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# EMPLOYMENT TRIBUNALS

**Claimant:** Dr R A Hackley

**Respondent:** Queen Mary University of London

**Heard at:** East London Hearing Centre

**On:** 21, 22, 23, 24, 28 and 29 January 2020

**Before:** Employment Judge Gardiner

**Members:** Mr P Quinn  
Mrs BK Saund

## Representation

**Claimant:** In person

**Respondent:** Miss R Thomas, Counsel

**JUDGMENT** having been sent to the parties on 12 February 2020 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

1. At the conclusion of the Final Hearing, the Tribunal gave oral Reasons for dismissing the claim. A written Judgment was signed on 31 January 2020 and sent to the parties on 12 February 2020. On 4 February 2020, the Claimant requested written Reasons.
2. The Claimant, Dr Hackley, is of mixed Chinese and Thai national origin and identifies herself as BAME. From 2012 until 2019 she was employed as a Lecturer on a Research and Teaching contract in the Respondent's School of Business and Management ("SBM").
3. She alleges she has suffered discrimination in relation to promotion applications made in 2013, 2015, 2017 and 2018, and the feedback she received, her grievance lodged in 2017, and what she was told in 2017 about the Creative Branding module she had written. In particular, she says that the way she was treated in six respects amounts

to direct race discrimination and/or harassment related to her race. In relation to a seventh issue, she says her treatment amounted to sex discrimination and/or harassment related to her sex. These issues are listed and addressed in the Conclusion section below,

4. The Respondent denies that there was any discrimination. In addition, it argues that many of the Claimant's claims are out of time given that these proceedings were issued on 21 November 2018, substantially more than three months after many of the events of which the Claimant complains. The Respondent argues it would not be just and equitable to extend time to enable them to be determined on their merits.

5. A bundle of documents was put before the Tribunal extending to 591 pages. Whilst the Respondent did not agree to the relevance of all of the documents, there was no objection to those documents being referred to in evidence. The Tribunal has heard evidence from the following witnesses:

- a. The Claimant;
- b. Professor Julia Shelton, who investigated the Claimant's grievance;
- c. Professor Stephan Henneberg;
- d. Professor Nicholas O'Shaughnessy;
- e. Professor Martin Laffin; who was the Claimant's line manager until 2016
- f. Professor Matthew Hilton; the Vice-Dean of the Faculty of Humanities

6. Each of those witnesses confirmed that their statements were true on oath or affirmation, and was cross examined on their contents. In addition, the Respondent produced a Chronology, Cast List and List of Abbreviations. These documents were not agreed. Closing Submissions were made on the start of day 5 of the case, Tuesday 28 January. Both parties had prepared written closing submissions. They had a full opportunity to amplify those submissions orally and to comment on the points made by the other party.

## Findings of fact

7. The Claimant applied for a research and teaching position at the Respondent in 2012. Previously she had held academic positions at Surrey University and the University of Durham, starting her academic career in October 2006. Her academic field is that of marketing. Her husband, Dr C Hackley, is also an academic researching and teaching in the same subject area, though not employed by the Respondent. He had previously been the Claimant's PhD supervisor. With the exception of her PhD thesis, all of the Claimant's published papers in academic journals have been papers co-written with her husband. On occasions there were other collaborators as well.

8. At the time of her application to the Respondent, Professor Martin Laffin was the Head of the School of Business and Management. He was in part responsible for her appointment. He had known the Claimant before her application because he had worked at Durham University at the same time as the Claimant. When initially applying to the Respondent, the Claimant had hoped to be appointed to the position of Senior Lecturer, but was appointed to the level of Lecturer. Professor Laffin did not consider that her

research work to date merited the position of Senior Lecturer. However, given that marketing was an academic field where there was a shortage, it was agreed to increase her pay. As such, she was allocated a pay grade that was at the top of the level of pay normally paid to a Lecturer. He did not assure her that she would be promoted in the near future.

9. Until 30 April 2016, Professor Laffin was the Claimant's line manager. Thereafter her line manager was Professor Laffin's replacement as Head of the School of Business and Management, Professor Frances Bowen.

