EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4110858/15

Held in Glasgow on 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23 & 24 November 2017 and 15 February 2018

Employment Judge: **Lucy Wiseman**
Members **Robert McPherson**
James Burnett

Mr Peter Kirby — **Claimant**
Represented by:
Mr N Grundy - Counsel

Glasgow Caledonian University — **Respondent**
Represented by:
Mr B Campbell - Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal decided to dismiss the claim.

REASONS

1. The claimant presented a claim to the Employment Tribunal on 16 September 2015 alleging he had been subjected to detriment and/or dismissal for making a protected disclosure or disclosures; and (following amendment) that he had been subjected to discrimination because he was a disabled person and had been constructively dismissed.

2. The respondent entered a response denying the claim in its entirety, although they subsequently accepted the claimant was a disabled person from 26 May 2015 onwards, and had the mental impairment of depression.

3. A number of amendments were made to the claim originally presented to the Tribunal , and further particulars were provided by both parties. The final version of the claim and the response were produced at pages 159 – 167 and pages 168 – 183 respectively.

4. A schedule of (alleged) disclosures and detriments was also produced (pages 81 – 94).

5. The representatives also produced an agreed List of Issues for the Tribunal as follows:-

Protected disclosure claim

(i) Did the claimant make any or all of the disclosures relied upon in the Scott Schedule (pages 81 – 94);

(ii) Are the disclosures which the claimant made "*qualifying disclosures*" within the meaning of Section 43B Employment Rights Act 1996;

(iii) If so, are those disclosures "*protected disclosures*" within Section 43C Employment Rights Act;

(iv) Has the claimant been subjected to any or all of the detriments upon which he relies in the Scott Schedule by an act or deliberate failure to act by the respondent;

(v) If so, was such detriment on the ground that the claimant had made one or more protected disclosures (Section 48(2) Employment Rights Act);

(vi) Is any detriment to which the claimant was subjected by the respondent on the ground that he made one or more protected disclosures, out of time having regard to the provisions of Section 48(3)(a) and (4) and Section 207B Employment Rights Act;

(vii) Is any complaint which individually is out of time, part of a series of similar acts, at least one of which is within time having regard to the provisions referred to in the paragraph above;

(viii) For any complaint which is time-barred, was it reasonably practicable for the claimant to have lodged the claim such that it would have been in time and

(ix) If not, did the claimant lodge the claim within such subsequent period as was reasonable, such that it should now be admitted.

Disability Discrimination Claim

(x) The respondent agreed the claimant was disabled from 26 May 2015 onwards by virtue of his mental health condition of depression (page 175);

(xi) In terms of the complaint brought under Section 15 Equality Act:-

(a) Did the respondent treat the claimant unfavourably by failing to engage him for the Performance and Development Annual Review and performance related pay for the period 2014 – 2015 and/or failing to notify him of the vacancies identified in subparagraphs (a) to (e) of paragraph 21 (iv) of his updated statement of claim (page 164);

(b) If so, was the unfavourable treatment because of something arising in consequence of the claimant's disability and

(c) If so, was such treatment a proportionate means of achieving a legitimate aim.

(xii) In terms of the complaint brought under Section 20 Equality Act:-

(a) Did the respondent have a provision criterion or practice of cancelling occupational health appointments without giving the claimant an opportunity to respond to the assertions being made by occupational health and/or needed the claimant to be in work in order to receive a notice of internal vacancies;

(b) If so, did the PCP place the claimant at a substantial disadvantage in relation to persons who are not disabled and

(c) If so, did the respondent fail to take such steps as it was reasonable to have taken to avoid the disadvantage.

Unfair Dismissal

(xiii) Did the respondent act in repudiatory breach of contract, including a breach of the implied term that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. If so, what was, or were, the breach(es).

(xiv) Was the alleged withholding of information and/or concealing of damaging and/or untruthful comments by the respondent (paragraphs 28 and 29 of page 166) the last straw;

(xv) Was the claimant's resignation on 18 May 2017 in response to the repudiatory breach.

(xvi) If so, what was the reason or principal reason for the dismissal.

(xvii) Has the respondent shown that the reason for the dismissal was SOSR and/or conduct (paragraph 113 at page 182).

(xviii) If so, did the respondent act reasonably or unreasonably in treating that reason as sufficient to dismiss the claimant and

(xix) Was the dismissal to any extent caused or contributed to by any action of the claimant.

6. A number of preliminary issues were discussed at the commencement of the Hearing, and the Tribunal noted this Hearing was to determine liability only. The claimant had covertly recorded a number of meetings with the respondent and had prepared transcripts which had been included in the productions. The respondent did not accept the documents as *"transcripts*" and did not accept the documents were either complete or accurate. The claimant had not provided the respondent with audio recordings, and had refused their offer to have the recordings professionally transcribed.

7. The witnesses in this case had prepared witness statements. We heard evidence from:-

- the claimant;
- Ms Daisy Collinson Cooper, student on the MSc in Health History between 2014 and 2015;

- Ms Janet Pierotti, Visa and Immigration Support Adviser who had previously held the position of Administrator in the Centre;
- Ms Oonagh Walsh, Professor within the history subject group;
- Ms Rachel Russell, Assistant Head of the Department of Social Sciences, Media and Journalism;
- Mr Ben McConville, Head of the Department of Social Sciences, Media and Journalism;
- Mr Ben Shepherd, Reader in the history subject group;
- Ms Lyndsay Brown, Financial Controller;
- Mr Gerry Milne, Chief Financial Officer and Vice Principal Infrastructure;
- Ms Janet Greenlees, Senior Lecturer in the history group;
- Ms Elaine McFarland, retired Professor of History;
- Ms Toni Hilton, Dean of the Glasgow School for Business and Society;
- Ms Valerie Webster, Deputy Vice Chancellor;
- Ms Hazel Lauder, Head of Information Compliance and
- Mr Mike Mannion, Assistant Vice-Principal (Academic).

8. We were referred to a very large jointly produced bundle of documents to which both parties added during the course of the Hearing.

9. We, on the basis of the evidence before us, made the following material findings of fact. These are the facts which the Tribunal considered material to the issues to be determined by the Tribunal. The claimant's witness statement

ran to some 380 pages and the productions ran to some 4000 pages. It is not the role of this Tribunal to record everything said in evidence in the Hearing.

Findings of fact

10. The respondent is a higher education institution. The case concerned the respondent's Glasgow School for Business and Society (GSBS), which comprised three departments, one of which was the Department of Social Sciences, Media and Journalism.

11. The Department of Social Sciences, Media and Journalism was broadly split between Social Sciences on the one hand and Media and Journalism on the other. Within Social Sciences there were three subject groups, one of which was History.

12. Mr Ben McConville was Head of the Department of Social Sciences, Media and Journalism and Ms Rachel Russell was the Assistant Head of Department.

13. The claimant commenced employment with the respondent on 1 April 2012 and was employed as a Professor of Social History. The claimant's letter of offer of employment was produced at page 184, and the Statement of Terms and Conditions of Employment was produced at page 187. The job description (page 202) described the main purpose of the claimant's role as being to:-

> "*contribute to the strategic development of the University by providing leadership for the development and delivery of research and/or Learning and Teaching and/or Knowledge Transfer/Income Generation and/or Administration/Management and/or Community Engagement Outreach in the School and the University more broadly.*"

14. The activities of the role included "*directing the activities of the Centre for the Social History of Health and Healthcare".* The Centre was a collaborative venture with the University of Strathclyde, and attracted grant funding from the Wellcome Trust. The claimant's predecessor (Professor John Stewart) held the post of Director of the Centre, and the claimant became Director of the Centre following upon Professor Stewart's retirement.

15. The claimant, in his capacity as Director of the Centre was Principal Investigator for the Wellcome Trust grants awarded to the Centre. This meant the claimant was, essentially, responsible for ensuring that grant expenditure from that fund was in line with the University's policies.

16. The post of Director of the Centre was to rotate between the respondent University and Strathclyde University.

17. The members of staff in the history subject group at the time of these events included Professor Elaine McFarland, Professor Oonagh Walsh, Dr Ben Shepherd; Dr Victoria Long; Dr Janet Greenlees and Dr Karly Kehoe.

18. The claimant did not initially have any particular issues in terms of his relationship with other members of staff in the history subject group, but this changed in 2014 when members of the history subject group found the claimant increasingly difficult to deal with. The difficulties escalated and led to a breakdown in the claimant's relationship with the group by the end of 2014.

19. A number of issues caused friction between the claimant and his colleagues.

The Research Excellence Framework Programme (REF)

20. The respondent University participated in the Research Excellence Framework programme (REF), which is a periodic UK-wide exercise of the qualitative assessment of a university's research portfolio across different selected academic disciplines. The REF programme operates on a 6 yearly

cycle. The level of qualitative assessment informs the amount of block research grant that the Governments of the UK award annually to each university, and is a significant feature in the ranking calculations of most university league tables where league table positions affect reputation.

21. The REF process culminates in each University submitting a portfolio of work in various academic disciplines known as Units of Assessment (UoAs) which it thinks collectively showcase its portfolio in the best light. UoAs vary from REF to REF. The respondent requires to consider very carefully which submissions to make because it does not want to risk a low rating. Accordingly, the process for each REF exercise involves agreeing within the University which UoAs to target for submission. A UoA lead will be appointed to co-ordinate the gathering of relevant research work.

22. The claimant was a History UoA lead in the REF 2014 process. This involved the claimant gathering publications from the history subject group and writing (with input from the whole group) a research narrative outlining research activity and future plans.

23. The REF 2014 submission was made by the respondent on 29 November 2013. The claimant's role as History UoA lead ended at this time (as it did for all other UoA leads).

24. There is, in the period following a REF submission, a "*wash up*" period where clarification may be sought by the Audit team. Professor John Marshall, the lead contact for the respondent, sought the support of those people, including the claimant, who had been UoA leads, to respond to these enquiries. This was common practice and did not indicate any ongoing capacity as a UoA lead for the 2014 REF or the future one.

25. The claimant thought he was the most experienced, and best placed person to perform the role of REF lead, and he wished to continue as UoA lead for

History. He adopted the position that unless and until he was told otherwise, he held that role.

26. The claimant, at various time during 2014, issued instructions and made demands of members of the group regarding what research they were doing and how they should report to him about it; and this included completing a REF2020 proforma. He, for example, sent an email to the group on 29 May 2014 (page 603) with the subject "REF Update". He stated:-

> "*Now that the teaching year is over, it's a good time to have an update on where we are with our individual research. Would you please each let me have a 1 -2 page summary of current/pending publications together with future plans? I'd be grateful if you would also include progress with research grant applications, as well as research activities that might contribute to future REF impact. I'd be grateful if you could let me have this within 2 weeks."*

27. The members of the history group knew the role of UoA lead ended with the submission made at the end of November 2013. They found the claimant's continued reference to that role, and his requests for information to be annoying and irritating because he was no longer the REF lead and had no basis for making the requests which were time consuming to respond to.

28. One of the members of the group, Dr Kehoe, responded to the claimant's above email on 11 June (page 603) to suggest they delay things until there was a group meeting to discuss the REF strategy. Dr Kehoe stated she would like to know how the university intended to "*play the 2020 game*" and that she would like them to respond as a group.

29. The members of the history group also, as a group, spoke to Professor Karen Johnston, the Associate Dean of Research for the School, in early 2014, to ask for confirmation that the claimant was no longer REF research lead. Professor Johnston confirmed this was the case, and also confirmed that in

due course they would need to decide as a group who the next lead would be.

30. Dr Karly Kehoe, Dr Victoria Long and Dr Janet Greenlees complained to Mr Ben McConville, Head of Department, regarding the fact the claimant was continuing to assume the title of REF lead for history, when he no longer had that status, and that he was making demands of them which he was not entitled to. They felt the nature of the demands amounted to bullying.

31. Professor Walsh met with Professor Mannion, who had been responsible for the whole University REF submission, in December 2014 to inform him that the group considered the claimant's behaviour and insistence on calling himself Research Lead and REF Lead was unreasonable and causing great stress within the department. Professor Mannion confirmed a meeting had been planned for all 2014 REF leads to thank them for their work in ensuring a successful submission in December 2013, and to also confirm that a process for selecting REF 2020 leads would be made in due course.

32. Professor Mannion told the claimant, at a meeting in September/October 2014, that he was not the REF UoA lead. The claimant continued to described himself as REF lead for History into 2015.

33. Mr McConville took up the issue with Professor Karen Johnston and Professor Mannion in November 2014. Mr McConville met with Professor Johnston in early November because her predecessor had appointed the claimant to the role for the REF. Professor Johnston confirmed the claimant was not Research Lead beyond the completion of the university's submission at the end of November 2013. Mr McConville and Professor Johnston endeavoured to meet with the claimant to discuss and clarify the position but, due to the claimant's prevarication, this proved not possible until 23 February 2015 when the claimant finally agreed to meet with Mr McConville and Ms Smith. Mr McConville explained to the claimant at this meeting that he was no longer research lead.

Research Group Lead/History Policy and Practice lead

34. The members of the history subject group were frustrated by the fact the claimant referred to himself as the Research Lead for History. The issue was rooted in the fact the members of staff wished research issues to be discussed at the regular monthly meetings of the group, with the Lead being selected by the group.

35. An email exchange regarding this matter took place in late September 2014 (pages 3677 – 3689). Dr Vicky Long contacted Ms Joanne Irwin, HR (copied to Ms Rachel Russell, Assistant Head of Department) following an email from the claimant (page 3677) because the recent exchange of emails had made her feel "*very uncomfortable*". She described the emails as pertaining to the idea that a Departmental Research Group be established, but the claimant was opposed to the idea, whereas other colleagues supported it. Dr Long was not concerned by the fact the claimant adopted a different position to the others, but she was concerned about the tone of the email and the hostility of the messages sent by the claimant. She was worried the situation may escalate, and concluded her email by stating:-

> "*I hope my concerns are groundless, but I want to flag them at this point, should Peter choose to exploit his seniority to target me, or indeed other colleagues, further down the line. The thought of interacting with Peter, in person or via email, makes me feel anxious at this point."*

36. Professor McFarland also noted in an email on 1 October 2014 (page 3680) that she was "*becoming increasingly alarmed"* at the tone of the conversation.

37. Dr Ben Shepherd sent an email dated 15 January 2015 to Mr McConville and Ms Smith following upon an exchange of emails he had had with the claimant. On 13 January Dr Shepherd emailed the claimant to say he would not be

attending the meeting proposed by the claimant because he agreed with the majority view that the currently relevant research issues should be discussed at the next regular History subject group meeting. The claimant had responded to say that as Research Group Lead he had asked Dr Shepherd to attend a meeting to discuss REF and other research matters. The claimant stated this could not be done at the History teaching group meeting because several members of that smaller group had stated their wish to exclude members of the wider Research Group. The claimant confirmed it was reasonable for him to call a meeting to discuss the REF results and it was reasonable for staff to provide their availability for the meeting. He expected staff to respond to that reasonable request.

38. Dr Shepherd forwarded the email exchange to Mr McConville to illustrate further the mounting day-to-day anxiety, stress and disruption that the claimant continued to inflict upon the History group with his repeated insistence that he was still "*Research Group Lead".* Dr Shepherd concluded by stating he believed it was necessary to resolve the research lead issue before mediation began.

39. The members of the history group were also annoyed and frustrated by the fact the claimant referred to being the History, Policy & Practice lead, in circumstances where that group had never come to fruition. The HPP group was a brand used in connection with the REF to suggest collaborative working. The claimant had agreed to lead the group, but ultimately the group had no membership and had not met.

40. The other members of the History group also raised their frustrations with the claimant regarding what they saw as his assumption of these roles. Professor Walsh (on behalf of the department) emailed the claimant on 9 April 2015 (page 1726) stating:-

> "*Firstly, you are not Research Lead for History. There is no such role in History or in any other unit in the School, or indeed to our knowledge, the University. John Cook is Research Lead for the Department and*

has been formally appointed to that position. Given this fact, we do not want to receive any further emails from you that continue to make this assertion.

Secondly, the History group consists of seven members: McFarland, Shepherd, Greenlees, Kehoe, Long, Walsh and Kirby. This is the REF unit of assessment, and is the group that offers the History teaching element of the BASS programme. We meet monthly to discuss all issues that relate to that group .. All of the group apart from you stated repeatedly that we wished to meet to discuss the REF 2014 results and begin discussion on planning for REF 2020. You repeatedly refused to either attend or arrange such a meeting. The REF 2014 result discussions will inevitably include issues of a confidential and sensitive nature, yet you continued, without consultation with the rest of the group, to invite colleagues who were not part of the submission. There is extensive (indeed exhaustive) email correspondence in which each member of the group confirmed their wish that we meet as the History group to discuss REF 2014 past and future, yet you refused to acknowledge this democratic decision. Why?

Thirdly, we are both angered and appalled at your implication in this email that the History group wishes to exclude colleagues with History interests elsewhere in the University. .. What we objected to was your insistence on including them in early discussions of the REF and taking it upon yourself to invite others to those confidential and sensitive meetings.

Fourthly, you are utterly incorrect in stating that there is an "apparent unwillingness" to attend History Policy and Practice group meetings. You imply there is such a properly appointed group, and that meetings are regularly held. As you well know, the HPP group exists only on the University website, has never met, has no constitution and no mandate. .."

Workplace Allocation Model (WAM)

41. The respondent, in May 2014, introduced a pilot scheme to deal with the teaching workload of academics. This scheme was named the Workload Allocation Model (WAM). The aim behind the scheme was to try and quantify in terms of units, the various activities and duties of each academic for the year, to try to ensure everyone undertook an appropriate share of the various requirements of the department. Each academic had to account for an annual total of 550 units which were allocated to activities such as delivering a teaching module, undertaking a substantive academic administrative role or working on an externally funded project (page 581). Certain allowances were given to recognise a particular title or status: so, for example, anyone who was a professor got an allocation of 275 hours towards their total for the academic year, whereas members of staff other than professors received 110 hours. The professorial allowance was intended to cover professorial responsibilities such as the preparation of high-quality publications, participation in academic conferences; mentoring junior colleagues, undertaking research-related administrative roles and generally contributing to the academic profile of the school and the University as a whole.

42. The introduction of the WAM had its difficulties and there was particular concern that junior (that is, non professorial) colleagues could become overloaded with teaching responsibilities that would have a significant impact on their ability to conduct research, which is necessary for promotion and career progression.

43. The members of the history subject group, including the claimant, met in early May 2014, to discuss and compare how they would complete each part of the form. This was to ensure the members of the department took a consistent approach to accounting for their activities and that each person's WAM total accurately reflected the workload they carried. There had also been agreement at the meeting to circulate draft WAMs so all would know who was

doing what and who needed to be given additional responsibilities to ensure an equal distribution of teaching, administration and research.

44. The members of the history subject group, with the exception of the claimant, took broadly the same approach to completing their assessment. The target was to achieve 550 hours.

45. The claimant adopted the approach of taking the 275 hours allocated for being a professor, but then sought to get credit and recognition for duties and responsibilities which ought to have been included within the 275 hours. So, the claimant claimed 275 hours for being the Director of the Centre plus History, Policy and Practice (HPP) Lead/REF lead since 2012.

46. The claimant circulated his draft WAM (page 588) and his total hours were 735. The claimant revised his draft WAM and, on 18 June 2014 (page 609) his total hours were amended to 675.

47. The consequence of the claimant's approach to completing the WAM and accounting for his time was that in comparison to other members of staff, he had much less/no time left for core duties such as teaching. In May/June 2014 Professor Walsh met with the claimant to discuss the teaching requirements for the following year. Professor Walsh asked the claimant to take up the module lead for the year 1 history module, as well as run his own year 4 module. This would have given the claimant a similar workload to Professor Walsh and Professor McFarland. The claimant refused and threatened to raise a grievance against Professor Walsh if she "f*orced*" him take it on. Professor Walsh felt aggrieved at this because she had simply been trying to reach agreement on a fair share of the teaching workload.

48. The claimant's approach to WAM and his lack of teaching, caused frustrations within the group and led to tension between the members of the group and the claimant particularly because they were of the view the REF research lead role had ended in December 2013.

49. The claimant was aware of these tensions although they were not discussed directly.

Programme Board Meetings

50. The Department held Programme Board meetings approximately three times a year. The focus of discussion at Programme Board Meetings is the relevant Social Science degree programme being provided, with History being one of the contributing disciplines. The meetings may be attended by teaching staff, students and management within the department responsible for the course. Ms Rachel Russell, Assistant Head of the Department attended these meetings.

51. The May 2014 Programme Board Meeting received feedback provided by students in relation to the various teaching modules which had been delivered in 2013/14. The survey completed by the students was anonymous and asked the same questions in respect of each module. The feedback on the programme was, in general, positive. The claimant's module had been generally well received, but had received the lowest ranking of all of the history modules.

52. The claimant was most unhappy about this and launched into a lengthy monologue regarding the evaluation process. He challenged the methodology; said he was going to use his own poll and demanded to have details of the identities of the students who had given the rating. The claimant had to be asked to stop and to take the matter to a more appropriate forum. The claimant's conduct was unprofessional particularly given the audience at the meeting included students.

53. The next Programme Board meeting took place in February 2015. The claimant, without prior warning, again criticised the process and went over

the same points despite being asked to stop. The claimant again caused discomfort to those present.

Monthly meetings

54. The members of the history subject group also had concerns regarding the claimant's behaviour at monthly meetings, which were attended by all historians and occasionally by Ms Russell. The date and time of each meeting was arranged via an online Doodle poll, where people can indicate what is suitable for them. This was a source of friction because the claimant tended to wait until others had completed their availability, and then claim the selected date/time did not suit him. He, in turn, accused people of selecting a date/time which they knew he could not attend. The claimant did not attend many monthly meetings, and ultimately on 9 February 2015 (page 1191), he emailed the members of the group to inform them he would not attend any more group meetings because he considered the meetings were ad hoc and not sufficiently formal.

55. The atmosphere at monthly meetings which the claimant attended was tense and there was an absence of the goodwill and collegiality which was present when the claimant did not attend. The members of the group found the claimant difficult to deal with because he would often complain about decisions made in his absence and quibble over agenda items and previous minutes.

Teaching modules

56. The claimant's email of 9 February 2015 (page 1191) to the members of the history group (above) was copied to Mr Ben McConville and Ms Rachel Russell. The members of the history group usually met monthly and one item for discussion would be future teaching. Ms Russell understood from the claimant's email that he had disagreed with his colleagues, and would not be attending the next meeting to discuss this matter.

57. Mr McConville and Ms Russell required to resolve the question of the claimant's teaching, and to this end, Ms Russell had an exchange of emails with the claimant on 12 February. This exchange culminated in the claimant threatening to report Ms Russell to HR if she continued to raise the matter with him. Ms Russell copied these emails to Ms Smith, HR, expressing that she was "*just about getting to the end of my endurance"* with the claimant and confirming that many of the claimant's colleagues had told her they were experiencing distress at his behaviour.

58. The claimant refused to meet Ms Russell to discuss with her the teaching requirements. He continued to send bluntly worded emails which Ms Russell considered sought to dictate what he would and would not do.

59. A meeting of the history group took place on 17 February 2015, which the claimant did not attend (he was off sick, but confirmed he would not have attended in any event even if he had been at work). The claimant had proposed a level 3 and 4 module for 2015/16 and lecturing (5/6 lectures) on the first year course. The level 4 module was excluded following discussion on the 17th February.

60. A BASS Board meeting took place on 25 February 2015 to discuss the whole social sciences degree and curriculum development for the following year. The claimant's level 3 module, which was a new module, was under review. It was agreed the weighting should be changed and an exam component added and that it should then come back for approval.

61. Professor Walsh was to report this back to the claimant, but forgot to do so.

62. Ms Russell had a deadline of 26 March 2015 to confirm which modules would be available to students at their options meeting. Ms Russell decided, prior to 16 March, that the claimant's module would not be included. She took this

decision because there was not capacity to run both of the modules the claimant wished to provide.

Leverhulme and British Cotton Growers Association grants

63. The claimant, by email of 26 February 2015 (page 1379) notified the members of the history group (and copied to Mr McConville and Ms Russell) that he had obtained a substantial research grant which would buy him out of teaching from 2015 until 2017. He confirmed he would remain the Principal Investigator for the Wellcome Trust grant but would relinquish the role of History Research Lead. The claimant confirmed details of the grant would follow.

64. The claimant had in fact applied for two grants and obtained 75% from British Cotton Growers Association and 25% from Leverhulme Trust. The claimant had only secured 75% of the grant by 26 February and accordingly his email of 26 February was premature and misrepresented the position because he did not have the full grant as at this date.

65. Mr McConville is responsible for arranging teaching cover. Mr McConville responded to the claimant's email on 27 February 2015 (page 1385) to state he was pleased the claimant had secured a large grant, however, he needed to sit down with the claimant and the Associate Director Research to discuss what was being bought out and for how long. Mr McConville reminded the claimant that any buyout had to be discussed and agreed, and that this should have occurred prior to the claimant announcing it.

66. Professor Hilton was made aware of the claimant`s email of 26 February, and she obtained both grant applications to read. Professor Hilton contacted Professor Mannion because she had observed the applications were almost identical and there was uncertainty whether both funders were aware of the application being made to the other. Professor Hilton also emailed the

claimant to request clarification. Professor Hilton considered the claimant`s response to be condescending.

67. Professor Hilton made the decision to remove an announcement, regarding the funding, from the University`s website until these matters had been clarified.

68. Professor Mannion and Professor Marshall met with the claimant on 8 May 2015, to obtain reassurance from him that both funders knew of each other and that they would be supporting the same programme of research and were content to do so. Further, that copies of the two grant confirmation letters were required for accounts to be opened in line with University procedure and for the purposes of clarifying the amounts and their purposes.

69. Profession Mannion was surprised the claimant took umbrage at these requests. However, over the course of the next few weeks the claimant did provide the required information.

Dr Karly Kehoe

70. Dr Karly Kehoe contacted Mr Ben McConville on 30 September 2014 regarding an email (page 694C) she had received from the claimant, which she considered amounted to bullying. Mr McConville contacted Jo Irwin in the respondent's People Services to seek advice regarding the bullying policy. Mr McConville noted in his email (page 704) that there had been "*some rumblings*" within History for a few months, and that any advice would be welcome.

71. Ms Irwin, HR Business Partner, responded the following day and suggested, with regard to group issues, that constant emailing was not helpful and that a group meeting to work things out would be useful. She advised, with regard to Dr Kehoe's concerns, that prior to getting into the formal bullying and harassment policy, a facilitated meeting between Dr Kehoe and the claimant

would be helpful, and that a manager needed to speak to the claimant regarding his comments and help him understand the impact he has had and that he should apologise to Dr Kehoe.

72. Ms Lindsay Smith, a Casework Adviser in People Services, met with Dr Kehoe on 2 October 2014. Ms Smith sent a note of that meeting (page 729) to Mr McConville and Professor John Lennon later that same day. The note was in the following terms:-

"Here is an update from my meeting with Karly:

- *Karly was very keen to make this formal, that is, for this complaint to be on Pete's record however I have explained that we usually attempt to address any complaints informally. I have also outlined what a formal process would entail.*

- *Karly feels that Pete has little respect for others, he particularly shows bullying behaviour towards young females and he is very controlling by not sharing information with the rest of the team. She now has no confidence in him being able to maintain confidentiality given what he stated in the email.*

- *Karly feels that Pete's comments have impacted on her professional reputation and this has now destroyed their working relationship. She commented that a number of colleagues came to see her following Pete's email to see how she was as they were concerned.*

- *In terms of resolution Karly is looking for Pete to make a public and corrective apology, that is an email sent to the same audience that received the emails and also correcting the errors he made. Karly would like to review this apology before it is sent in terms of ensuring it contains the correct information. I have*

also explained that Pete may not be agreeable to making an apology.

- *Karly has also said that Pete states that he is Research Lead for History however she is not sure if this is self-appointed .. Are you able to clarify? She stated she wanted Pete removed from this role.*

- *Karly stated she is not interested in a facilitated meeting with Pete.*

I agreed with Karly that the next step will be for me to speak with Ben [McConville] to share her proposed resolution … She is also happy to provide any further examples of his behaviour if that will help when speaking to Pete. Karly also mentioned that Vicky Long is also thinking about coming to speak with People Services about Pete."

73. Mr McConville met with the claimant on 2 October. The claimant was not willing to apologise to Dr Kehoe, and considered her email was typical of a wider issue in the group which he wished to discuss with People Services. Mr McConville reported this to Jo Irwin and Professor Lennon by email of 2 October (page 731).

74. Ms Irwin responded to Mr McConville (page 730) acknowledging the trail of emails had been "*out of control*" but that the claimant had taken it a step further and had been inappropriate in personalising it. Ms Irwin was of the opinion the claimant had no choice but to apologise.

75. Dr Kehoe emailed Ms Smith on 7 October (page 740) to say that she had considered matters and, given that she still had to work with the claimant, she was content to go down the informal route, subject to (i) the claimant issuing a public apology; (ii) the claimant being removed from the History Research lead role and (iii) a very senior female manager outside of GSBS speaking to

the claimant about appropriate conduct towards junior and female colleagues.

76. The claimant emailed Dr Kehoe on 14 October (page 740) stating he had checked his records and wished to provide some clarification. The claimant concluded the email by apologising for including elements of information in an email to her which was also copied to the department. The claimant explained this as a "*momentary lapse of judgment*" which clearly fell short of his normally high standards of confidentiality.

77. Dr Kehoe informed Mr McConville of this and told him it was not consistent with the apology she had been expecting. Dr Kehoe copied this email to Professor Lennon, Acting Dean of the Faculty. Professor Lennon responded to say he also did not consider the claimant's email to be an adequate apology and that it was not in line with the conversation he had had with the claimant the previous week. Professor Lennon concluded by stating he would be initiating further action regarding the claimant's behaviour towards Dr Kehoe (by this he meant disciplinary action against the claimant).

78. The claimant sent a further email to Dr Kehoe on 28 October (page 768) in which he stated he realised his comments were unacceptable and would have caused her considerable upset. He offered his sincere apologies for any unhappiness the email may have caused and confirmed it had never been his intention to upset her. The claimant suggested some form of mediation to repair their working relationship.

79. Dr Kehoe copied the claimant's email to Professor Lennon and Mr McConville the following day and confirmed the email from the claimant was a "*nice and considerate email*". She also confirmed that she did not want to take up the claimant's suggestion of mediation because she thought it would provide an opportunity for the claimant to justify what had been said.

80. Dr Kehoe noted in the email (page 768) that Professor Lennon had confirmed the claimant holds no research authority whatsoever over the history area, and that he was in no way their research lead. Dr Kehoe queried whether this had been formally explained to the claimant. Dr Kehoe concluded the email by stating she would remain *"wary*" of the claimant because this incident had not been the first.

81. Mr McConville met with the claimant and Dr Kehoe on 12 November following upon an exchange of emails in which Dr Kehoe explained why she did not want to engage in mediation with the claimant, and in which the claimant tried to encourage her to mediate. Mr McConville encouraged them to stop emailing, and to recognise there was still some way to go in repairing their relationship.

