EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MRS J VENENCIA (C1)	AND	GLYNDWR UNIVERSITY
MRS A O'SULLIVAN (C2)		

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: MOLD **ON: 7TH / 8TH /9TH / 10TH /11TH / 14TH / 15TH /16TH JANUARY 2019**
7TH / 8TH / 9TH / 10TH MAY 2019.

EMPLOYMENT JUDGE MR P CADNEY **MEMBERS: MR J WILLIAMS**
MS S ATKINSON

APPEARANCES:-

FOR THE CLAIMANT:- **MR R RYAN**

FOR THE RESPONDENT:- **MR J BOYD**

JUDGMENT

The judgment of the tribunal is that:-

1. The first claimant's claims of harassment contrary to s26 Equality Act 2010 are dismissed upon withdrawal.

2. The first claimant's claim of disability discrimination in the failure to make reasonable adjustments is dismissed.

3. The first claimant's claim of constructive unfair dismissal is dismissed.

4. The second claimant's claim of constructive unfair dismissal is dismissed.

Reasons

1. By these claims both claimants bring claims of constructive unfair dismissal; and the first claimant brings a claim of disability discrimination in the failure make reasonable adjustments. The first claimant previously brought a claim of harassment pursuant to s26 Equality Act 2010 (the protected characteristic also being disability) with the acts complained of set out in a schedule. During the hearing those claims were withdrawn and they are dismissed by consent, although the acts complained of are still relevant as they form part of the basis of the first claimant's constructive dismissal claim.

2. The tribunal has heard evidence from the first claimant Ms Jaqueline Venencia, and the second claimant Ms Alison O'Sullivan, and from Dr Phil Basset. On behalf of the respondent we heard evidence from Mr Simon Stewart , Mr Peter Gibbs , Ms Louise Medlam and Ms Louise Casella. In addition, we considered a very substantial quantity of documents, the bundles running to some 1500 pages.

3. Although some of the evidence was complex and detailed the essence of the dispute between the parties relates to the proposed restructure of the PCET team as is set out in detail below. As Ms Venencia set out in her final submissions (para 4), the five "key events" which led to her resignation were the treatment of her four complaints/ grievances and her appeal all of which "..*were inter-related; (and) directly or indirectly related to the restructure..".* This in our view is an accurate and admirably succinct summary of the main issues in the case and applies equally to Ms O'Sullivan's claim. As a result, it will form the main focus of our decision.

4. Both claimants were employed within the respondents Post Compulsory Education and Training Team (PCET). There were three members of the team Ms Venencia and Ms Sue Horder (SH) who were senior lecturers, and Ms O'Sullivan who was the Programme Leader. Ms Venencia had in addition, in July 2013 taken on the additional role of Programme Leader for the Looking Forward to Higher Education (LFTHE) Programme. Mr Stewart was at the relevant times the Head of the School of Social and Life Sciences of which PCET was a part. Mr Gibbs was the respondent's Head of Human Resources. Ms Medlam was Academic Registrar and was appointed by PG to investigate both claimants' grievances and complaints. Ms Casella was at the relevant times Assistant Vice Chancellor and was the decision maker either individually or as part of a panel (as is set out in greater detail below) in respect of both claimants' grievances and complaints. Both Ms Medlam and Ms Casella sat on the Vice Chancellor's Board (VCB).

Facts

5. Prior to the events which led to the claimants' resignations the respondent had carried out a restructuring an exercise which had resulted in a number of redundancies (Project Saturn). The former Head of School Dr Bassett retired and in

August 2014 following the restructure Mr Stewart became Head of Social Sciences and Education (to which were added Sports Science, Psychology and Health in 2015). In this role he became Head of School for Education which included the PCET team.

6. The relationship between both claimants and Mr Stewart does not appear to have started well. From Mr Stewart's perspective he was from the beginning of his appointment seeking to find ways that each team could be managed more efficiently as, even following Project Saturn, there were still very substantial savings that needed to be delivered. However, in September Ms O'Sullivan had presented a request for an additional 200 hours staffing resource, and at a meeting on 30th September 2014 when Mr Stewart sought, in particular, input into a proposal to integrate part time and full time to deliver greater teaching efficiencies, neither claimant thought or accepted that this was a practical proposal. In addition, Ms O'Sullivan provided Mr Stewart with a document which he believed showed significantly more teaching hours than on the respondents internal Moodle link, which he regarded as very curious. In contrast with other departments he took the view that the claimants were obstructive and failed to understand or engage with the need to make further savings, and describes them as "*entirely opposed to any change*." Things came to head at a meeting on 21st October 2014 at which Mr Stewart SS "*questioned the validity of the documents*" (a reference to the teaching hours documents referred to above), which caused Ms O'Sullivan to accuse him of being underhand and going behind her back. As described by Ms Venencia, Mr Stewart was "..*repeatedly making derogatory remarks about the integrity of Mrs O'Sullivan's decisions*", and she describes this as establishing a rift between Mr Stewart and Ms O'Sullivan.

7. In broad terms it is the claimants' case that the future events, in particular the proposed restructuring was informed by this dispute and that from this point on, whatever Mr Stewart's ostensible purpose, his real purpose was to engineer them out of the University, and those events should be viewed in that light.

Restructure Proposal

8. The primary cause of the dispute between both claimants and Mr Stewart was his proposal to restructure the department. The process leading to the restructuring proposal being agreed and implemented began in March 2015. On 30th March 2015 Mr Stewart presented a proposal to the Operational Manager's Group (OMG). He gave another report at the next OMG meeting on 16th April 2015. On 23rd April 2015 the proposal was discussed at an HR meeting, and on 27th April 2015 at the Vice Chancellor's Board (VCB). After this Mr Stewart discussed the proposal with Ms Deniz Baker, the UCU representative, and finally on 4th June 2015 the claimants were invited to a first consultation meeting which was held on 11th June 2015. This was the beginning of the first stage of the respondent's consultation process which provided for collective consultation. If at the conclusion of stage 1 the proposed restructure was approved by the VCB the process would then move

to stage 2, individual consultation. As will be set out below the process in fact never reached stage 2, and individual consultation never commenced.

9. The proposal that was presented at that meeting set out a number of fundamental changes. An organisational chart showed the current structure as a Principal Lecturer (Ms O'Sullivan 1.0 FTE) and two senior lecturers (Ms Venencia and Ms Horder both 1.0 FTE). Mr Stewart proposed amalgamating teaching of the full time and part time students, together with paying observers on a sessional basis for student observation, which would be removed as a requirement for permanent staff. This would mean that only 1.4 FTE staff would be needed to deliver the PCET programme. The new structure would have no principal lecturer, but one senior lecturer (1.0 FTE), and a lecturer (0.4 FTE) together with sessionally paid observers. The proposal suggested that the current cost of the three full time members of staff was £180,902. The revised structure would give direct staffing costs of £84,460 together with the cost of funding the sessional observers.

10. In essence Mr Stewart believed that the proposed new structure would deliver the course programme more efficiently and make substantial cost savings. The claimants have never accepted this. They believed that the proposal was flawed, they have never accepted for example that the full time and part time student cohorts could be taught together, and that the potential cost savings were far smaller than Mr Stewart calculated thus rendering the scheme unviable and pointless in any event.