10. The Claimant's contract was a research and teaching contract. In broad terms, she was expected to put in 1000 hours of work over the course of the year, of which 5% or 50 hours were expected to be involved in the wider administration of the department, such as participation in meetings and committees. She was subject to a three-year probation period. For the duration of this period she was allocated a mentor to help her establish herself within the department and to enable her to pass her probation period. The Claimant's mentor was Professor Nicholas O'Shaughnessy. She was allocated Professor O'Shaughnessy because he was a more senior academic, he had similar research interests, and was thought to be someone who would be supportive and take an interest in her career. Professor O'Shaughnessy had known the Claimant and her husband for several years.

11. Professor O'Shaughnessy did not arrange formal mentoring meetings with the Claimant. Rather he saw his role as being available if and when the Claimant asked him for advice. He did not see his role as being to help the Claimant with any applications for promotion. In the course of her cross-examination, the Claimant suggested that she should have been allocated a BAME mentor. She had not asked for such a mentor at the outset, nor at any point subsequently.

12. Internal promotions at the Respondent are considered annually. The Respondent's procedure is that applications for promotion must be made using the Respondent's application form and supported by the applicant's CV. The Respondent publishes written guidance to assist those seeking promotion.

13. In January 2013 she put in an application for promotion to the role of Senior Lecturer. This was 5 months after she had started in the role of Lecturer. She was asked to provide evidence of her suitability for promotion under the headings Knowledge Creation, Knowledge Dissemination and Enabling Activities. Under the latter category, the Claimant did not provide any evidence of enabling activities at the Respondent, stating that she had not yet had the opportunity to make a major contribution to the School's leadership and management.

14. The application was considered by the Management Committee of the School of Business and Management, chaired by Professor Laffin. This Committee comprised seven academics including Yasmin Ibrahim. The recommendation of the Management Committee was not to support the Claimant for promotion to Senior Lecturer. Professor Laffin informed the Tribunal that it would be highly unusual for someone in the Claimant's

position to be promoted within 5 months of appointment. If promotion was granted, he said this would suggest she had been allocated to the incorrect position when she started. Professor O'Shaughnessy also told the Tribunal that he would not have supported a promotion application from the Claimant during her probation period.

15. One significant concern with the Claimant's application was that it had not identified activities undertaken since the start of her appointment at Queen Mary. Rather, it referred to research and teaching activities at Durham, where she had been previously. The other concern, which Professor Laffin raised directly with the Claimant, was that she had published almost exclusively with the same academic. She had not looked to publish with a different and wider group of co-authors.

16. As a result of the perceived weakness in her application, Professor Laffin decided not to forward the Claimant's application to the Preliminary Faculty Panel for consideration. This was communicated by Professor Laffin to the Claimant at the time.

17. Within the SBM, there were four other applications for promotion in 2013 that were considered by the Preliminary Faculty Panel. Two were successful, two unsuccessful. Of the two successful applicants, one was promoted from Lecturer to Senior Lecturer. That person was of Indian ethnic origin. The other successful candidate was recorded as being from "other white background". Of the two unsuccessful candidates, both were White British.

18. The Claimant chose not to appeal against the outcome of her 2013 promotion application. In her evidence, she explained that she felt it would be difficult to do so, given that she was still on probation.

19. In early 2013 the Claimant became pregnant. She was absent on maternity leave from 30 September 2013 until 17 March 2014.

20. The Claimant did not generally attend meetings or open days organised by the SBM. In fact, the Tribunal notes that the Claimant's only example of an occasion when she attended a meeting other than her teaching responsibilities was when she presented a seminar to her colleagues explaining her research on Thai Death Rituals. Until 2018, the Claimant did not provide other examples of SBM meetings she had attended. The Claimant did not argue that her childcare responsibilities prevented her from attending such meetings.

21. In January 2015, the Claimant applied again for promotion to the position of Senior Lecturer. At the time, she was still in her probation period. Her application was considered by the School of Business and Management's Research Advisory Group, which by then was responsible for recommendations on promotions. Professor Laffin was part of that Group.

22. By this point, the Claimant's research record was as set out in her CV. She had contributed to a maximum of four publications at ABS3 level. Professor Laffin again

regarded this as a weakness in her promotion application, as well as the fact that she had not yet taken on significant administrative responsibilities.