82. Mr McConville reported to Ms Smith and Professor Lennon by email of 12 November (page 780) that there was still a long way to go on both sides to repair the relationship. Mr McConville noted:-

> *"the main issue with Pete is his status as research lead. Mike Mannion has told Pete that he should continue as research lead for History. He accepts that his role as UoA History lead for 2014 REF is coming to an end. We need to tie up the loose end in regard to his status.."*

83. Mr McConville disputed the claimant's position regarding Professor Mannion because Mr McConville had spoken to Professor Mannion and understood that his view was the same as Mr McConville's view. In any event he considered that even if the claimant genuinely believed he had a particular status – which he did not – it was causing friction within the group as a whole and had to be resolved. Mr McConville and Professor Johnston tried to arrange to meet with the claimant to discuss this matter, but they faced a number of excuses by the claimant not to meet. A meeting was eventually arranged in February 2015, and Mr McConville told the claimant he was no longer research lead.

84. Dr Kehoe emailed Ms Smith to raise a formal complaint against the claimant on 10 April 2015 (page 1723) following a prolonged exchange of emails. Dr Kehoe told the claimant she was copying Mr McConville and Professor Hilton into her email asking him to stop emailing her. She stated the claimant's email conduct was "*antagonistic and inappropriate*" and she found the emails very upsetting.

85. The claimant did not do as requested, but instead responded to Dr Kehoe to state that she was mistaken and as Professor McFarland had copied her email to the group, he had also done so with his response. He concluded his email by stating "*Do not email me on this again*."

86. Ms Smith notified the claimant that the complaint had been made and that a meeting would take place with the investigating officer, Professor John Pugh. The meeting did not in fact take place because the claimant went on a business trip to China and upon his return he commenced a period of sickness absence from which he did not return.

Celebration of History Research

87. On 5 December 2014 the claimant emailed the history group to say he wanted to host a celebration of history research. A similar event had been held the previous year which had involved a guest reception and a promotional pamphlet to raise awareness of their work. The members of the group did not want to hold an event at the time suggested by the claimant because the REF 2014 results were due to be released in December and they considered the timing was not appropriate because if the REF result was not as good as expected then a celebration would look foolish and presumptuous; and if the REF result was good, a celebration may appear to be gloating. The members of the group told the claimant their views, but he ignored them and persisted in emailing them to request research information.

88. The claimant emailed Professor Johnston on 8 December regarding the "*increasingly difficult behaviour within the group*". He stated in his email: "*Between you and me, things are getting increasingly "parochial" in this small group".* The claimant also reported this to HR.

Mediation

89. Ms Smith met with Professor McFarland, Dr Kehoe, Dr Greenlees and Dr Shepherd on 18 November 2014 to listen to their concerns about the claimant`s behaviour. They described the claimant as "*aggressive"* and "*attacking them through emails with strong language*". There was reference to having received multiple emails from the claimant using confrontational language and they considered him "*dominating*" and intent on getting his own personal agenda across.

90. Ms Smith advised that one possible intervention was mediation where he and they could discuss their differences. She also referred to a team building workshop. Professor McFarland and the others were not overly keen on these suggestions and they decided to see how things went without further action from HR for the time being.

91. Ms Smith subsequently received an email from Professor McFarland in December 2014, asking if she could pick up the "*history group issue*" in the New Year. She received an email from Dr Greenlees copying her in on an email exchange regarding funding for a conference, and she also received further emails from Professor McFarland and Dr Kehoe stating they had continued concerns with the claimant and seeking help to resolve the difficulties.

92. Ms Smith discussed the matter with Mr McConville, who agreed the Department would fund the cost of mediation. Mr McConville was prepared to fund mediation because he was aware of complaints from Dr Long, Dr Kehoe and Dr Greenlees during the course of mid-2014 onwards regarding

their concerns that the claimant was behaving in an oppressive and overbearing way during one-to-one conversations, at group meetings and in emails. They complained the claimant was difficult to work with and that he was unco-operative, confrontational, obstructive, aloof, inflexible and huffy, and that the tone of his emails deteriorated into bullying when they refused to respond to his requests. They felt he was trying to adopt a position of authority or superiority over them which went far beyond his title as professor, and in circumstances where he had no line-management authority over them.

93. Mr McConville had also received complaints that the claimant was continuing to assume the title of Research Lead for History (the role he had fulfilled for the REF 2014 process) when he no longer had that status. And, there were also concerns the claimant was attempting to avoid his share of student teaching.

94. Professors Walsh and McFarland had also raised with Mr McConville concerns about the way the claimant acted towards them and colleagues at Strathclyde University in respect of the Centre.

95. Mr McConville considered there was a dysfunctional working environment and a breakdown in working relations between the claimant and his colleagues.

96. Ms Smith had an HR colleague contact the members of the history group and the claimant to enquire if they would be willing to participate in mediation. The members of the history group each responded to indicate they would be willing to participate in mediation, but only on condition the "*research lead issue*" was resolved first.

97. Ms Smith understood the claimant was also prepared to mediate but only on condition that his allegations of financial irregularity regarding Dr Greenlees were resolved as per his email of 21 January 2015.

98. Ms Smith understood Mr McConville and Ms Russell were dealing with the issue regarding Dr Greenlees and she therefore decided it was not possible to proceed with mediation immediately.

99. Ms Smith subsequently received an email from Dr Shepherd on 15 January 2015 regarding an email exchange he had had with the claimant. Dr Shepherd referred to the claimant inappropriately referring to himself as the Research Group Lead, and he referred to the claimant causing *"mounting day-to-day anxiety, stress and disruption within the group*."

100. Ms Smith also received an email from Dr Kehoe on 10 February forwarding an email exchange which culminated in the claimant's email of 9 February in which he gave reasons why he would not participate in any further group meetings, and outlined his teaching plans for the following academic year.

101. This email was followed up with an email from Ms Russell on 12 February regarding her exchange with the claimant regarding his approach to determining his future teaching. The claimant had threatened to complain to HR if she communicated again with him on the matter. Ms Russell concluded her email by stating she was "*getting to the end of my endurance with Peter*" and she noted that within the group "*even those who have never complained before are now telling me they are experiencing distress*."

102. Ms Smith met with the claimant on 13 February because she wanted to discuss with him whether he may be suffering from stress, and whether he would benefit from an assessment by the occupational health provider. The claimant ultimately decided against a referral.

103. Ms Smith and Mr McConville met with the claimant again on 23 February regarding the Dr Greenlees issue.

The Centre

104. The Centre for the Social History of Health and Healthcare was established to promote a research agenda that was collectively agreed between the respondent university and Strathclyde university. There was no written constitution for the Centre, so all decisions were made collectively at regular meetings of staff from both universities.

105. There were discussions towards the end of 2014 regarding the creation of a written constitution to formalise the running of the Centre. A draft constitution was circulated on 17 February (page 1291) for discussion at the meeting on 20 February. The claimant responded on 19 February with his comments which were to the effect that much more work was required on the draft, and that it was necessary to discuss the draft with the Principal Investigator (i.e, him) because he was the person who had actually run the Centre for the past three years. The claimant's comments and position were seen as being negative in circumstances where much work had been put into producing a draft for discussion.

106. The Centre secured a large grant from the Wellcome Trust in 2005. The grant was administered by the Director of the Centre, who automatically took on the designation "*Principal Investigator*".

107. The claimant was Director of the Centre following upon the retirement of Professor Stewart in 2012. The claimant was Principal Investigator for the Wellcome Trust grant. The claimant secured a small grant extension in 2013 which was intended to see some existing projects to conclusion and allow staff to undertake field and archival trips for their own research projects.

108. The claimant, in his role as Director of the Centre, believed all matters relating to the Centre had to be channelled exclusively through him. This caused a number of difficulties and tensions.

109. Professor Walsh and others considered the claimant, over the course of 2014, became increasingly secretive regarding the Centre's funds and did not

produce a report on the Centre's budget for discussion, which had been the standard practice of Professor Stewart. The claimant's attitude caused considerable alarm amongst staff from both Universities, and the claimant's reluctance to share information meant there was uncertainty regarding the funds available for Centre activities. The funds from the grant were to be used within a set timescale, for defined activities. There was concern, as a result of the claimant's actions, that the Centre may fail to spend the grant on research as intended, and this would potentially cause embarrassment with the Wellcome Trust. The claimant had to ask for an extension of time twice from the Trust as funds had not been spent within their initially set period. The claimant had authority to sanction spending, but there was a frustration that he only seemed to be using funds for things he approved of or was involved in.

110. The academic staff in the Centre were encouraged to apply for external research grants to fund projects. The practice had always been to alert colleagues of an intention to submit a grant application because this ensured there was not a clash of applications to the same funder, which might weaken both applications. It also allowed staff to know about future research activities which may allow for the appointment of PhD staff. There was a collaborative approach to funding applications and peer review was not uncommon.

111. The claimant submitted an application to the Wellcome Trust without giving any indication to staff that he intended to do so. This was considered to be professionally discourteous and placed Professor Mills, Strathclyde University, in the awkward position of having an application from the Centre of which he was a founding member and active participant, submitted without his knowledge.

112. The claimant, in or about mid-2014, insisted, without discussion or consultation with colleagues, on appointing a part time Administrator for the Centre. This was in circumstances where staff in the Centre had made clear

that they did not support this as a productive use of Centre funds. Administrative functions, such as the organisation of seminars and conferences, had devolved to individual staff members and there was no necessity for a Centre Administrator. The staff were of the opinion the funds would be better spent on support for research.

113. The members of the Centre from both Universities felt, by late 2014, that the Centre had become dysfunctional and that it was time for the claimant to make way for someone from Strathclyde University to take over the role of Director.

114. There had been agreement in mid-2014 that the Directorship would pass to Strathclyde University in early 2015. An email sent from the claimant and Professor Mills on 27 June 2014 (page 627) to the members of the Centre was in the following terms:-

> *"GCU will soon complete the second of two three year stints as administering institution for [the Centre] and it will soon be Strathclyde's turn to take on this responsibility for a three year period. As such we propose the following arrangements:*
>
> 1. *Peter and Jim will act as co-directors of the Centre between 1 September 2014 and 31 January 2015, when the directorship responsibilities will transfer to Strathclyde.*
>
> 2. *Peter will remain PI on the Wellcome Trust grant until it expires on 31 May 2015. After current commitments some £10K possibly remains to be allocated so proposals for further Centre activities remain welcome.*
>
> 3. *Jim will take the lead on organising events to mark the tenth anniversary of the Centre in 2015.*

4. *Jim will host the Annual Lecture on 12 November 2014 and will organise the forthcoming series of public lectures between Nov 2014 and May 2015.*

5. *Peter will organise the Policy, Poverty and Public Health in Britain and China symposium in October 2014.*

6. *Peter will convene the Centre research seminars at GCU throughout 2014 – 2015."*

115. There was, notwithstanding this email, a belief by members of the Centre that the claimant was reluctant to relinquish the Directorship, and concern that he would retain control over spending.

116. Professor Jim Mills wrote to Professor Mannion on 24 February 2015 (page 1350). He referred to having been informed by colleagues that the claimant had initiated an action against the members of the history group requiring them to surrender all emails in which he was mentioned. Professor Mills was not aware why this course of action had been taken, but he considered it indicated that trust had broken down between the claimant and his colleagues at the respondent university. Professor Mills was anxious the claimant would find it difficult to provide effective leadership, because he no longer seemed to have a working relationship with them. Professor Mills suggested that a fresh face was the way forward and enquired whether senior management at the respondent university might be inclined to consider selecting one of the experienced and much-respected historians to represent the university as Director of their members of the Centre.

117. Professor Mannion responded to the email to suggest a meeting to learn more of the situation.

118. Professor Mannion met with the claimant on 4 March 2015. The discussion included the Centre and the grant from the Wellcome Trust. The claimant told Professor Mannion that there was agreement that he would remain Principal

Investigator for the grant (which remained with the respondent university) whilst Professor Mills would act as Director for a three year period. The claimant told Professor Mannion that he felt Professor Mills was trying to get the grant money from the respondent university to Strathclyde university and that he was worried some members of staff at the respondent were supporting him.

119. The claimant received an email from Professor Mills on 4 March and the 6th March 2015. The email on 4 March referred to the claimant being successful in a grant application and whilst congratulations were offered, Professor Mills sought clarification regarding the project and the funding body making the award. He went on to state that given the demands on the claimant's time, he wondered if it was time to hand on the responsibilities of Director of the Centre.

120. The email on 6 March (page 1445) was in the following terms:-

> " .. *It has been pointed out to me that, following your recent actions against colleagues at GCU, it is clear that you are now Director of health historians there in nothing but name. The reasons for your actions are none of my business but they point to a breakdown of trust between you and your colleagues. Given that working relations are now very strained between yourself and the other historians, it is plain that they will not be inclined to take direction from you even if you were to give it. The basis of the Centre is of course collaboration and cooperation and it seems that you are not in a position to do either with colleagues at GCU at the moment. In these circumstances I am sure you agree that we are no longer able to claim that you are able to provide effective leadership to the health historians there and as such you have relinquished the Director's role and must now relinquish the title.*

The email [of the 4th March] points to an easy way to do this. It allows us to avoid a vote-of-no-confidence in you. Losing this would be very damaging to your reputation both at GCU and beyond and as such I hope we can proceed without it. An email from you to colleagues by noon on Monday, advising them that you have stepped down with immediate effect will do the trick. .. If there is no progress along these lines by noon on Monday then we will have to proceed with the vote of no confidence."

121. The claimant did not proceed as suggested, and a doodle poll vote of no confidence was held on 9 March 2015.

122. The claimant contacted Ben McConville regarding these events, and forwarded him a copy of the email of 6 March from Professor Mills. The claimant believed the situation was retaliation for his complaint regarding Dr Greenlees (see below).

123. The claimant emailed Mr McConville, Ms Smith and Professor Hilton, Dean of GSBS on 9 March. Professor Hilton immediately telephoned Professor Mills at Strathclyde University to ask him to withdraw the poll, but she was unable to speak to him directly.

124. Professor Hilton met with Professor Mills on 10 March. Professor Hilton made clear that she considered conducting the poll was inappropriate and she asked him to remove it. Professor Mills told Professor Hilton that the reason for the poll was because the claimant had adopted a dictatorial and unaccountable approach to running the Centre, and the claimant was refusing to give up the directorship of the Centre. He also referred to the Centre having a large surplus of grant funds which should have been used years before, but the claimant would not allow them to be used. Professor Mills agreed the vote of no confidence was inappropriate but it indicated the strength of feeling of staff, and he refused to remove the poll.

125. Professor Hilton met with the claimant later the same day to brief him on her meeting with Professor Mills. The claimant provided a copy of the email which informed members of the Centre that he would stand down as director on 31 January 2015. He confirmed he would stand down as previously agreed and allow the directorship to pass to Strathclyde.

126. Professor Hilton tried to call Professor Mills to inform him of her discussion with the claimant, but he was not available. Professor Hilton contacted the Dean of Strathclyde University to explain the position. She then emailed Professor Mills to convey what the claimant had said, and to again ask for the poll to be withdrawn. Professor Mills responded an hour later (copied to the claimant) to confirm the poll no longer had any purpose and would be superseded by the process of identifying a new Director. Professor Hilton sent a further email suggesting the governance shortcomings in relation to the Centre should be improved.

127. Professor Hilton noted that within one or two days, the poll had been removed. Professor Hilton was not aware of whether anyone had voted in the poll, and if so, whether any responses had been divulged.

128. The claimant, on 11 April 2015, emailed Professor Hilton (page 1747) asking that she commence an investigation into who, within the respondent university, was allegedly dissatisfied with his leadership of the Centre and was complicit along with Professor Mills in harassing him. Professor Hilton responded to the claimant on 13 April (page 1752) to suggest this could be discussed at a meeting already scheduled for 22 April.

Dr Janet Greenlees

129. Dr Greenlees was involved in organising a conference entitled "*Caring for the Poor in Twentieth Century Britain: A collaborative Workshop with QNIS (the Queens Nursing Institute, Scotland)*" on 12 September 2014. The cost of organising the conference was to be partially funded by a grant of £2000 from

QNIS, which was to cover speakers, travel and accommodation costs. QNIS would not fund the cost of any catering.

130. Dr Greenlees approached the claimant in May/June 2014 to ask if she could use some funds from a grant (R4146) of which he was Principal Investigator, to provide top-up funding for the conference. The claimant agreed to cover any excess funding for the conference not covered by the external funder, up to a maximum of £1200.

131. Dr Greenlees emailed the claimant on 26 June 2014 (page 897) confirming she had commitment from QNIS for funding up to £2000, and proposing the Centre put in the £1200 requested to be used for the conference dinner and some hotel expenses.

132. The claimant notified Mr McConville about this matter because he would need to confirm and approve the expenditure. Mr McConville replied confirming he was happy for the event to be funded as proposed. The claimant emailed Dr Greenlees on 27 June confirming "*That's fine. Please go ahead with Centre funds up to £1200."*

133. Dr Greenlees asked the Centre Administrator, Ms Pierotti, to prepare an invoice to be sent to QNIS for the sum of £2000. The invoice was paid on 26 August and the sum of £2000 was paid into Dr Greenlees account R4331 for the conference.

134. Dr Greenlees contacted the claimant in November 2014 regarding transfer of funds from the claimant's grant account R4146 to her account R4331. The claimant responded to Dr Greenlees, and (in the absence of Ms Pierotti) Ms Teresa McAndrew, Senior Administrator, asking for the relevant forms to be sent to him together with a copy of the catering/dinner receipts.

135. Ms McAndrew responded to state she had prepared the paperwork for signature and would leave the paperwork in his pigeon-hole for him to sign and return.

136. The claimant collected the Expenses Transfer Form on 1 December 2014, which had already been signed by Dr Greenlees for the sum of £1,047.91. The claimant was expected to sign the form to authorise the transfer of funds to Dr Greenlees' account. However, the claimant considered the sum requested was larger than he had expected in circumstances where the size of the conference had been smaller than expected.

137. Dr Greenlees had attached to the Expenses Transfer Form, a Project Summary Report. The claimant noted from this document that the research account code (R4331) was not solely for the conference but also appeared to be for an earlier research project which had ended in May/June 2014. The document suggested there had been an overspend on the earlier project. The claimant noted it was not normal practice to operate two research projects from one account, and the account for the earlier project should have been closed at the end of that project.

138. The claimant was reluctant to transfer funds without further information and clarification from Dr Greenlees, so he arranged to meet with her on 3 December. At the meeting (which the claimant covertly recorded) the claimant told Dr Greenlees he wished to avoid any double counting of expenses; he needed to be sure they were working within the respondent's procedures; he was getting mixed messages about the conference expenses and he did not know the overall cost of the conference and this was causing problems. The claimant enquired about the R4331 account, and was told by Dr Greenlees that there had been an existing QNIS and Wellcome Trust grant for a project she had undertaken and rather than open a separate account for the conference, she had used the same account.

139. The claimant did not accuse Dr Greenlees of anything during the meeting on 3 December but his suspicion that an irregularity was occurring increased. He emailed the claimant and asked for the overall costs of the accommodation and travel for the conference.

140. The claimant also (having spoken to Ms Pierotti for authority) retrieved a file from her desk marked QNIS which held information regarding the conference.

141. Dr Greenlees thought there had been a misunderstanding between herself and the claimant: she thought the claimant had agreed to pay £1,200 whereas he thought he was to pay up to £1200. Dr Greenlees felt she was being "*hounded"* by the claimant regarding this matter. She sent an email to Professor Mills on 4 December (page 843) stating:-

> *"Peter is now refusing to cover my catering costs for the workshop, instead only wishing to cover the dinner. I am about to send you an email to seek "clarification" about Wellcome spending and would be grateful if you would reply. I'll then save it and forward it to Peter if necessary. (FYI the amount I'm requesting is £1,047.91 and he agreed to cover up to £1,200)."*

142. Professor Mills responded to Dr Greenlees on 5 December to say that his understanding was that as long as she had receipts/invoices to cover expenditure, the Wellcome Trust were content. Dr Greenlees replied:-

> *"Thanks, that's what I thought and all receipts are in place. Only problem is that Janet [Pierotti] charged them initially to my grant rather than the Centre. She said she would transfer the money before she went off sick, but did not. I only found this out when looking at the accounts – she didn't tell me. Peter originally agreed to cover all catering costs (lunch, teas and dinner) but has now seen a note that the QNIS do fund teas/lunches in their grants (although not dinner) and wants to withdraw this funding unless the workshop went over the 2K*

they gave me for the workshop. However, after P agreed to the catering costs, in discussion with Clare Cable of QNIS, she agreed any leftover money from the workshop could go to transcribing our interviews. This was then done. This agreement was never put in writing. I don't want to go back to them and request it as it makes us look bad and I'm working on getting more money out of them. Moreover, P has no reason to back out of the agreement other than to be awkward (which other history colleagues at GCU agree). I'm going to find all the emails etc and send it to him, but I do have better things to do with my time, as you might imagine."

143. The claimant arranged to meet Mr Stuart Mitchell, Business Finance Partner for GSBS, on 5 December. At the meeting the claimant told Mr Mitchell of the situation and showed him the various emails and receipts. The claimant thought Dr Greenlees was overcharging his research account and that he did not want to end up subsidising another project. The claimant confirmed he would be willing to pay £305 which was the cost of the dinner.

144. The claimant calculated the total cost of the workshop was £2,200 (in fact it was £2,115), and Dr Greenlees had already been given £2,000 by QNIS. Dr Greenlees was seeking £1047 from the claimant. The claimant, on this basis, concluded Dr Greenlees was trying to overcharge his fund by £700/800. This, if true, would be a breach of the respondent's expenses policy.

145. The claimant emailed Dr Greenlees on 9 December (page 871) stating there appeared to be a large discrepancy between the funds she had requested and those expended on the workshop. He stated the sum of £1,047 was far in excess of the sum of £340 remaining after taking the £2,000 grant into account. He asked Dr Greenlees for an explanation.

146. Ms Pierotti returned to work and, on 10 December, she informed the claimant that she had found the spreadsheet which she had created on the 4th October,

showing the final workshop costs. The spreadsheet showed the total costs of the workshop were £2,115 and the *"overcharge*" was £932.

147. The claimant, upon receipt of this information, emailed Dr Greenlees (page 875) to inform her that he had located the spreadsheet itemising the costs of the workshop. He included the information from the spreadsheet and concluded the overcharge was £932.

148. Dr Greenlees replied (page 888) referring to previous correspondence where the claimant had committed up to £1,200, and she asked him to honour payment of the catering costs of £1,047. Dr Greenlees copied her email to Mr Mitchell.

149. The claimant responded to Dr Greenlees on 12 December (page 887) setting out his position in full and concluding that he was willing to pay up to £1,200 if she could provide evidence to support costs to that extent had been incurred over and above the £2,000 received from QNIS. The claimant copied his email to Mr Mitchell, Ms McAndrew and Ms Pierotti.

150. Dr Greenlees responded on 17 December (page 913). Dr Greenlees questioned why the claimant's email had been copied to so many people, particularly as Ms Pierotti was still on sick leave. Dr Greenlees set out her position in full and then questioned how the claimant had gained access to her accounts; come up with figures which were incorrect; made unfounded allegations regarding an overspend on an account and his willingness to make unfounded assertions about colleagues.

151. The claimant responded the same day (page 923) confirming he had obtained information from the spreadsheet and had not accessed her account. He also confirmed he was referring the matter to the Dean.

152. The claimant emailed Professor Lennon, Acting Dean, on 17 December (page 924) asking if he had time to meet with Dr Greenlees and him to discuss a finance issue.

153. The claimant also sent an email to Professor Lennon on 17 December which included all of the email correspondence and the tables of financial information which, he stated, "*tended to show Dr Greenlees was attempting to overcharge the R4146 research account in excess of £930*."

154. Professor Lennon responded to the claimant on 21 December to state he was attending tender interviews all day. The University closed for Christmas on 23 December.

155. Dr Greenlees, unbeknown to the claimant, emailed Ms Smith, People Services on 17 December (page 913) regarding "*difficulties"* she had been having with the claimant. Dr Greenlees referred to the financial issue and to the claimant refusing to pay the funds agreed. She also referred to him making unfounded allegations about her, obtaining financial data he does not have access to and sending "*uncomfortable*" emails. Dr Greenlees confirmed she had spoken with Professor McFarland and Professor Walsh, as well as Ms Russell and Mr McConville, and they all agreed HR needed to be involved. She asked to discuss it in the New Year.

156. Dr Greenlees, acting on advice from Ms Russell, also sent an email to Professor Mills on 17 December (page 926) in which she stated that having spoken with Professors Walsh and McFarland, they had agreed it was better to keep Professor Mills informed of certain events relating to the Centre. Dr Greenlees summarised the issue and concluded that due to the claimant's behaviour and the tone of his emails which were bullying, accusatory and victimising in tone, she had passed the matter to the Head of Department and HR for resolution. Dr Greenlees stated Professor Mills should be aware of all this in case it escalated, and she and Professors Walsh and McFarland wanted to ensure their reputation with Wellcome was not tainted and the Centre not damaged.

157. Professor Walsh also emailed Professor Mills on 6 January 2015 from her private email address (page 954). She apologised for the *"secret service stuff*" but noted he may have heard from Dr Long or Dr Greenlees that working relationships with the claimant had broken down badly. As a result of that the rest of the history group were tending to use non GCU addresses for anything related to him, because they suspected he was working towards a formal grievance and may make a Freedom of Information request.

158. The claimant subsequently learned that Professor Stewart (his predecessor) had sent an email to Professor Mills on 18 December in which he stated "*it would appear comrade Kirby is now deeply loathed at GCU. I think Janet may have filled you in on some of this but there are all sorts of complaints flying about."*

159. The claimant was also told on 19 December by a colleague, Professor Hughes, that he had met Professor McFarland and been told that the claimant had accused Dr Greenlees of dishonesty.

160. The correspondence between the claimant and Dr Greenlees continued in January 2015, and Dr Greenlees copied these emails to Ms Russell and Mr McConville.

161. Ms Russell emailed the claimant on 13 January 2015 (page 992) to advise that she had taken over the issue regarding workshop costs. She wished to take the heat out of the situation particularly as the correspondence seemed to be getting difficult. Ms Russell acknowledged the claimant's request for details of what the money was for was perfectly reasonable. Ms Russell explained she had told Dr Greenlees that the costings provided did not give details of what she was claiming; she had been over the costings with Dr Greenlees and identified the additional expenditure, which was for transcription of the event (QNIS paid for the recording of the event on the day) and this was transcribed afterwards and an invoice submitted. Dr

Greenlees had produced an amended spreadsheet, and Ms Russell confirmed to the claimant that the total cost was £2,908 as shown on the spreadsheet she attached.

162. Ms Russell understood at this point that the two additional items on the amended spreadsheet related to the September workshop. It was not until the meeting on 23 January, that she realised this was not correct.

163. The claimant responded immediately (page 1006) and set out his view that the spreadsheet forwarded by Ms Russell was an altered version of the original spreadsheet and the additional costs had not been incurred for the explanation given. The claimant concluded by stating he had now set out his position several times and if he was approached again regarding the matter he would complain formally to HR.

164. Mr Ben McConville contacted Mr Stuart Mitchell and asked him to audit the matter.

165. Mr McConville and Ms Russell also met with Dr Greenlees towards the end of January to understand her account of what had happened.

166. Mr McConville and Ms Russell also met with the claimant on 23 January, who insisted on being accompanied by Ms Pierotti. Mr McConville was of the opinion the claimant and Dr Greenlees had disagreed over the terms on which the claimant had authorised the release of some funds to cover part of a conference she was organising. Mr McConville and Ms Russell made it clear to the claimant that he was perfectly entitled, if not obliged, to ensure he was clear on how the trust funds were to be spent; however his manner of dealing with the issue was disproportionate and not appropriate. The claimant produced documents tending to show the additional items claimed by Dr Greenlees were for an earlier workshop. Mr McConville and Ms Russell took the documents to check with Dr Greenlees. Their involvement in this matter was superseded by Ms Brown becoming involved.

167. Mr McConville contacted Ms Smith after these meetings in order to update her and seek her advice.

168. The claimant was not satisfied with the meeting he had had with Mr McConville and Ms Russell because he believed they knew the original spreadsheet had been altered and had been misled by Dr Greenlees about the items of expenditure and when they had occurred. The claimant carried out some research and identified the respondent's Policy *"Financial Misconduct: a guide to prevention, reporting and investigating*." The Policy stated "*Financial misconduct should be taken to cover fraud, corruption, theft, dishonesty or deceit by an employee, whether at the expense of the University, other employees, students or any other body or organisation, as well as actions or inactions which fall below the standards of probity expected in public life."*

169. The claimant emailed Mr McConville on 26 January (page 1105) stating the matter required to be dealt with under the University's Policy on Financial Misconduct. Mr McConville replied to state he had contacted HR and would take the matter forward.

170. The claimant did not wait for Mr McConville to deal with the matter, instead, he telephoned Ms Lyndsey Brown, Financial Controller, on 27 January, to report problems with Dr Greenlees' claims and the altered spreadsheet. The claimant later emailed Ms Brown all of the relevant information.

171. Ms Brown met with the claimant on 28 January and he had an opportunity to give his account of the matter. Ms Brown advised, at the end of the meeting, that her immediate impression from reading the emails was that there was room for differing assumptions to be made by both parties. She felt they were speaking at cross purposes.

172. Ms Brown, following the meeting, referred to the Financial Misconduct policy. She also noted there were points which required further consideration, including sight of the full breakdown of associated with the workshop, before any conclusion could be reached regarding financial misconduct. Ms Brown also asked Mr Mitchell for a list of Dr Greenlees' projects so she could check for any anomalies in their finances. Ms Brown was satisfied, when she received the reports, that there were no apparent irregularities with the projects and that none were in deficit.

173. Ms Brown met with Mr McConville and Ms Russell on 3 February. They went through the expenses incurred for the workshop which totalled £2115.46. QNIS provided funding of £2000 but that did not cover catering. Dr Greenlees had approached the claimant for funding to cover the cost of catering. Ms Brown, Mr McConville and Ms Russell decided that only the balance over £2000 (that is, £115.46) should be paid out of the claimant's grant account R4146. The full cost of catering had been £305.46 and the difference of £190 was made up by the School itself. They considered that on one interpretation of the agreement, the full catering costs could justifiably have come from the claimant's grant, but they decided not to go down that route.

174. Ms Brown, Mr McConville and Ms Russell understood Dr Greenlees had not been able to accurately split the work covered by an invoice received for transcription costs between the workshop and the project which had funded it. The cost appeared to relate partly to the workshop and partly cover other services related to the overall project. It was agreed that none of the transcription invoice would be treated as charged to the workshop. There was no suggestion the invoice was anything other than genuine.

175. Ms Brown did not consider Dr Greenlees' conduct fell within the definition of financial misconduct.

176. Ms Brown was concerned about the practice of academics informally agreeing with each other to release money from one project to another. She

considered the informality was insufficient and had contributed to the misunderstanding which had arisen. Ms Brown noted the matter should have been referred to the Head of Department to issue clear instructions, and she suggested more formal arrangements for the transfer of funds be put in place.

