R4. We note the letter from Doctor Barkoukis on behalf of the Safe You Consortium (at R4 3rd page) to Doctor McNamara in response to the concerns raised. In particular we note the sixth paragraph in which he expresses concerns as to why the claimant did not notify them of her concerns earlier, and only chose to draw attention to the potential problem one year after the paper had been submitted rather than ahead of submission, given her involvement in the project. We also note the seventh to ninth paragraphs setting out the re-analysis undertaken and the outcome. We also note the email dated 7 June 2018 from Doctor McNamara to Doctor Barkoukis which states that *"the Chief Editor has reviewed the investigation report and the revised results and is happy to proceed the correction"* (at R4 2nd page). We also note the Corrigendum that was issued (at R4 5th page to end).

Relevant law

127. Section 43A Employment Rights Act 1996 ("ERA"):

> *"Meaning of protected disclosure*
> *In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."*

128. Section 43B ERA:

> *"Disclosures qualifying for protection*

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
(a) that a criminal offence has been committed, is being committed or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged, or
(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed."

129. Section 43C ERA:

"Disclosure to employer or other responsible person
(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure...—
(a) to his employer, or
(b)where the worker reasonably believes that the relevant failure relates solely or mainly to—
(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility to that other person."

130. Section 47B ERA:

Protected disclosures.
(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
(1A)A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
(a)by another worker of W's employer in the course of that other worker's employment, or
(b)by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.
(1B)Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
(1C)For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.
(1D)In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—
(a)from doing that thing, or
(b)from doing anything of that description.
(1E)A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a)the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and
(b)it is reasonable for the worker or agent to rely on the statement. But this does not prevent the employer from being liable by reason of subsection (1B).
(2) This section does not apply where—
(a)the worker is an employee, and
(b)the detriment in question amounts to dismissal (within the meaning of Part X).
(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, " worker ", " worker's contract ", " employment " and " employer " have the extended meaning given by section 43K."

131. Section 103A ERA:

"Protected disclosure
An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

Our conclusions

132. Both counsel spoke from their written submissions and we take these into account in reaching our conclusions.

Protected disclosures

133. The claimant has brought a complaint that she was automatically unfairly dismissed by reason of making protected disclosures pursuant to section 103A ERA and also a complaint that she suffered detriments by reason of making disclosures pursuant to section 47B ERA.

134. The protected disclosures that she relies upon were alleged to have been made to the respondent, her employer, between January and May 2017 under pursuant to sections 43B(1)(b) and 43C.

135. We have had regard to Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, EAT particularly at paragraph 24 and Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436 particularly at paragraphs 35 and 36 with regard to the requirements for a disclosure of information under section 43B(1).

136. With regard to complaints of detrimental treatment, we have also had regard to the guidance set out in Blackbay Ventures Ltd v Gahir [2014] IRLR 416, EAT (when considering claims of victimisation for having made protected disclosures).

137. Where the claim is for detriment, the burden of proof is closer to that in discrimination claims, i.e. once less favourable treatment amounting to a detriment following a protected disclosure has been shown, the employer must prove under section 48(2) ERA on what ground it acted and that the protected disclosure was no more than a trivial influence, if any, on the employer's treatment of the individual (Fecitt and Public Concern at Work v

NHS Manchester [2012] IRLR 64,CA.

138. Where a claim is for automatic unfair dismissal under section 103A ERA, there are no complex rules about who has the burden of proof. As with all unfair dismissal claims, it is for the employer to prove the reason for dismissal. If the employee is suggesting that the employer dismissed her by reason of making protected disclosures, she has to produce some positive evidence of that, but she does not have to discharge any burden of proof. Having heard the evidence on both sides and making inferences from the primary facts, it is for the tribunal to decide what the reason for dismissal was. If the employer is unable to provide an alternative reason this may indicate that making protected disclosures is the true reason, but not necessarily (Kuzel v Roche Products Ltd [2008] IRLR 530, CA. It is also important to note that the protected disclosure has to be the reason or the principal reason for dismissal

139. Where an employee does not have sufficient service to claim ordinary unfair dismissal, the burden of proof lies on the employee to prove she was dismissed for making protected disclosures (Ross v Eddie Stobart Ltd UKEAT/0088/13).