11. This dispute essentially underlies everything that follows. The claimants believe that the information and arguments they provided during the consultation should have convinced any reasonable recipient that Mr Stewart's proposal was neither practical nor financially viable and should not proceed. To the extent that it did not convince him to withdraw it, that must in essence mean that the real purpose of the scheme was to engineer the dismissals of the claimants; and the extent that their objections did not convince later participants in the process, such as the members of the VCB that must be either because they were misled or were for some reason prepared to approve a proposal which was not rationally sustainable. In essence the claimants case rests (at least in this regard) on the proposition that it was not rationally possible to disagree with them in their criticisms of the proposal.

12. Following the meeting on 11th June 2015 the claimants requested a substantial volume of information. There is a dispute as to whether they had received all the requested information, but the claimants certainly received a very substantial quantity of information, and it was sufficient for them to be able to prepare a detailed response to the proposal. The end of the consultation period was originally set for 10th July 2015. However, some of the information requested was not sent until 9th July 2015 so Mr Stewart extended the consultation period until 17th July 2015, with a further meeting to take place on 22nd July. In fact this meeting did not in the end take place although nothing substantial turns on this.

13. It is not necessary to refer to the claimants' response in detail but one aspect is sufficient to set out the differences between the parties. As set out above the proposal was based on the proposition that PCET had three members of staff with a total staffing cost of £180,902. In their response the claimants contend that the actual proportion of PCET work done by those staff was, Ms O'Sullivan 0.48 FTE, Ms Horder 0.47 FTE, Ms Venencia 1.0 FTE. The claimants therefore concluded that on the basis of workload the actual cost of providing the PCET programme was 1.97 FTE giving a total figure of £115,633.This gave savings not of £84,000 (approximately and including the cost of the sessional observers) but of £31,193. Moreover, the claimants did not accept that the provision of £10,228 for sessional observers was sufficient but should estimated at £29,000 thus giving savings of only £2,193. In essence the claimants contended, and still contend, that the scheme was fundamentally flawed as it could not deliver the savings claimed or anything like them. If this is correct it must have had some other purpose, which they contend was removing them.

14. However, Mr Stewart drew exactly the opposite conclusions from those intended by the claimants. If only 1.97 FTE provision was currently being used to deliver the PCET programme, and if approximately half of both Ms O'Sullivan's and Ms Horder's time was spent on other activities, it demonstrated the correctness of his proposal that the PCET activities could be delivered with 1.4 FTE staff and sessionally paid observers. In his own subsequent reply to the claimants' response Mr Stewart contended that the claimants had effectively made his point for him, and that even on their own analysis the savings that could be made were demonstrably true.

15. On or about 9th July Ms Horder distanced herself from the claimants' objections and indicated that she believed that they should have supported the proposals. Thereafter the claimants continued to press their case but without Ms Horder's support. Both claimants are extremely dismissive of Ms Horder's position, believing that she should have continued to support them. As with others involved in the process, they do not accept that there is any possibility, and it appears to have occurred to neither of them at the time, that Ms Horder was on reflection genuinely of the view that the proposals should be supported. As we have not heard evidence from Ms Horder it is impossible for us to make any finding as to this. However, there is nothing in the evidence presented by the claimants that would indicate that Ms Horder's position was anything other than genuine.

16. Before dealing with the claimants' grievances and complaints it is sensible to deal with the process of the proposals through the respondent's management structure. On 22nd July 2015 the OMG met and as is recorded at paragraph 8(g) set out that the proposal had first been raised at the OMG and then ratified at the VCB. The feedback from the proposal was shared with the OMG, and it was agreed that paper would be shared with the VCB on 27th July 2015.

17. The proposal was considered and approved by the VCB on 27th July 2015 (minutes para 14.210) which concluded that the process should move forward to individual

consultation. At this meeting Mr Stewart had presented his proposal together with a summary of the feedback he had received. Mr Stewart contends that this was an accurate summary, whereas the claimants contend that it was deliberately misleading and incomplete. In our judgement, despite the claimant's complaints as to it Mr Stewart's summary was admirably accurate and fair. It presented to the VCB all of the claimants' central arguments against the proposal, and in our judgement anyone reading it would have a full understanding of the fundamental disputes. Ms Casella was present at this meeting and agreed with and approved the proposed restructure. Ms Medlam was not present at this meeting, but had been present at the earlier VCB meeting on 27th April 2015 at which the OMG was recorded as having approved the consultation. However, at that stage there was no reference to the detail of the proposal or that it related to PCET.

18. Prior to the following VCB meeting on 14th September 2015 a complaint had been received by Graham Upton from Ms O'Sullivan that the summary presented by SS did not fully or accurately represent the claimants' views. Mr Upton considered that "..*in the interest of transparency and fairness the VCB would be asked to revisit and review its decision to approve the restructure for progressing to Stage 2" (minutes para 15.5.3)*. The documents considered by the VCB at the 14th September 2015 meeting included Ms O'Sullivan's letter of complaint. However, having reconsidered in the light of that further information the conclusion of the VCB was that "..*the VCB did not consider the argument presented by the complaint provided any substantive reason to reconsider their original decision and resolved that the original decision stood*." The respondents contend that this in and of itself demonstrates that the VCB had not been misled by Mr Stewart at the meeting on 27th July 2015, as the new information did not provide any substantive reason to reconsider the earlier decision, and that the proposal was necessarily rationally supportable given that it had twice been considered and twice approved by the VCB.

19. Thus by the 14th September 2015 the VCB had twice considered the proposal and had twice approved it and had provided that the process should move to Stage 2. For the reasons subsequently set out during the period with which we are concerned the stage 2 (individual consultation) did not actually commence.

20. It is sensible at this stage to deal with the claimants' criticisms of the restructure process. The first point the claimants make is that there was no adequate consultation at stage 1. As set out above in the respondent's procedure there is a first stage, unlike many redundancy consultation procedures, of consultation at the stage of formulating the proposal itself, and not simply of consulting individually as to the implementation of the new structure.

21. The claimants contend that for the reasons set out above they submitted compelling objections to the restructure proposals which were ignored by Mr Stewart and subsequently by the VCB, at least at the meeting on 14th September 2015, when the full objections were before the VCB. From this they invite the tribunal to conclude that there was no genuine consultation as, if there had been

the restructure could not have proceeded, at least in an unamended form. Fundamental to this are two assertions, firstly that the proposed savings were illusory for the reasons set out above, and secondly that the proposal for joint teaching of the part time and full time cohorts which underlay the proposals was unachievable. If there was no genuine consultation at this early stage, of necessity, there has been a breach of the implied duty of mutual trust confidence as the process necessarily assumes that the respondent is acting rationally and in good faith.

22. The respondent submits that his approach is fundamentally misconceived. The process set out above is self-evidently thorough and fair. The proposed restructure was considered by a number of different committees, in particular the OMG and VCB on several occasions. Having finally approved it, the VCB agreed to reconsider its approval in the light of the Ms O'Sullivan contending that they had not seen the full objections, but only Mr Stewart's summary. Having done so the VCB, which comprises the most senior individuals within the university confirmed their approval. The process involved SS providing the claimants with very substantial volumes of information, answering their questions, and extending the time for the first stage of consultation. The idea that this is not a thorough and fair process is absurd, and is a proposition which relies in essence on the assertion that no one could reasonably disagree with them. As the outcome was not their preferred outcome they conclude that there was at least bias and possibly some form of conspiracy. However, the whole process described above demonstrates conclusively that fair minded, intelligent and reasonable people could and did agree to and approve the proposed restructure.