177. Ms Brown and Mr McConville met with the claimant on 18 February to explain their decision. The claimant agreed to transfer the sum of £115.46.

178. The claimant subsequently contacted Ms Brown and Mr McConville to advise he wished to receive an apology from Dr Greenlees. He drafted a letter of apology which he wished Dr Greenlees to sign and suggested her signature on the apology was a condition of releasing the money. Mr McConville informed the claimant this was not appropriate because the matter had been resolved and Dr Greenlees had not been found "*culpable*" by Ms Brown.

179. The claimant refused to release the money and continued to seek an apology from Dr Greenlees.

180. Ms Brown and Mr McConville met with Dr Greenlees on 20 February to notify her of their decision. Dr Greenlees was also informed that Mr McConville would arrange for her to receive training on financial management of projects.

181. Ms Smith and Mr McConville met with the claimant on 23 February to encourage him to participate in mediation without insisting on an apology. The claimant would not agree and pressed for an apology by 3 March, failing which he intended to raise a formal grievance. The claimant intimated his intention to raise a formal grievance against the History teaching group and Dr Greenlees on 10 April.

182. The claimant did not provide details of his grievances and Kathleen Cleary, Professional Services Manager, emailed him on 21 April (page 1818) to note his emails sent on 10 April and that fact she had advised him of the correct

procedure for lodging formal complaints. Ms Cleary noted that to date the Casework team had not received his complaint form or supporting evidence.

183. Ms Brown made her manager, Mr Gerry Milne, Chief Financial Officer & Vice Principal Infrastructure, aware she had investigated concerns raised by the claimant, but considered they fell outside the scope of the Financial Misconduct Policy. Ms Brown told Mr Milne of the details of the concerns raised by the claimant and he agreed with her conclusions that the matter was one of misallocation rather than financial misconduct. Mr Milne further agreed that in cases where there was no financial misconduct the Policy did not apply and therefore there was no requirement to report the matter further.

Disciplinary action

184. Professor Hilton became aware of the fact Mr McConville was having difficulty getting the claimant to attend a meeting, and that an issue had arisen regarding what teaching the claimant would provide in the next academic year. Professor Hilton emailed the claimant, Ms Russell and Mr McConville on 18 March 2015 to propose a meeting to discuss a number of issues which included: (i) what the claimant was seeking to do in relation to his current grant funding, research and teaching buy-out; (ii) the ongoing poor working relationship between the claimant and his colleagues; (iii) the claimant's apparent refusal to respect the direction of his line managers and (iv) the claimant's reluctance to meet with them to discuss any of those matters.

185. Many attempts were made to arrange the meeting with the claimant: numerous email exchanges took place, dates were set and then put off; the claimant refused to attend without a union representative and he refused to have Ms Russell at the meeting. Ultimately a date was fixed for 8 May. Professor Hilton considered the claimant's emails to be insubordinate and disrespectful in tone.

186. The day prior to the meeting the claimant emailed Professor Hilton, copied to Mr McConville and two others, stating "*Given recent events in which Toni Hilton appears to be acting in concert with others to harm my research and my research projects, I feel that a meeting with her at present is inappropriate. There is a formal complaint to be lodged in this respect. I am happy to meet with Ben [McConville] and Douglas [Chalmers] tomorrow if that's ok with you."*

187. Professor Hilton advised the claimant she would be present at the meeting, and that it would proceed on 8 May. Professor Hilton, Mr McConville, the claimant and his representative Mr Chalmers attended the meeting. The meeting was difficult and the claimant repeatedly talked over Mr McConville and Professor Hilton.

188. Professor Hilton sent an email to Ms Smith and Ms Cleary after the meeting (page 2064) setting out what had been discussed and her opinion of the claimant's behaviour. Professor Hilton concluded, in light of the claimant's overall conduct at the meeting and in his subsequent emails, that formal action had to be commenced.

189. Ms Smith assisted Professor Hilton in drafting a letter (page 2147) which was sent to the claimant on 13 May. The letter set out a background of concerns regarding the claimant's behaviour towards Ms Russell and Mr McConville, gave examples of inappropriate behaviour which included delay and failure to attend the meeting in a reasonable timeframe, insubordination and failure to follow reasonable instructions and misrepresentation. The letter concluding by stating all of the above concerns were potentially allegations of gross misconduct, and that he would be contacted again once a disciplinary panel had been appointed.

190. The claimant went off ill on 25 May and did not return to work. The disciplinary process was never concluded.

<u>Ill Health</u>

191. The claimant commenced a period of sickness absence on 25 May 2015. The claimant was absent until his resignation in May 2017. The claimant was signed off work because of stress.

192. The respondent conceded the claimant was a disabled person from 25 May 2015, because he had the mental impairment of depression.

193. The respondent made a referral to PAM occupational health solutions for a report and prognosis regarding the claimant's health and fitness to attend a disciplinary hearing and a complaints investigation. The first appointment due to take place on 6 July had to be cancelled by PAM.

194. The claimant attended the re-arranged appointment on 15 July but confirmed that he wished to view any report prior to it being sent to management. The consultation was therefore terminated and an appointment with an OH Physician arranged for 6 August.

195. The respondent received a report from Dr Mark Fenwick, Occupational Physician, dated 17 August 2015 (page 2387). Dr Fenwick reported the claimant's GP had referred him to a Specialist agency, and they had advised that in their opinion the claimant was exhibiting symptoms related to depression, anxiety and adjustment disorder for which he had been prescribed medication. The claimant had reported that the symptoms had developed against a background of events at work, and he now experienced an acute exacerbation of his symptoms when presented with communication from the University in any format.

196. Dr Fenwick recommended the claimant be regarded as medically unfit to attend work in any capacity at present. Dr Fenwick could not identify a clear time frame for a return to work and was unable to recommend any adjustments which may assist.

197. The respondent obtained an updated occupational health report in August 2015 and endeavoured to obtain a further update in April 2016. An

appointment was made for the claimant to see Dr Valentine on 25 April, but the claimant refused on the basis he wanted to be seen by Dr Fenwick. The claimant received an email from PAM on 28 April 2016 (page 2578) explaining Dr Valentine was now the physician appointed to the GCU contract. However, Ms Keddie agreed to *"see if [she] could make arrangements for you to see Dr Fenwick again*." Ms Keddie subsequently advised the claimant that an appointment had been scheduled for him on 10 May. The claimant responded seeking a copy of the amended referral made by the respondent.

198. Ms Daly of PAM responded to the claimant's email to state that HR had requested that an appointment be arranged for the claimant to see the GCU OH Physician, Dr Valentine, and that if he had any concerns regarding this he should contact HR. She also referred him to HR for a copy of the referral.

199. The claimant responded to Ms Daly the following day (page 2575. The claimant voiced concern that Ms Smith, HR, had chosen for him to see a particular physician, and that he was deeply anxious and suspicious about her reasons for doing so. The claimant reiterated that he would be happy to see Dr Fenwick.

200. The matter was escalated to PAM's Clinical Operations Manager who emailed the claimant to state Dr Valentine was the Occupational Health Physician working on the GCU contract, and that HR had no involvement in the appropriateness of the doctors and did not dictate which physician should be seen.

201. The claimant responded to ask for the appointment with Dr Fenwick to be honoured. The claimant was advised an appointment with Dr Fenwick could be offered on 10 May. This was subsequently rescheduled to 24 May.

202. The claimant again requested the "*amended*" referral, and this was provided. The claimant made an issue of two points in the referral and his email

exchange with Ms Cowan at PAM regarding what information had been forwarded to Dr Fenwick was eventually escalated by her to the Regional Director to deal with. Mr Smith, Regional Director, emailed the claimant to clarify the position and he advised the claimant to revert to HR if he had any further queries. The claimant continued to email Mr Smith.

203. Mr Smith advised Ms Smith, HR, on 20 May 2016, that they had cancelled the claimant's appointment and would not be in a position to see him. Mr Smith confirmed they were concerned about the claimant's manner in dealing with staff and did not consider that proceeding with the appointment would be beneficial to either party.

204. A number of vacancies were advertised during the course of the claimant's absence: specifically, Research Theme Lead (GSBS); Associate Dean, Research (GSBS); Head of Department of Law, Economics, Accountancy and Risk; Module Leader, Postgraduate Research Methods Module; and School Research Lead Roles. The claimant was not specifically notified of these vacancies during his absence, but he had access to the respondent's intranet where the vacancies were advertised.

205. The respondent undertakes an annual Performance Development Appraisal and Review process (PDAR) which links to performance related pay. The process was not undertaken for the claimant in 2015 because the respondent's Remuneration Panel took a decision to defer consideration of the claimant's performance for 2014/2015 because it was not possible to carry out an assessment faithfully in light of his absence and the unconcluded internal grievance process.

The claimant's grievance

206. The claimant raised a grievance by way of letter from his legal representative on 3 July 2015 (pages 2310 – 2341, with supplementary information at pages 2342 – 2351). Professor John Pugh undertook the investigation of the

grievance. He interviewed Professor Mike Mannion on 29 October 2015 (page 3350); Ms Lyndsey Brown on 4 November 2015 (page 3354); Ms Hazel Lauder on 4 November 2015 (page 3357); Professor John Marshall on 5 November 2015 (page 3359); Mr Ben McConville on 10 November 2015 (page 3362); Ms Rachel Russell on 10 November 2015 (page 3367); Mr Stuart Mitchell on 11 November 2015 (page 3370); Professor Toni Hilton on 20 November 2015 (page 3372); Mr Julian Calvert on 24 November 2015 (page 3375); Professor Karen Johnston on 25 November 2015 (page 3376); Mr Paul Woods on 15 December 2015 (page 3379); Ms Lindsay Smith on 15 December 2015 (page 3381); Dr Vicky Long on 23 February 2016 (page 3384); Dr Janet Greenlees on 24 February 2016 (page 3387); Ms Fiona Campbell on 8 January 2016 (page 3399); Professor John Cook on 13 January 2016 (page 3402); Mrs Mary Henaghan on 15 January 2016 (page 3405); Professor Mike Mannion on 20 January 2015 (page 3406); Professor Elaine McFarland on 17 February 2016 (page 3408); Dr Ben Shepherd on 22 February 2016 (page 3411) and Professor Oonagh Walsh on 23 February 2016 (page 3415).

207. Professor Pugh prepared a Complaint Investigation Report on 7 June 2016 (page 3436 – 3512). His conclusions were set out on page 3510 – 3512. Professor Pugh noted the complexity of the case which involved a deterioration of working relationships on both sides. He noted it would have been preferable to have interviewed the claimant, but this had not been possible. Professor Pugh concluded the situation could not reasonably be categorised (as the claimant had alleged) as "*mobbing behaviour*" with "*history staff combining to bully, harass and set up the claimant to fail*." He considered that on balance the history staff found themselves in a difficult situation and in general they adopted behaviours to cope with the situation as they saw it.

208. Ms Valerie Webster, Deputy Vice Chancellor, chaired the panel which heard the grievance. The panel comprised Professor Woodburn, Associate Dean of

Research and Director of Institute of Applied Health Research, and Ms Jackie Main, Director of Student Experience.

209. The claimant was invited to meet with the panel, but could not do so due to ill health. The claimant submitted a lengthy document entitled Response to Complaint Investigation Report, which the panel considered.

210. The members of the panel read the documentation and sought further information from some members of staff who had been interviewed by Professor Pugh.

211. The panel concluded that on a number of occasions staff had not behaved well towards each other. However there was a clear pattern of the claimant not following the direction of his managers or being at odds with the understanding of other members of staff and going back on things which had been agreed. The members of the panel formed the impression that the claimant's colleagues reached the point where they considered they had no other option but to take action such as make a group complaint to People Services and, in some cases, take part in the vote of no confidence. The panel further concluded that notwithstanding the poor behaviour on both sides, they did not feel there was evidence that amounted to harassment, bullying or victimisation: the claimant had, on occasion, adopted a position of being in power over colleagues.

212. The panel met on 16 September 2016 to formalise their conclusions, and a letter was sent to the claimant on 7 October (page 2774) giving their decision.

213. The panel recognised the claimant's working relationship with colleagues had broken down, and that there would have to be a process to achieve reconciliation. The panel made some recommendations which were intended to be followed in preparation for the claimant returning to work and to support his transition back into the department.

214. The claimant appealed the decision of the panel and his appeal was heard by an appeal panel comprising Ms Jan Hulme, University Secretary and Vice Principal for Governance, Professor Tom Buggy and Professor Robert Ruthven. The role of the appeal panel is to conduct a review of how the first panel had undertaken the exercise, and to this end the appeal panel interviewed Professor Webster.

215. The claimant was unable to attend the appeal hearing because of ill health.

216. The appeal panel concluded the first panel had approached the complaint in an appropriate and thorough way.

217. The appeal panel had a letter sent to the claimant on 3 February 2017 (page 2821) setting out their decision to reject the appeal. The appeal panel were satisfied that notwithstanding a number of people's behaviour within the history group had fallen short of an acceptable standard at times, this was balanced by their observation that the claimant had been responsible for creating and perpetuating a lot of uncertainty and tension among his colleagues.

Subject Access Request

218. The claimant made five Subject Access Requests (SARs). Ms Hazel Lauder is Head of Information Compliance. All SARs are referred to the Information Compliance Team and they ask relevant employees to provide copies of the information requested, and may also seek assistance from the Information Technology Team to recover emails.

219. The first SAR was made on 19 February 2015, and the claimant sought the following information:-

(i) his complete personnel file;

(ii) emails between Dr Janet Greenlees, Dr Karly Kehoe, Dr Vicky Long, Professor Elaine McFarland, Dr Ben Shepherd, Professor Karen Johnston, Mr John Lennon, Professor Karen Stanton, Professor Pamela Gillies, Mr Stuart Mitchell and Ms Teresa McAndrew between 3 March 2014 and 23 February 2015 inclusive;

(iii) emails to and from the above individuals with others within and outwith the respondent between 3 March 2014 and 23 February 2015 inclusive;

(iv) emails sent and received by Ms Rona Blincow from 1 April 2012 to 23 February 2015 and

(v) minutes of all University meetings containing his personal information.

220. The first SAR was withdrawn by the claimant before the University could provide a response.

221. The claimant made a second SAR on 17 March 2015 in which he sought the following information:-

(i) all internal and external emails and electronic attachments referring to the claimant sent and received by Dr Janet Greenlees, Dr Karly Kehoe, Dr Vicky Long, Professor Oonagh Walsh and Ms Rachel Russell between 1 January 2014 and 16 March 2015, and

(ii) all internal and external emails and electronic attachments referring to the claimant sent and received by Ms Rona Blincow from 1 April 2012 to 16 March 2015 inclusive.

222. The third SAR was made on 20 June 2015, and the claimant sought the following information:-

(i) all emails and attachments containing the claimant's personal information sent and received by Professor Toni Hilton, Mr Ben McConville, Dr Douglas Chalmers, Ms Lindsay Smith, Mr Stuart Mitchell, Professor Karen Stanton, Professor Pamela Gillies between 1 February 2014 and 20 June 2015;

(ii) the voicemail recording left by the claimant on the account of Mr Brian Pillans on 16 February 2015 and

(iii) a copy of the claimant's personnel file.

223. The fourth SAR was made on 7 July 2015. The claimant sought all voicemail messages containing his personal information sent and received by Dr Janet Greenlees, Dr Karly Kehoe, Professor Elaine McFarland, Dr Vicky Long, Professor Oonagh Walsh, Dr Ben Shepherd, Mr Ben McConville, Ms Rachel Russell, Jackie Tombs and Professor Toni Hilton between 1 January 2014 and 20 June 2015.

224. The fifth SAR was made on 15 December 2015. The claimant sought the following information:-

(i) all internal and external emails and electronic attachments referring to the claimant sent and received by Dr Janet Greenlees, Dr Karly Kehoe, Dr Vicky Long, Professor Oonagh Walsh and Ms Rachel Russell between 16 March 2015 and 11 December 2015;

(ii) all internal and external emails and electronic attachments referring to the claimant sent and received by Professor Elaine McFarland, Dr Ben Shepherd, Professor Karen Stanton, Professor John Stewart, Ms Diane Donaldson, Ms Karen Ray, Professor Mike Mannion, Professor John Marshall (including to and from their personal assistants) between 1 January 2012 and 11 December 2015 and

(iii) all paper and electronic notes, memos and transcripts of the following meetings held by management with the claimant on 23 January 2015; 28 Jan 2015; 18 February 2015; 23 February 2015; 4 March 2015; 6 March 2015; 10 March 2015; 13 March 2015 and 8 May 2015.

225. Ms Lauder issued a response to the claimant in respect of each of the SARs. In each case, once the information requested had been received by her, she reviewed it. She made the decision to exclude a small percentage of the information gathered either because (a) the information was not the claimant's personal data; (b) the information did not otherwise fall within the scope of the SAR; (c) the claimant already had the information and/or (d) the information contained third party personal data and the disclosure of that data would have been unreasonable in the circumstances.

226. The claimant complained about the results of the SARs on five separate occasions. Ms Lauder responded on each occasion to explain the basis of her decision.

227. The claimant made three complaints to the Information Commissioner's Office between May and August 2015. The Information Commissioner's Office investigated each complaint and concluded, in each case, that the respondent had adopted the correct approach and complied with their obligations under the Data Protection Act.

228. Ms Lauder provided a table (attached to her witness statement) showing the documents the claimant maintained should have been disclosed, and her explanation why they had not been disclosed.

Claimant's resignation

229. The respondent disclosed documents to the claimant between 3 and 11 May 2017 as part of the preparation for the Hearing of the claimant's case scheduled for June 2017. The claimant, upon reading the documents,

concluded University managers, HR staff and others had made damaging and untruthful comments over an extended period to his detriment and without his knowledge.

230. The claimant considered this was the "*last straw*" and resigned on 18 May 2017. The letter of resignation (page 3306A) noted he had become aware for the first time that (a) documents which he had previously requested in a series of SARs and which he was told either did not exist or were not relevant to his requests, were always in the possession of the University but were not disclosed and (b) University managers and HR staff made damaging and untruthful statements to his detriment of which he had been previously unaware. The claimant considered these acts, taken together with the actions of the University staff and management towards him were so serious as to constitute a breach of the implied duty of trust and confidence. The claimant resigned with immediate effect.

Credibility and notes on the evidence

231. The claimant invited the Tribunal to accept his relationship with members of the history group had been without difficulty up until mid-2014 when the University introduced the WAM. The claimant accepted the WAM process caused friction, although he considered the friction was between staff and management, rather than staff and him. He described there being a "*general frostiness"* towards him at or about this time.

232. The claimant believed that after he raised issues concerning Dr Greenlees' monetary claim, staff turned against him and subjected him to harassment and victimisation. The claimant felt the group were trying to marginalise his role as research lead and REF lead and that their lack of co-operation was down to this, or WAM.

233. The claimant sought, in relation to each and every one of the issues set out above, to present a different side of the story to demonstrate that he had been

in the right and that everyone else was wrong, and that the history group had ganged up against him.

234. We found the claimant to be a not entirely credible or reliable witness. The claimant had a tendency not to answer the questions put to him in cross examination: instead of answering he would either tell the Tribunal something he wanted us to know from his perspective, or he would lose track because he was searching through the documents for a particular email. The Employment Judge explained to the claimant on a number of occasions that he should focus on answering the questions put in cross examination and that his representative would have an opportunity in re-examination to invite him to provide more details if necessary. The claimant was unwilling or unable to comply with the direction.

235. The claimant told the Tribunal that he was obsessed with the detail of the case and found it difficult, because of his mental impairment, to answer questions directly. We acknowledged this, but we had to balance it with the fact the claimant had virtually all the details of his case at his fingertips.

236. The claimant's position appeared to be that not only was he right and everyone else wrong, but he could point to emails to support what he had told us. There was no room in the claimant's world for acknowledging that others might have had concerns or a different perception of events. For example, the claimant assumed the members of the history group acted as they did because he had raised concerns regarding Dr Greenlees and he could see no other reason for their behaviour. This, however, conveniently ignored the fact many complaints had been made by the members of the group to HR regarding the claimant's behaviour, and the fact his relationship with the group had broken down prior to any concerns regarding Dr Greenlees being raised.

237. The claimant sought to rely on emails to "*prove*" he was right. For example, the members of the history group were concerned about the claimant

continuing to be Director of the Centre. The claimant pointed to an email issued by himself and Professor Mills, stating they would be joint Directors until the end of January 2015, when the Directorship would pass to Strathclyde University. The claimant's position was that this "*proved"* what had happened and therefore the concerns of the history group were untruthful and/or unsubstantiated.

238. The difficulty with the claimant's approach is that emails do not *"prove*" what in reality actually happened. An email may state "*I gave you £10 on Monday"*, but this does not prove the matter one way or another. The proof lies in the fact of whether the money was given or not. The evidence of the respondent's witnesses was that the claimant, notwithstanding what was stated in the email, did not give up Directorship of the Centre at the end of January 2015. This was the cause of discontent and led to them taking action to address the situation.

239. The above is but one example of very many examples where the claimant sought to prove his position was right (see below).

240. The claimant produced a witness statement which was 378 pages long. The claimant, in his witness statement, did not set out a chronological account of events: he did not, for example, explain what happened, why, in his opinion, it happened or why it upset/annoyed him and what he did about it. Much of the witness statement read like a submission and a rebuttal of the respondent's case. The level and depth of detail made it difficult for the Tribunal to understand what information the claimant knew at the time of events: the statement was written with the benefit of hindsight and information gained rather than reflecting what occurred at the time.

241. The claimant`s position, in relation to the REF issue, was that not only was he the REF lead, but he continued to be so after the submission had been made in December 2013. He further considered the position was "*ongoing*" and that he was the most experienced and best placed person to be the REF

lead for 2020. He adopted the position that unless and until told otherwise, he continued to be the REF lead.

242. The claimant accepted he had asked others in the History department to provide him with details of their research, and that he had done so because the collection and retention of this information was important for the next REF in 2020. He also accepted that he had created a new template for the 2020REF.

243. The claimant, in support of his position, pointed to an email from Professor Johnston asking for information to be collected. He also relied upon his version of a meeting with Professor Mannion on 4 March 2015, when he asserted Professor Mannion had told him he wanted him to stay on as REF lead.

244. We contrasted the claimant's evidence with the evidence of the respondent's witnesses, which we accepted. The overwhelming weight of evidence was to the effect the UoA REF lead ended with the submission of the work (in this case in December 2013), and that there was no continuing role to the next REF. All of the respondent's (relevant) witnesses spoke to this, and to the fact there is a period, following submission of the work, where questions or issues may arise for clarification. The person responsible for the REF will ask those persons who had been the UoA REF leads to deal with, or input, to the responses to the issues raised.

245. We also accepted the respondent's evidence to the effect the subjects for the following REF are not decided upon until well into the process and that there will be another process to identify the REF leads for the forthcoming process. There was no dispute regarding the fact that History is not a subject matter for the REF 2020. We considered this evidence proved the claimant was not, and could not have been the UoA REF lead for History moving forward to the REF 2020.

246. We also accepted the evidence which demonstrated the concerns and frustrations members of staff had regarding this issue. For example: (i) Dr Kehoe refused to provide the claimant with the research information requested because she wanted matters to be discussed in the group first; (ii) Dr Kehoe, Dr Long and Dr Greenlees made a complaint to Mr McConville because they considered the claimant was not the REF lead (beyond December 2013) and his requests were overly onerous and bullying; (iii) Professor Walsh spoke with Professor Mannion about the matter and (iv) Professor Mannion did not, at the meeting on 4 March 2015, tell the claimant he was still REF lead.

247. We found as a matter of fact the claimant did not continue to be REF lead beyond December 2013, and any requests made of him after that date were as part of the wash-up only. We also found that his continual requests caused frustration amongst members of staff because they knew he was not the REF lead on a continuing basis and some viewed his continued requests for information as onerous and bullying. There was also frustration during the WAM process because members of staff knew the claimant claimed a considerable number of points for being REF lead, when in fact he no longer held that position.

248. The issue of the claimant believing he was Research Lead for History and for the HPP group also caused concern in the group. The claimant, in support of his position, pointed to the University website where it listed various groups and group leads. The respondent's witnesses acknowledged this, but it was clear the website was not updated as regularly as it should be. There was also very clear evidence, which we accepted, to the effect that the History Policy and Practice group (HPP) was a group put together for the purposes of the REF. Professor Walsh described it as "*an entity with a web presence .. to strengthen the REF submission and to suggest collaborative working*". Dr Shepherd described is as "*branding*". Professor McFarland described it as "*a brand name*". She explained that there had been a need for History to cast themselves as a cluster. The claimant had agreed to lead the HPP group in

addition to the REF, but the cluster had not taken off, there were no terms of reference and there had been no membership or meetings.

249. We considered that with many of these issues, the crux of the matter was not who was right or wrong, but rather the impact it was having on the members of staff affected. We have set out above the concerns raised by staff regarding the REF issue. The same applied in relation to other issues: for example, in relation to the Research Lead and HPP issue, we accepted (i) Dr Long raised her concerns with Ms Irwin, HR, and Ms Russell; (ii) Professor McFarland wrote an email in which she referred to becoming "increasingly alarmed" at the tone of the email exchange; (iii) Dr Shepherd sent an email to Ms Russell and Mr McConville raising his concerns and explaining why he would not be attending the meeting called by the claimant and (iv) Professor Walsh wrote to the claimant on behalf of the members of staff setting out in the clearest possible terms that the claimant was not the Research Lead or HPP lead.

250. We acknowledged employees often have different views but, as stated above, this case had moved beyond collegiality and the spirit of co-operation and compromise, to one where positions were adopted and the claimant was unwilling to accept anyone else's view. The claimant had no line management authority over the members of the History group and it appeared to this Tribunal that the claimant, rather than cooperate with his colleagues, endeavoured to force his views and his position on them.

251. The claimant was described by the respondent's witnesses in their evidence as "*belligerent, aggressive and difficult to deal with*", "*superior"*, "*pompous", "arrogant*", "*excessively sensitive to sleights on his character*" and that he had a lack of respect for younger women; sought to stifle their views; escalated things; widened email circulation and threatened to make a formal complaint if he did not get his own way.

252. The issue with Dr Greenlees was a good example of the way in which the claimant approached matters. We accepted Mr McConville and Ms Russell's

evidence that they made it very clear to the claimant that he had been right (if not obliged) to raise an issue and query a financial matter with Dr Greenlees. Mr McConville expressed his support for the claimant bringing the matter to his attention. However, the problem was the way in which the claimant had done this: Mr McConville spoke of a "*detailed attack against Dr Greenlees which went some way beyond the terms of release of the trust money*". Mr McConville told the claimant his manner of dealing with the matter was disproportionate and not appropriate. He also described the claimant as being more intent on pursuing Dr Greenlees to an excessive degree and trying to find evidence of wrongdoing wherever he could, rather than resolving the misunderstanding which had occurred over a small sum of money.

253. We formed the impression, based on the evidence before us, that the claimant was determined to prove Dr Greenlees had been in the wrong. Dr Greenlees did/would not do as the claimant wished, and so he went after her with a dogged determination to show that she was in the wrong. The fact Dr Greenlees ran one account for QNIS, which included more than the workshop was unacceptable to the claimant, notwithstanding the fact he did not know Dr Greenlees had sought advice on this, and had been told it was in order.

254. We accepted Dr Greenlees did not cover herself in glory in terms of this matter, but it was very clear that she took advice and acted on it, and there was no suggestion of her benefitting financially herself. Dr Greenlees accepted she could not claim more than expenditure cost and that she could not claim for expenditure incurred on another project. She put the confusion down to the fact of having more than one item in one account. Dr Greenlees felt the claimant kept changing his mind, and she thought the claimant had accessed her accounts, and this had caused her stress. Mr McConville and Professor Hilton both acknowledged, with the benefit of hindsight, that disciplinary action should have been taken against Dr Greenlees.

255. The claimant, although careful not to use the terminology, clearly thought Dr Greenlees was guilty of financial misconduct; he wanted to demonstrate this

and have appropriate action taken against Dr Greenlees. We formed the impression that the claimant, having reached that view, pursued it and pushed matters in that direction. This much was clear from the fact that before Mr McConville and Ms Russell could take HR advice on the matter, the claimant had gone over them to report the matter to Ms Brown. It was the claimant who kept escalating the matter because he did not get the result he wanted.

256. The claimant clearly considered the matter to be extremely serious, and he surmised that the members of the history group knew of the matter, discussed it and took action against him because he had raised the issue. We preferred the evidence of the respondent's witnesses regarding these matters, and we found the members of the History group who knew something of the issue (Professors Walsh and McFarland) considered the matter to be a minor issue, and an issue for Dr Greenlees and the claimant to resolve; it was "*no big deal*". Dr Shepherd also knew of the issue but was only "*vaguely aware of it in January/February 2015*". We accepted Professor Walsh's evidence that she thought the issue was "*relatively trivial*" and that if vouching was required it could be provided; she thought the issue could be "*easily resolved*". We further accepted that Professor Walsh did not know, until she read the documents for this Hearing, that the issue had "*become a much bigger issue*".

257. We also preferred the evidence of Professors Walsh and McFarland to the effect they did not discuss the matter and did not tell Dr Greenlees to inform Professor Mills.

258. We found as a matter of fact that the issues arising in 2014 led to a breakdown in the working relationship between the claimant and his colleagues. We noted that all witnesses appeared to agree that WAM was when matters really started to deteriorate: the claimant described there being a "*general frostiness*" and Dr Greenlees described WAM as the point when "*things really started to go pear-shaped*". We considered this undermined the claimant's case that colleagues had acted as they did in 2015 because he made a

protected disclosure (or disclosures) about Dr Greenlees. We acknowledged – and consider this below in more detail – the fact it did not wholly undermine the claimant's case, but against a background of disharmony, complaints to HR, Mr McConville and Ms Russell, general frustration regarding the claimant and a breakdown in the working relationship, the weight of direct evidence pointed to the conclusion that the actions of the members of the history group were due to those factors, rather than because of any protected disclosure/s made.

259. The claimant recorded a number of conversations and meetings without the knowledge of those present. The claimant produced his transcripts of those recordings. The respondent did not accept the claimant's documents as transcripts and did not accept them as being complete and accurate documents. We acknowledged the claimant's transcript of the covert recording is admissible in evidence, and that it is for the Tribunal to decide the cogency of the transcript and its impact on the evidence. We, on considering this matter, attached weight to three particular issues: firstly, the claimant could have given the respondent access to the recordings and asked them to agree a transcript: he did not do so. Secondly, the transcript produced for the Tribunal is the claimant's document. No-one except the claimant has had the benefit of hearing the recording. We do not know what was used for the recording. We had to have regard to the fact the document will reflect the claimant's version of events and that it has been produced to support his case. Third, the claimant covertly recorded the meeting with Dr Greenlees on 3 December 2014 which was the first time he had met with her to discuss the issue. The claimant gave no explanation why he felt it necessary to covertly record this conversation which was, allegedly, the first protected disclosure and, according to the claimant, the start of things going wrong for him. Furthermore, the claimant, in the knowledge that he was recording the conversation, may have asked questions in a particular manner the importance of which may not have been known to Dr Greenlees at the time.