140. We would note from the outset that we were concerned that the claimant's case as to which written communications amounted to protected disclosures and in the case of oral communications, what precisely was said by her to the respondent's witnesses changed throughout the proceedings.

141. We also note that at the start of the hearing the claimant produced a number of policy documents within C1 which she relied upon as evidence that she believed amounted to the breach of a legal obligation, namely a contractual one, under section 43B (1)(b) ERA. However in oral evidence it was clear that she had only seen one of those documents at the time of making her alleged disclosures. This was the document entitled Guide to Good Research Practice and is the named indicates is a guide rather than a legal obligation.

142. We further note that the claimant also relied upon obligations within her offer of employment letter and contract of employment (R1 203-205 and 206-211) and Professor Petroczi's contract of employment (at R3). However, her evidence as to what specific legal obligation she relied upon was unclear, she did not have a copy of Professor Petroczi's contract at the material time and indeed there is nothing in those documents giving rise to a legal obligation upon which her alleged disclosures could be based.

143. Turning then to consider each of the claimant's alleged protected disclosures:

The meeting with Doctor Opara on 9 January 2017

143.1 As we have indicated in our above findings, we preferred the evidence of Doctor Opara and do not accept that the claimant raised any of the alleged protected disclosures during this meeting. Whilst the claimant mentioned that her name was taken off a paper, this was not one of her pleaded protected disclosures and in any event

it is not capable of constituting a protected disclosure;

The email dated13 March 2017

143.2 In her email to Doctor Opara dated 10 March 2017 (at R1 524), the claimant requested to meet with her *"regarding the pending work"* she was doing for Professor Petroczi and the respondent. In her subsequent email to Doctor Opara (at R1 523) the claimant initially alleged it contained protected disclosures. However, as we have indicated in our findings, the claimant accepted in cross examination that neither email contained protected disclosures. The first clearly does not. The second raises concerns about work and the working relationship which do not disclosure a breach of any legal obligation or matters which the claimant could reasonably believe were made in the public interest;

The emails of 13 & 18 April and 5 May 2017

143.3 With regard to the email of 13 April 2017 (at R1 407), as we have indicated above, the claimant only relied on the part referring to the failure to provide her with a reference as constituting a protected disclosure. However, as we further indicated, she accepted that this was not something that amounted to the breach of a legal obligation. In any event, this is not a matter which has been raised in such a way that the claimant could reasonably believe was made in the public interest. It is clearly raised as a matter of concern for herself alone as the penultimate paragraph of the email sets out;

143.4 With regard to the email of 18 April 2017 (at R1 412), this simply does not contain any protected disclosures, as we have found above. It refers to the end of her employment and the dignity at work procedure and that is all;

143.5 With regard to the email of 5 May 2017 (at R1 417-418), the claimant accepted in cross examination that this contained the same disclosures which she raised at the meeting with Doctor Opara and Mrs Bruton at the meeting on 26 April 2017. These were identified as those disclosures that the claimant alleged she made at the meeting on 9 January 2017 relating to nepotism, fraud and data fabrication and disclosures about the detriments that she suffered as a result of making those earlier disclosures. Whist the email refers to the reference, as we have found this is not something capable of amounting to a protected disclosure. Whilst the email also refers to her allegation of plagiarism of her work by Professor Petroczi this was not something that the claimant relied upon as amount to a protected disclosure;

143.6 It therefore makes sense, as the respondent submitted to deal with this matter under the heading of her further alleged protected disclosure - the meeting of 26 April 2017;

The meeting of 26 April 2017

143.7 As we have indicated we do not find that the claimant made any protected disclosures to Doctor Opara at their meeting on 9 January 2017;