23. We will set out our conclusions as to these competing points of view later in this decision; but we have set them out here as they, in our view underly all the other issues.

Other Complaints

24. Before dealing with the claimants' complaints/grievances we will set out the other primary complaints. Our conclusions as to these issues are set out below.

25. Ms Venencia (LFTHE) – As set out above Ms Venencia was in addition to her PCET duties Programme Leader for the Looking Forward to Higher Education Programme (LFTHE). In September 2014 she requested that she be permitted to relinquish this role due to her workload. In March 2015 Mr Stewart informed Ms Venencia that he had found a replacement and that he could relieve her of this responsibility. Ms Venencia complains that this was only done after she had secured a contract with Coleg Gwent and that the real reason for relieving her of duties was a preparatory step to making her redundant.

26. Ms Venencia – ("suicide" email) – On 2nd October 2015 at 08.39 Ms Venencia emailed Mr Gibbs to say that she was unable to come into work and that she had

"found recent developments overwhelming" and that "last night I felt suicidal". On receipt Mr Gibbs forwarded this to Emma Taylor of HR who replied at 11.17 saying that she had generated a request for counselling via occupational health, advised her to seek guidance from her GP and advised her of the existence of Recourse, a 24 hour support line. This email was sent to her work email address which is the same address as that from which Ms Venencia had sent her email to Mr Gibbs. Ms Venencia did not check her work emails and contends that she did not receive a reply to her email until 15th October; and that this indicates a lack of care. In any event she contends that when this email was received it should have generated a much more significant response than simply an email by reply, and that much greater attempts should have been made to ensure her well-being.

27. The respondent submits that its response was self-evidently reasonable. Within a short time of receipt it had replied, advised the claimant to seek assistance from her GP, arranged an OH appointment and advised her of the existent of the helpline. To categories this as a failure adequately to respond is wholly unreasonable.

28. Ms O'Sullivan – (MA Programme Director). On 7th September 2014 AOS became the interim leader of the MA programme. On 5th February 2015 SS invited expressions of interest to become the permanent programme lead. The claimant submitted an expression of interest, as did Mr John Luker who was ultimately successful. The choice was made by Mr Stewart together with another Head of Division and both agreed on Mr Luker's appointment. Once again the complaint is that this was a not a genuine appointment of the person considered to be best suited to the role, but a pre-emptive attempt to remove duties from Ms O'Sullivan as a preparatory step to making her redundant.

29. The respondent submits that there is no evidence that it was anything other than a genuine process. It was in line with the normal process for filling posts of this type. The final decision was not simply made by SS but another colleague and there is no evidence that they did not select the individual they felt had submitted the better application. The fact that the claimant is dissatisfied with the outcome is not evidence that the process was in any way flawed.

30. Ms O'Sullivan – Inter Professional Group. Ms O'Sullivan complains that Mr Stewart deliberately excluded her from this group. However, it is not in dispute that Mr Stewart sent a general email to staff including Ms O'Sullivan inviting expressions of interest to participate in this group, nor that Ms O'Sullivan did not respond to the email.

<u>Grievances/Complaints</u>

31. As referred to above, on 24th July 2015 Ms O'Sullivan wrote to Mr Upton registering a formal grievance contending that it was inequitable for Mr Stewart to be responsible for preparing the proposal, considering the feedback, and being

responsible for implementation of the restructure proposals. Mr Upton appointed Louise Casella to hear the grievance.

32. On 6th August 2015 Ms O'Sullivan lodged her second grievance accusing Mr Stewart of bullying. She complained that she had been the Interim Programme Leader for MA Education, but that on 5th February he had asked for expressions of interest for the permanent role. Ms O'Sullivan applied but on 5th March 2015 Mr Stewart informed her that John Luker had been appointed. Secondly, she complained she had been deliberately excluded from meetings or communications without good reason, specifically alleging that she had not been invited to join Inter-Professional Strategy Group. She alleged that both these actions were designed by Mr Stewart to manoeuvre her into a position by which he could make her redundant.

33. The Anti Bullying and Harassment Policy is a separate policy from the grievance policy. On or about 12th August Mr Gibbs decided to consolidate the two complaints and processes. This had the effect of delaying Ms Casella's investigation of the grievance as the ABH policy required an initial investigation stage, followed by a formal investigation panel hearing. On or about 24th August 2015 Mr Gibbs had invited Ms Medlam to investigate both complaints.

34. On 1st September 2015 Ms Venencia submitted her first complaint. This concerned the restructure proposal as set out above and specifically alleged that Mr Stewart had failed to disclose inaccuracies in his original proposals as revealed and set out in the claimants' response; and that the consent of the VCB had been obtained by the withholding of this information; and that Mr Stewart was alleged to have personal issues with herself and Ms O'Sulllivan.

35. On 9th September 2015 Ms Venencia submitted her second grievance against Mr Stewart. This was, like Ms O'Sullivan's second complaint a formal complaint of bullying and harassment. On 16th September 2015 Mr Gibbs asked Ms Medlam to act as investigating officer in relation to Ms Venecia's complaints.

36. On 21st September 2015 LM held the first an investigatory interview with Ms O'Sullivan. Following that meeting Ms Medlam conducted interviews with both Mr Gibbs and Mr Stewart and posed questions to Ms Horder by email.

37. On 28th September 2015 she conducted an investigatory meeting with Ms Venencia, who was accompanied Stuart Cunningham, a Senior Lecturer in Computing, with Danielle Sulllivan from HR present. There is a dispute as to Ms Medlam's tone and manner during the meeting. Ms Venencia describes Ms Medlam as "judgmental and intimidating." Ms Medlam accepts that Ms Venencia became agitated and upset and that the meeting was brought to an early end, but does not accept that she acted towards Ms Venencia any differently than she would have treated anyone else; and that whilst these meetings can often be emotional in the end she has to obtain the information and evidence necessary to allow her to make a decision. She describes herself as being "*quite firm and direct*

in my questioning when she became evasive or contradictory but I remained professional sympathetic and calm." There are two sources of evidence other than Ms Venencia, Ms Sullivan and Mr Cunningham. On 1st October 2015 Ms Venencia sent an email to Ms Medlam complaining about the conduct of the meeting; and on the same day emailed Mr Gibbs asking him to remove Ms Medlam as investigating officer. Mr Gibbs replied on 15th October 2015. He had investigated, and Danielle Sullivan did not support the allegations and Mr Cunningham described it as "direct and challenging", which is not significantly different from Ms Medlam's own description. He did not accept that this meant that Ms Medlam was unsuitable to continue, and he decided to retain her as the investigating officer.

38. On 30th September 2015 Ms Venencia lodged a third compliant against both Mr Stewart and Ms Horder, essentially complaining that they had collaborated to produce a teaching timetable which removed her from teaching the full-time cohort.