260. We, for these reasons, decided not to attach significant weight to the transcripts.

261. The claimant also attached significance to the view of Professor Cook, when he told Professor Pugh (during the grievance investigation) that his personal opinion was that a group of staff in History were attempting to undermine the position of professors and readers in the kind of "*palace revolution*" against staff in senior research roles in order to take research power and influence for themselves. Professor Cook felt it was possible the claimant had been bullied out of his position by his fellow history colleagues.

262. We balanced Professor Cook`s view with that of Professor McFarland who described him as not being respected in his own discipline and that his comments were inaccurate.

263. We also noted in any event that if Professor Cook`s view was correct it undermined the claimant`s case that he was subjected to detriment and/or dismissal for making protected disclosures.

264. The claimant's witnesses, Ms Daisy Collinson Cooper and Ms Janet Pierotti did not add to the proceedings.

265. We found all of the respondent's witnesses to be credible and reliable. They each gave their evidence in a straightforward and honest manner, and were prepared to concede or acknowledge points made in cross examination where appropriate. For example, Dr Greenlees acknowledged that reference, in her emails to Professor Mills, to the claimant refusing to pay what had been agreed was untrue. The claimant was not "*refusing"* but seeking clarification and vouching for the sum claimed.

266. The respondent's witnesses each had a good grasp of the facts and we formed no impression of collusion either at the time of these events or in preparing their evidence. Each witness told of their frustrations and difficulties

in dealing with the claimant and the fact that some of those matters were similar did not prove/suggest collusion. Mr McConville and Ms Russell in particular had borne the brunt of the complaints from members of the history group. Ms Russell's dealings with the claimant were very difficult particularly after the claimant accused her of siding with Dr Greenlees. The claimant would not attend meetings where Ms Russell was present and threatened Ms Russell with a formal grievance if she spoke to him again about teaching which is a matter within her remit as Assistant Head of Department and line manager.

Claimant's submissions

267. Mr Grundy had, at the commencement of the Hearing, provided the Tribunal with a list of issues which had been prepared on behalf of the claimant, but not agreed with the respondent. Mr Grundy referred the Tribunal to that document for reference to the proper approach in law to the various issues. The cases referred to in the document *were* ***Harrow London Borough v Knight [2003] IRLR 140***; ***Serco Limited v Dahou [2017] IRLR 81****;* ***NHS Manchester v Fecitt [2012] IRLR 64*** and ***Omilaju v London Borough of Waltham Forest [2005] IRLR 35***.

268. Mr Grundy submitted the covert recordings made by the claimant were admissible as evidence, and that it was a matter for the Tribunal to assess the cogency of the transcripts prepared by the claimant, and their impact on the issues to be determined (***Punjab National Bank v Gosain UKEAT/0003/14)*.**

269. Mr Grundy invited the Tribunal to find Ms Pierotti and Ms Daisy Collinson-Cooper honest and to accept their evidence. Mr Grundy reminded the Tribunal that one of the claimant's concerns was that Ms Brown did not speak to Ms Pierotti during the course of her investigations and therefore, it was submitted, missed the significance of the altered spreadsheet issue, and the

point that such conduct fell within the wider definition of financial misconduct in the policy (page 291).

270. The claimant, it was submitted, was very driven and deeply upset/affected about what occurred to him. He has felt it necessary to go into great detail to prove points which in ordinary circumstances might not be seen as being controversial. The claimant suffered from mid- December 2014 onwards with symptoms of stress which culminated in a nervous breakdown by 26 May 2015 (report of Dr Cosway at page 2677). Mr Grundy submitted the Tribunal ought to take this into account when assessing the claimant's evidence and his perception of matters and his response. Mr Grundy invited the Tribunal to accept the claimant's evidence as truthful and corroborated by the documents and recordings.

271. A number of the respondent's witnesses had admitted that parts of what they had included in emails or in their witness statement were untrue. For example, Dr Greenlees told Professor Mills on a number of occasions that the claimant was refusing to pay legitimate expenses. This was untrue. Dr Greenlees also alleged she told Ms Russell in January 2015 that the extra items which she had included in the altered spreadsheet of 13 January 2015 did not relate to the September workshop, but Ms Russell did not give any evidence which confirmed this point, and neither did Mr McConville. A further example was the witness evidence to the effect people took part in the vote of no confidence because the claimant was reluctant to relinquish the role of Director of the Centre. However, the documents produced (pages 627, 694 and 1310) all supported the claimant's position that he had agreed to step down as Director and did so on 31 January 2015. There was, it was submitted, an ulterior motive.

272. Professor Walsh, it was submitted, demonstrated, during her evidence, her contempt for the claimant and this permitted the Tribunal to draw the inference that she behaved in a similar way towards the claimant after June 2014. Professor Walsh had insisted, during her evidence, that the email of 18

June 2014 (page 3418) was not the email at page 607, however the parties had agreed they emails were one and the same and this undermined Professor Walsh's evidence.

273. Professor Hilton regarded the claimant's behaviour as insubordinate in that he wilfully disregarded a lawful order. Mr Grundy submitted Professor Walsh's reaction had been "*over the top*"; that she appeared to have a low thresh-hold for taking offence and decided to move directly to a disciplinary hearing notwithstanding most of the matters not being discussed with the claimant at the meeting on 8 May 2015.

274. Professor Hilton repeated in evidence on a number of occasions that she regarded the Dr Greenlees issue as trivial and that she had not been aware of the issue in January 2015 despite Mr McConville's email of 23 January 2015 (page 3240). Mr Grundy submitted Professor Hilton's protests rendered her evidence not credible on this issue, and that it would be proper for the Tribunal to draw the inference that she was aware of the Dr Greenlees issue and had been briefed by Mr McConville about it and by the claimant. The suggestion by Professor Hilton that the claimant was at fault for not doing more to prevent the vote of no confidence gave an insight into her mindset that the claimant was blameworthy and the cause of his own misfortune. The claimant was seen as a trouble-maker for taking the "*trivial"* matter of his concerns regarding Dr Greenlees too far by making protected disclosures about it. The recording transcribed by the claimant supported his version of events that Professor Hilton was aware of the details surrounding the directorship of the Centre much earlier that she admitted.

275. Professor Mannion was adamant he had not told the claimant in October 2014 that he was the history research lead and that the claimant was wrong to suggest otherwise. It was submitted that this evidence had to be contrasted with the evidence of Mr McConville who stated Professor Mannion had confirmed to him at the time that he had said that to the claimant. The Tribunal

was invited to prefer the evidence of the claimant and Mr McConville regarding this point.

276. Mr Grundy noted there was a dispute about whether the claimant was told on 23 February 2015 that he was not the history research lead. The claimant's evidence that he was not told this, was supported by the recording. Mr McConville stated Ms Smith had made a record of this point, but no record had been produced. Mr Grundy invited the Tribunal to prefer the evidence of the claimant because it was inconceivable that if the claimant had been told this he would not have objected and followed it up.

Pre December 2014

277. Mr Grundy submitted that prior to December 2014 there was no issue as to the claimant's role or duties. He invited the Tribunal to find the claimant had been appointed "*Research Professor*" and that he had been expected to take the lead in history research for the group (page 202 and 199). There was a distinction between the REF lead and the HPP/History group Research Lead. The claimant fulfilled both roles and although the formal submission for the REF process was made at the end of 2013, the Tribunal was invited to accept there was still work which the claimant was expected or required to do in respect of the REF.

278. Mr Grundy invited the Tribunal to also find that the claimant was the HPP/History group research lead. Mr Shepherd confirmed he had regarded the claimant as the research lead up until the end of June 2014, although it should be noted there had been no cut-off date referred to in his witness statement.

279. Mr Grundy invited the Tribunal to find that the WAM submissions were the catalyst or trigger for a "*revolt*" against the claimant having any research leadership roles going forward. The claimant's reliance upon his role as Director of the Centre; REF lead, Research group lead as well as a separate

project for Professor Mannion as justifying extra points caused obvious consternation. Members of the history group regarded this as an attempt by the claimant to avoid what they saw as his proper teaching responsibilities. Within a short period of time:-

- the group decided Dr Long should replace the claimant as the research lead;

- Dr Kehoe wanted a meeting to discuss research related activities because of WAM and

- there was agitating for the claimant to agree to relinquish the role of Director of the Centre and to pass it onto Professor Mills.

280. The Tribunal was invited to find that the approach taken by the history group fitted with Professor Cook's overview (page 3403) that they were making professional life very difficult for the claimant.

281. There was a very clear difference of view taken by the members of the history group on the one hand and the research staff who managed the claimant on the other: for example, Professor Mannion told the claimant he was history group research lead.

282. In October 2014 the Dr Kehoe incident occurred. The trigger again appeared to be her concern that academic staff below the level of Reader should have more say in research activity. The claimant was viewed by the history group as picking on her because of his inappropriate email. The claimant gave an unreserved apology of which other members of the group were unaware. Mr Shepherd, in light of learning of it, drew back from his comments at paragraph 13 of his witness statement.

Post November/December 2014

283. The next significant matter to arise was that the claimant was then seen by the other members of the history group to be picking now on Dr Greenlees over the payment of the expenses for the workshop. It was submitted that it was clear from the emails that Dr Greenlees was discussing the matter with other members of the history group and that there was agreement to share the information with Professor Mills. It was further submitted the group were annoyed the claimant had escalated the matter and made protected disclosures. This materially influenced the decision to hold a vote of no confidence on 9 March 2015 for the members of the history group to take part in. Mr Grundy suggested it was *"astonishing*" that Professor Hilton was apparently unaware that members of the history group had taken part in the vote and that it had been published. The failure to address this matter within GCU led to stress and anxiety on the part of the claimant.

284. Mr Grundy suggested matters deteriorated rapidly and got much worse for the claimant after he was seen to be questioning the expenses being claimed by Dr Greenlees, and, perhaps more importantly, because the claimant had escalated it to Mr Mitchell on 5 December 2014, Professor Lennon on 17 December 2014, Ms Russell on 13 January 2015, Mr McConville on 23 January 2015 and then to the University Financial Controller on 27 January 2015.

285. The claimant, it was submitted, was regarded as being deliberately awkward or difficult and acting unfairly. The claimant and Ms Pierotti were regarded as being "*smug" and*/or "*triumphant*" and the claimant was seen as dealing with the issue in a disproportionate and/or inappropriate way. Hence the serious issue about the altered spreadsheet and the request for the claimant to sanction an additional payment which was unjustified, were not properly identified or addressed at the time. The investigation by Ms Brown did not address this point. She did not speak directly to Dr Greenlees or Ms Pierotti. This allowed Dr Greenlees to continue to denigrate the claimant with the rest of the history group and Professor Mills. Mr Grundy suggested it was

significant that it was only at the time of the later investigation that Mr McConville indicated that he believed that Dr Greenlees ought to have been disciplined and that she went on the attack.

286. Matters got progressively worse for the claimant with the vote of no confidence on 9 March 2015. There was no investigation into the involvement of GCU staff in the vote of no confidence. The claimant's role as Research Lead came under more sustained attack; the integrity of his research applications were called into question; the decision was taken to move straight to a disciplinary hearing and the claimant was becoming increasingly unwell.

Protected disclosures claim

287. The qualifying disclosures made by the claimant fall into two categories namely the misuse of research funds and harassment/health and safety issues. The claimant believed the disclosures regarding misuse of research funds tended to show a breach of a legal obligation in respect of integrity or probity required in the use of research funds, and in particular ensuring funds were only used for the purposes for which they had been given. The disclosures regarding harassment/health and safety issues tended to show a breach of the legal obligation to keep the claimant safe at work and/or protect his health and safety.

288. Mr Grundy noted the respondent took no issue regarding "*public interest".*

289. Mr Grundy invited the Tribunal to find the claimant did suffer detriments by acts or deliberate failures to act on the part of the respondent as referred to in the Scott Schedule. A detriment is established if a reasonable worker would or might take the view that the treatment accorded to him had in all the circumstances been to his disadvantage. If the Tribunal find the claimant did suffer a detriment, it was then for the respondent to prove, on the balance of probabilities, that the act or deliberate failure to act was not on the grounds

that the claimant had made any or all of the protected disclosures. Mr Grundy submitted the respondent had not satisfied the burden upon it. The protected disclosures had a material influence upon the respondent's treatment of the claimant. There was a noticeable increase in hostility towards him after he was perceived to be picking on Dr Greenlees and escalating matter to senior management.

290. Mr Grundy noted the timebar point raised by the respondent and submitted the relevant question for the Tribunal was whether the series of acts or deliberate failures to act continued beyond 21 April 2015. If the Tribunal find that the series of acts ended at an earlier date, then it will have to determine whether it was not reasonably practicable to have presented the complaint earlier. The Tribunal would require to give consideration to the claimant's disability and his state of health. The GP notes referred to in the Report of Dr Cosway (page 2677) refer to a diagnosis of "*severe depressive episode*" on 27 May 2015, an inability to open emails at 11 June 2015 and treatment at the Priory hospital because of the impact of the condition upon his functioning between 30 July and 17 August 2015. Mr Grundy invited the Tribunal to extend the period for presentation of the claim because of the period of very acute symptoms of ill health.

Constructive Dismissal

291. Mr Grundy noted there was a clear overlap between the various detriments (above) and the factors which pointed to a breach by the respondent of the implied duty of trust and confidence. He submitted the way in which the respondent treated the claimant was at the very least likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The last straw was the withholding of information and/or concealment of damaging and/or untruthful comments made by members of the respondent's staff about the claimant. Mr Grundy submitted that it was irrelevant whether there were proper legal grounds to justify non-disclosure:

the contents of the previously undisclosed material revealed new distressing and horrible matters which tipped the claimant over the edge.

292. The Tribunal was referred to the claimant's letter of resignation of the 18th May 2017 which set out his position.

293. Mr Grundy invited the Tribunal to find that the reason for the dismissal, namely the breach of the implied duty of trust and confidence, was inextricably linked to the protected disclosures made by the claimant.

Disability Discrimination

294. Mr Grundy referred the Tribunal to pages 303 – 327 of the claimant's witness statement which addressed the various complaints being made.

Respondent's submissions

295. Mr Campbell's submission dealt firstly with the issue of whether the disclosures alleged to have been made were protected disclosures; secondly with the issue of whether any detrimental treatment was on the ground that a protected disclosure had been made; thirdly the complaint of disability discrimination and lastly the constructive dismissal claim.

Were the alleged disclosures protected disclosures?

296. Mr Campbell referred to Section 43A and B and Section 47B of the Employment Rights Act which set out the meaning of "*protected disclosure*", "*disclosures qualifying for protection*" and the right of a worker 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.

297. Mr Campbell referred to section 43B(1) which made clear that for there to be a "*disclosure*" there must be something which conveys information or facts, and not merely a statement of position or an allegation (**Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38*).*** A qualifying disclosure occurs when the employee has the reasonable belief that one of the defined categories of occurrence has happened, is happening or is likely to happen. The Tribunal, it was submitted, must determine (a) what legal obligation the claimant thought was being, or would likely be, breached and (b) whether it was reasonable to hold that belief.

298. The term "*detriment*" was described in the case of **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** where it was held that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. An unjustified sense of grievance was not enough.

299. Mr Campbell submitted the onus of proof was initially on the claimant to show that (i) he made each alleged protected disclosure and (ii) he was subjected to a detriment. If the claimant did so, the respondent then had to prove that the reason for such detriment was a permissible reason, that is, one outside Section 43B(1).

300. The detriment must be "on the ground that the worker has made a protected disclosure". The EAT held that this means more than "just related" to the disclosure. There must be a causative link between the protected disclosure and the reason for the treatment, in the sense of the disclosure being the "*real*" or "*core"* reason for the treatment **(Aspinall v MSI Mech Forge Ltd UKEAT/891/0*1*** and ***London Borough of Harrow v Knight [2003] IRLR 140*).** The Court of Appeal in **NHS Manchester v Fecitt [2012] IRLR 64** held that to avoid liability an employer must show that the protected disclosure did not "*materially influence*" their detrimental treatment.

301. Mr Campbell noted the claim consisted of a number of alleged protected disclosures and detriments as set out in the Scott Schedule. He submitted that for the claimant to succeed in respect of any given allegation, it must be shown that:

- the claimant made a disclosure of information to his employer (in the sense of conveying facts as opposed to a mere allegation);
- the disclosure was made in the reasonable belief of the claimant that it showed or tended to show conduct which falls into at least one of the categories within Section 43B(1);
- the disclosure was in the public interest and
- on the ground that he made such disclosure, he was subjected to a detriment by his employer by either an act or a failure to act.

302. Mr Campbell submitted there was no complaint by the claimant which met all of the above criteria and therefore the entire detriment complaint should be dismissed by the Tribunal .

303. The first alleged protected disclosure to Dr Greenlees on the 3rd December 2014 (item 1 on the Scott Schedule) did not meet the test of a qualifying disclosure because:-

(a) it was not made to the claimant's employer, but rather to a colleague of equivalent, if not more junior, status and role. The respondent had in place two policies for the reporting of concerns over financial conduct – the Public Interest Disclosure Policy (page 279) referred to in the claimant's contract and the Misconduct Policy (page 290). The former required a report to be made to the University Secretary whereas the latter asks that the individual's line manager be notified. Mr Campbell suggested that by virtue of the respondent making specific provisions for employees to raise concerns, and circulating

those policies, it was entitled to assume that employees would follow them should a situation provided for within them arise;

(b) it does not tend to show the claimant holding a reasonable belief that a breach of a legal obligation has occurred. The claimant was asking for clarification of certain details and giving a view on what the reporting requirements were. The claimant, in his statement (paragraph 33) stated "*I did not accuse Dr Greenlees of anything during the meeting, nor did I refuse to pay her";* and

(c) it does not provide "*information*" showing or tending to show the necessary belief on the part of the claimant.

304. The second alleged protected disclosure to Mr Stuart Mitchell on 4 December 2014 (item 3 on the Scott Schedule) did not meet the test of a qualifying disclosure for the reasons set out above, and because:-

(a) it was not raised with the claimant's employer and

(b) it shows the claimant giving Mr Mitchell some background details and asking for advice, but still not clear on certain details. He was suggesting Dr Greenlees may have made an error (*"It may be more, rather than the sin of commission, it's a sin of omission, and muddle really")*.

305. Mr Campbell noted the legal obligation said by the claimant to have been breached was "*her legal obligation to comply with the University's financial conduct procedures in that she was seeking to claim expenses for a workshop from a fund for which she had responsibility when she knew that the majority of the sum claimed was not properly payable by that fund*." The respondent's Financial Misconduct Policy defines "financial misconduct" as "*fraud, corruption, theft, dishonesty or deceit by an employee … as well as actions or inactions which fall below the standards of probity expected in*

public life". Mr Campbell submitted that it was denied, as a matter of fact, that Dr Greenlees had done anything to fall into any of these categories. At worst she had wrongly interpreted the basis on which the claimant had agreed to cover some of her workshop funding. She was completely open about the sums she incurred, the funds she received from elsewhere and what the amount sought from the grant was to cover. In any event the disclosure did not, at this point, tend to show the claimant holding a reasonable belief that she had transgressed the policy. It was the evidence of Ms Brown that there was a lack of procedures for grant holders transferring funds between accounts, which added to the confusion.

306. There was no other identifiable legal obligation which the claimant could reasonably have believed Dr Greenlees had breached, and in any event his disclosure does not show that he believed there was.

307. The third alleged protected disclosure to Dr Greenlees on 9 December 2014 (item 5 on the Scott Schedule) did not met the test of a qualifying disclosure for the reasons set out in 1 above and because:-

(a) it was not made to the employer;

(b) the claimant did not, at this point, know the figures: he stated "*there appears to be a large discrepancy between the funds requested and those expended"* and he asked *"can you please provide an explanation"*. The claimant had not reached the stage of believing there had been a breach of a legal obligation and

(c) the claimant, rather than conveying information or facts, was asking for them.

308. The fourth alleged protected disclosure to Dr Greenlees on 10 December 2014 (item 6 on the Scott Schedule) did not meet the test of a qualifying disclosure for the reasons set out a 1 above and because:-

(a) the disclosure was not made to the employer;

(b) the emails reads as an update to the earlier email where he is clarifying what financial information he has been able to find out. Mr Campbell noted that Dr Greenlees raised the claimant's disclosures to her with Ms Brown by email on 17 December 2014 and again on 9 January 2015 which would be inconsistent with her being aware or sensitive about any wrongdoing.

309. The fifth alleged protected disclosure to Professor Lennon on 17 December 2014 (item 7 on the Scott Schedule) was not a qualifying disclosure for the reasons set out at 1 above, and because:-

(a) the disclosure was not made to the claimant's line manager or the University Secretary per the relevant policies;

(b) the claimant's issue was that he considered he had not received full accounting for the amount he has been asked to release. He was not conveying that he had formed the view that the claimant had breached an obligation. It was submitted that he would not have been reasonable in doing so, given that he admitted to still not fully understanding the position. The claimant was still saying *"the Centre will pay any reasonable costs … however … I need to see the extra expenditure before I can sigh her ERF".* The claimant went on to complain not about Dr Greenlees' stance or actions in relation to the funds, but "the change in tone of Janet's communications". The claimant was escalating the matter because he had been unable to make progress in clarifying the financial position and because he took issue with the tone that Dr Greenlees' emails were starting to take; and not because there had been a breach of any policy or obligation.

310. The sixth alleged protected disclosure to Rachel Russell on 13 January 2015 (item 14 on the Scott Schedule) was not a qualifying disclosure because the

alleged disclosures up to 13 January 2015 were made before transcription and data storage costs were put to the claimant as part of the sum claimed by Dr Greenlees. The exchanges up to that point related only to her asking for what she thought the claimant had agreed to pay (that is, catering costs), but which the claimant thought was more than he had agreed (that is, catering costs not covered by the initial £2000 external donation), causing him to ask if there were any further expenses of which he was unaware. But the sum sought by Dr Greenlees was for costs legitimately incurred – all of the catering costs for the workshop were genuine. The claimant's "*disclosures"* (such that he made any) were therefore in the nature of reporting his frustration at being asked to approve the transfer of a given amount of money but not being provided with sufficient vouching, based on his understanding of the agreement which had been struck. It was not of the nature that fell within any of the prescribed categories of protected disclosure. The claimant was not saying anything to show he held a reasonable belief in there being a breach of any legal obligation. His communications do not suggest he had reached that view. If he had, it would not have been reasonable to do so in light of the confusing and contradictory exchanges between the two over a period of months and the lack of adequate procedures governing the situation.

311. Mr Campbell submitted that although the alleged disclosure on 13 January 2015 was made to the claimant's line manager, it still fell short of showing the claimant reasonably believing there had been or would likely be a breach of a legal obligation. The claimant was being asked to authorise a revised figure based on two new expenses which he had not been aware of before. Although he queried this he was not well enough informed to know or state that those costs were not sufficiently connected to the workshop to validly fall within the scope of the agreement. As such the claimant could not and did not at that time convey information about a likely breach which could qualify as a protected disclosure.

312. The meeting with Mr McConville and Ms Russell on 23 January 2015, and the follow up email to Mr McConville on 24 January 2015 were items 16 and 17 on the Scott Schedule. Mr Campbell accepted that it was only on 23

January 2015 that the claimant could have made a protected disclosure because on the day he met his two line managers, he had by then established that the two additional expenses which he had been asked to cover, were not incurred as part of the workshop. The claimant conveyed this by providing information. Mr Campbell submitted that even if the claimant made a protected disclosure at this time, it could not have been the reason for any of the alleged detrimental treatment occurring earlier: by this time, many events had already taken place.

313. Mr Campbell also accepted that the claimant's dealings with Ms Lyndsay Brown on 27 – 29 January 2015 included making protected disclosures. By this time the claimant was following the specific policy designed for protected disclosures to be made and he was providing adequate information in support of his belief.

314. The seventh alleged protected disclosures following referral of concerns to Ms Brown (items 28, 29, 31, 32, 33, 34 and 44 on the Scott Schedule) were, it was submitted, not protected disclosures. If the claimant held a belief that a legal obligation (being the duty to protect an employee against retaliatory acts arising from the making of protected disclosures) was being breached, it was a belief which was not reasonably held, because it was based on one or more erroneous assumptions on the part of the claimant. For example:-

- that colleagues were circulating rumours about him or subjecting him to reputational damage;

- that parties owed him a legal duty that they did not (for example, Professor Mills);

- that what he was perceiving as bullying or harassment was no more than colleagues (i) expressing different views to his which happened to be consistent with each other, such as who to invite to group meetings generally or to discuss REF results; (ii) challenging his

stance on certain issues (such as whether he had any status or power as REF 2020 Lead, group Research Lead or History Policy and Practice Lead), with just cause, or (iii) otherwise acting as they were entitled to (for example, taking part in a vote of no confidence) if not required to (for example, deciding as a group the proposed teaching curriculum for the following academic year) and (iv) that in any event, any negative behaviour experienced by the claimant was a "*retaliatory act"* arising from his making protected disclosures rather by any other reason.

315. Furthermore, there was an element of the claimant's colleagues behaving more defensively as they saw his actions as being problematic, and his attitude towards them change rather than vice versa.

Was any detrimental treatment on the ground that a protected disclosure had been made?

316. Mr Campbell made a number of general submissions on whether any detrimental treatment was on the ground that a protected disclosure was made, and he then specifically addressed each of the detriments set out in the Scott Schedule.

317. Mr Campbell referred to relevant events preceding the alleged disclosures. He invited the Tribunal to note the evidence of the respondent's witnesses to the effect that over a period of several months before the first alleged disclosure, the claimant's relationship with various colleagues became increasingly strained and in some cases broke down substantially, if not altogether. Similarly, issues with Professor Mills were coming to a head. Examples of this included:-

- resentment towards the claimant because of his approach to accounting for workload for WAM in May/June 2014;

- his conduct in the BASS/Project board meeting in May 2014;

- his retaliatory stance towards Professor Walsh when she attempted to persuade him to take on more teaching responsibility in June 2014;

- ongoing issues throughout the year caused by him holding himself out as REF and research lead;

- his conduct around team meetings;

- his public email to Dr Kehoe on 30 September 2014;

- Dr Long's concerns raised with People Services by email on 2 October 2014 when she referred to the thought of dealing with the claimant making her feel anxious;

- perceptions of his conduct as director of the Centre;

- his manner of communication with colleagues;

- four of the group met with People Services to voice concerns about the claimant and agreeing to keep matters under review and

- Mr McConville recognising that matters had become so serious that attempts were made to arrange mediation involving the group, with a clear division between the claimant on the one hand and the rest of his colleagues on the other.

318. The claimant explicitly acknowledged (paragraph 1102 of his statement) that "*Prior to [5 December 2014] relationships within the group had been frosty"* and *" ..you've possibly come in late on this because this issue between the historians and myself has been going on since April/May last year".* Further, at the outset of the grievance submitted on 3 July 2015 he stated *"since May*

2014 I have been harassed, bullied, victimised, ostracised and set-up to fail by a small group of staff within the history teaching group ..".

319. Mr Campbell also asked the Tribunal to consider the claimant's practice of covertly recording meetings and conversations with various colleagues on a number of occasions prior to the first alleged disclosure being made. Mr Campbell invited the Tribunal to draw an inference from that practice that it illustrated a suspicious mindset and relations between the claimant and his colleagues being already damaged.

320. The claimant, in cross examination, sought to explain this by stating it was a product of perceived inequalities between the entitlements of professors and non-professors arising out of the WAM. However, Mr Campbell submitted that explanation was at odds with the evidence of the respondent's witnesses and did not account for the division in the group being between him and the other members, which included two other professors. Mr Campbell invited the Tribunal to note that all of the matters raised in paragraphs 1051 – 1095 of the claimant's witness statement predated his first alleged disclosure.

321. Mr Campbell submitted that against this extensive background of friction and antipathy, it was not only plausible but on the balance of probability likely, that matters complained of by the claimant against his immediate colleagues and managers were wholly or substantially the continuation or product of these previous issues.

322. Mr Campbell noted that the issues of whether the claimant remained REF 2014 Unit of Assessment Lead beyond the end of 2013, or continued in some capacity as a Unit of Assessment lead for the next REF, or was group Research Lead, or Head of the History Policy and Practice group in any real sense took up considerable time at the Hearing. There was clearly a difference of opinion on these matters between the claimant and the respondent's witnesses. It was submitted the position on the evidence was clear, which was that the substantial duties as REF lead ended in December

2013 and what the claimant was asked to do beyond this was a series of sporadic residual tasks from time to time. The tasks were infrequent and nowhere near the substantial role associated with being REF lead. Nor could the claimant (or anyone else) be considered Unit of Assessment Lead for the next REF because it was premature. Similarly, the History Policy and Practice group was seen as a merely cosmetic "*branding"* title intended for external use which merely applied to the teaching group themselves in connection with the REF submission, and it therefore had no life of its own beyond that exercise. The title of research lead appeared to be used interchangeably with HPP lead and was a role which each teaching group would decide upon itself.

323. Mr Campbell submitted that it almost did not matter who was right regarding this issue, because the material point was that the claimant saw things differently from his colleagues which might not have amounted to much of an issue had it not been for the WAM exercise in May and June 2014. That exercise, and the tensions it created, caused resentment to build up towards the claimant because of his taking credit for these roles which were seen to be minor or non-existent. The problems were compounded by the claimant's requests during the academic year 2014-2015 for reports or materials on members' individual research efforts, and his perceived lack of collegiality in decisions related to the research which were felt to be the preserve of the group as a whole. It was submitted that it was these matters which were the primary cause of deteriorating relationships between the claimant and his colleagues around the time he attributes difficulties to his colleagues' knowledge of his disagreement with Dr Greenlees.

324. Mr Campbell noted that between 3 December 2014 and 23 January 2015 the following events occurred:

- Dr Kehoe emailed Mr McConville about the claimant's "*attempt to claim a research leadership role*" on the 8 December 2014;

- the claimant's history group colleagues had disagreed with him over whether to produce a pamphlet promoting/celebrating history research;

- they had also disagreed with him over who should attend their meeting to discuss the REF results;

- Professor Walsh emailed Professor Mills on 6 January 2015 to explain that "*working relationships with Pete have broken down badly*" and hence members of the group were using private emails as they were anticipating a formal grievance from him and a request for copies of their work emails (in the knowledge that he had done this at a previous institution).

325. Mr Campbell referred the Tribunal to the claimant's witness statement where he discussed difficulties with the group, and invited us to note that paragraphs 29 – 86 and 1098-1105 all occurred in December 2014; paragraphs 88 – 104 and 1122 – 1133 all occurred before the claimant met with Ms Russell on 13 January 2015; paragraphs 105 – 109 and 1135 – 138 all occurred on 13 January 2015 and paragraphs 110 – 128 all occurred between 13 and 23 January 2015.

326. Mr Campbell next addressed the question of whether any detriment occurred on the ground a protected disclosure had been made. He submitted that for any proven detriment contained in the Scott Schedule, it did not occur on the ground a protected disclosure had been made because (i) the perpetrator did not know of the alleged protected disclosure said to have caused it and/or (ii) the individual acted (or refrained from acting) for a different reason.