143.8 As we have found, the issue of nepotism that the claimant alleged was made at that meeting was not raised on 26 April 2017. Further, it was not referred to in her email of 5 May 2017;

143.9 As we have found above, the claimant mentioned her allegation of data fabrication in the meeting of 26 April 2017, but in vague and imprecise terms. As such it does not pass the test set out in Kilraine because it does not contain sufficient factual content and specificity such as it is capable of tending to show one of the matters in section 43B(1);

143.10 For the sake of completeness, we note that at the preliminary hearing on 21 September 2017, a further alleged protected disclosure was identified at paragraph 4 d of the Issues (at R1 55). This refers to the meeting held on 26 April 2017 (although in error this is identified as being on 25 April) and the claimant initially being told that she may raise a grievance (which was later denied – in the email from Doctor Opara and Mrs Bruton of 5 May 2017 at R1 416). However, we cannot see how this could amount to a protected disclosure and further it is not something which the claimant could reasonably believe was made in the public interest.

144. We therefore conclude that the claimant has not shown that she had made any protected disclosures and so her complaints of detriment under section 47B ERA and of automatic unfair dismissal under section 103A ERA must fail and are dismissed.

145. It follows that the claimant was not dismissed for the sole or principal reason that she made protected disclosures. But in any event, as we have indicated above, we find that there was a dismissal in as far as the claimant's fixed term contract expired and was not renewed. However, the respondent went to great lengths, particularly Professor Petroczi and Doctor Opara, to continue her employment, the claimant initially accepted an extension to her contract but then changed the terms of work she was prepared to undertake and this could not be accommodated by the available funding. The claimant then made no attempt to continue any dialogue with the respondent and simply left its employment on 28 February 2017.

146. We also note that in her email to Doctor Opara dated 13 March 2017 (at R1 523), the claimant stated that Professor's Petroczi's attitude towards her had changed *"since I told her I no longer wished to work at Kingston University"*. Further, in her email to Professor Sutcliffe dated 13 April 2017 (at R1 407), the claimant stated that she was seeking help regarding the situation with Professor Petroczi arising *from "my decision to not accept a contract offered by Andrea for 2017"*. In addition, in her email to Professor Petroczi of 13 April 2017 (at R1 408), the claimant states *"before not accepting your offer".*

147. Further, we do not accept the claimant's assertion that Professor Petroczi

was subjecting her to detriments because she had decided to leave the respondent's employment. Whilst Professor Petroczi may have been displeased with her, this arose not from the fact that she left the respondent's employment but the way in which she chose to do it and her attitude since then (as her email of 13 April 2017 indicates (at R1 408-409).

Ordinary unfair dismissal

148. As we have found above, the claimant did not have two years' continuous employment with the respondent. The claimant's continuous employment began on 1 September 2015 and the effective date of termination was 28 February 2017. As a result the Tribunal has no jurisdiction to deal with her complaint of ordinary unfair dismissal under section 98 ERA. This complaint is therefore dismissed.

149. It therefore follows that our unanimous decision is that all of the claimant's complaints fail and her claim is dismissed.

150. Having considered all of the evidence and having reached our conclusions we make the following observations as to the parties' credibility. The claimant's case changed throughout the proceedings. This was not only in terms of the pleaded case between her claim form, the defined issues, her various further and better particulars and at the hearing, but also as to the context in which it arose, as between her written evidence, her answers in cross examination and in answer to questions from the Tribunal panel and that her allegations were on occasions not even supported by her own documents. We were concerned as to the nature of the allegations made against Professor Petroczi and the representation of events to various members of the respondent's staff, including the Dean, which we found not to have been made out in evidence. These allegations could have had a very serious impact on Professor Petroczi's career and reputation. We found the respondent's witnesses to be consistent and straightforward throughout.

Employment Judge Tsamados

Date: 19 September 2018