39. On 6th November 2015 Ms Medlam produced her investigation report into Ms O'Sullivan's allegations. She concluded that they were without merit and should be dismissed. Specifically she concluded:-

i) The abuse of authority and power- This centred around the failure to appoint Ms O'Sullivan as permanent MA Programme Leader. She concluded that the process used by Mr Stewart was "clear, fair, transparent and reasonable."

ii) Deliberate exclusion from meetings and communications- This related to the failure to appoint Ms O'Sullivan to the IPG. Ms Medlam accepted Mr Stewart's explanation that he had emailed all staff to invite them to become involved and Ms O'Sullivan did not ask to be included. He had not therefore excluded her at all.

iii) It was inequitable for Mr Stewart to write the proposal, consider feedback make decisions and implement changes – This concerned the restructure proposal. Ms Medlam concluded that this was the same process that other departments had gone through whilst restructuring and that in essence, this was part of Mr Stewart's role as Head of School.

40. On 3rd December the anti- harassment and bullying panel met.

41. On 9th December Ms Medlam produced her reports into Ms Venencia's complaints. Once again, she found no evidence to support them and advised the investigation panel that they should be dismissed. Specifically she concluded:-

i) Intimidating hostile and degrading environment in which to work in relation to the delivery model – This related specifically to a comment allegedly made by Mr Stewart which Ms Venencia interpreted as implying that there was an inequitable distribution of workload. The complaint appears to be not that there

was in fact an inequitable distribution of work but that Mr Stewart took the view that there had been. Ms Medlam took the view that there was no evidence that Mr Stewart had created an intimidating hostile or degrading environment.

ii) Abuse of power or authority- This related to Mr Stewart allegedly disregarding the excessive workload caused by the LFTHE duties. Ms Medlam concluded that there was no evidence that Mr Stewart's actions were inappropriate or an abuse of his position. This is in any event a somewhat curious complaint given that Ms Venencia also complains of Mr Stewart removing the LFTHE duties from her in March 2015.

iii) Harassment resulting in changes to benefits- This relates both to the complaint about the continuation of LFTHE duties from September 2014 and their removal in March 2015. Once again Ms Medlam concluded that Mr Stewart had balanced the Ms Venencia's requests and the business needs of the university "in a fair and transparent way".

iv) Deliberately excluded from meetings and communications without good reason -This related to an allegation that Mr Stewart had failed copy Ms Venencia into an email, which Ms Venencia found on investigation had been copied to her, and other similar allegations. Ms Medlam found that there was no evidence that Mr Stewart had excluded her from correspondence.

v) Disregarded satisfactory or exemplary quality of work despite evidence – This relates to an email sent in April 2015 to all the staff by Mr Stewart congratulating them. Ms Venencia complained that he had specifically mentioned one programme but not her or a programme of hers. Ms Medlam found no evidence that he had deliberately neglected to single her out for praise.

vi) Sabotaged contribution to a team goal or reward -This related to the restructure and Mr Stewart's failure to take into account significant increase in student numbers in the restructure proposal. Ms Medlam concluded that Mr Stewart had considered a number of factors in the restructure proposal and that an increase in student numbers for one academic year should necessarily fundamentally alter the restructure proposal.

vii) Intimidating and hostile environment in which to work in relation to the length of the consultation period/ Made UP his own rules/ PCET restructure proposal was not viable – This conflates three complaints about the restructure proposal. In support of these allegations Ms Venencia alleged that Ms Horder had sent Mr Stewart a copy of the response without Ms O'Sullivan or Ms Venencia's knowledge or approval. Ms Medlam found that Ms Venencia produced no evidence to support this and that Mr Stewart and Ms Horder denied it. Secondly, she alleged that Mr Stewart had intentionally misled the VCB and failed to provide the complete response from Ms O'Sullivan and Ms

Venecia. Ms Medlam found that Mr Stewart had produced a comprehensive summary and that there was no evidence to support this allegation.

42. In respect of the grievances she concluded:-

i) Mr Stewart' refusal to accommodate appropriate strategies to accommodate large groups- This relates to an allegation that Mr Stewart ignored proposals from Ms Venecia about split group teaching (dual delivery). Ms Medlam found that Ms Vebencia had produced no evidence that she had suggested dual delivery, but rather that it had emerged after the meeting with the students on 23rd September 2014.

ii) Mr Stewart's motives for opposing her proposal – Ms Venencia alleged that Mr Stewart wanted to limit the number of jobs within the university in order to reduce her job security. Ms Medlam found that Ms Venencia produced no evidence to support these allegations and she accepted Mr Stewarts explanation was that her proposal would increase costs and negate any financial advantage of increased student numbers.

iii) The collaboration of Mr Stewart and Ms Horder to devise a timetable which removed Ms Venencia from predominantly the full time provision / Mr Stewart collaboration with Ms Horder over timetabling was inappropriate. Ms Medlam made two findings about this. Firstly, that Ms Horder had not participated in devising a timetable for Ms Venencia and that the timetable arose from the split provision. This resulted in Ms Venencia remaining at Northop, where she had always been intended to teach, but the teaching provision changed. Ms Medlam concluded " *I found it very unreasonable that JV expected to be teaching only the full time group at Wrexham*". Ms Venecia found no evidence of any collusion between Mr Stewart and Ms Horder.

43. Overall, therefore Ms Medlam did not find any evidence to support any of the allegations made by either claimant and her recommendation to the investigation panel was that they be dismissed.

44. Following the provision of those reports Ms Casella was asked by Mr Gibbs to chair the investigation panel. Although she was aware of the background and had been present at OMG and VCB meetings she considered herself appropriate to chair the panel as she was of an appropriate level of authority given he seniority of those against whom the allegations were made, in particular Mr Stewart, and that the rest of the panel comprised Emma Taylor an HR Business Partner, and Professor Williams, Professor of Polymer and Colloid Chemistry.

45. In addition to the complaints investigated by Ms Medlam set out above Ms Casella was asked to investigate a further complaint against Mr Gibbs by Ms Venencia, which Professor Upton had concluded should be investigated under the Dignity at Work Policy, a conclusion with which Ms Casella agreed. The first stage in the Dignity at Work Policy is for the manager to conclude whether a formal

investigation is appropriate. Ms Casella took the view that they did not require one and that she they could be determined on paper. She did not uphold any of the complaints. She informed JV of this by letter on 21st January 2016. Ms Casella's detailed reasoning in respect of this is set out a para 27 a) – p) of her witness statement. We accept her evidence that the reasons set out there genuinely represent her views, and it is not necessary to set them out in detail here.

46. In respect of the other allegations which had been investigated by Ms Medlam, Ms Venencia was invited to a panel meeting on 10th February 2016. Ms Venencia declined to attend, and it was decided to postpone the hearing until Ms Venencia's appeal against Ms Casella's decision was heard. On 11th March 2016 Ms Venecia resigned and so the panel did not in the end meet to make any findings as to the complaints against Mr Stewart and Ms Horder.

47. In relation to Ms O'Sullivan an investigation panel meeting was scheduled for 3rd December 2105. Ms O'Sullivan could not attend on 3rd December but as the other witnesses had been scheduled for that day the panel met and heard their evidence. The meeting was then adjourned and rescheduled for 10th December 2105 to allow for Ms O'Sullivan to attend which she confirmed she would. However, on 10th December 2015 Ms O'Sullivan was ill and the meeting rescheduled for 14th December 2015. On 13th December 2015 the panel was informed that Ms O'Sullivan would not be returning to work until 4th January 2016. As a result Ms Casella decided to continue with the hearing on 14th December 215 and dismissed the complaints:-

i) In respect of the MA Programme Leader role complaint the panel concluded that Mr Stewart had used standard practice and that expressions of interest had been reviewed both by Mr Stewart and another Head of School and both had reached the same conclusion.

ii) In respect of the IPG allegation the panel concluded that as Mr Stewart had sent an open invitation asking for expressions of interest in joining the IPG and that Ms O'Sullivan had not responded to this invitation that there was no evidence in support of this allegation.

iii) In addition, although not a specific complaint they concluded that Ms O'Sullivan was wrong in her view that Mr Stewart's intention was to make her redundant. The collective consultation part of the process had concluded but the individual consultation had not yet begun, and those comments must be premature as her individual position had not been begun to be discussed at that stage.