327. Mr Campbell referred the Tribunal to the case of **Bolton School v Evans [2006] EWCA (Civ) 1653** and submitted it was important that the Tribunal properly distinguished between the making of any disclosure and the surrounding circumstances and behaviour of the claimant. Detrimental treatment on the ground of the former was unlawful, whereas it was not on

the basis of the latter. Mr Campbell pointed to the fact the claimant alleged a number of detriments occurred because he raised concerns between December 2014 and January 2015 over his prolonged exchange with Dr Greenlees in the latter part of 2014 (Scott schedule numbers 1, 3, 5, 6, 7, 14, 16 – 20). The claimant did not, however, accuse Dr Greenlees directly of financial misconduct, and appears to have consciously avoided doing so. It was submitted that even if a connection provisionally appeared to exist between the claimant's raising of a concern and other subsequent events generally, the evidence supported that it was not his making of the disclosure itself which played a part in any later detriment, but rather surrounding factors such as (i) what was perceived by Dr Greenlees, rightly or wrongly, to be his general intransigence or awkwardness and refusal to make good on an agreement he made with her; (ii) the view of Dr Greenlees, and later others, regarding the claimant's communication manner insofar as the tone of his emails, their frequency and the number of people involved; (iii) what was viewed by Mr McConville and Ms Russell as the claimant's overly eager pursuit of a sanction against or apology from Dr Greenlees and (iv) having received formal resolution by Ms Brown of the financial situation with Dr Greenlees, he failed to draw a line under that process, which were problematic.

328. Mr Campbell submitted his position was supported by the evidence. For example, Mr McConville, Ms Russell and Ms Brown each acknowledged to the claimant that he was completely within his rights to raise any issue he had with being asked to approve the release of grant funds where adequate vouching was not provided. The fact he had raised an issue was not the problem for them. Both Mr McConville and Professor Hilton considered that a disciplinary process may have been justified for Dr Greenlees, but they accepted that investigation of the matter had been handed over to Ms Brown who had the appropriate financial expertise and authority, and that she made a ruling which they accepted would stand.

329. Mr Campbell acknowledged that whilst Dr Greenlees may have been more likely to bear a grudge against the claimant, her evidence was that she was largely unaware of what the claimant was saying to others. She knew he had raised the matter directly with her in December 2014, but this was not (for the reasons set out above) a protected disclosure. Her awareness that the claimant raised the matter with the acting Dean, Professor Lennon, on 17 December 2014, was not knowledge of a protected disclosure. Dr Greenlees did not know that the claimant had made disclosures to Ms Russell and Mr McConville on 23 January 2015 (paragraph 31 and 32 of her witness statement). She was not at the meeting and had understood that Mr McConville and Ms Russell were acting on their own initiative to bring the long running matter to a conclusion. Similarly she did not know that the claimant had referred the matter to Ms Brown: she only knew of the involvement of Ms Brown a couple of days before their meeting on 20 February 2015 and did not know at first who she was.

330. The matter, for Dr Greenlees, was a minor matter: she had her expenditure finally covered and she was not aware that the Financial Misconduct policy had been potentially invoked. Mr Campbell invited the Tribunal to note that even when reporting to Professor Mills in what she doubtless thought were confidential emails, she did not say that the claimant had accused her of breach of procedures, or that he had reported her to management. Her focus was that the claimant had not paid up (in her view unjustifiably); that he was being awkward; that he had apparently gained access to confidential information about her projects and that his intransigence could cause embarrassment to the Centre and others.

331. Mr Campbell submitted that if there were any concerns or issues that the claimant's colleagues had with him around the "*workshop issue*" they would have to be seen as separate from the making of any disclosure itself, in the same way that breaching one's employer's data security systems in order to demonstrate their vulnerability was separate from voicing concerns about that vulnerability, where the former was not protected (***Bolton School v Evans***).

332. It was submitted that the evidence of the respondent's witnesses regarding what the history group members knew about the claimant's discussions with Dr Greenlees was consistent. Dr Greenlees mentioned or showed a small number of emails to Professor Walsh and Professor McFarland in December 2014, because she wanted their views on whether the claimant's tone was appropriate. She was not asking them to look at the financial aspects. Dr Greenlees said to Professor Walsh that the claimant had agreed to pay some money but was now refusing. Both professors thought the matter was minor and it did not have an effect on any of their future actions in respect of the claimant. They agreed Dr Greenlees should raise it with Ms Russell, and she did.

333. Dr Greenlees stated that the three individuals to whom she spoke individually, suggested she notify Professor Mills as the matter pertained to Centre funds. Mr Campbell acknowledged the individuals did not recall this, and suggested that it was possible Dr Greenlees exaggerated the degree to which she gained their endorsement for something she wanted to do.

334. Dr Greenlees did not notify the non-professor members of the history teaching group and there was no evidence that they knew around the time the matter was developing and being dealt with (up to the end of February 2015). Mr Shepherd stated he found out at some significantly later point in 2015 although it was, in his mind, a discrete and irrelevant matter in relation to the other issues going on.

335. Mr Campbell submitted that given the above points, the Tribunal should find:-

(a) only Dr Greenlees, Professor Walsh and Professor McFarland knew anything about the matter at all from among the history teaching group;

(b) it was not a material issue for any of them that the claimant had raised a query over the funds request;

(c) the issue (if there was one) was over matters such as the tone of the claimant's communications, the long-running nature of the matter, the involvement of other individuals and the claimant's apparent (albeit unproven) accessing of confidential information relating to Dr Greenlees' projects;

(d) none of them considered the matter significant enough for it to affect their subsequent conduct towards the claimant given the larger and more longstanding issues at the time and as developed subsequently;

(e) none of them knew that the claimant had made disclosures to Mr McConville and Ms Russell or Ms Brown on 27 – 29 January 2015 and

(f) none of the other members of the history teaching group were aware of the matter at all.

336. Mr Campbell identified each of the detriments referred to in the Scott schedule and submitted the alleged detriments had not occurred on the ground of any protected disclosure for the following reasons (the numbers follow the numbers on the Scott schedule):-

- (2) this is not a detriment because Dr Greenlees was stating something factually truthful, that is, that he [the claimant] was not at that point paying even what he agreed was payable. If it was a detriment, it was de minimis and there was no adverse consequence. The act of reporting the matter should not be confused with any future steps taken by Professor Mills in consequence of the matter being reported as those were not the "employer" subjecting the claimant to a detriment.

- (4) as for 2 above, plus she was entitled to claim the claimant was awkward as he arguably was, but this was a separate issue from the disclosure.

- (8) as for 2 above.

- (9) this is not an act or failure to act by the claimant's employer because JS had retired in 2013.

- (10) the gist of the accusation was that the claimant was said to have accused Dr Greenlees of dishonesty. Professor McFarland's evidence was that she would have described the matter neutrally. This is not a detriment because Professor McFarland would only have said what was accurate and fair comment: what was conveyed to the claimant was Professor Hughes' interpretation and not Professor McFarland's actual words. This was part of a wider discussion about the claimant and his being in dispute with his colleagues. Professor Hughes conveyed it to the claimant in a friendly way and in a social setting. If it was a detriment, it was very minor and isolated. Further, it was not on the ground the claimant had made a protected disclosure since the only disclosure she knew about (if any) was the claimant's communication with Dr Greenlees, and this was not a protected disclosure.

- (11) is not a detriment, and did not occur on the ground the claimant made a protected disclosure. Professor Walsh did not know the specifics of any particular disclosures. Dr Greenlees was not looking for views regarding the financial aspects of the disagreement, she was seeking views regarding the tone of the claimant's communication. Professor Walsh's email was based on pre-disclosure issues (up to the end of November 2014) and in knowledge of what the claimant had done before.

- (12) This is not a detriment because the communications were, on the whole, merely enquiring with the organising institution what input from the respondent was required. Mr Campbell acknowledged this could be seen as Dr Long being reluctant to approach the claimant, but this was understandable given the other reasons aside from Dr Greenlees' issue. In any event Dr Long did not know about any protected disclosure.

- (13) this was not a detrimental act by the employer, and was not done on the ground the claimant had made a protected disclosure.

- (15) this was not a detriment. The claimant got a response initially which was, on the face of it, reasonable. Ms McAndrew thought she was providing what he had asked for. The claimant asked for more details, but Ms McAndrew did not respond to this. There was no evidence of a protected disclosure being the reason for the failure to respond, and Mr Campbell suggested it could merely have been an oversight.

- (21) Mr Campbell did not accept this as fact, and in any event it did not occur on the ground the claimant had made a protected disclosure. Ms Gillies knew nothing of any disclosure on balance of probability and based on the evidence of Ms Brown and Mr Milne. The sole basis for the claimant's assertion was that he understood Ms Brown or Mr Milne would have reported the claimant's complaint under the policy to Ms Gillies. Both witnesses confirmed they did not do so.

- (22) this was not a detriment: it was a democratic and necessary decision because there had not been scope to put both of the claimant's modules forward. This did not occur on the ground the claimant made a protected disclosure: it occurred because of other factors, which included the need to allocate teaching fairly, take into

account all individuals' preferences and University orders to reduce modules generally.

- (23) this was not done on the ground the claimant had made a protected disclosure, and was based on wider, pre-disclosure issues including longstanding dissatisfaction with the claimant acting as Principal Investigator. Mr Campbell suggested that a lot of what was said was arguably fair comment given the tense exchange of emails between the claimant and Professor Mills the same day. Dr Greenlees was not (as alleged) saying the claimant's email disclosures relating to financial irregularity were potentially embarrassing to the University, but rather that the claimant's reluctance to use Centre funds, his further request for an extension to the grant period and the manner of his communications are the concerns.

- (24) is not a detriment, and was factually denied as described. The vote was to circulate a further draft constitution document and not to remove the claimant's status or powers. In any event, this did not occur on the ground of the claimant's having made a protected disclosure: it related to ongoing pre-disclosure issues and wider concerns about the claimant's conduct as Principal Investigator in relation to the Centre.

- (25) Mr Campbell disputed these facts on the basis she was not the organiser, but Strathclyde University; and this did not occur on the ground the claimant had made a protected disclosure.

- (26) this was not a detriment, and was not a detriment by the claimant's employer.

- (27) this was an oversight by Professor Walsh, and was not the cause of the module ceasing. The claimant had not written the module by the time the students were given their choices. The module could not have been led by another historian. The claimant was proposing to buy

himself out of teaching, and this is why the module did not and could not proceed. The oversight by Professor Walsh did not occur on the ground a protected disclosure had been made.

- (28) this was denied factually. The claimant was not being caused reputational damage by colleagues as a result of the Dr Greenlees issue. He wrongly assumed they were all aware of it, were discussing it and talking to others about it: he misconstrued other events to be caused by that when they were not.

- (29) this is not a detriment. There was no retaliation because of his reporting of financial concerns and there were no false rumours circulating either. This did not occur on the ground the claimant had made a protected disclosure.

- (30) this is not a detriment by the employer, and was not done on the grounds the claimant had made a protected disclosure. There were wider issues regarding the Centre, including a breakdown of relations between the claimant and (i) Professor Mills and (ii) the rest of the history colleagues generally.

- (31) as for 28 above. The matter was raised with Mr McConville who agreed to look into it and take appropriate action. It was not reasonably foreseeable at this point that the poll would be posted shortly afterwards. By 9am on Monday morning the poll had gone live and the matter was being taken seriously and dealt with appropriately by Professor Hilton. Any alleged lack of action to protect the claimant was not done on the ground the claimant made a protected disclosure.

- (32) as for 31.

- (33) Professor Hilton did act promptly, and the matter appeared to have been remedied by the end of the following day, after Professor

Mills agreed to withdraw the poll. There was no evidence to suggest action was warranted against the respondent's history staff. Professor Hilton was already trying to arrange a meeting with the claimant to discuss other matters and proposed to listen to his concerns at that time. Any alleged lack of action to protect the claimant was not done on the ground he had made a protected disclosure.

- (34) as for 33.

- (35) this is not a detrimental act by the employer and even if it was, it was not done on the ground the claimant made a protected disclosure.

- (36) this is not a detriment. Dr Kehoe was entitled to vote as she did and she did not act on the ground the claimant had made a protected disclosure. There were wider Centre issues, and any alleged lack of action to protect the claimant was not on the ground he had made a protected disclosure.

- (37) as for 36.

- (38) this was not a detriment, and was different to the evidence before the Tribunal . Professor Hilton was offering assistance to the claimant and was not acting on the grounds the claimant had made a protected disclosure.

- (39) as for 38.

- (40) this was not accepted factually. An email was sent on that date, but does not state what is suggested. This was not a detriment and did not occur on the ground of the claimant making a protected disclosure. Ms Russell had already decided the claimant's level 3 module could not be offered to students.

- (41) this was not a detriment and did not occur on grounds the claimant made a protected disclosure.

- (42) as for 41 above, plus reflects the wider issues.

- (43) this was not a detriment: the Administrator was for the benefit of the Centre, not the claimant. The action did not occur on the ground the claimant made a protected disclosure, but because Professor Hilton learned the Directorship of the Centre had transferred to Strathclyde and it for them to make such decisions.

- (45) this was not accepted factually because there was no statement or suggestion that Professor Hilton would not support the claimant's research. She withdrew a publicity article against a background where the claimant had not provided the necessary information and documentation in line with standard procedures. This action did not occur on the ground the claimant had made a protected disclosure.

- (46) this was not accepted on the fact, and was not a detriment.

- (47) this was not accepted factually. The grant was for the benefit of the Centre: it did not belong to the claimant. Professor Hilton was seeking a pragmatic way of allowing Strathclyde to have access to spending. The claimant was informed of the arrangement: Dr Greenlees was not involved as Professor Hilton signed off on expenditure. This was not a detriment, and did not occur on the ground of the claimant making a protected disclosure.

- (48) the facts regarding this matter differed. Professor McFarland confirmed this was a "*different incarnation*" of research lead and a reaction to the group meeting with Professor Hilton a week earlier, when they learned history may not be a discrete submission in the next REF cycle.

- (49) this was not a detriment, but rather a necessary communication after all informal attempts to address the claimant's behaviour had been exhausted.

- (50) this was not factually accurate. Dr Greenlees' evidence and timeous emails report student concerns and/or a lack of adequate provision. This was not a detriment and did not occur on the ground the claimant made a protected disclosure.

- (51) this was not a detriment, but fair comment in the circumstances.

- (52) this was not a detriment (see 27 above).

- (53) as for 52 and 27 above

- (54) this was not a detriment and did not occur on the ground the claimant made a protected disclosure.

- (55) this was not a detriment. The claimant received his contractual entitlement to sick pay and had the period of full pay extended by a month before reverting to half pay.

- (56) this is not a detriment: the respondent had no say in the matter which was brought about by the claimant himself.

Time bar

337. Mr Campbell submitted parts of the protected disclosure detriment claim were time barred. The claim had been presented to the Tribunal on 16 September 2015. The ACAS notification date was 20 July 2015 and the certificate had been issued on 20 August 2015. In order to determine whether a complaint was on time, it was necessary to count back three months less one day from

the date the claim was presented (17 June 2015) and discount the duration of the early conciliation period (1 month) and this resulted in a date of 17 May 2015. However, section 207(4)B provides that if the time limit for a complaint would expire between the ACAS notification date and 1 month after the date the ACAS certificate was issued, the deadline to present the claim is extended to one month after the date the ACAS certificate was issued. This brings the date to 20 September 2015. Mr Campbell submitted that any complaint alleged to have occurred on or after 20 September 2015 was in time, but all acts prior to that were out of time.

338. The claimant had not provided the Tribunal with any evidence why it was not reasonably practicable to have presented the claim on time.

339. The respondent's position was that the out of time complaints were not part of a series of similar acts. Mr Campbell referred to ***Arthur v London Eastern Railway [2006] EWCA Civ 1358*** where it was held that there must be "*some relevant connection between the acts*". This did not exist in the claimant's case, particularly as the complaints related to different people involved in different situations at different times, with no clear evidence of them being influenced by the other.

340. Mr Campbell referred to ***Unilever UK pc v Hickinson UKEAT/0192/09*** where it was held that in deciding whether a detriment case is brought in time, Tribunals must focus on the date of the act giving rise to a detriment, not the consequences that follow.

341. In light of the above submission, Mr Campbell invited the Tribunal to find that all of the allegations of detriment as a result of making disclosures about financial misconduct on the part of Dr Greenlees were collectively separate from the rest of the claimant's allegations; that in any event the individual allegations against Professor McFarland, Ms McAndrew, Professor Gillies and Mike Mannion were separate and each out of time; that the allegations of failure to protect the claimant from retaliatory acts prior to 21 April 2015

were separate as was Professor Hiltons' conversation with the claimant, and Professor Hilton and Professor Johnstone`s emails to the history group and their collective response. Accordingly all of these matters were out of time and should fall outside the Tribunal 's jurisdiction to determine on the merits.

Disability Discrimination claim

342. The claimant brought a complaint of discrimination arising out of disability in respect of the PDAR. The claimant was awarded the incremental annual pay rises on the two annual review dates on which he was absent (November 2015 and November 2016) and as such there was no unfavourable treatment.

343. The claimant did not have an appraisal rating for the academic year 2014-15 or 2015-16 as he had not been working for the whole of each year, there was a lack of evidence of performance against objectives and there were unresolved issues around his conduct which prevented anything other than a rating of 1 out of a possible 4 being applied, which would not have resulted in a Performance Related Pay (bonus) award in either year under the rules of the revised scheme. As such (a) he was not treated unfavourably by having his rating deferred as the application of a rating would have left him no better off and (b) if he was treated unfavourably, then for the year 2014-15 the treatment was not arising in consequence of his disability but rather his behaviour and specifically the unresolved disciplinary process and separate complaint of Dr Kehoe and (c) any unfavourable treatment was a proportionate means of achieving a legitimate aim (namely applying a fair appraisal system to all staff and awarding a bonus only to those who deserve one) and thus justified.

344. The claimant also brought a complaint of discrimination arising out of disability in respect of internal vacancies. Mr Campbell submitted the claimant had not been treated unfavourably because (a) it would arguably have been unfavourable to contact the claimant to discuss alternative roles whilst he was absent on grounds pertaining to his mental health; (b) such roles were not viable options for the claimant and (c) the claimant had access to his work

email account and so was not denied the opportunity to be notified of the roles.

345. If however the claimant was treated unfavourably for a reason arising in consequence of his disability, it was a proportionate means of achieving a legitimate aim that he was not contacted specifically about the roles, the aim being not to risk jeopardising the claimant's already sensitive mental state and damaging relations between the parties by explicitly suggesting he either vacate his existing role or take on additional duties.

346. The claim of failure to make reasonable adjustments also related to the issue of internal vacancies. Mr Campbell submitted the respondent did not require the claimant to be in work to receive notification of internal vacancies. The claimant had access to them when absent from work and this was supported by the fact he discovered them and incorporated a complaint about them into his claim in 2016 whilst still off work and in the respondent's employment.

347. The respondent did require the claimant to be fit to work to have a realistic chance of applying for and securing any of the vacancies for which he was suited in terms of his skills and experience. There were no further steps the respondent could have taken to avoid any disadvantage caused to the claimant by that position: unless he was medically certified as fit to return to work in some capacity then no arrangements made by the respondent with respect of the roles would have assisted in overcoming the disadvantage of the claimant's medical unfitness for work.

348. The complaint of failure to make reasonable adjustments also related to occupational health appointments. Mr Campbell submitted the question of having the claimant seen by PAM was entirely taken out of the respondent's hands, both at the time and indefinitely, as a result of their decision. The respondent did not conceal the appointment; they did not apply a provision, criterion or practice of cancelling appointments with regard to the claimant. PAM cancelled the appointment which the respondent had been happy to see

go ahead. They did so in response to direct communications from the claimant and not anything done by the respondent. In any event, asking the claimant at that point for a chance to respond would not realistically have changed their stance.

349. The respondent did not apply a provision, criterion or practice as alleged, in a way which placed the claimant at a disadvantage compared with non-disabled persons. It would have been exactly the same situation had PAM cancelled an appointment for an employee who was not disabled.

350. There were no reasonable steps which the respondent failed to take. It had made every reasonable effort to arrange the appointment and it was only as a result of the claimant's communications that it was cancelled.

Constructive dismissal

351. Mr Campbell noted the claimant's case appeared to be based on (i) the respondent not disclosing items to him at an earlier stage than May 2017 and specifically not disclosing them in response to one or more of his five data subject access requests (SAR) throughout 2015 and early 2016; (ii) such items contained untrue and/or damaging statements about the claimant which amounted to a breach of mutual trust and confidence and (iii) disclosure of those items amounted to the last straw.

352. The respondent's position was that:-

- it would not be a breach of mutual trust and confidence merely by not disclosing documents to an employee which pertain to them. There were various reasons which were permitted in terms of the Data Protection Act 1998 and related guidance and those applied as explained by Ms Lauder in her evidence;

- it could not be a breach of mutual trust and confidence merely for an employer to disclose documents in connection with an employment

Tribunal hearing which have hitherto not been provided to the employee. The rules on how a response to a SAR should be made under the Data Protection Act are different from those which govern employment Tribunal disclosure and an employer, even if not obliged to disclose more under the latter, is entitled to do so in the interests of mounting its best defence to the claim;

- the respondent was not in breach of the obligation of mutual trust and confidence by not disclosing the documents earlier than it did;

- an employer cannot be in breach of mutual trust and confidence simply by virtue of its holding a document about another employee which is factually untrue or, in the view of that second employee, potentially damaging. An employer is entitled and at times required to gather documents which could be described as such, for example in a grievance or disciplinary process;

- none of the documents disclosed to the claimant are, on the balance of probabilities, factually untrue or damaging at all and

- the claimant was already aware of the general details of the situations to which the disclosed documents relate, and accordingly disclosure of the documents cannot be founded upon as a last straw.

353. The disclosed documents upon which the claimant relied were dated between October 2014 and June 2015 and also 10 November 2015. It was submitted that when the substance of the disclosures was considered against the information the claimant already had before going off ill in May 2015, and then raising his claim in September 2015, and receiving various responses to his SAR requests up to 2 February 2016, their effect is less than would be required to breach mutual trust and confidence or amount to a last straw.

354. Mr Campbell noted some of the claimant's specific complaints, and responded to them. The claimant complained of not being informed of the accusations made by Dr Kehoe in October 2014 about his REF and/or research lead status and her feeling uncomfortable or intimidated by his behaviour and seeking to have a senior female colleague address the claimant about his behaviour towards others. Mr Campbell invited the Tribunal to note the claimant was already aware of Dr Kehoe's sensitivity to his communications by virtue of his apology in October/November 2014. Also, on 9 April 2015 the group emailed the claimant to state their collective position on a number of issues including REF and research leadership. If the claimant had not been aware beforehand, the email made it patently clear. The claimant was also provided with an extract of the formal complaint she lodged against him by letter on 23 April 2015 which raised in some detail the issues she had with his conduct towards her.

355. The claimant also complained of not being copied emails by other parties pertaining to him generally. Mr Campbell noted that many of the documents, or passages within them, merely represented management or HR updates or the provision of advice to deal with a difficult situation. At times they used discretion to avoid aggravating matter. Mr Campbell submitted the respondent was entitled not to disclose every communication they made or received to all individuals they were trying to assist in the process.

356. The claimant also complained that Ms Russell had made statements considered to be untruthful at a meeting as part of an investigation into the complaint by Dr Kehoe. Mr Campbell submitted those statements were either patently correct or at least represented a validly held view. They could not be proved as untrue or damaging and in any event it was not a breach of mutual trust and confidence for her to have made them.

357. Mr Campbell submitted that withholding any document disclosed in May 2017 was not a detrimental act on the ground the claimant made a protected disclosure. Ms Lauder had no involvement in the events surrounding the

alleged disclosures and no interest in treating the claimant adversely as a result of any disclosures made. Her motive was solely to follow the relevant law and guidance on responding to SARs in the way she would have done for any fellow employee.

Conclusion

358. Mr Campbell invited the Tribunal to reflect on the point that if the claimant's case was that all of the detrimental treatment by all of the various named parties over a period of months stemmed from his reporting of his disagreement with Dr Greenlees, was this realistic? Would such a large group of professionals really all turn against the claimant for raising what was commonly agreed to be a legitimate concern? What would they stand to gain? What was their motive? Did Dr Greenlees really have so much influence over her immediate colleagues, managers, senior office holders and people in completely different University functions and different Universities to make them side with her in retaliation against him? Mr Campbell submitted that this was not even close to probable.

359. The respondent's position was that where any action (or failure to act) could be described as detrimental to the claimant, it occurred for the individual's own reasons, some of which the claimant brought on himself, some potentially motivated by a subjective, incomplete or even erroneous understanding of the relevant facts, but none on the ground he had made a protected disclosure. This, it was submitted, was a much more likely and probable true version of events.

360. Mr Campbell invited the Tribunal to dismiss the whole claim.

Discussion and Decision

361. We considered it would be helpful to set out the list of alleged disclosures and the detriments said to have occurred because the disclosure had been made.

The list of alleged disclosures and detriments

(1) The claimant met with Dr Janet Greenlees on 3 December 2014 and raised a number of legitimate concerns about claims she had made against the claimant's Wellcome Trust research fund in relation to the costs of an academic workshop she had held on 11 and 12 September.

The detriment said to have occurred because of this disclosure was that Dr Greenlees wrote two emails to Professor James Mills of Strathclyde University on 4 December 2014, in which she referred to the meeting with the claimant the previous day. She alleged (untruthfully) that the claimant was refusing to pay her funds for the workshop, when she knew that the majority of the sum she had claimed was not properly payable by the claimant's research fund.

(2) At a meeting with Mr Stuart Mitchell (Finance Business Partner) on 5 December 2014, the claimant disclosed information tending to show that Dr Janet Greenlees was in breach of her legal obligation to comply with the University's financial conduct procedures in that she was seeking to claim expenses for a workshop from a fund for which she had responsibility when she knew the majority of the sum claimed was not properly payable by that fund.

The detriment said to have occurred was that on 5 December 2014 Dr Janet Greenlees wrote an email to Professor Mills alleging (untruthfully) that the claimant was refusing to pay funds to her from the research grant, when she knew those funds were not properly

payable. Dr Greenlees further alleged that the claimant was being "awkward" and that the other members of the respondent's History group agreed with her.

(3) The claimant made a disclosure to Dr Greenlees, by email on 9 December 2014, that there was a large discrepancy between the funds requested and those expended on the workshop.

The claimant disclosed to Dr Greenlees, by email of 10 December 2014, information which tended to show she was in breach of her legal obligation to comply with the University's financial conduct procedures. The claimant believed the over-charge was £932.

The claimant disclosed the overcharge in an email to Professor John Lennon (Acting Dean of the Glasgow School of Business Studies) with 13 pages of email evidence including tables of expenditure.

The detriment said to have occurred was that Dr Greenlees wrote a further email to Professor Mills undermining the claimant's position and reputation and falsely alleging that he had been refusing to pay the monies to her. Dr Greenlees stated she had communicated with Professor Walsh and Professor McFarland, of the respondent's History group, and Ms Rachel Russell, Assistant Head of Department, and that they had agreed that she should write to Professor Mills about the financial concern raised by the claimant. Dr Greenlees made further untrue statements about the claimant's actions and behaviour and offered to provide Professor Mills with further information.

Professor John Stewart wrote to Professor Mills making derogatory remarks intended to create a false impression of the claimant. He stated "it would appear that comrade Kirby is now deeply loathed at GCU. I think Janet may have filled you in on some of this."

On 19 December a GCU Professor from outside the History group told the claimant that he had recently met with Professor McFarland and received a report that the claimant had alleged a lack of honesty against Dr Greenlees and that his alleged action had not been well received by the History group.

On 6 January 2015 Professor Walsh sent an email to Professor Mills from her private email address stating "as you may have heard from Janet or Vicky, working relations with Pete have broken down badly. As a result, we're (the rest of the History group) tending to use non-GCU addresses for anything relating to our esteemed colleague." Professor Walsh stated the group was acting in this way specifically to discuss the claimant whilst avoiding detection in the event of a Data Protection request by the claimant.

On 6 and 20 January and 3 February 2015 Dr Vicky Long sent three emails to Professor Mills expressing concerns that the claimant might raise objections to signing off the forthcoming June conference expenses and the costs of Professor Linda Bryden's visit to Glasgow. The claimant was not made aware of Dr Long's views and was not contacted about any matters relating to the conference.

On 12 January 2015, Professor Stewart wrote a further email to Professor Mills in which he made further derogatory remarks about the claimant. He stated: " I am getting my aged ear bent …. he [the claimant] has pissed people off so much that more than one historian is examining his/her options."

(4) On 13 January 2015 Ms Rachel Russell emailed the claimant requesting that he arrange a transfer of a further amount of £908.43 to Dr Greenlees' research account. The claimant emailed Ms Russell protesting about her request and disclosed information to her which

tended to show Dr Greenlees was in breach of her legal obligation to comply with the University's financial conduct procedures.

The claimant emailed Mrs Theresa McAndrew (Senior Administrator) on 17 January 2015 requesting detailed financial information relating to research projects which had previously been made available to him. His request was refused.

(5) On 23 January 2015 the claimant attended a meeting with Mr Ben McConville (Head of Department) and Ms Russell, along with Ms Janet Pierotti. He disclosed the financial irregularities to Mr McConville and Ms Russell and provided supporting documentation.

On 26 January the claimant emailed Mr McConville with attachments which tended to show Dr Greenlees was in breach of her legal obligation to comply with the University's financial conduct procedures.

On 27 January the claimant phoned Ms Lyndsay Brown (Financial Controller) disclosing information which tended to show that Dr Greenlees was in breach of her legal obligation to comply with the University's financial conduct procedures.

On 28 January the claimant met with Ms Brown and disclosed information to support his position; and he later emailed her information and attachments.

On 16 February the claimant's research-teaching work was publicly attacked and misrepresented as insulting to staff by Professor Gillies in a departmental meeting attended by several members of the History group.

The claimant's successful level four specialist module was cut from the BA Social Sciences provision by Ms Russell and the History group on 17 February.

Dr Greenlees wrote a further email on 19 February to Professor Mills in which she stated the claimant was "still refusing to pay up". She stated the emails the claimant had sent to disclose the financial irregularity could embarrass the University and damage its reputation with external research funders. Dr Greenlees stated she was acting with the knowledge of Professor Walsh and Dr Long and that she had discussed the matter with Professor Stewart. She made untruthful statements about the claimant's handling of two financial matters.

On the morning of 20 February Dr Greenlees was told she was not entitled to the sums claimed. In the afternoon, Dr Greenlees and Professor Walsh attended a meeting of the Centre and attempted to vote down the claimant's role as Principal Investigator and grant holder for the Wellcome Trust grant.

Dr Greenlees was made the GCU organiser of the Centre's June Conference. She did not contact the claimant regarding the Conference finances which were to be funded by the grant administered by the claimant. Three months later the claimant was accused of failing to approve funding.

On 23 February Professor Walsh disclosed to Professor Mills a sensitive and confidential internal email. Professor Mills wrote to Professor Mike Mannion (Pro-Vice Chancellor, Research) asking him to replace the claimant as a Centre lead stating "a fresh face therefore seems to be the way forward."