23. On 19 February 2015, Professor Laffin emailed the Claimant to tell her that the School would not be putting her forward for promotion that year although she could apply if she wished. On 3 March 2015, notwithstanding this indication, the Claimant emailed to ask Professor Laffin to forward her application to the Humanities and Social Sciences Faculty Meeting.

24. On 17 March 2015 Professor Laffin wrote the following overview of the Claimant's case for the HSS Faculty Panel:

"The quality of Amy's teaching is very good and she has achieved a particularly strong student evaluation in her Advertising module (4.4 for teaching and 4.29 for the module overall).

However, Amy has published almost exclusively with the same co-author. In an application for promotion, we need to be clear exactly what an applicant's contribution is to the field. It would be usual to expect to see some single-authored articles or a wider range of co-authors with other authors. I have made this point previously to Amy as she mentions.

It would also be important to see more evidence of citizenship and participation within the life of the School, such as participation at open days and involvement in student recruitment activities, attendances at seminars etc

These points were also made at the internal School panel (of five senior professors) which reviewed promotion cases within the School."

25. At the Faculty Meeting, which concluded on the same day, 17 March 2015, the Panel expressed the following view:

"The Panel felt research contribution met the criteria for promotion to a Senior Lecturer. However, HoS [Professor Laffin] had indicated that the contribution under enabling aims was not in line with what would be expected for promotion, so the application was not supported. Panel wishes HoS to ensure that Dr Hackley has access to good mentoring to help develop her career."

26. The outcome of this meeting was to record that her application was not supported. However, the Faculty Panel asked further questions of the School of Business and Management about her candidacy as follows, in an email on 26 March 2015:

"Does the comment on contribution to enabling aims take into account the period of maternity leave?

Could she be asked to provide revised CV with a statement detailing the contribution of each author to shared publications?"

27. In response, the Faculty Panel was provided with a revised CV containing details of the contribution of each author and the following comments from Professor Laffin on whether maternity leave had been taken into account in relation to enabling aims:

“Yes. The colleagues in the marketing group felt that Amy seldom, if ever, turned up to meetings involving marketing colleagues and she has no record of involvement in any student recruitment or other activities. There are plenty of opportunities for colleagues to contribute to open days and such like. But she has not done so and, to my recollection of my conversation with her, did not claim to have done so. I would note that she did not attend the recent School Board meeting which only takes place once a semester.”

28. Although this further information was provided on 13 April 2015, the Claimant was not informed of the outcome of the promotion application until a letter dated 3 August 2015. This informed her that there was not a prima facie case for promotion at this stage.

29. Again, the Claimant chose not to appeal against the rejection of her promotion application. In the 2015 promotion round, only one promotion application made within the School of Business and Management was accepted. This was a woman promoted from Reader to Professor. The ethnicity of this candidate was not recorded. The ethnicity of one of the two other unsuccessful lecturers seeking promotion to senior lecturer was White British Welsh. This promotion candidate was male.

30. The Panel's recommendation regarding mentoring was not implemented by Professor Laffin. He did not change the existing mentoring arrangements. At the time, the Claimant still had a mentor in Professor O'Shaughnessy.

31. At the start of August 2015, the Claimant's three-year probationary period ended. She passed her probation as recorded on the Probation Assessment form, signed both by Professor O'Shaughnessy and by Professor Laffin. For some reason, this form was not completed until December 2015.

32. On 31 March 2015, the Claimant notified Professor Laffin that she would be making a flexible working application. She did not want to reduce her hours, but rather to start no earlier than 10am so that she could make arrangements for her daughter to be cared for during the day. Professor Laffin's response was that he would try to organise this, but it was difficult as timetabling was not fully within his control.

33. She followed this up on 21 May 2015 with a formal request for flexible working. Her email made specific reference to the Queen Mary flexible working policy, and included a link to a government website setting out the legal position in relation to obligations for flexible working requests. No action was taken in relation to this flexible working request, contrary to the statutory requirements that apply to making such a request.