48. Ms O'sullivan's complaints were not therefore upheld. The outcome was communicated by a letter of 17th December 2015.

Resignations

49. Ms O'Sullivan resigned on the 5th January 2016. She refers in her resignation letter to the alleged conduct of Mr Stewart, that her complaints as to the restructure had been ignored and disregarded, and that the grievance and bullying complaints had not been properly conducted. In essence her complaints as set out in the letter are those which form the basis of this claim.

50. Ms Venencia resigned on 11th March 2016. She complains of a deliberate failure to provide a reasonable opportunity to obtain redress, a failure of the duty of care specifically in relation to the suicide email, and a failure to make reasonable adjustments.

Conclusions

51. We will deal first with the disability discrimination claim of Ms Venencia

Disability Discrimination

52. The disability contended for is a mental impairment (depression/complex post-traumatic stress syndrome). Although the respondent does not formally accept that the claimant was disabled person, the claimant was not cross-examined to any significant extent as to the fact of disability and the issue is not addressed in the respondent's skeleton argument, which is predicated on the basis that the claim is doomed to fail in any event. As, for the reasons set out below we accept that proposition, it is not necessary to deal with the question of disability in detail. The evidence before us is that the claimant has a long history of mental health issues which appear to have started with an episode of post-natal depression and have led to periods since during which she has required anti-depressant medication. In the light of the lack of significant challenge to the claimant's evidence we accept on the basis of the evidence we have that the claimant had a long-term recurring condition and was a disabled person at the relevant time.

53. The reasonable adjustment contended for was the removal of Ms Medlam from taking any further part in investigating the claimant's grievances between 1st October 2015 and March 2016.

54. The respondent submits that this claim suffers two fatal flaws. The first is that there is no PCP. The claimant requested Ms Medlam's removal on 1st October 2015. Mr Gibbs spoke to Ms Medlam, Danielle Sullivan and the claimant's representative Mr Cunningham who had been present at the investigation meeting on 28th September 2015 about which JV was complaining. Having spoken to them Mr Gibbs decided not to remove Ms Medlam from her investigatory role. If this evidence is accepted,

which we do, the respondent contends that the claim must fall at the first hurdle as there is no PCP. What the claimant is complaining of is in fact a specific decision taken by Mr Gibbs on or about 15th October 2015. This cannot be a PCP (see *Nottingham City Transport v Harvey [2012] UK EAT 0032/12*). Just as in Harvey the respondent submits that there is no evidence that the respondent has any practice of continuing to require grievance investigation officers to continue to investigate after there has been a complaint about them. This was a specific decision taken by a specific individual in the specific circumstances of this case. The fact that the claimant did not like or agree with his decision does not make it a PCP.

55. Secondly there is no medical evidence that even if it is a PCP that it placed the claimant at a substantial disadvantage. There is nothing to indicate that the claimant suffered any disadvantage above and beyond that which would be suffered by anybody who considered a grievance investigation officer aggressive in interview and whose request for her to be removed was refused.

56. Whilst the second point is open to debate, in our judgement the first is unanswerable. There is no PCP identifiable by us, and it follows that this claim must fail.

Constructive Dismissal

57. There are a number of sources for the basis of the constructive dismissal claims. Firstly there are those matters identified at the Preliminary Hearing which arose from the original pleadings. Secondly there is the schedule which was originally intended to be a schedule of the acts of harassment, and finally there are the closing submissions. As the respondent points out although the claims a very wide ranging the focus of the closing submissions, at least those front the first claimant rest almost exclusively on the claimant's grievances and her appeal.

58. Before dealing with the specific individual complaints of both claimants it is sensible to give a broad overview and our views of the major disputes between the parties.

59. The claims are both based on a breach of the implied duty of mutual trust and confidence whereby an employer must "without reasonable and proper cause conduct itself in a manner calculated or ("and" in the original :See Baldwin v Brighton and Hove City Council [2007]ICR 680) likely to destroy or seriously damage the relationship of trust and confidence between employer and employee". That involves two questions. Firstly did the employer conduct itself in a manner calculated or likely to destroy the relationship of mutual trust and confidence, and secondly if so, did it have reasonable and proper cause to do so.

60. The primary factual basis for this is the restructure proposal. Clearly any restructure proposal which may result in redundancies may damage mutual trust and confidence with potentially affected employees. If however there is a rational basis

for the proposed restructure, even if the affected employees do not accept or agree with it, the employer as general proposition will be likely to have fulfilled the requirement of having reasonable and proper cause for the proposed course of action.

61. The fundamental planks of the both claimants' claims (this is a slightly expanded formulation of what are set out as the main planks of JV's claim in the written submissions para 14) are:-

i) There was no rational basis for the restructure;

ii) It follows that the restructure must have had a real purpose which was not its ostensible purpose, which was SS's desire to manage the claimants out of the respondents' employment;

iii) SS's actions prior to the restructure should be viewed as acts which were preparatory to securing their redundancies in that the purpose and/or effect was to deprive them of duties making it more likely that they would be at risk of redundancy;

iv) There was no genuine consultation;

v) The various management boards that approved the restructure (and in particular the VCB meeting on 27th July 2015) were misled by SS into doing so and/or were biased;

vi) Even if the claimants are mistaken in respect of the restructure and the propositions advanced above they represent their genuine views and were reasonable conclusions to draw given the failure of the respondent adequately or sufficiently to engage with them during the consultation period;

vii) When the claimants lodged complaints/ grievances about the restructure those complaints/grievances were investigated by a member of VCB (LM) who was either actually biased in favour of the restructure or who could reasonably be perceived as biased; and subsequently determined by LC or by a panel including LC who similarly was a member of the VCB and was again either actually biased in favour of the restructure or who could reasonably be perceived as biased;

viii) As a result neither claimant had any adequate or reasonable investigation into their complaints/ grievances irrespective of the merits of the underlying arguments as to the flaws in the restructure.

62. Each claimant has other complaints which we will deal with individually, but we will firstly deal with those fundamental issues. However, before this there is an issue as to the claimants' credibility.

Credibility

63. As will be apparent a number of the claimants' assertions rest not on the events themselves but on the claimants' perception and interpretation of them, and in particular how they fit into the bigger picture. The respondent essentially asserts that there is no bigger picture and that the events complained of must dealt with on their own merits. The respondent submits that in reaching conclusions as to this that there are major questions before the tribunal as to whether the claimants' perceptions are a reliable guide, which it the respondent categorises as a credibility issue.

64. This derives, in particular, from supplemental witness statements submitted by both claimants between the date on which the claims were originally listed for hearing in May 2018 and the final hearing in January 2019 in which each accuses the respondent and/or the respondent and its legal advisors of conspiring to pervert the course of justice arising from the contents of the original bundle. As the second claimant, with whose evidence the first claimant expressly agrees, puts it "*In summary I believe that a number of these documents have been modified and changed after the event by the respondent in an attempt to mislead the tribunal and support the respondent's position…. In this statement I plan to go through a number of such documents .. and explain why I believe this is evidence of foul play by the respondent*."