Between 25 February and 16 June Professor Walsh failed to act on a request issued by the BA Social Sciences Programme Board. This had

the effect of excluding the claimant's new level-three research-led teaching module from the 2015-16 Social Sciences curriculum.

(6) The claimant, on 3 March 2017, disclosed to Mr McConville, Ms Smith (HR) and Professor Hilton that "*I hope you will understand my difficult position as PI for research account R4146. Reputational damage has accrued to me as a result of the spread of misinformation about this matter, yet I have maintained complete confidentiality throughout. In my view we must also avoid a situation in which we are seen to condone financial misrepresentation*." The claimant also confirmed that History staff research accounts which had previously been available to him were being withheld.

On 4 March the claimant disclosed to Professor Mike Mannion that retaliation was taking place in the wake of his earlier disclosures and that false rumours were being spread that he had refused to pay Dr Greenlees.

The respondent failed to investigate and did not act to protect the claimant from retaliatory acts.

On 6 March Professor Mills wrote to the claimant threatening a vote of no confidence.

(7) On 6 March the claimant wrote to Mr McConville informing him about the harassment and asking him for protection. He subsequently met with Mr McConville that day and disclosed information to him that there was ongoing harassment and reputational damage.

The respondent failed to act to protect the claimant.

(8) The claimant disclosed Professor Mills' email to Professor Hilton, Mr McConville and Ms Smith on 9 March. The claimant requested their assistance to protect him and the Wellcome Trust funding.

The respondent failed to act to protect the claimant.

(9) On 9 March the claimant disclosed to Professor Hilton, Mr McConville and Ms Smith the details of an on-line vote of no confidence circulated by Professor Mills on behalf of the respondent's History group.

On 9 March Professor Mills wrote to a professor at Strathclyde University and declared that the History group at GCU had asked him to make public their loss of faith in the claimant's leadership. Dr Karly Kehoe, a member of the History group, emailed Professor Mills and confirmed her vote was "No".

On 10 March Dr Shepherd sent two emails to Professor Mills and Professor Walsh stating he did not have confidence in the claimant as Co-Director of the Centre; and that he did not have confidence in his [the claimant's] suitability for an internal research leadership role within GCU.

Professor Hilton suggested to the claimant that a "way out" would be to give up control of the Wellcome Trust grant to Dr Greenlees.

On 13 March Professor Mills sent an email to Professor Hilton in which he confirmed he had spoken to her on 10 March. Professor Mills complained the claimant had made a formal complaint about his actions in conducting the public vote. He further implied the claimant was sexist and made allegations that the claimant had concealed his actions from his employer.

Professor Hilton informed the claimant that he had created a situation with Strathclyde University and she again requested he give up control of the grant.

On 16 March 2015 Dr Shepherd wrote a confidential email to Dr Joan Allen, External Examiner for History, by which he excluded the claimant's level three module from consideration.

On 9 April 2015 Professor Hilton and Professor Johnston emailed the History group to arrange a meeting about the future of history research at GCU, and the REF 2020. They did not consult the claimant.

On 9 April the claimant received a long email from the History group stating the claimant was not Research Lead and that there was no such role in History or in any other unit in the School. The group accused the claimant of not accepting the democratic decisions of the group. The respondent failed to act to confirm the claimant's position.

On 24 April Professor Hilton wrote to inform the claimant that the University's approval of a replacement Centre Administrator had been withdrawn

(10) On 6 May the claimant disclosed information in an email to Professor Mannion and Professor Marshall that he was being victimised by Professor Hilton and Professor Walsh.

On 7 May Professor Hilton wrote to Ms Fiona Ramsay, Professor Tombs, Professor Mannion and Professor Marshall and the claimant, and stated the claimant's new research project due to commence on 1 September would not be supported in any way.

On 15 May Professor Walsh wrote to the claimant implying that he had failed to sign off costs associated with the June conference. No such requests had ever been made.

On 18 May Professor Hilton wrote an email to Dr Greenlees and Professor Mills giving them financial control over the claimant's Wellcome Trust grant.

On 21 May Dr Greenlees called a meeting of the History group, where one item for discussion was the role of "Research Lead". The claimant believed he held this role, and he wrote to the group asking them not to discuss this point in his absence. The claimant noted from the Minutes of this meeting that Professor McFarland had been selected by the History group in place of the claimant.

On 29 May, whilst the claimant was absent on sick leave, the respondent sent a letter to his home address inviting him to attend a disciplinary hearing.

Between 29 May and 1 June Dr Greenlees sent emails to Professor Mills and Ms Russell in which she made numerous untruthful statements about the claimant's teaching: she stated for example that students on the claimant's child health module had raised concerns with her about the poor quality of the claimant's teaching.

On 1 June Ms Russell emailed Professor Mills about the claimant's MSc module and stated "sorry it is all such a mess".

On 4 June the claimant's module was excluded from discussion and the BASS board meeting.

On 16 June the claimant's level three module was formally removed from the Social Sciences curriculum without consultation with the claimant.

On 7 July the respondent's website carried an article about the Centre. The article did not mention the claimant and created the impression he did not have any major role in the Centre.

The claimant was absent from work from 26 May 2015 until the date he resigned. Under the terms of the respondent's sick pay policy, and due to his length of service, he was entitled to 22 weeks of full pay and 22 weeks of half pay. On 1 October 2015 the respondent agreed to extend the full sick pay allowance from 27 October to 22 November 2016. On 24 April 2016 the respondent ended the claimant's half pay period.

On 23 May 2016, without consultation with the claimant, the respondent permanently cancelled the occupational health assessment for the claimant.

362. We next turned to consider the issues before the Tribunal

1. <u>Were the disclosures made by the claimant protected disclosures?</u>

363. The first issue for this Tribunal to determine is whether the disclosures alleged by the claimant are protected disclosures. Section 43A Employment Rights Act sets out the meaning of "*protected disclosure*" and provides that 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.

364. Section 43B provides that 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, is being 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 and safety of any individual has been, is being or is likely to be endangered;

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

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

365. Section 43C sets out to whom a qualifying disclosure may be made. A qualifying disclosure is made in accordance with this section if the worker makes the disclosure to his employer.

366. We also had regard to the case of ***Cavendish Munro Professional Risks Management Ltd v Geduld*** (above) where the EAT held that for there to be a disclosure, there must be something which conveys information or facts, and not merely a statement of position or an allegation. The EAT in the case of ***Kilraine v London Borough of Wandsworth [2016] IRLR 422*** cautioned Tribunals to take care in the application of the principle arising out of the ***Cavendish*** case. It was stated that Tribunals should not focus only on asking whether an alleged protected disclosure was information or an allegation when reality and experience suggested that, very often “information” and

"allegation" were intertwined. The question to be asked was simply whether there was a disclosure of information.

367. The first disclosure was alleged to have been made by the claimant to Dr Janet Greenlees on 3 December 2014 when the claimant met with her and raised concern/clarification regarding claims made by her in relation to a workshop. We considered (i) whether there had been a disclosure of information; (ii) whether it had been made to the claimant's employer and (iii) whether it tended to show the claimant held a reasonable belief that a breach of a legal obligation had occurred. We noted the respondent took no issue with any of the disclosures being in the public interest.

368. We concluded, having had regard to the claimant's witness statement, the witness statement of Dr Greenlees and the oral evidence, that the claimant did no more, at the meeting on 3 December 2014, than ask Dr Greenlees to provide a figure for the overall cost of the conference. The claimant did not *"disclose*" information to Dr Greenlees: he asked for it.

369. We noted the respondent has a Public Interest Disclosure Policy (page 279). The Policy provides that the University Secretary is the designated officer to whom a disclosure should normally be made, although a member of staff may make the disclosure in the first instance to their Head of School/Department and may ask their line manager to make the disclosure on their behalf. The policy goes on to state that any cases of financial misconduct will be reported by the University Secretary to the Chief Financial Officer who will arrange for an investigation to be carried out in accordance with the University's Financial Misconduct Policy.

370. We further noted this Policy was referred to in the claimant's contract (page 197). The clause stated the University had a policy and relevant procedures to enable staff and students to draw to the attention of the appropriate senior management and/or Governor/s matters that would be sufficiently serious to be considered under "whistleblowing" arrangements. It was stated "*you are*

required to use these procedures should you have a matter that would reasonably fall within their scope." A copy of the policy was available on the University's intranet.

371. The claimant must have known about the respondent's policy because it was referred to in his contract, but he did not use it. We accepted Mr Campbell's submission that having specifically referred to the policy in the claimant's contract, and placed it on the intranet, the respondent was entitled to assume that employees would follow it should the situation arise. That said, however, we did not accept that the fact the claimant did not follow the policy prevented him from making a qualifying disclosure.

372. The meaning of the term "*employer*" is not defined in Section 43C, but there is a general understanding that a disclosure should be made to someone who can do something about it. So, a disclosure made to someone more senior to the worker, and who has express or implied authority over the worker would suffice. This is reflected in the respondent's Policy by stating that matters should be reported to the Secretary or Head of Department (or Chief Financial Officer).

373. The claimant had a conversation with Dr Greenlees on 3 December 2014. Dr Greenlees is a junior employee: she was not Head of the Department and had no line management role in respect of the claimant. She was not an appropriate person for the claimant to make a disclosure: she was not the employer in terms of Section 43C.

374. We next considered whether the disclosure tended to show the claimant held a reasonable belief that a breach of a legal obligation had occurred. This was the first occasion on which the claimant spoke to Dr Greenlees regarding the transfer of funds. The purpose in speaking to her was to seek clarification and ensure she understood why he needed it. The claimant could not, at this stage, have held a reasonable belief that a legal obligation had been breached because he did not have the information to reach that belief.

375. We concluded the first alleged disclosure was not a qualifying or protected disclosure because (i) the claimant did not disclose information to Dr Greenlees; (ii) the disclosure was not made to the claimant's employer and (iii) the information disclosed did not tend to suggest that a legal obligation had been breached.

376. The second disclosure was alleged to have been made by the claimant to Mr Stuart Mitchell on 5 December 2014 when he sought advice regarding the transfer requested by Dr Greenlees.

377. We asked whether the claimant disclosed information to Mr Mitchell. The claimant provided Mr Mitchell with some background information and his view that too much was being sought for payment of the dinner. He told Mr Mitchell that he had spoken to Dr Greenlees to ask why, if the dinner cost £x, he was being asked for £y, but she did not know. Mr Mitchell agreed that if the claimant wanted to pay for just the dinner, he should create an expenditure transfer for the sum of £305 and that was all there was to it. The claimant appeared satisfied with this.

378. We concluded the claimant did disclose information to Mr Mitchell, however he did not do so in the reasonable belief that a breach of a legal obligation had occurred. We reached that conclusion because the claimant did not at any time make such a suggestion, and he did not at that stage have all of the necessary information to reach that belief. The claimant also told Mr Mitchell that "*It may be more, rather than the sin of commission, it's a sin of omission, a muddle really".* This explanation supports the fact the claimant had not yet concluded Dr Greenlees had breached a legal obligation.

379. We noted this disclosure was also made to an employee more junior to the claimant. However, we concluded it was made to the claimant's "*employer*' in circumstances where Mr Mitchell was the GSBS' Business Financial Partner and a reasonable/obvious first point of contact.

380. We decided the second alleged disclosure was not a qualifying disclosure because the claimant did not reasonably believe a legal obligation had been breached.

381. The third disclosure was alleged to have been made by the claimant to Dr Greenlees on 9 December 2014 when he alleged there was a discrepancy between the funds requested and those expended on the workshop.

382. We decided this was not a qualifying disclosure because it was made to Dr Greenlees, who was a more junior employee and not the claimant's "*employer*" in terms of Section 43C.

383. The fourth disclosure was alleged to have been made by the claimant to Dr Greenlees on 10 December 2014 when he provided information which tended to show she was in breach of her legal obligation to comply with the University's financial conduct procedure.

384. We decided this was not a qualifying disclosure for the same reason as set out at three above.

385. The fifth disclosure was alleged to have been made by the claimant to Professor Lennon on 17 December 2014. The claimant sent Professor Lennon an email on 17 December 2014 (page 936a) stating he had a duty to ensure that expenditure claimed from grant R4146 fell within normal procedure, and that Dr Greenlees had already received £2000 from QNIS for the workshop which cost £2115. He confirmed he had asked Dr Greenlees to account for the £930 overcharge but that she had not yet done this. He confirmed he had told Dr Greenlees the Centre would pay any reasonable costs incurred by the workshop, in excess of the £2000 received from QNIS and up to a maximum of £1,200, however he needed to see the expenditure before signing the transfer form. He concluded by stating there was a need

to avoid any hint of double counting, before going on to complain about a change in the tone of Dr Greenlees emails.

386. We accepted the disclosure was made to the claimant's employer (for the same reasons as set out at two above).

387. We next considered whether the claimant provided information to Professor Lennon inasmuch as he sent the email chain of correspondence (13 pages) and tables of financial information to him. However, Section 43B makes clear there must be a disclosure of information, and the ***Cavendish*** case confirmed there must be something more than an allegation or perception. The disclosure of information must, in the reasonable belief of the worker making it, tend to show a breach of a legal obligation. The claimant did not, in the email, state he believed the claimant had acted in breach of the University's financial procedures, or that there was wrongdoing on her part. The thrust of the claimant's email was a complaint about not having received full accounting from Dr Greenlees for the amount he had been asked to release, and being unable to release funds in those circumstances. We acknowledged there was a suggestion of an overcharge, but that was balanced by the fact the claimant had agreed to release funds of up to £1,200.

388. We noted that, in addition to the above points, the claimant did not at this stage have all of the relevant information (the alleged disclosures up to and including this stage were made before the transcription and data storage costs were put to the claimant as part of the sum claimed by Dr Greenlees. Accordingly, the only issue between the two related to Dr Greenlees asking for what she thought the claimant had agreed to pay – that is, catering costs – but which the claimant thought was more than he had agreed – that is, catering costs not covered by the £2,000 from QNIS – causing him to ask if there were any further expenses of which he was unaware). He did not fully understand the position and therefore was not yet in a position to reasonably believe there had been a breach of a legal obligation.

389. We concluded the disclosure made to Professor Lennon on 17 December 2014 was not a protected disclosure because the claimant did not disclose information to Professor Lennon, and the information disclosed did not tend to show a breach of a legal obligation.

390. The sixth disclosure was alleged to have been made by the claimant to Ms Russell on 13 January 2015. On 13 January 2015, Ms Russell emailed the claimant, attaching a financial spreadsheet. She informed the claimant she had been over the costings with Dr Greenlees and identified the additional expenditure. She told the claimant it was for the transcription of the event and an invoice had been submitted. She confirmed the total cost was £2,908.43, per the attached spreadsheet.

391. The claimant noted the spreadsheet had been altered to include two new items of costs which he believed had not been incurred for the explanation given. The claimant considered the alteration of the spreadsheet to be "*improper*".

392. The claimant emailed Ms Russell immediately, referring to the "*entirely new claim*" for transcription costs. He reminded Ms Russell that up to this point Dr Greenlees had been seeking funds for catering only, and that the Centre had agreed to fund only the workshop dinner and some other small accommodation expenditure. He had not agreed to fund any QNIS publication. The claimant reminded Ms Russell of his duty to ensure that expenditure from the R4146 grant was agreed, proper and proportionate. He warned Ms Russel that if he was approached further on the matter he would complain formally to HR and request an audit of the claims.

393. We did not consider the claimant's email to Ms Russell to be a protected disclosure because it did not provide information, but rather confirmed his increasing frustration at a situation whereby he was being asked to approve the transfer of a sum of money without being provided sufficient vouching. The email to Ms Russell does no more than reiterate the claimant's

understanding of what the requested funds were to be used for and his surprise/concern that transcription costs had been introduced into the equation. The content of the email does not disclose information or facts, but rather seeks to set out the claimant's position. Furthermore, the information provided did not tend to show a breach of a legal obligation and did not suggest the claimant had reached that view yet.

394. The claimant clearly took a very dim view of the spreadsheet being altered, and new expenses being added. The claimant did not, as at 13 January, know whether those costs were sufficiently well connected to the workshop to validly fall within the scope of the agreement. The claimant could not, therefore, disclose information to Ms Russell about a likely breach of a legal obligation.

395. The claimant's email disclosed to Ms Russell nothing more than that the claimant was concerned and annoyed about the inclusion of new expenses; that he had set out his position regarding funds and the need for sufficient vouching and that he did not wish to be contacted again on the matter.

396. We decided, for all of these reasons, that the disclosure to Ms Russell on 13 January 2015 was not a protected disclosure.

397. The seventh disclosure was alleged to have been made by the claimant to Mr McConville and Ms Russell when he (accompanied by Ms Pierotti) met with them on 23 January 2015. The focus of this meeting was the altered spreadsheet and the additional transcription cost which had been added to the spreadsheet. Ms Russell, having spoken to Dr Greenlees, understood the workshop had been recorded and that the additional cost was for the transcription of the recording. Ms Russell told Dr Greenlees the cost did not appear on the spreadsheet, and therefore an amendment had to be made to reflect this.

398. The claimant informed Mr McConville and Ms Russell that the transcription did not relate to the workshop, but to an earlier transcription of a paper published by Dr Greenlees and Alex Flucker and which related to another research project.

399. We were satisfied the claimant disclosed information to Mr McConville and Ms Russell at the meeting on 23 January 2015, rather than setting out his position or making allegations. The claimant provided them with information which set out his concern that Dr Greenlees had included in the altered spreadsheet, expenses not related to the workshop, and which she wanted him to pay.

400. We next considered whether, in the reasonable belief of the claimant, the information disclosed tended to show that a person had failed to comply with a legal obligation. We concluded the claimant did not reasonably believe, at the meeting on 23 January, that the information disclosed tended to show a person had failed to comply with a legal obligation. We reached that conclusion because the claimant's clear position was that it was only as a consequence of the discussions at that meeting, that he became convinced the matter needed to be dealt with under the University's Financial Misconduct policy. We inferred from this that at the time of the meeting the claimant did not hold, and had not held, that view.

401. We decided for these reasons that the disclosure on 23 January 2015 was not a protected disclosure.

402. The eighth disclosure was alleged to have been made by the claimant to Mr McConville on 26 January 2015. The claimant emailed Mr McConville on 26 January 2015 to inform him that the findings at the meeting on 23 January had convinced him the matter required to be dealt with under the University's Policy on Financial Misconduct. The claimant attached a copy of the policy to his email.

403. The claimant, in his email, suggested Dr Greenlees had "*communicated a version of events unfavourable to me, throughout the School*" and that *"news of the matter had even reached the Dean"*. The claimant stated that *"in view of this it is essential that this is handled strictly in accordance with University Policy on Financial Misconduct."* We considered this demonstrated the claimant did not reasonably believe the information tended to show a breach of a legal obligation: but rather, his belief was that Dr Greenlees was spreading a version of events which was unfavourable to him and accordingly he escalated the matter. We decided the disclosure on 26 January 2015 was not a protected disclosure for this reason.

404. The ninth disclosure was alleged to have been made by the claimant to Ms Brown, Financial Controller, on 27 January 2015, when he reported, in terms of the University Financial Misconduct Policy, the problems he had had with Dr Greenlees. The tenth disclosure was alleged to have been made by the claimant to Ms Brown on 28 January 2015 when they met and the claimant provided her with information. The eleventh disclosure was alleged to have been made by the claimant to Ms Brown on 29 January 2015 when the claimant provided information and attachments to Ms Brown.

405. We have dealt with these alleged disclosures together because they are clearly linked and show a developing disclosure of information and documentation. We were satisfied that between 27 – 29 January 2015, and at the latest, by 29 January 2015, the claimant made a disclosure of information to Ms Brown which, in his reasonable belief, tended to show a person had breached a legal obligation (that is, the obligation to deal with financial matters in accordance with the University`s policies and procedures). This was a protected disclosure.

406. The twelfth disclosure was alleged to have been made by the claimant to Mr McConville, Ms Smith and Professor Hilton on 3 March 2015. The claimant sent Mr McConville an email on 3 March 2015, which he copied to Ms Smith and Professor Hilton. The claimant referred to his "*difficult position as PI for*

research account R4146" and stated *"Reputational damage has accrued to me as a result of the spread of misinformation about this matter yet I have maintained complete confidentiality throughout. In my view we must also avoid a situation in which we are seen to condone financial misrepresentation."*

407. The claimant went on to refer to Dr Greenlees' refusal to provide an apology and suggested the "*most responsible management position would be for [you] to meet with her again and inform her that an apology is in order to make amends. You ought to inform her that she should not be dismissive of the impact her repeated and inaccurate claims for money had upon me in terms of time, unnecessary concern and stress. If she persists in her refusal you should inform her that her actions raise an issue of conduct and behaviour. You should state that you will be initiating action in accordance with the University's conduct and capability procedure."* Mr McConville responded to confirm discussions were taking place with Dr Greenlees to get to the point of mediation.

408. The claimant also stated the History staff research accounts which had previously been available to him as History Research Lead had become "*mysteriously unavailable to me"* and that the accounts were "*currently being withheld from me without explanation".*

409. We concluded this disclosure of information was not a protected disclosure because the focus of the information being disclosed was on the claimant's view that Dr Greenlees should be told to apologise, and what action he believed the respondent should take if she refused. The reference to "reputational damage" was not sufficient to convey information about what had happened or why it had happened.

410. The thirteenth disclosure was alleged to have been made by the claimant to Professor Mannion on 4 March 2015. Professor Mannion met with the claimant on 4 March 2015 to discuss the new research grants obtained by

the claimant. Professor Mannion's evidence to the Tribunal was that this was the only subject discussed. Profession Mannion acknowledged he had previously met with Professor Mills regarding the Centre, but he had not either informed the claimant of this, or raised it for discussion at the meeting.

411. Professor Mannion acknowledged he had been "*vaguely aware"* the claimant had a disagreement with Dr Greenlees: he did not know the specifics of the matter or what processes were followed to deal with it or the outcome. Professor Mannion recalled that on any occasion when the claimant had mentioned it to him, it was in the context of "*letting off steam"* rather than involving Professor Mannion in it. In any event, any issue relating to how academics worked together within a particular group, was not within Professor Mannion's role or remit.

412. The claimant's position was that at this meeting he told Professor Mannion the full story regarding Dr Greenlees, and also that retaliation was taking place in the wake of his earlier disclosures and that false rumours were being spread that he had refused to pay Dr Greenlees funds from R4146.

413. We preferred the evidence of Professor Mannion regarding this matter. We considered the evidence regarding the purpose of the meeting – to discuss the new research grants obtained by the claimant – supported his recollection of the issues discussed. Furthermore, we accepted Professor Mannion's evidence to the effect he was only vaguely aware of the Dr Greenlees issue: the matter did not concern him and was not discussed in detail at the meeting. This undermined the claimant's suggestion that he had informed Professor Mannion of the whole story and suggested there had been false rumours and retaliation. We concluded for these reasons that this was not a protected disclosure.

414. The fourteenth disclosure was alleged to have been made by the claimant to Mr McConville on 6 March 2015 when the claimant emailed him asking for

protection. The claimant did not wait for a response to the email but went to meet Mr McConville (fifteenth disclosure). The email to Mr McConville stated:-

> *"I have just received an email from a Professor at another University in Glasgow which refers disparagingly to my "recent actions against colleagues at GCU". That individual is attempting to use the matter to force me into a course of action that would cause a substantial financial loss to GCU. Given this evidence of reputational damage and the urgency of this matter you will need to deal with the matter right away."*

415. The claimant then met Mr McConville. The purpose of that meeting was that the claimant wanted to impress upon Mr McConville that he considered it clear that individuals were telling people that he [the claimant] had harassed Dr Greenlees and that he was refusing to give her money. He was concerned that if Dr Greenlees did not apologise, it was going to lead to people requesting that the [Wellcome Trust] grant be moved from GCU to Strathclyde. The claimant stressed that the money was GCU research money and that he wanted to keep it like that.

416. A perusal of the claimant's "*transcript"* of the meeting supports the conclusion that the issues vexing the claimant at the time were (i) an apology from Dr Greenlees; (ii) his view the University should discipline Dr Greenlees if she would not apologise and (iii) retaining the grant at GCU.

417. We concluded in the circumstances that the fourteenth and fifteenth disclosures were not protected disclosures because the claimant did not disclose information to Mr McConville which tended to show a breach of a legal obligation.

418. The sixteenth disclosure was alleged to have been made by the claimant to Professor Hilton, Mr McConville and Ms Smith on 9 March 2015 when he disclosed to them Professor Mills' email regarding the vote of no confidence,

and told them he was unable to defend himself because of the duty of confidentiality. The claimant stated the "*inevitable consequence"* of the failure to obtain the reasonable apology from Dr Greenlees, was that she had gone to Professor Mills to bring about a vote of no confidence in the claimant. The claimant considered Professor Mills had acted on what he had been told by Dr Greenlees because he saw it as an opportunity to have the grant funds transferred to Strathclyde. The claimant stated that if he was ousted, Dr Greenlees was the Deputy Director, and was "*amenable to having our grant transferred to Jim [Professor Mills] in return for the vote".* The claimant concluded the email by asking that Dr Greenlees' apology was supplied that day and that the respondent act to protect him and the University's funding.

419. We asked ourselves whether this was a disclosure of information which, in the reasonable belief of the claimant, tended to show a breach of a legal obligation. The claimant provided information to Professor Hilton, Mr McConville and Ms Smith when he told them of the vote of no confidence and why he thought it was occurring. However we could not accept the claimant had a reasonable belief the information tended to show a breach of a legal obligation. We could not accept the claimant had a reasonable belief because there were a number of erroneous assumptions/statements in the email. The claimant presented the information in the email as if the issue with Dr Greenlees had been the only issue affecting his relationship with members of the history group. The claimant knew this was not correct: he knew there had been a host of issues, or at least tensions and frustrations with the group, which had led to the proposal for mediation at the end of December. Furthermore, the claimant made an assumption that Dr Greenlees had gone to Professor Mills to bring about the vote of no confidence, in circumstances where he did not know what had brought about the vote. He also assumed, wrongly, that colleagues were circulating rumours about him.

420. The claimant suggested in his email that if he was removed as Director, the Directorship would pass to Dr Greenlees as Deputy Director. The claimant knew this was an erroneous statement to make because he had already

agreed with Professor Mills that the Directorship would pass to him at the end of January 2015. The claimant, notwithstanding having been party to an email informing members of the Centre of this change, continued to act as Director of the Centre beyond 31 January 2015. The claimant ignored this fact and failed to recognise that it may have had a bearing on the decision to hold the vote of no confidence.

421. We concluded the disclosure on 9 March 2015 was not a protected disclosure because the claimant did not have a reasonable belief that a legal obligation was being breached.

422. The seventeenth disclosure was alleged to have been made by the claimant to Professor Hilton, Mr McConville and Ms Smith on 9 March 2015 when he emailed them to ask that they instruct members of GCU staff not to take part in the poll. We decided this was not a protected disclosure because it did not disclose information and what was disclosed did not tend to show a legal obligation was being breached.

423. The eighteenth disclosure was alleged to have been made by the claimant to Professor Mannion and Professor Marshall on 6 May 2015. Professor Hilton emailed the claimant on 6 May 2015 to inform him that it would not be possible to proceed with the appointment of a Centre administrator. The claimant immediately raised this with Professor Mannion and Professor Marshall because he considered the decision to be a breach of the agreement with the Wellcome Trust. He attached various documents to the email including the original grant application and grant award letter from Wellcome Trust.

424. We concluded this disclosure was not a protected disclosure because he did not provide sufficient information to Professors Mannion and Marshall to allow them to understand the issue. The email was no more than an assertion by the claimant that the decision was a breach of a previous agreement.

425. We decided the claimant made one protected disclosure in terms of section 43B Employment Rights Act, when he disclosed information to Ms Lindsay Brown, Financial Controller on 27 – 29 January 2015.

2. <u>Was the claimant subjected to detriment and if so, was that on the ground of making a protected disclosure?</u>

426. The claimant alleged he had suffered many detriments, as set out above. The first issue for the Tribunal to determine is whether the events as described by the claimant occurred, and if so, whether they amounted to a detriment. We noted the term "detriment" is not defined in the Employment Rights Act, and we accepted we therefore had to look to the meaning of detriment as established by discrimination case law. We were referred to the case of ***Shamoon v Chief Constable or the Royal Ulster Constabulary*** (supra) where it was held that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. The basic test to determine whether there has been a detriment must be applied by considering the matter from the point of view of the complainant. If the complainant's opinion that the treatment was to his detriment is reasonable, that ought to be sufficient. An unjustified sense of grievance is, however, not enough.

427. The terms of Section 47B Employment Rights Act make clear that it must be shown the worker was subjected to a detriment in the form of an act or deliberate failure to act on the part of the employer. The complainant will usually seek to demonstrate that, compared with other workers (hypothetical or real) he suffered a disadvantage. Someone who has been treated no differently from other workers will find it difficult to show he has suffered a detriment.

428. This Tribunal must determine (a) whether the alleged act/failure to act occurred; (b) whether the claimant was subjected to a detriment and (c)

whether he was subjected to a detriment on the ground of having made a protected disclosure.

429. The first alleged detriment concerned Dr Greenlees' two emails to Professor Mills, in which she referred to the claimant refusing to pay her funds from R4146 for a workshop. There was no dispute regarding the fact Dr Greenlees did send the emails to Professor Mills. The claimant asserted Dr Greenlees untruthfully alleged the claimant was refusing to pay her funds, and that she knew the majority of the sum claimed was not properly payable from the fund.

430. The claimant took issue with Dr Greenlees saying he was "r*efusing*" to pay, because he considered he was not refusing, but clarifying and seeking documentation to explain the sum due to be paid. Dr Greenlees however understood the claimant had agreed to pay a sum of money, which he was now questioning. We considered that Dr Greenlees' use of the term "*refusing*", used generally and in layman's terms, correctly described what she believed was happening: that is, that the claimant was not paying the money, but instead he was questioning the matter.

431. We also had regard to the fact that at the time Dr Greenlees sent the emails to Professor Mills she believed what was stated: she believed he was refusing to pay and that she was entitled to the funds. It was only with the benefit of subsequent clarification, and hindsight, that it became clear Dr Greenlees had one account for a project of two parts, one of which was the workshop, and that this had created the difficulty/confusion.

432. We concluded this was not a detriment because Dr Greenlees was stating something factually correct, and we considered the claimant's reaction to the term "*refusing*" was an unjustified sense of grievance.

433. The second detriment also concerned Dr Greenlees' emails to Professor Mills and we concluded this was not a detriment, for the same reasons as set out above. The detriment was also alleged to include Dr Greenlees' statement

that the claimant was being awkward and that other members of the history group agreed with her. There was no dispute regarding the fact Dr Greenlees did write to Professor Mills in these terms. We noted that at the time the email was sent, Dr Greenlees and the claimant had a difference of opinion regarding what had been agreed. Dr Greenlees did think the claimant was being awkward. We considered the claimant's reaction to this was an unjustified sense of grievance.