65. The point can be made simply by reference to one of the documents referred to. One of the documents referred to is the minutes of Vice Chancellor's Board meeting on 14th September 2015. In the original bundle the first two pages of the minutes had been omitted. The claimants' allegation is that this was done to disguise the fact that two attendees were Louise Medlam and Louise Casella. As the respondent points out the two pages originally included were those that contained the references to the consideration of the restructuring plan and are therefore on the face of it the only pages that needed to be included in the bundle. Moreover, the bundle was agreed with the first claimant's then solicitors and the full document had been disclosed. If either claimant wished to have the first two pages in the bundle they could have chosen at any stage to include them. Secondly minutes of the 27th July 2015 meeting were included which showed that both were present, and in any event the make up of the VCB is publicly available information. The second claimant had in any event been sent a full copy of the minutes as early as 1st October 2015 and had noted in an email to Peter Gibbs that Ms Medlam was named as an attendee. This document was itself in the original bundle. Thus the respondent asserts that the reality is that the document which the claimants' assert was being deliberately withheld from the tribunal was a document that had been in Ms O'Sullivan's possession for some three and half years and which could have been included or which, if not included, the claimants could simply have invited the tribunal to admit. The allegation that the respondent was attempting to pervert the course of justice by hiding the fact of their attendance is absurd, and so absurd that

either the claimants cannot have genuinely believed it, or if they did genuinely believe it are so consumed by animosity for the respondent that they have lost all sense of perspective. Moreover, in the course of both claimants giving their evidence Mr Ryan tried valiantly to get both to accept that although they may genuinely believed them at the time that they were not now pursuing the allegations, but both stuck resolutely to their guns. Put simply the respondent submits that if they were prepared to believe, and to continue to believe this, they have so lost any sense of proportion that it casts into doubt the likelihood of their other allegations being sustainable. This is reflected in a number of the allegations before us in which the claimants contend that events that are, on the respondents evidence, perfectly ordinary events that will occur in the course of any employment, but whose outcome disappointed the claimants have been elevated into allegations of some form of pre-emptive attempt to make it more likely that they were be made redundant, or some form of conspiracy against them.

66. In our judgment the respondent is broadly correct in this. The supplemental witness statements essentially advance a conspiracy theory for which there is no evidence and does not bear much examination. We bear in mind, however, the claimants' assertion that if they became convinced of the respondent's bad faith that was a conclusion the respondent drove them to by its own behaviour (see para 71 (vii) above) and that if they are wrong about this it should not be held against them. In the end however, we also bear in mind that whether the claimants' interpretation of events is or is not correct we have to assess the respondent's actions objectively against the alleged breach of the implied duty of mutual trust and confidence.

<u>There was no rational basis for the restructure/ The VCB was misled</u>

67. The basis for this assertion is as set out above. The claimants' central contentions are that the financial benefits are illusory and the proposal for integrating part time and full-time teaching was unworkable. As to the first of these in our judgment the respondent's position is fundamentally correct. As the claimant's own figures showed the central PCET provision did not require three full time members of staff in that it only occupied, under the existing regime, 1.97 FTE staff. The claimants' suggestion that the restructure did not take into account their additional current duties in our judgement misses the point. Mr Stewart had identified a means of delivering the core curriculum more efficiently. At that stage the individual positions of the individual employees were not being considered. That would be addressed at stage two. However, for the reasons set out above stage two was never reached. Moreover, the restructure proposal was approved twice by the VCB and from the evidence before us, was conducted entirely in accordance with other restructuring exercises. The claimants' suggestion that the VCB was misled entirely ignores the fact that when Ms O'Sullivan's complaint was placed before it in September 2015 it reached the same view. In our judgement there is a wealth of evidence that the proposal was a rational one which the VCB was entitled to approve.

The real purpose of the restructure was to target the claimants and manage them out of employment/

68. As the respondent, in our judgement correctly points out, this assertion is premature. The question of whether any individual employee would be made redundant, and if so which, would only be made at the second stage which was never reached. There is a dispute between the parties as to whether the dual delivery has been implemented and if so whether successfully. The evidence of Mr Stewart is that it has, but the claimants do not accept this. Whichever is correct does not affect the question of whether Mr Stewart was entitled to take the view that it could in advance. Even if he had turned out to be wrong it would not necessarily mean that it was not rational to attempt it.

69. In our judgment there is no evidence to support the contention that the real purpose of the proposed restructure was anything other than Mr Stewart's ostensible purpose, to deliver the core curriculum more efficiently. Having heard Mr Stewart's evidence we accept that this was his genuine purpose.

70. It also follows that we accept Mr Stewart's actions in respect of the particular events of which the claimants complain (in Ms Venecia's case the continuation and then removal of LFTHE duties; and in Ms O'Sullivan's the failure to secure the permanent MA Programme Leader role and a place on the IPG) were not acts that were designed to place them at greater risk of redundancy. We accept for the reasons given above that in each case Mr Stewart's actions were rationally open to him and there is not any evidence that any of these events would have had any bearing on any subsequent redundancy selection exercise.

No genuine consultation/Failure to engage during consultation

71. In our judgment this is a curious allegation. As is set out above in the course of the collective consultation with Mr Stewart he provided a very substantial body of information to the claimants from which they were able to set out their objections. When Ms O'Sullivan complained that the original VCB meeting had not considered their objections in full, the full objections were considered at the next VCB meeting. In cross examination Mr Ryan advanced the proposition that the consultation could not have been genuine precisely because having considered the claimants objections both Mr Stewart and the VCB pursued and approved them in their original form. In our judgement this founders on the same point as set out above. It is only true if the proposals were not rationally supportable. If they were, which for the reasons set out above we find to be the case, then it is not possible to conclude that the consultation was not genuine simply because they were accepted. In our judgment there is no evidence to support this contention.

72. The second point is that even if the consultation was genuine and even if the proposal was rationally supportable that the claimants reasonably believed that neither position was correct and that their view stemmed from the failure properly to explain the proposal to them during the consultation. This essentially stems from a

proposition advanced during the hearing that if they did not understand the consultation process that is the respondent's fault. If they did not understand the basis of Mr Stewart's proposals, or did not understand that their individual circumstances would be considered at stage 2 of the process, whilst stage 1 was simply concerned with structure, their failure to understand was because the respondent had not explained the process sufficiently. The difficulty with it is proposition is that it is not suggested at any stage that they were actively misled by anything said or done by the respondent. In our judgement even if it is true that there was a misunderstanding of the process, there is no evidence that that resulted from anything said or done by the respondent.

Grievances/Complaints

73. The allegations of bias are twofold. Firstly, there is a contention that the VCB and/or Ms Medlam or Ms Casella were actually biased. Secondly that either or both of Ms Medlam or Ms Casella were apparently biased in that they were both members of the VCB and were therefore investigating and drawing conclusions at least in part in relation to decisions in which they had participated, or at very least were members of the body that had taken that decision.