434. There was no evidence to suggest Dr Greenlees had discussed the funding matter with the members of the history group, who agreed the claimant was being awkward. The reference in the email to other members of the history group agreeing with her, could equally have related to the wider difficulties experienced by the group. The claimant admitted there was a "frostiness" in the group towards him, and we accordingly concluded the content of the email was not a detriment, but an unjustified sense of grievance.

435. The third detriment also related to the emails sent by Dr Greenlees to Professor Mills. We concluded this was not a detriment for the same reasons as set out above. We, in addition to this, preferred the evidence of Professors Walsh and McFarland and Ms Russell when they told the Tribunal that they had not advised Dr Greenlees to write to Professor Mills.

436. The fourth detriment referred to Professor Stewart's contact with Professor Mills when he stated "*it would appear comrade Kirby is now deeply loathed at GCU. I think Janet may have filled you in on some of the details*". There was no dispute regarding the fact Professor Stewart did make this statement to Professor Mills. However, Professor Stewart had retired from the employment of the respondent and we therefore concluded this was not a detriment because the act was not by the claimant's employer.

437. The fifth detriment concerned Professor Hughes informing the claimant he had recently met with Professor McFarland, who told him the claimant had alleged a lack of honesty by Dr Greenlees, and that the accusation had not

been well received by the history group. We acknowledged the claimant may have been told this by Professor Hughes, but Professor McFarland's evidence to the Tribunal was that in response to Professor Hughes' question regarding the claimant, she "*may*" have told him there was an issue with Dr Greenlees, but she did not use the word dishonesty. We accepted Professor McFarland's evidence because at this stage she believed the issue between the claimant and Dr Greenlees was a minor disagreement.

438. We, in considering this matter, noted the claimant considered the issue with Dr Greenlees to be very serious, and although he did not use the word "*dishonesty"* in his evidence regarding Dr Greenlees, it was clear that is what he thought. We concluded, against that background, that this could not be a detriment in circumstances where the claimant was simply hearing what he himself believed: any sense of grievance regarding this was unjustified.

439. The sixth detriment concerned Professor Walsh sending emails to Professor Mills from her private email. There was no dispute regarding the fact Professor Walsh did email Professor Mills in those terms. The reason for her email was because it was known the claimant had a dispute with his previous employer and had made Subject Access Requests to obtain colleagues' emails. There was a reference in Professor Walsh's email to working relations with the claimant having broken down badly. This was a statement of fact and was something known to the claimant given Mr McConville had suggested mediation as a way to resolve working relationships.

440. We were unsure what the specific detriment was in relation to this matter and we accordingly concluded this was not a detriment because it was an unjustified sense of grievance.

441. The seventh detriment concerned emails from Dr Long to Professor Mills expressing concerns that the claimant might raise objections to signing off on expenses for the June conference. The first email from Dr Long was sent on 6 January 2015 (page 956) stating she had a "*quick query about taking this*

forward. Am I right in thinking that Peter will be signing this off (and that travel and accommodation expenses should therefore be booked via GCU)? If so, it might be worth me running the attached document past him: if there are going to be any objections, it would be better to find out now.."

442. The second email was sent on 20 January (page 1067) and stated: "*will Linda's travel and accommodation expenses need to be processed via GCU, and ergo subject to Peter's approval? As it may take a little time to get the go ahead if this is the case, it would be helpful to know."*

443. The third email was sent on 3 February 2015 (page 1166) and stated: "*It's the budget/approval/possible issues that might arise in relation to that which was giving me sleepless nights."*

444. There was no dispute regarding the fact the emails were sent by Dr Long in the above terms. There was also no dispute regarding the fact the claimant had not been approached by Dr Long regarding approval for the above expenses. We considered the first two emails to be entirely innocuous enquiries by Dr Long. The reference in the third email to *"sleepless nights*" could be a reference to having sleepless nights because of having to deal with the claimant, or it could be a reference to sleepless nights because if expenses were not approved, it would leave Dr Long in a difficult position with more work to do.

445. The claimant has interpreted the emails as being about him, but we considered this was an over-reaction in circumstances where he had not yet even been approached for approval. We concluded this was not a detriment because it was an unjustified sense of grievance.

446. The eighth detriment concerned an email from Professor Stewart to Professor Mills in which he referred to "*getting my aged ear bent a bit*" and stating the claimant had "*pissed people off so much that one historian is examining his/her options*". Professor Stewart also enquired whether the claimant had

let go of the budget yet. There was no dispute regarding the fact this email was sent in these terms, however we concluded this was not a detriment because it was not an act of the claimant's employer.

447. The ninth detriment concerned the refusal by Ms McAndrew to provide detailed financial information relating to research projects to the claimant. There was no dispute regarding the fact the claimant wrote to Ms McAndrew asking for information to be provided. Ms McAndrew responded and provided what she thought the claimant was looking for. The claimant went back to Ms McAndrew for more details, but this request was not answered. We concluded this was not a detriment because there was no evidence to suggest why Ms McAndrew had not responded, and we considered the claimant's suggestion that this was a deliberate act to be an overreaction in circumstances where there could have been many explanations.

448. The tenth detriment concerned Professor Gillies' comments regarding the claimant's research-teaching survey work and her statement that in future research support should be directed at younger members of staff. We had some difficulty considering this matter because there was a lack of evidence from witnesses other than the claimant. We were not prepared to accept the claimant's interpretation of what occurred given our concerns regarding over-reaction to other points (above). We, in the circumstances, concluded this was not a detriment because we were not persuaded it occurred as stated by the claimant.

449. The eleventh detriment concerned the claimant's level 4 module being cut from the BA Social Sciences degree. We accepted this was a detriment.

450. The twelfth detriment concerned Dr Greenlees email to Professor Mills in which she referred to embarrassment to the University and damage to reputation with external funders. There was no dispute regarding the fact Dr Greenlees wrote to Professor Mills in these terms: however, there was a dispute regarding the interpretation to be placed on the email. The claimant

linked what was said to the dispute between himself and Dr Greenlees. However, the fact there were other issues relating to the Centre, its running, its Constitution, the claimant remaining Principal Investigator for the grant and the claimant's reluctance to use the grant, which were occurring at that time, cannot be ignored. These were all issues which could cause embarrassment and reputational damage to the University.

451. We were not convinced, given the extent of the other matters going on at the time, that the claimant's interpretation of this email could be accepted. We concluded this matter was not a detriment for this reason.

452. The thirteenth detriment concerned Dr Greenlees and Professor Walsh attempting to vote down the claimant's role as Principal Investigator and grant holder for R4146. We preferred the evidence of Dr Greenlees and Professor Walsh regarding that meeting and the fact the vote taken related to circulating a further draft constitution document, and was not to remove him as Principal Investigator. We concluded for this reason that this was not a detriment.

453. The fourteenth detriment concerned Dr Greenlees being made the Centre organiser of the Centre's June conference and not contacting the claimant regarding funding for the conference. We concluded this was not a detriment because Dr Greenlees was not made the organiser: Strathclyde University were organising the conference.

454. The fifteenth detriment concerned Professor Mills writing to Professor Mannion asking him to replace the claimant as Centre lead at GCU and referring to a "fresh face" being the way forward. We concluded this was not a detriment because it was not an act of the claimant's employer.

455. The sixteenth detriment concerned Professor Walsh's failure to inform the claimant of the BA Social Sciences Programme Board request, which led to the claimant's new level three module being cut. We concluded this was not a detriment because it was not Professor Walsh's failure which led to the level

three module being cut from the programme. The decision had been taken by Ms Russell prior to this.

456. The seventeenth detriment concerned the respondent failing to investigate or acting to protect the claimant against ongoing retaliatory acts by Dr Greenlees and others. We concluded this was not a detriment because the way in which this alleged detriment is framed presupposes the actions of Dr Greenlees and others were "*retaliatory".* We concluded, for reasons set out below, that the actions of Dr Greenlees and others were not retaliatory and often not as described by the claimant.

457. The eighteenth detriment concerned the same allegation and we concluded this was not a detriment for the same reasons.

458. The nineteenth detriment concerned an email from Professor Mills to the claimant in which he threatened a vote of no confidence and stated losing it would be damaging to the claimant's reputation. We concluded this was not a detriment because it was not an act of the claimant's employer.

459. The twentieth, twenty – first, twenty -second and twenty –third detriments concerned an allegation of failing to act to protect the claimant from retaliatory acts. We concluded this was not a detriment for the same reasons as set out above.

460. The twenty – fourth detriment concerned Professor Mills' email to a Professor at Strathclyde University stating staff at GCU had asked him to make public their loss of faith in the claimant's leadership by way of a vote of no confidence. We concluded this was not a detriment because it was not an act of the claimant's employer.

461. The twenty fifth detriment concerned Dr Kehoe emailing Professor Mills to confirm her vote was "*no*", and the respondent not preventing the retaliatory act. The way in which the claimant framed this alleged detriment presupposed the members of the history group all knew about the Dr Greenlees issue and

took part in the vote of no confidence because of that issue. We concluded the claimant's presumption was wrong: the members of the history group knew superficially of the issue with Dr Greenlees. The motivation for the vote of no confidence related to all of the other issues which had caused difficulties for the group. We concluded this allegation was not a detriment because it was based on an erroneous assumption.

462. The twenty – sixth detriment concerned Dr Shepherd's emails to Professor Mills and Professor Walsh stating he did not have confidence in the claimant as Co-Director of the Centre, or in his suitability for an internal research leadership role. The respondent failed to prevent this retaliatory act. We concluded this was not a detriment for the reasons set out above.

463. The twenty – seventh detriment concerned Professor Hilton's suggestion the claimant give up control of the R4146 grant to Dr Greenlees. There was no dispute regarding the fact Professor Hilton made the suggestion to the claimant, but there was a dispute regarding the reason behind the suggestion. The claimant alleged this was a detriment, but Professor Hilton told the Tribunal she made the suggestion whilst offering assistance to the claimant. We preferred Professor Hilton's evidence and concluded this was not a detriment because it was an unjustified sense of grievance based on erroneous assumptions about why the offer was made.

464. The twenty –eighth detriment concerned Professor Mills email to Professor Hilton complaining the claimant had made a formal complaint about his actions in conducting the vote and implying the claimant was sexist. Professor Hilton summoned the claimant to an urgent meeting. We concluded this was not a detriment because we preferred Professor Hilton's version of events regarding this meeting.

465. The twenty – ninth detriment concerned Dr Shepherd's email to Dr Joan Allan excluding the claimant's level three module from consideration by the External Examiner. We concluded this was not a detriment because Ms

Russell had already decided the level three module could not be offered to students.

466. The thirtieth detriment concerned Professors Hilton and Johnston emailing the members of the history group staff to arrange a meeting about the future of history research at GCU and the REF 2020 without consulting the claimant. We accepted that contacting the members of the history group without including, or consulting, the claimant was a detriment.

467. The thirty – first detriment concerned an email to the claimant from the members of the history group stating he was not Research Lead and accusing him of not accepting the democratic decisions of the group. The issue of whether the claimant was or was not research lead, or REF lead, lay at the heart of the dispute between the claimant and the members of the history group. They clearly did not regard him as the lead and all of the evidence from each of the witnesses clearly suggested the REF lead was a time limited appointment which ended once the submission was made. The evidence regarding the term Research Lead was confusing, but what was clear was the fact the members of the history group did not accept he held that position and explained why.

468. We concluded this was not a detriment because it was based on the claimant's erroneous belief that he held positions which he did not.

469. The thirty – second detriment concerned Professor Hilton's withdrawal of approval for a Centre Administrator. We concluded this was not a detriment because the claimant was no longer Director of the Centre. The Directorship of the Centre had transferred to Strathclyde University and Professor Hilton decided any decision regarding an Administrator should be taken by them: this was particularly so against a background of opinion that there was no longer any need for a Centre Administrator.

470. The thirty – third detriment concerned Professor Hilton's statement that she would not support the claimant's new research project. We preferred Professor Hilton's evidence regarding what occurred and we accepted she withdrew a publicity article because it was prudent not to have this go out before an announcement was made. The background to this was that the claimant had not provided the necessary information and documentation yet. We concluded this was not a detriment for these reasons.

471. The thirty – fourth detriment concerned Professor Hilton's decision to give Dr Greenlees and Professor Mills financial control over R4146 grant. We could not accept the description of this grant as "*the claimant's grant*". The grant was made by the Wellcome Trust for the Centre. The claimant, in his role as Director, was Principal Investigator for the fund. The Directorship had passed to Strathclyde University. Professor Hilton took the decision to give Professor Mills financial control over the fund, but she retained the duty to sign off on expenditure. Dr Greenlees was not involved. We concluded this was not a detriment but a natural consequence flowing from the decision that Strathclyde would take on the Directorship.

472. The thirty – fifth detriment concerned the claimant asking the group not to discuss Research Lead whilst he was not present, but they did so in any event, and Professor McFarland took on that role. We accepted that having been asked not to discuss the matter, it could have been hurtful to proceed to do so in any event, and therefore we accepted this was a detriment

473. The thirty – sixth detriment concerned the claimant's period of sick leave and the respondent sending an invitation to a disciplinary hearing to his home address. We concluded this was not a detriment in circumstances where the respondent had to correctly inform the claimant of the fact of a disciplinary hearing.

474. The thirty seventh detriment concerned emails from Dr Greenlees making untruthful statements about the claimant's teaching. We preferred Dr

Greenlees' evidence regarding this matter and we accepted Dr Greenlees raised student concerns and/or lack of adequate provision. We concluded this was not a detriment for this reason.

475. The thirty eighth detriment concerned a statement in Ms Russell's email to Professor Mills apologising for it all being such a mess. We concluded this was not a detriment in circumstances where Ms Russell's comments were fairly and accurately made. The situation in the history department was a mess: the working relationship between the claimant and his colleagues had broken down.

476. The thirty ninth detriment concerned Ms McKinley, BA Social Sciences Programme Administrator, informing staff that three of the claimant's modules had been discussed, when in fact it was four. We concluded this was not a detriment because the email from Ms McKinley was based on the module having been withdrawn by Ms Russell months previously, and was not as the claimant suggested.

477. The fortieth detriment concerned the claimant's level three module being formally removed from the Social Sciences curriculum. We concluded this was not a detriment for the reasons set out above.

478. The forty first detriment concerned the respondent's website carrying an article about the Centre which did not refer to the claimant. We accepted this was a detriment because it was hurtful not to refer to the claimant's input and period of time as Director of the Centre.

479. The forty second detriment concerned the amount of sick pay received. We concluded this was not a detriment because the claimant received his full entitlement of sick pay.

480. The forty third detriment concerned the cancellation of the occupational health appointments. We concluded this was not a detriment because it was

the claimant's own actions and behaviour which brought about the termination of the occupational health appointments.

481. We, in conclusion, decided that of the 43 detriments alleged by the claimant, only 3 were detriments.

3. <u>Was the claimant subjected to detriment on the ground of having made a protected disclosure.</u>

482. We must now determine whether the claimant was subjected to a detriment, or detriments, on the ground of having made a protected disclosure. We reminded ourselves that we decided (above) that the claimant made one protected disclosure on 27 – 29 January 2015, when he disclosed information to Ms Brown regarding the dispute with Dr Greenlees. The three detriments (above) occurred after that date.

483. We referred to the case of ***Aspinall v MSI Mech Forge Ltd EAT 891/01*** where the EAT held that the words "*on the ground that*" in Section 47B Employment Rights Act mean that an employee must be able to prove a causal nexus between the fact of making a protected disclosure and the decision of the employer to subject him to the detriment. The EAT adopted the same approach as that applied by the House of Lords in ***Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065*** where it was held that (the proper approach in determining a victimisation complaint) was not to ask whether *"but for*" the protected act having taken place the treatment would have occurred, but rather to ask what, consciously or unconsciously, was the employer's reason or motive for the less favourable treatment. Where the Tribunal finds a motive for the less favourable treatment, and is satisfied that this is not consciously or unconsciously related to the protected act, the less favourable treatment cannot be said to be "*by reason*" of the protected act. Accordingly there is no victimisation.

484. The EAT in ***Aspinall*** borrowed the words used in the ***Khan*** case where it was stated that "for *there to be detriment under Section 47B, on the ground that the worker has made a protected disclosure, the protected disclosure has to be causative in the sense of being the real reason, the core reason, the causa causans, the motive for the treatment complained of*."

485. The claimant's position was, essentially, that after he raised with Dr Greenlees, some questions and clarification regarding the funds she wished to have transferred, everything that happened thereafter was because of that and subsequent disclosures. The claimant acknowledged there had been a frostiness in the group towards him but he put that down to WAM and sought, in the opinion of the Tribunal, to play down the deteriorating relationship with members of staff.

486. We found as a matter of fact the claimant's relationship with the members of the history group had deteriorated to such an extent that it had broken down by December 2014/January 2015. We accepted that WAM was a factor in the deteriorating relationship but there were many areas of tension and dispute. For example, (i) the claimant's position that he was, and remained, REF 2014 lead; Research Lead and HPP research lead; (ii) his conduct at the Programme Board meeting in May 2014; (iii) his reluctance to take on a fair share of teaching; (iv) his threat of formal action if Professor Walsh asked him about teaching again; (v) his conduct at and about team meetings; (vi) his conduct towards Dr Kehoe; (vii) the tone of his emails and the fact he tended to circulate widely; (viii) the tone of his emails to Dr Long and (ix) his conduct as Director of the Centre and being Principal Investigator for the R4146 grant.

487. The claimant sought, in his witness statement and in responses to cross examination, to demonstrate that he had, in respect of each of the above matters, been in the right. We accepted Mr Campbell's submission that it almost does not matter in the particular context of this claim, who was right or wrong in respect of these matters. We further accepted that what was relevant was the fact the claimant saw things differently from his colleagues

and the above issues may not have amounted to much had it not been for the WAM exercise in May/June 2014. That exercise created tensions and resentment built up towards the claimant because of the way in which he took credit for roles which were minor or did not exist. The members of the history group resented his repeated requests for materials on individual research; his perceived lack of collegiality and the way in which he took a lead on issues which were felt to be the preserve of the group as a whole.

488. We further found as a matter of fact that the claimant erroneously believed/assumed the members of the history group were talking about the Dr Greenlees issue. The evidence of the respondent's witnesses was that they were superficially aware that there had been a disagreement between the claimant and Dr Greenlees: most witnesses voiced the view that it was a matter between colleagues and for them to resolve. None of the witnesses considered it to be a serious matter: they attached no importance or significance to it.

489. Professor Walsh told the Tribunal that Dr Greenlees had "*mentioned it in passing*". Dr Greenlees told the Tribunal that any mention of the matter had been in relation to the tone of the emails rather than their content.

490. The claimant relied on statements made in Dr Greenlees' emails where she referred to having discussed the matter with Professors Walsh and McFarland, and to them and Ms Russell, advising her to raise it with Professor Mills. We accepted Professor McFarland's evidence when she told the Tribunal that Dr Greenlees had a tendency to propose something, collect endorsements and then note it as she had done in the email. Professors Walsh and McFarland both stated they had not advised Dr Greenlees to raise it with Professor Mills.

491. We considered that if this had been a case of the claimant getting on well with colleagues until disclosures were made, the change in the conduct of colleagues may well have pointed to a causal link between the disclosure and

the detriment. However, in this case, there was an abundance of evidence regarding the very difficult relationship between the claimant and his colleagues prior to any disclosure being made. The relationship had broken down prior to any disclosure being made. We attached significant weight to this fact and we considered it noteworthy the claimant sought to ignore it when inviting the Tribunal to focus solely on the later events.

492. We acknowledged one scenario may have been the group deciding to take retaliatory action for the claimant raising complaints about Dr Greenlees. We however could not accept that submission in circumstances where the evidence of the respondent's witnesses at this Hearing, which we accepted, was that they had only a superficial knowledge of the Dr Greenlees issue and were not concerned about it. Dr Greenlees herself was comfortable that she had not done anything wrong. She had sought advice regarding having one account for a project which had two parts, and she put forward genuine invoices for payment.

493. Mr McConville and Professor Hilton considered, with the benefit of hindsight and reflection, that disciplinary action could have been taken against Dr Greenlees, but their views were very much an after-thought and, in the case of Mr McConville, based on the fact Dr Greenlees did not/would not recognise and accept his advice regarding best practice.

494. We asked ourselves what did the claimant rely upon to demonstrate that the protected disclosure caused the detriment/s complained of. The key factor relied upon by the claimant was that after December 2014 his relationship with staff "*fell off a cliff*": he considered there was only one reason for that and it was the issue with Dr Greenlees. We could not accept the claimant's position because it was not correct to say his relationship with staff fell off a cliff after December: the relationship had been deteriorating during the latter half of 2014 and broke down prior to the end of December. The claimant was aware of this because of the endeavours of Mr McConville to arrange mediation, and he also stated in his grievance that "*since May 2014 I have*

been harassed, bullied, victimised, ostracised and set-up to fail by a small group of staff within the history teaching group in GSBS."

495. We considered the explanation for the treatment of the claimant lay in the fact the relationship had broken down and the claimant would not participate in mediation unless and until Dr Greenlees apologised. The longer that situation continued, the more difficult the group of staff became: they did not want to co-operate with the claimant; did not want him to lead research; did not want him to speak for the department; did not want him to continue as Director of the Centre and did not want him to continue as Principal Investigator for the R4146 grant.

496. The claimant complained that his level four specialist module was cut from the BA Social Sciences degree by Ms Russell and the history group, without consultation on 17 February 2015. We asked what was the reason for Ms Russell taking this action. We accepted her evidence that it was because there was not scope to put forward both of the claimant's modules. We asked whether this was motivated, consciously or subconsciously, by the fact of the claimant's disclosure to Ms Brown on the 27-29 January 2015. We were entirely satisfied the decision had nothing whatsoever to do with the claimant's disclosure to Ms Brown. We acknowledged Ms Russell would have been aware of the fact the claimant intended to raise the matter with Ms Brown, but she (and Mr McConville) was content with that because Ms Brown is the Financial Controller and the appropriate person to deal with it.

497. There was nothing in Ms Russell's evidence which disclosed directly, or by inference, that she retaliated against the claimant for disclosing the matter to Ms Brown. We therefore concluded the claimant had not been able to show the causal link between the disclosure and the detriment.

498. The next detriment occurred on 9 April 2015 when Professors Hilton and Johnston contacted the history group to arrange a meeting to discuss the future of history research and the REF 2020, and they did so without

consulting the claimant. We acknowledged it may have been hurtful to not consult the claimant about this meeting, but we were entirely satisfied the claimant had been trying to meet with the group to discuss these matters since January 2014, but had failed to do so because they did not want to meet with him. We accepted Professors Hilton and Johnston adopted a pragmatic approach to try to move matters forward. We were entirely satisfied the pragmatic approach was not influenced consciously or subconsciously by the fact of the claimant having made a disclosure to Ms Brown in January 2015, but was influenced by the fact the claimant's relationship with the members of the history group had broken down and he no longer commanded their respect.

499. The final detriment occurred on 7 July 2015 when the website carried an article about the Centre and failed to mention the claimant. There was no evidence before the Tribunal regarding the author of the article, or its purpose. We acknowledged it would have been hurtful for the claimant to read the article and note he had been omitted. However, we were entirely satisfied there was no causal link between the article and the disclosure made in January.

500. We decided to dismiss the complaint of detriment on the grounds of having made a protected disclosure because there was no causal link between the disclosure and the detriment. We decided to dismiss this claim.

501. We should state that if we erred in our decision regarding whether disclosures were protected and whether alleged detriments were detriments, and if all the alleged disclosures were protected, and all of the detriments found to be so, our conclusion would still have been the same – that is, we would still have decided to dismiss the complaint because we would not have been satisfied there was a causal link between the disclosure and the alleged detriment.

502. The respondent's witnesses were able to give an explanation for each and every action said by the claimant to be a detriment. We found the

respondent's witnesses to be credible and reliable and we accepted their evidence. There was no direct evidence of retaliation and no findings from which we could draw an inference of retaliation. This, together with our findings regarding the working relationship having broken down prior to any disclosures being made, and the members of staff being only superficially aware of the Dr Greenlees issue and being unconcerned about it, support our conclusion. This is particularly so given our further conclusion that the claimant was aware of the relationship having broken down but sought to play this down at the Hearing.

Timebar

503. The respondent submitted that all complaints of a detrimental act or omission falling before 21 April 2015 were timebarred. The basis of the respondent's submission was that the claim was presented on the 16th September 2015 and, allowing for the rules on early conciliation, only complaints occurring on or after 21 April 2015 could be included in the claim.

504. The claimant sought to argue that there was a series of acts, which continued beyond 21 April 2015 and therefore the claim was in time. There was no submission to explain why the alleged acts should be considered similar: we accordingly assumed it was because they were all said to be retaliatory acts taken because a disclosure or disclosures had been made.

505. Mr Campbell referred the Tribunal to the case of ***Arthur v London Eastern Railway [2006] EWCA Civ 1358*** where it was held that there must be some relevant connection between the acts for them to be a series of acts. Mr Campbell invited the Tribunal to accept there was no relevant connection in this case because the complaints related to different people involved in different situations at different times, and there was no clear evidence of them being influenced by each other.

506. We concluded that certain acts may be considered a series of acts: for example, the actions of Dr Greenlees in sending emails to Professor Mills on the 4, 5 and 17 December 2014 and 17 February 2015 and her actions on the 20 February, 21 May and 29 May 2015. We concluded this series of acts was in time.

507. We decided that all other acts/omissions said by the claimant to be detriments occurring prior to 21 April 2015 were timebarred. These acts involved different people – for example, Dr Long and Ms McAndrew – and different situations. We acknowledge the claimant sought to paint a picture of the members of the history group discussing and having knowledge of the Dr Greenlees issue, but we did not accept his evidence regarding this matter. We found as a matter of fact that the knowledge of members of the group was superficial and that there was no general discussion of the issue. In particular it was clear from the evidence of the respondent's witnesses that they did not think the issue important: it was described as nothing more than a disagreement which should be resolved between them.

508. We must consider whether it was reasonably practicable for the claim to have been presented on time. Mr Grundy invited the Tribunal to have regard to the health report prepared by Dr Cosway and to the fact the GP notes referred to in the report, referred to a diagnosis of a "*severe depressive episode*" on 27 May 2015, and to an inability to open emails as at 11 June 2015 with subsequent treatment at the Priory because of the impact of his functioning between 30 July and 17 August 2015. We had regard to the state of the claimant's health during this period. We balanced this with the fact there was no direct evidence to the effect this was the cause of any delay in presenting the claim. Further, there was no evidence to clarify when the claimant instructed a legal representative.

509. We decided, on balance, to accept it was not reasonably practicable for the claimant to present his claim on time because of the state of his health. We

were satisfied the claim was presented within a further reasonable period. Accordingly, the claim is treated as being made in time.

Disability Discrimination

510. The respondent conceded the claimant is a disabled person in terms of the Equality Act, and that he was so from the 26 May 2015 by virtue of the mental impairment of depression.

511. The claimant brought two complaints of disability discrimination: a complaint of discrimination arising from disability and a complaint of failure to make reasonable adjustments.

Discrimination arising from disability

512. Section 15 Equality Act provides that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

513. The claimant, in order to succeed with a claim of discrimination arising from disability must establish (i) that he has suffered unfavourable treatment and (ii) that the treatment is because of something arising in consequence of his disability. If he establishes these two things, the respondent will be liable unless it can show the unfavourable treatment was a proportionate means of achieving a legitimate aim.

514. We had regard to the claim form (page 163) where the complaint was set out, and noted it was in two parts. The claimant firstly complained that there had been a failure to engage him in the Performance and Development Annual

Review (PDAR) for the period 2014 – 2015 and secondly, that the respondent had failed to notify him of vacancies which had been circulated on an internal email list. It was said these matters amounted to unfavourable treatment and that it arose as a consequence of his disability, namely his absence on sick leave.

515. We asked firstly whether the claimant suffered unfavourable treatment. We noted the term is not defined in the Equality Act, although the Equality and Human Rights Commission's Code of Practice on Employment states that it means that the disabled person must have been put at a disadvantage. We acknowledged the term is to be construed widely and that there is no need for a comparator in order to show unfavourable treatment.

516. The respondent's PDAR process was a performance scheme for senior staff within the University. The review period is the academic year, which is August to July. The process is one whereby the individual is required to prepare a document outlining their activities and achievements and objectives for the coming year. This document will then be discussed in June/July with the individual's appraiser before being agreed. The appraiser will submit a provisional rating to the University's Remuneration Panel and, ratings are finalised in October/November. The Panel will also decide whether an individual is to be awarded an annual pay increase and if so how much (usually all staff will receive the same award in percentage terms). Staff are notified by the end of November and pay increases are backdated to August.

517. The Remuneration Panel also decide whether any awards of performance related pay should be made to individuals (in effect a one off bonus to reflect a strong performance in that year).

518. The claimant had received a £4500 performance related payment in 2013, and a £1515 performance related payment in 2014.

519. The claimant was awarded the annual pay increase in 2015 (and 2016), but he was not contacted regarding the PDAR process and accordingly not considered for a performance related payment.

520. We decided the failure by the respondent to engage the PDAR process in respect of the claimant in 2015 (and 2016) was unfavourable treatment because it denied him the opportunity of being considered for a performance related payment. We further decided the unfavourable treatment was because of something arising in consequence of the claimant's disability, namely his sickness absence.

521. We next considered whether the respondent's decision not to engage the PDAR process in respect of the claimant because he was off on sickness absence, was a proportionate means of achieving a legitimate aim. We accepted Mr McConville's evidence that the claimant was treated in the same way as other individuals who, although not disabled, are absent for a lengthy period of time. A lengthy absence means there is not sufficient work to be appraised, and the individual is not present to take part in the appraisal process.

522. We accepted the legitimate aim of the respondent was to apply a fair appraisal system to all staff and that it was a proportionate means of achieving that aim for the respondent to require staff to engage in the appraisal process and demonstrate performance against objectives set for a defined period of time. We, in addition to these points, also had regard to the fact that there was a disciplinary complaint outstanding for the claimant to answer, and a complaint by Dr Kehoe. We could not, against that background, accept the claimant's argument that the respondent could have assessed the work carried out without his presence.

523. We next considered whether the respondent's failure to notify the claimant (via his solicitor) of vacancies circulated on an internal email list was unfavourable treatment. There was no dispute regarding the fact five posts

were advertised internally: (a) Research Theme Lead; (b) Associate Dean, Research; (c) Head of Department of Law, Economics, Accountancy and Risk; (d) Module Leader, Postgraduate Research Methods Module and (e) School Research Lead Roles. We accepted the claimant's evidence that he would have been interested in applying for each of these roles.

524. We asked whether the failure of the respondent to notify the claimant of these roles was unfavourable treatment. We firstly had regard to the fact there was no contractual right to be specifically and personally notified of any roles or opportunities arising within the University. We secondly had regard to the fact the claimant had not at any time, prior to or during his absence, asked to be notified of any vacancies.

525. The third point to which we had regard was the fact the claimant continued to have access to the respondent's intranet during his absence and could have accessed it remotely. We accepted Ms Smith's evidence that each role was circulated by email to people in the University of relevant background and status (for example, according to the relevant school, or all staff, or specific groups such as GSBS Academics). We accepted her evidence that the claimant would have received the same email as other potential candidates.

526. We concluded the respondent had failed to send the vacancies to the claimant's solicitor, but the claimant had access to the vacancies via the respondent's intranet which he could access.

527. We further concluded this failure was not unfavourable treatment. The claimant was absent from work with a severe depressive illness. We accepted Ms Smith's evidence that against that background it would have been, at the very least, insensitive to notify him of vacancies. We also accepted that it is not normal practice for the respondent to contact employees on sickness absence to inform them of internal vacancies. In addition to this, we considered the scope for the claimant to misinterpret being sent vacancies as the respondent trying to move him from his post was immense.

528. We decided the failure by the respondent to notify the claimant's solicitor of internal vacancies was not unfavourable treatment. However, if we are wrong in this, we were satisfied the failure was a proportionate means of achieving the legitimate aim of treating employees absent through ill health sensitively.

529. We decided to dismiss the complaint of discrimination arising from disability.

Failure to make reasonable adjustments

530. We had regard to the claim form (page 165) which sets out the complaint that the respondent had failed to make reasonable adjustments. The complaint was that the respondent (i) permitted the cancellation of an occupational health assessment on a permanent basis and (ii) failed to notify the claimant's solicitor of the internal vacancies.

531. Section 20 Equality Act provides that there is a requirement, where a provision, criterion or practice of the employer, puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

532. The provision criterion or practice said to have been applied by the respondent was cancelling the appointment without giving the claimant an opportunity to respond to the assertions being made by the Occupational Health Department. This put the claimant at a substantial disadvantage in comparison with a person who is not disabled, because it exacerbated his medical condition.

533. There was no evidence to support the claimant's position that the respondent applied a provision, criterion or practice of cancelling occupational health appointments without giving the claimant an opportunity to respond. The documents (emails) demonstrate a very large number of emails sent by the

claimant to the occupational health provider querying firstly the change in doctor he was to see and secondly the provision of information to the doctor. The second matter was referred by the occupational health provider's Administrator to its Director. The occupational health provider told the respondent that it would not see the claimant again because of his behaviour (being the tone and volume of emails).

534. Ms Smith emailed the claimant's solicitor on 23 May 2016 (page 2601) to inform him that the appointment arranged for 24 May had been cancelled and would not be rescheduled. The email explained the decision had been taken following an email from the occupational health provider expressing concerns about the referral for the claimant. The concerns related to the claimant's regular contact with staff, and his tone which, in the opinion of the occupational health provider's staff, was becoming more demanding and threatening. Ms Smith confirmed the opinion from the occupational health provider that a consultation would not be beneficial for either party, and that the University had accepted the request to cancel the appointment.

535. Ms Smith was asked in cross examination whether the refusal to see the claimant again was a decision taken by the occupational health provider or the University. She confirmed it was a decision taken by the occupational health provider.

536. We accepted Ms Smith's evidence. We concluded there was no evidence to support the contention that the respondent had applied a provision criterion or practice of cancelling appointments without allowing the claimant to respond, in circumstances where the respondent did not cancel the appointment.

537. We further concluded that in the event the respondent did apply the provision criterion or practice as alleged, the claimant was not placed at a substantial disadvantage in comparison with persons who are not disabled. We were entirely satisfied that a non disabled person who had been referred for

occupational health assessment, and who conducted themselves in the same way as the claimant, would also have had their appointment cancelled.

538. We decided for these reasons to dismiss this aspect of the claim.

539. We next considered the complaint regarding failure to notify the claimant's solicitor of the internal vacancies. We noted this aspect of the complaint did not define the provision, criterion or practice said to have been applied by the respondent, but instead took the approach of saying that contact through the claimant's solicitor was a reasonable adjustment but the respondent failed to use it.

540. We decided to dismiss this complaint because we did not know what provision criterion or practice was relied upon by the claimant, or the nature of the substantial disadvantage. Furthermore, if there was a requirement to make reasonable adjustments, the respondent complied with this duty by agreeing to contact the claimant through his legal representative. The fact the respondent failed to notify the claimant, through his legal representative, of internal vacancies, did not relate to the failure or otherwise to make reasonable adjustments.

541. We noted the list of issues to be determined also suggested the respondent had applied a provision criterion or practice of the claimant having to be in work in order to receive a notice of internal vacancies. We could not accept this was a provision criterion or practice applied by the employer, because the evidence before us was to the effect the claimant could access the internal vacancies at home through the respondent's intranet. Further, the claimant could have asked for the internal vacancy list to be sent to him at home (or to his representative), but he did not do so. We accordingly decided to dismiss this aspect of the claim because the claimant has not shown a provision criterion or practice was applied by the employer.

542. We, in conclusion, and for the reasons set out above, decided to dismiss the complaint of disability discrimination.

Constructive Dismissal

543. The claimant brought a claim of constructive dismissal and asserted the implied duty of trust and confidence had been breached entitling him to resign and claim constructive dismissal. The breach of trust and confidence was said to have arisen from the failure to disclose documents which should have been, but were not, disclosed as part of the SAR; the discovery that staff of the respondent had made damaging and untruthful statements about the claimant to his detriment and of which he had previously been unaware and the acts to which those statements referred which had extended over a period of time.

544. We, in considering the complaint of constructive dismissal, firstly had regard to the terms of Section 95(c) Employment Rights Act, which provides that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

545. We also had regard to the case of ***Western Excavating Ltd v Sharp [1978] ICR 221*** where it was held that the employer's conduct which gives rise to constructive dismissal must involve a repudiatory breach of contract. It was stated:-

> *"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."*

546. The claimant, in order to succeed with the claim of constructive dismissal, must establish:-

- that there was a fundamental breach of contract on the part of the employer;
- that the employer's breach caused the employee to resign and
- that the employee did not delay too long before resigning.

547. The claimant sought to argue there had been a breach of the implied duty of trust and confidence. We firstly had regard to the following authorities which explain the duty of trust and confidence. The EAT in the case of ***Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84*** held that a term is to be implied into all contracts of employment stating that employers will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Further, in ***Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666*** it was stated:-

> *"to constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."*

548. We also had regard to the case of **Malik v Bank of Credit and Commerce International 1997 IRLR 462** where Lord Steyn, in the House of Lords, stated:-

> "*in assessing whether or not there has been a breach of the implied obligation of mutual trust and confidence, it is the impact of the*

employer's behaviour on the employee that is significant – not the intentions of the employer. Moreover, the impact on the employee must be assessed objectively."

549. We, secondly, had regard to the fact individual actions taken by an employer which do not themselves constitute fundamental breaches of any contractual term, may have the cumulative effect of undermining trust and confidence, thereby entitling the employee to resign and claim constructive dismissal. The claimant's case falls within this category: the individual actions of the respondent, in dealing with the various issues, did not themselves constitute fundamental breaches of the duty of trust and confidence, however, it was submitted the cumulative effect of those actions (or inactions) did breach the duty of trust and confidence.

550. The Court of Appeal in the case of ***Lewis v Motorworld Garages Ltd [1985] IRLR 465*** held the Tribunal had been wrong not to take account of the cumulative effect of the employer's criticisms.

551. We thirdly noted the fact the claimant relied on a "*last straw*" which caused him to resign, and we had regard to the following authorities which explain what is required to be a "*last straw*". In ***Lewis v Motorworld Garages Ltd*** (above) the Court of Appeal held that a course of conduct can cumulatively amount to a fundamental breach of contract entitling the employee to resign and claim constructive dismissal following a "*last straw*" incident, even though the last straw by itself does not amount to a breach of contract. It was immaterial that one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach and that the employee did not treat the breach as such by resigning.

552. The above principle was applied by the EAT in ***Abbey National plc v Robinson EAT 743/99*** where it upheld a Tribunal's decision that an employee was entitled to resign and claim constructive dismissal almost a year after a breach of contract by the employer. The employee resigned as a

result of the cumulative effect of a course of conduct and the fact that one of the events amounted to a repudiatory breach did not mean that she had affirmed the contract.

553. The Court of Appeal in ***Omilaju v Waltham Forest London Borough Council [2005] ICR 481*** explained that the act constituting the last straw does not have to be of the same character as the earlier acts, nor must it constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective.

554. The EAT in ***Thornton Print v Morton EAT 0090/08*** discouraged focusing too heavily on the last straw. It commented that the principle of the last straw, as explained by the Court of Appeal in ***Omilaju***:-

> "*means no more than the final matter that leads to the acceptance of a repudiatory breach of contract when taken together and cumulatively with earlier conduct entitles a party to accept a repudiatory breach, whether that last matter is in itself a breach of contract or not".*

555. We decided it would be appropriate to determine the following points: (i) was there a last straw incident; (ii) if so, was there a course of conduct the cumulative effect of which breached the duty of trust and confidence; (iii) if so, did that breach cause the claimant to resign; (iv) if so, what was the reason for the dismissal; (v) has the respondent shown the reason for dismissal was some other substantial reason and/or conduct and (vi) did the respondent act reasonably or unreasonably in treating that reason as sufficient to dismiss the claimant.

Was there a last straw incident

556. The claimant identified the last straw as being the withholding of documents which he believed ought to have been disclosed as part of the SARs and/or the discovery that damaging and untruthful comments had been made by managers and HR employees. We noted, with regard to the disclosing of information/documents, that the claimant made a SAR on 16 March, 18 June and 10 December 2015. The claimant presented his initial claim to the Employment Tribunal on 16 September 2015 alleging he had been subjected to detriment on the ground of having made a protected disclosure/s and age discrimination. In May 2017 documents were disclosed by the respondent as part of the preparation for the Hearing. The claimant asserted that upon reviewing the documents provided, he noticed documents which he considered ought to have been provided in the earlier SAR exercise. He also learned that members of staff had made, what he considered to be, damaging and untruthful statements about him to his detriment and of which he had been unaware. The claimant believed this had happened because he had made protected disclosures regarding Dr Greenlees or because he had complained of harassment.

557. The claimant resigned on 18 May 2017 because (a) the acts referred to in the documents extended over a period of time; (b) this was the last straw because he considered the documents should have been disclosed as part of the SAR but he had been told they did not exist or were not relevant to his requests and/or (c) this was the last straw because the managers or HR staff made damaging statements to the detriment of the claimant, of which he was previously unaware, and which those responsible knew or ought to have known were untruthful. The cumulative effect of these actions, it was said, constituted a fundamental breach of trust and confidence.

558. We asked ourselves whether the disclosure of documents in May 2017 as part of the preparation for the hearing of the claimant's case, was a last straw. We had regard to the fact the SAR process is governed by the Data Protection

Act. The Act gives individuals a right to access personal data held by organisations; however, it is not a blanket right and not all personal information requested need be disclosed.

559. Ms Lauder, the respondent's Head of Compliance, gave evidence regarding the claimant's SARs and her decision to exclude a small percentage of the information. Ms Lauder produced a table showing the documents she had excluded (that is, not produced to the claimant in response to his SAR) and the reason why she had taken the decision to exclude it. We accepted Ms Lauder's evidence in its entirety because we found Ms Lauder to be a wholly credible witness, and because the claimant's three complaints to the Information Commissioner's Officer regarding the results of the SARs were investigated and dismissed because it was concluded the respondent had adopted the correct approach and complied with its obligations under the Data Protection Act.

560. We concluded the respondent did not withhold information or documentation which ought to have been disclosed in the SARs, but rather the respondent did not disclose certain documents to the claimant and were permitted to do so in terms of the Data Protection Act.

561. The claimant further asserted the reason for the respondent's failure to disclose certain documents requested in the SARs was because he had made a protected disclosure and/or complained of harassment. We could not accept this assertion because we accepted Ms Lauder's evidence (which was not challenged in cross examination) that (a) she had made all decisions regarding the claimant's SAR requests and determined the documents to be provided and excluded; (b) she had no knowledge of the claimant prior to him submitting the SAR and (c) she had no knowledge of the claimant's (alleged) protected disclosures or his complaints of harassment.

562. We, in addition to the above points, also had regard to the fact the documents excluded were certain emails within a chain of emails. This was not a case

where a complete email chain, or a complete subject matter, had been excluded. The claimant was well aware of the subject matters of the emails: he, for example, knew of the difficulties he was having with members of the history group, and he knew their views regarding him being REF lead and research lead.

563. We concluded that in circumstances where the respondent was legally entitled to withhold certain documents from the claimant, and where the claimant was already aware of the subject matters to which the emails related, that the disclosure of those documents could be described as *"innocuous*". We considered the claimant erroneously linked the non disclosure of documents to the making of protected disclosures and/or complaints of harassment in circumstances where Ms Lauder knew of neither. The innocuous act of the respondent cannot be a final straw even if the claimant mistakenly interpreted the act as hurtful and destructive of his trust and confidence in the employer. We decided for these reasons that the disclosure of documents in May 2017 was not a last straw.

564. We next considered whether the claimant's discovery that staff made (allegedly) damaging statements to the detriment of the claimant, of which he was previously unaware, and which those responsible knew or ought to have known were untruthful, was a last straw. The damaging and untruthful statements said by the claimant to have been disclosed in May 2017 included:

- ostracism by work colleagues;

- refusal by colleagues to co-operate with the claimant in his proper role as Lead for the History, Policy and Practice Research Group and History REF lead (Dr Kehoe to Ms Smith and Mr McConville in December 2014; Dr Long to Ms Smith in January 2015);

- untruthful and unsubstantiated allegations by managers that the claimant was performing roles that did not exist (Ms Smith and Mr McConville in November 2014);

- removal without notice from the GSBS Research committee;

- untruthful and unsubstantiated allegations against the claimant of bullying, aggression and scaring behaviour towards younger female members of staff (Dr Kehoe's email to Ms Smith in October 2014; Dr Greenlees to Ms Smith in January 2015);

- untruthful and unsubstantiated allegations by a manager that the claimant shouted at a female member of staff and that this formed part of a pattern of behaviour;

- untruthful and unsubstantiated allegations that the claimant made a personal attack towards the Assistant Head of Department in a meeting and had repeatedly insulted her during that meeting;

- untruthful and unsubstantiated allegations that the claimant used derogatory and aggressive language;

- untruthful and unsubstantiated allegations that the claimant had failed to attend meetings;

- untruthful and unsubstantiated allegations against the claimant of aggressive body language;

- unfavourable allegations about the physical appearance of the claimant;

- untruthful allegations about statements allegedly made to the claimant in meetings;

- untruthful allegations about the content of meetings held with the claimant;

- withholding by HR casework advisor of upwards of 23 investigation meeting notes compiled during investigation of the claimant's grievance;

- allegations that the claimant's submission of his lawful SARs amounted to bullying;

- secret circular emails between HR, management and the claimant's colleagues without the claimant's knowledge in which the claimant, his proper roles and other matters were the subject;

- further covert damaging email communications;

- emails sent by colleagues outside the University denigrating the claimant's research leadership qualities within GCU;

- unjustified mobbing group email communications against the claimant (email signed by the 6 members of the history group stating he was not the Research Lead – April 2015) and

- claims of poor workload fulfilment.

565. We, in considering whether the discovery that these remarks had been made amounted to a last straw, had regard to three material issues. Firstly, we had regard to the fact that none of the statements were, on balance, factually untrue. We acknowledged the statements or views expressed were not in accordance with the claimant's views, but that did not mean the statements were untrue simply for that reason. We were satisfied the statements and views expressed were views genuinely held by others and were based on events which occurred. For example, there was a view held by female members of the history group (Drs Long, Kehoe and Greenlees) that there was a pattern of behaviour by the claimant towards them. We acknowledged

the claimant did not agree with this assertion, but it was a view genuinely held by them and based on the tone and volume of the claimant's emails and/or direct contact with him.

566. We secondly had regard to the fact the claimant was very well aware of all of the issues raised or commented upon in the statements made. We acknowledge he may not have seen every word written in every email, but in terms of the subject matters and causes of complaint, he was well aware of the matters causing tension, frustration and concern.

567. The third matter to which we had regard was the fact that notwithstanding the above points, we had to acknowledge that it cannot have been pleasant for the claimant to read what colleagues had written about him, even if he had had some knowledge prior to this regarding the level of disquiet.

568. We concluded, on balance, that this was a last straw.

569. We decided the disclosure of documents was an innocuous act and did not contribute to the breach of the implied term of trust and confidence. However, the discovery of what employees had said about him and the situation, was a last straw.

Was there a course of conduct the cumulative effect of which breached the implied duty of trust and confidence?

570. We reminded ourselves that the course of conduct, the cumulative effect of which was said to have breached the duty of trust and confidence, was (i) the failure to disclose documents which the claimant thought ought to have been disclosed as part of the SARs; (ii) the discovery of damaging and untrue statements made by various members of staff and (iii) the acts to which those statements referred. We also reminded ourselves that the Tribunal's function is to look at the employer's conduct as a whole and determine whether its effect, judged reasonably and sensibly, is such that the employee cannot be

expected to put up with it. The impact on the employee must be judged objectively.

571. We decided it would be appropriate to consider the course of conduct in chronological order, and to have regard to the acts to which the statements referred first. We noted the statements (set out above) referred to a range of issues which occurred between mid-2014 and the claimant commencing sickness absence on 25 May 2015. We considered the issues could be broadly categorised as follows:-

- tensions and disputes with others in the history group (REF lead; research lead; HPP lead; WAM; Programme Board meetings; monthly meetings; teaching)

- Dr Kehoe;

- Dr Greenlees;

- Leverhulme and British Cotton Growers Association grants;

- the Centre and

- the vote of no confidence.

572. We next had regard to the action taken by the respondent to address these issues. The evidence before this Tribunal, and which we accepted, disclosed a growing concern among members of the history group regarding the claimant's conduct. The scenario unfolding was of a dysfunctional working environment and a breakdown of working relations between the claimant and his colleagues. It was a wide-ranging and difficult situation with a large number of concerns being raised with Mr McConville and Ms Russell; advice being sought from Ms Smith, HR; individual complaints/concerns being raised and ultimately a collective grievance being presented.

573. The respondent addressed those concerns by initially offering advice and informal resolution and support, and subsequently when Mr McConville (acting on HR advice) proposed mediation. We considered the decision to offer mediation was significant because it demonstrated Mr McConville (and HR) not only understood the difficulties within the department, but also the need to find a way to resolve them for everyone. It was unfortunate the proposal of mediation was met with barriers from both sides, because relationships deteriorated further and culminated in the vote of no confidence.

574. We considered Mr McConville's decision to offer mediation was a reasonable and sensible course of action to take, and could have resolved many of the issues which were causing friction (such as whether the claimant was REF lead/research lead/HPP lead). Furthermore, it would have provided an opportunity for issues to be aired by both sides, and for a resolution to have been put in place.

575. Dr Kehoe raised concerns regarding the claimant's conduct and these concerns were investigated by Mr McConville and Ms Smith. The claimant accepted the outcome of the investigation and agreed to apologise to Dr Kehoe.

576. The issue with regard to Dr Greenlees is set out fully above and not repeated here. We considered the material facts to be firstly that Mr McConville and Ms Russell acknowledged the claimant was correct to have raised his concerns. Secondly, an investigation was conducted by Mr McConville and Ms Russell although they did not have time to conclude their investigation before the claimant raised the matter with Ms Brown. Thirdly, Ms Brown conducted a thorough investigation, had regard to the Financial Conduct Policy and Procedure and reached a decision which the claimant accepted. We considered the investigation carried out by the respondent was reasonable and whilst it may not have been in accordance with the demands of the claimant, that of itself did not impact on the reasonableness of the action taken by the employer.

577. Professor Hilton and Professor Mannion were involved in dealing with the situation regarding the grants from Leverhulme and British Cotton Growers Association. There was no dispute regarding the fact the claimant had prematurely announced having secured funding to buy out his teaching commitment. There were also issues regarding the knowledge of the funders regarding the fact they were both funding the same research project and whether all of the respondent's financial procedures had been fully complied with. We considered the involvement of Professor Hilton and Professor Mannion in these matters was appropriate and reasonable.

578. The issues regarding the Centre involved the same group of history staff and Professor Mills of Strathclyde University. The issues (above) which caused the group to raise concerns regarding the claimant also impacted on the running of the Centre. In addition to this there were concerns that the claimant did not want to give up control of the Wellcome grant and that he was blocking the spending of that grant. The nature of the concerns was many and varied, but they were rooted in the fact the claimant had, by this stage, lost the respect and co-operation of his colleagues. This culminated in the vote of no confidence. Professor Hilton acted immediately upon learning of the vote of no confidence, to contact Professor Mills to ask him to stop/take down the vote. Professor Hilton also made contact with the Dean of Strathclyde University to address the matter.

579. We acknowledge the claimant wished Professor Hilton to take action to instruct members of staff not to participate in the vote, and that she did not do so. We however were satisfied Professor Hilton took such steps as were reasonable in the circumstances by trying to have the vote taken down from Doodle poll.

580. We were entirely satisfied the respondent took reasonable and appropriate action to try to resolve the very many difficult issues which arose. We, in particular, had regard to the fact the respondent took into account the fact

there required to be an ongoing relationship between the claimant and his colleagues in the department. This was evident from Mr McConville's action in proposing mediation; Professor Hilton's action in trying to stop the vote of no confidence and in the outcome of the grievance where it was recognised that certain steps would have to be taken to mend the relationship.

581. We considered the claimant's issue with the actions of the respondent lay in the fact they did not do as he wanted: for example, the claimant wanted the respondent to tell the members of the history group that he was, and continued to be, REF lead, Research lead and HPP lead. Further, he wanted the respondent to have Dr Greenlees apologise to him and he wanted the respondent to stop the vote of no confidence and instruct employees not to participate in it.

582. The respondent listened to the claimant and had regard to his position in respect of these matters before making their decision regarding appropriate action. The fact the respondent did not comply with the claimant's wishes, does not of itself render the actions (or inactions) of the respondent damaging to the duty of trust and confidence. The respondent, for example, could not confirm the claimant was REF lead, or HPP lead, when this was not true.

583. The claimant's role in all of the very many situations cannot be under-estimated. The claimant's behaviour lay at the heart of this case and caused the difficulties to which his colleagues responded. Furthermore, the claimant's refusal to participate in mediation and his prevarication in meeting with Professor Hilton compounded those difficulties.

584. We next had regard to the disclosure of documents which the claimant believed ought to have been disclosed in the SARs. This is dealt with fully above when we set out our reasons for accepting Ms Lauder's evidence and concluding the respondent had been entitled, in terms of the Data Protection Act, to withhold the documents. It was clear from Ms Lauder's evidence, and the document she produced, that she had given considered and reasonable

thought to the requests for documents and which documents ought to be disclosed. We were satisfied the respondent acted in a reasonable and sensible manner when responding to the SARs. We were further satisfied this was not undermined by the erroneous belief of the claimant that the withheld documents ought to have been disclosed.

585. We lastly had regard to the damaging and untrue statements made by staff (set out above). We noted (above) that the statements were not, on balance, factually untrue. The statements were the genuinely held views of other members of staff. For example, the claimant referred to allegations by Dr Kehoe and Dr Greenlees of "*bullying, aggression and scaring behaviour towards younger female members of staff*". We acknowledge the claimant did not accept that allegation and believed it to be untrue, but what is set out was the view expressed by Dr Kehoe and Dr Greenlees, and it would have had to have been investigated if it was a formal complaint. This was not a case where members of the history group made spurious allegations against the claimant: the complaints made and the concerns raised were legitimate, and there was no evidence to support any suggestion the members of the group conspired against the claimant. The difficulties experienced by the group in dealing with the claimant, were difficulties also experienced by his line managers Mr McConville and Ms Russell, Professor Hilton, Professor Mills, HR and others. They were also the same difficulties experienced by the occupational health provider who found the tone of the claimant's emails and his constant emailing too much for staff to have to deal with.

586. The claimant described there had been a "refusal by colleagues to co-operate with the claimant in his <u>proper role</u> (our emphasis) as Lead for the HPP research group and History REF lead". It was true the history colleagues did not want to co-operate with the claimant regarding these matters because they did not believe him to be the History REF lead, or the HPP research lead. This statement encapsulated the difficulty in the relationship between the claimant and his colleagues: the claimant saw things differently to all of his

colleagues; he refused to acknowledge their position or to change his position and ultimately his colleagues dug in their heels.

587. We also noted above that the claimant was very well aware of all of the issues raised or commented upon in the statements. We acknowledge the claimant may not have seen every email or document, but he was very well aware of the complaints and the matters causing tension, frustration and concern. The claimant's grievance and grievance appeal demonstrated the level and depth of his knowledge of these matters.

588. We, in addition to this, considered that an employer is reasonably entitled to note concerns raised by employees and the nature of any advice given. For example, Dr Kehoe and Dr Long approached HR with concerns regarding the claimant. They informed Ms Smith of their concerns, but did not want her to take any action. Similarly, when the group approached HR for advice, they did not want, at that time, to make things formal. There are issues of confidentiality and no obligation on HR to make the claimant aware, at that stage, of what concerns have been raised.

589. We stood back and had regard to the whole course of conduct in this case. We acknowledged this cannot have been a pleasant experience for the claimant, or indeed anyone involved. We were, however, entirely satisfied that the respondent's actions in endeavouring to resolve the difficulties were reasonable and appropriate. We concluded the respondent had reasonable and proper cause to conduct itself as it did; and, that it did not conduct itself in a manner calculated or likely to seriously damage the relationship of trust and confidence.

590. We decided the respondent did not breach the implied duty of trust and confidence. There was no breach of contract entitling the claimant to resign. There was no constructive dismissal.

591. We should state that if we had decided there was a constructive dismissal, we would have had to determine the next questions, and we would have done so as set out below.

Did the breach cause the claimant to resign?

592. We were satisfied (if there was a breach of contract) that the cumulative effect of the respondent's actions caused the claimant to resign. We, in reaching this conclusion, had regard to the proximity of the disclosure of documents to the date of resignation.

What was the reason for the dismissal and has the respondent shown the reason to be some other substantial reason and/or conduct?

593. We acknowledged that if the claimant had been successful in showing there was a fundamental breach of the implied duty of trust and confidence, and that this had caused him to resign, he would have established that he had been constructively dismissed. We noted that in those circumstances, the burden shifts to the employer who, in order to prove the dismissal was not unfair, must show the employee was dismissed for a potentially fair reason falling within Section 98(1) or (2) Employment Rights Act. If the employer is successful in showing the employee was dismissed for a potentially fair reason, the Tribunal must then consider whether the employer acted reasonably in dismissing the employee for that reason in terms of Section 98(4).

594. The Court of Appeal in the case of ***Berriman v Delabole Slate Ltd [1985] ICR 546*** explained that in a case of constructive dismissal, the reason for the dismissal is the reason for the employer's breach of contract that led the employee to resign.

595. The respondent asserted the reason for dismissal was some other substantial reason and/or conduct. We, in considering this, asked ourselves what the reason was for the respondent's breach of contract which led the claimant to resign. In other words, what was the reason for the respondent acting as it had in relation to the matters set out above.

596. We referred to our findings of fact and to the points set out above regarding whether there was a breach of the implied term of trust and confidence. We had regard to the fact the claimant's behaviour lay at the heart of all of the issues which the respondent had to address. It was the claimant's behaviour which was the cause of the dysfunctional relationship with the members of the history group and the cause of the difficulties in the Centre. We acknowledged the claimant's case was that all of these issues only arose after, and because, he raised the issue concerning Dr Greenlees. However, that position was not factually correct: the claimant's relationship with his colleagues in the history group had broken down prior to any disclosure being made.

597. We concluded the reason for dismissal in the circumstances of this case was some other substantial reason, being the claimant's behaviour which caused the dysfunctional relationship in the history department, and in the Centre, and was the root cause of the issues the respondent had to deal with. We were satisfied the respondent has shown the reason for dismissal to be some other substantial reason, which is a potentially fair reason for dismissal falling within Section 98(1) Employment Rights Act.

Did the respondent act reasonably in treating that as a sufficient reason to dismiss the claimant?

598. Section 98(4) Employment Rights Act provides that a tribunal must decide whether, in the circumstances, the employer acted reasonably or unreasonably in treating the reason for dismissal as a sufficient reason for dismissing the employee. In constructive dismissal situations, the Tribunal

should ask themselves whether the employer's reason for committing a fundamental breach of contract was, in the circumstances, sufficient to justify the breach.

599. We asked ourselves whether the conduct of the claimant was sufficient to justify the breach of the implied term of trust and confidence (if we had found there to be such a breach). We answered that question in the affirmative and we did so because we considered (i) the issues raised by the various employees regarding the claimant were genuine; (ii) the respondent endeavoured to resolve the dysfunctional relationship and the difficulties caused by the claimant's conduct; (iii) the respondent took immediate action to have the vote of no confidence doodle poll removed and (iv) the respondent acted in accordance with its legal obligations in responding to the claimant's SARs.

600. We decided that if the claimant had established there was a constructive dismissal (that is, a fundamental breach of contract on the part of the employer, which caused him to resign) then the reason for that dismissal was some other substantial reason, and dismissal for that reason was fair.

601. We, in conclusion, decided:-

- the claimant was unable to establish there was a fundamental breach of contract on the part of the employer;

- if the claimant had been able to establish a fundamental breach on the part of the employer, it was this that caused him to resign;

- if the claimant had been able to establish a constructive dismissal, the reason for the dismissal was some other substantial reason, which is a potentially fair reason falling within Section 98(1) Employment Rights Act;

- dismissal for that reason was fair in terms of Section 98(4) Employment Rights Act and

- the claim of constructive dismissal is dismissed.

602. We decided to dismiss the entire claim because:-

(1) the claimant made one protected disclosure in terms of Section 43B Employment Rights Act, when he disclosed information to Ms Lindsay Brown, Financial Controller on 27 – 29 January 2015. The claimant was subjected to three detriments. We decided to dismiss this aspect of the claim because there was no causal link between the making of the protected disclosure and the detriments. (Further, even if all of the disclosures and detriments alleged by the claimant had occurred, we would still – for the same reasons - have concluded there was no causal link, and we would have dismissed this complaint).

(2) (a) The complaint brought in terms of Section 15 Equality Act was dismissed because the respondent's decision not to engage the PDAR process in respect of the claimant was a proportionate means of achieving a legitimate aim.

(b) We dismissed the other aspects of the disability discrimination claim because (i) the claimant was not treated unfavourably when the respondent failed to send the vacancies to the claimant and/or his solicitor; (ii) the respondent did not apply a provision criterion or practice of cancelling occupational health appointments without giving the claimant an opportunity to respond; and, even if they had, the claimant was not placed at a substantial disadvantage in comparison with persons who are not disabled and (iii) the claimant did not identify the provision

criterion or practice said to have been applied by the respondent, or the nature of the substantial disadvantage, in respect of the failure to notify the claimant regarding vacancies.

(3) We dismissed the constructive dismissal claim because the claimant could not establish there was a fundamental breach of contract entitling him to resign. Further, even if the claimant had established there was a fundamental breach of the implied duty of trust and confidence, and had resigned because of this, we would have found the reason for the dismissal was some other substantial reason and that the respondent acted reasonably in dismissing the claimant for this reason.

Employment Judge: **L Wiseman**
Date of Judgment: **15 March 2018**
Entered in register: **21 March 2018**
and copied to parties

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