74. As the respondent points out the claimants appear no longer to advance the actual bias proposition, or at least advance it very faintly. However, for the avoidance of doubt we do not find that there is any evidence of any actual bias on the part of Mr Stewart or the VCB. We accept the evidence of Mr Stewart that the summary of the feedback proposals was a fair representation of those responses. This is in our view evident from the fact that even when, in September 2015 the VCB had all the information the claimants wished them to see, they remained of the view that the restructure proposal was approved. There is no evidence at all that this decision was made in bad faith or did not represent the genuine view of the VCB or that it arose from any bias.

75. That leaves the question of the position of Ms Medlam and Ms Casella. Again, in our judgment there is no evidence of any actual bias. From the evidence summarised above, and having heard evidence from both we are entirely satisfied that each approached their tasks seriously and thoroughly and reached conclusions that were rationally open to them on the information before them. There is no evidence to support, and in our judgement significant evidence to contradict any suggestion that either was actually biased.

76. The point that has caused us the most difficulty is the question of the apparent impartiality of Ms Medlam and Ms CasellaL. Both were members of the VCB and had participated to some extent in the decision to approve the restructure. There is in our judgment no doubt that having been involved in the decision, to whatever degree, to approve the restructure there is obviously some force in the claimants' contention that there could to a reasonable observer be at least the appearance of

bias. Indeed, irrespective of the exact degree of their own participation they were being asked adjudicate on complaints/grievances which centrally related to proposals which had been approved by a body of which they were both members.

77. We have been referred to the case of *Watson v University of Strathclyde [2011] IRLR 458*. That case is authority for the proposition that apparent bias could constitute a fundamental breach of contract; that a reasonable employer will afford an employee a fair hearing, and that a fair hearing must not only be free from actual but also apparent bias. The claimants submit that since this is a case where apparent bias is plain even if there is no actual bias that their claim in this respect, and irrespective of the merits of the rest of the claims is unanswerable.

78. The respondent submits this case can be distinguished from Watson at least factually as the factual matrix is entirely different. This is true, but in our judgment if the principle is of general application any factual differences are not in and of themselves sufficient to avoid its application.

79. Is there then any basis for concluding that the principle set out in Watson does not apply in this case?. Fundamental to this is the question of who else could have carried out the investigations and decision making. In terms of the implied term if the appearance of bias is sufficient for there to be damage to, or the destruction of, the mutual bond of trust and confidence did the respondent have reasonable and proper cause to act as it did? The respondent submits that in effect it had no alternative. Who could have heard the grievance or complaints to whom this objection dd not apply? The complaint related to the Head of School and the senior management of the University. Accordingly, to investigate and adjudicate upon it required individuals of significant seniority, and preferably at least as senior as the members of the VCB, but anyone internal of sufficient seniority would by definition be a member of the VCB or OMG.

80. The claimants suggest that this circle could and should have been squared by the appointment of an external independent investigator/adjudicator. In our judgment the claimant is essentially correct that that is the only way that the apparent bias could be removed. Thus, the question for us becomes whether the respondent had good reason to employ a procedure which carried it with it the inherent risk of apparent bias or whether, or whether if the risk of apparent bias is inevitable whether it is in effect required to employ external investigators and decision makers. The respondent submits that there is no requirement on it to employ external investigators in an internal grievance or complaints procedure. It is entitled to use the internal employees best suited for the role and if that presents a risk of apparent bias that simply cannot be avoided. There cannot be any absolute duty not to continue to use those internal investigators. In our judgement as a matter of principle this must be correct. There are any number of examples in employment situations where decision makers are not entirely independent of other individuals involved in the process and in which there might be legitimate questions of apparent bias. That does not automatically require the employer to appoint external investigators. Moreover, this is not a situation like a disciplinary procedure in which

an external appointment might be made. These grievances and complaints centrally concerned the management of the University and its procedures and should therefore be determined internally. At very least the respondent was entitled to conclude that it was appropriate to determine them internally. If this is correct, and in our judgment it is, the question becomes whether the respondent should have appointed individuals against whom there could be no allegation of apparent bias, but who could realistically be perceived as too junior to investigate and determine issues relating to a Head of School and the VCB; or appoint individuals of sufficient seniority against whom allegations of apparent bias could lie.

81. Whilst we have not found this issue easy to resolve, in the final analysis we have concluded that there is no obviously correct answer to the question posed above and that in balancing the need for apparent impartiality with the need for individuals of sufficient seniority to be involved in the process that the respondent did have "reasonable and proper cause" to appoint Ms Medlam and Ms Casella and that this issue did not in and of itself constitute a breach of the implied term.

82. It follows that in respect of the major disputes between the parties we cannot identify anything which individually or cumulatively would amount to a breach of the implied term of mutual trust and confidence.

Specific Complaints

83. To the extent that they are not dealt with above the tribunal will set out its conclusions as to the individual complaints. The respondent has in our view correctly identified three sources for the basis claimants claims of constructive dismissal. The first are the matters set out in the ET1, the second those identified at the case management stage; and thirdly the schedule of acts of harassment submitted on behalf of the Ms Venencia. The issues are therefore as set out at paragraph 25 of the respondents Written Submissions and in the Schedule and we will deal with them in that order for ease of comprehension.

Ms Venencia

A(i) R tasked the claimant to work excessively over and above her contracted hours.

84. The claimant's contracted hours were a total of 1584 with 550 teaching hours. The respondent submits firstly that the claimant's contract provides that the scheduled teaching should not exceed 550 but that there is a standard clause that she should work such hours as are reasonably necessary to fulfil her duties and responsibilities. It is therefore a standard professional contract which provides for the obligation to work such hours as are necessary. The claimant's complaint appears to relate to her LFTHE work which she performed in addition to her PCET contract as set out a paragraphs 20-22 of the claimant's witness statement. As the respondent points out there is no evidence that this took the claimant above her contracted hours. However more significantly it is not in dispute that Mr Stewart asked her to retain LFTHE role until he could find a replacement, and that when he

did find a replacement and removed the LFTHE duty for the claimant in March 2015 that she said that she did not want to relinquish it. This appears on the face of it to be wholly inconsistent. The claimant cannot simultaneously complain about an excessive work load and complain at the reduction of that workload. As is set out above the explanation for that apparent inconsistency is that by March 2015 the claimant feared that the reduction in workload was part of a plan to make her redundant.

A(ii) – Mr Stewart failing to provide appropriate support for Ms Venencia

85. This is referred to at paragraph 23 of Ms Venencia's witness statement in which she refers to continuing to ask consistently for support over a seven month period (September 2014 to March 2015); and appears to be a corollary of the complaint above, that SS failed to support her in reducing her excessive workload. There is not in fact before us any evidence of the claimant seeking any particular form of support other than the removal of the duties, and again the is no specific evidence that the duties in fact took her above her contracted hours in any event.

A (iii) Mr Stewart offering inadequate TOIL.

86. This again relates to the LFTHE work. In March 2015 JV raised with SS the possibility of having TOIL to reflect her LFTHE duties. By 17th June 2015 it appears that this has been agreed in principle without any agreement as to any specific length of time. On 29th June 2015 SS suggests 50 hours TOIL representing 25 hours teaching and 25 hours preparation. On 9th July 2015 the claimant submitted a holiday card claiming 50 hours against her teaching commitments. Subsequently SS suggested 4 days TOIL based on the 25 hours teaching element of the LFTHE course. The claimant subsequently included 4 days TOIL on her holiday card but noted that she had been short changed because she had expected 10 days TOIL.

87. It is clear that there was never any specific agreement as TOIL in advance and it follows it would have to be negotiated later. The claimant's case is that having agreed 50 hours TOL that she should have been permitted to set all of it off against the teaching commitments; and Mr Stewart's that as it was not all teaching hours that was not something he would agree to. This dispute was never resolved. In our judgement Mr Stewart's position is perfectly logical even if the claimant did not agree with it. On any analysis it is very hard to see how it could be suggested that Mr Stewart was acting in a way calculated or likely to destroy or seriously damage trust and confidence simply by setting out his view as to the appropriate amount of TOIL.

A (iv) Mr Stewart refusing to reinstate absorbed holiday provision.

88. This claim is difficult to follow but appears to relate to the refusal to permit the claimant to carry over holiday from the 2015/16 holiday year to the 2016/17 holiday year. This is in effect the same point as that referred to above. If the claimant should correctly have been allocated 10 days TOIL but was only allocated 4 then she has

lost six days in her current holiday year which she has also not been permitted to carry over. If however she had no right to that amount of TOIL then she has not lost that holiday by not being permitted to carry it over. As on any analysis there was never any concluded agreement as to the amount of TOIL it is very difficult to see how failing to carry over holiday which had not been agreed in the first place adds anything to the complaints above.

A (v) SS refusing V's request for leave for scholarly activity

89. This claim has a slightly complex narrative which is accurately set out at paragraph 36 of the respondent's written submissions. Put simply there was correspondence as to how much time and when the claimant sought time off for scholarly activity. Agreement as to this would depend on the activity and the outcomes envisaged. Rather as with the TOIL issue following the agreement of the outcomes with her academic supervisor there was no final discussion as to this issue and as a matter of fact it was never rejected by Mr Stewart. This allegation therefore appears doomed to fail factually.

A (vi) SS/SH manipulating JV's timetable without her consent.

90. The background is that delivery of the course was intended to be provided at the Northop campus. However, there were more students enrolled than could be accommodated at Northop and it was proposed to move the whole course to Wrexham. On 21st September 2015 there was a student induction meeting and on 23rd September Mr Stewart, whose evidences we accept, was contacted by the student representative who was unhappy at the course being moved. At a meeting with the students on 28th September 2015 it was agreed that the course would be split between the sites. He decided that he two claimants would teach the cohort at Northop with Ms Horder teaching the Wrexham course. The respondent's case is that this was sensible given that the claimants were based at Northop and Ms Horder based at Wrexham; and that given that the split was as a result of complaints by the students and that it resulted in the claimant continuing to teach at the venue she always understood that she would be teaching at, it is hard to understand what the complaint is.

91. In our judgement, having accepted Mr Stewart's evidence, he appears to have arrived at a sensible solution to meet the students' needs whilst causing the least disruption to the staff. Once again it is very hard to see how this could destroy or damage the relationship of trust and confidence.

A (vii) R exploited JVs professional integrity through concerns about her job security.

92. This appear to be a generic allegation encompassing those specifically dealt with above and below. For the sake of completeness we cannot see any evidence that any of Mr Stewart's actions were done with this purpose and if this is a separate allegation we do not find that it is factually well founded.

B The restructure proposal was based on factually incorrect data

93. This is the central issue in the case and is not an allegation that we judge factually well founded for the reasons given above.

C (i) R failed to comply with time schedules.

94. This is dealt with below.

C (ii) Ms Venencia was not interviewed as part of her complaint about Ms Horder.

95. This is factually correct but Ms Venencia had already been interviewed by Ms Medlam. Having interviewed Mr Stewart and Ms Horder Ms Medlam clearly had an accurate understanding of the issues. The claimant has never articulated what information she could or would have provided which could have affected Ms Medlam's view. In any event if the claimant took the view that this prejudiced her the obvious course would have been to have met the proposed decision maker Mr Chris Jones, which C declined to do..

C (iii) Failed to conduct the investigation in a "objective sensitive" manner.

96. This is the allegation in respect of the 28th September 2014 meeting. As is set out above the descriptions of both LM herself and the claimant's representative are reasonably similar. We have no direct evidence save that of Ms Medlam and Ms Venencia themselves. We have no doubt each is giving truthful believes that their perspective on the meeting is the correct one; Ms Medlam that she was firm but fair, and Ms Venencia that it was intimidatory. In our judgement the difficulty for the claimant is that there was no complaint from her representative about the conduct of the meeting either in themeeting itself, or when he was subsequently contacted by Mr Gibbs. On the evidence before us we are not satisfied that there is anything to support the claimant's subjective perception of the meeting or to find that the way it was conducted was likely to destroy or damage mutual trust and confidence.

C iv) Failing to follow dignity at work policy

97. This is dealt with below

C (v) Failing to ensure impartiality across the grievance investigation.

98. Our conclusions as to both actual and apparent bias are set out above.

C (i) (iv) (vi) (vii) (viii) and (xix)

99. As the tribunal understands it none of these allegations of general procedural unfairness are being pursued. However, for completeness sake our view is that the claimant's grievances and complaints were lengthy and detailed and required significant

investigation. We are not able to identify any specific breach, and certainly not any breach which fundamentally affected the fairness of any of the processes. As is set out above the only procedural aspect which is of concern is the question of apparent bias which is dealt with above.

100. Accordingly, we cannot identify any events which taken individually or cumulatively are a breach of the implied term of mutual trust and confidence and Ms Venencia's claim must be dismissed.

Ms O'Sullivan

101. The underlying complaints which are common to both claims are set out and dealt with above. The specific claims are as follows.

It was wrong for Mr Stewart to write the proposal, consider the feedback, make the decision and be responsible for implementation.

102. The respondent submits that there is nothing inequitable about the Head of School being responsible for the process. As is set out above it was standard practice across the respondent and in the experience of the tribunal standard practice in many other organisations. The question of whether or not to restructure is essentially a managerial decision. This an entirely normal and standard process and we can see nothing in the fact of Mr Stewart being in charge of the process that would objectively destroy or seriously damage trust and confidence. Moreover, and in any event in the final analysis this is not entirely factually correct. The body ultimately responsible for acceptance of the proposal was the VCB not Mr Stewart personally.

The claimant not being awarded the MA Programme Leadership role.

103. This is the complaint set out above as to the claimant not being successful in her application for the permanent leadership of the MA Programme. As set out above there is no evidence before us that the conclusion was not genuinely made by Mr Stewart on the basis of the expressions of interest. In addition, the evidence is that the decision was made with another Head of Division who agreed with the outcome. There is no evidence before us which would allow us to conclude that the claimant should have been appointed to this role above the other candidate. Without being able to make such a finding factually the allegation falls away.

Ms O'Sullivan being deliberately excluded from meetings.

104. This is a reference to the IPG issue set out above. In our judgement there is no evidence which cold factually support this allegation.

105. Ms O'Sullivan's other complaints all relate to the restructure and grievance process and are dealt with above.

106. It follows that we are not able to identify any events which individually or cumulatively could amount to a breach of the implied term of mutual trust and confidence and the claimant's claim must be dismissed.

Judgment entered into Register
And copies sent to the parties on

.....25 October 2019.....

.....
for Secretary of the Tribunals

_____

EMPLOYMENT JUDGE CADNEY

Dated: 24th October 19