34. Professor Laffin told the Tribunal that he did not have a PA at the time, and this flexible working request was overlooked. The Claimant chose not to chase for a response to the flexible working request, nor did she appeal if she felt it had been refused. She next

raised the matter on 26 January 2017, in an email to Nicola Peatfield in HR and to Sandra Brown, who was responsible for equality and diversity. As part of a much wider ranging email, she stated she had never been invited to any meeting to discuss her formal flexible working request.

35. By this point, Professor Frances Bowen had taken over from Professor Laffin as the head of the school of business and management; and therefore taken over as the Claimant's line manager. Also on 26 January 2017, the Claimant emailed Professor Bowen a formal application for flexible working, which was dated 23 January 2017. In response, Professor Bowen suggested that there should be a meeting within 28 days to discuss this request. There was a meeting and the flexible working request was granted in February 2017.

36. The delay in dealing with the flexible working request was raised when the Claimant lodged a grievance on 2 June 2017. Professor Shelton, who heard the grievance, concluded that the original flexible working request was not dealt with in a timely manner. She upheld this part of the grievance.

37. The Claimant chose not to apply for internal promotion to Senior Lecturer in either 2016 or 2017.

38. In early 2017, the Respondent advertised externally to fill the position of Reader in Marketing. There were 11 applications for the role, who completed an application form and attached an up to date CV. The Claimant was one of the 11 applicants.

39. A shortlisting Panel was convened to consider these applications. This included the Claimant's previous mentor, Professor O'Shaughnessy, Professor Frances Bowen as Head of the School of Business and Management, and two other academic colleagues. Each Panel member provided views on those candidates on which they had comments. In relation to the Claimant, Professor O'Shaughnessy commented as follows:

"I like Amy's work and focus and style very much but there remain unresolved issues. She has never published a single article on her own and, always, publishes with the same other person although others may be brought in too. But I think for a Readership one needs to prove the ability to publish individually?"

40. The other Panel member to provide specific comments on the Claimant's application was Danae Manika who considered that the Claimant should not be shortlisted. Dr Manika recorded that there had been 3 ABS3 publications since 2008, and there was one ABS3 publication for REF 2021. None of the Panel members supported the Claimant being shortlisted, including Professor Henneberg.

41. Two candidates were shortlisted. The first was Dr Alexander Leischnig. He already held the role of Junior Professor at the University of Bamberg as well as the position of Visiting Professor at the University of Nuremberg. Dr O'Shaughnessy commented as part of the shortlisting process that Dr Leischnig was easily the best

candidate – the real issue with him was what courses he might teach. All those on the shortlisting panel agreed that Dr Leischnig should be shortlisted.

42. The other shortlisted candidate was Dr Annie Chen, who was a Reader in Marketing and Tourism Management at Sheffield Hallam University. She was of Chinese ethnic origin. Apart from Professor Henneberg, all the other four members of the shortlisting panel supported her being shortlisted. He noted her candidacy as N/maybe, an assessment also given to Dorothy Yen. In Ms Yen's case she did not have support from other Panel members.

43. Subsequently, Annie Chen withdrew her application as she had been offered a Professorship at Sheffield Hallam University.

44. Professor Henneberg had originally intended to be part of the interview panel. He had previously worked with Dr Leischnig in publishing two articles and was working on a further article with him. Professor Henneberg met with Professor Bowen to discuss the selection process. It was agreed that it would be best if he was not involved in the interview panel. This was because Professor Bowen wanted to avoid any potential suggestion of bias on the part of the interview panel.

45. As part of the process, Dr Leischnig was required to give a presentation to those within the School of Business and Management who were interested in considering the strength of his application. Once the presentation was over, the Claimant raised concerns with others present about the extent to which Dr Leischnig had supervised PhD students, the quality of his teaching scores, and the extent to which he had secured external funding. Dr Henneberg addressed each of these concerns, explaining that Dr Leischnig had supervised 10 PhD students, he had strong teaching scores and he had secured multi million Euro research grant. Accordingly, none of these concerns were valid.

46. Dr Leischnig was interviewed by a Panel including Professor Hilton and an External Member. All agreed that Dr Leischnig was of sufficient calibre for appointment, and he was appointed to the role of Reader. The Claimant told the Tribunal that her concern about this promotion opportunity was not that she was not appointed to the role of Reader. Rather she considered that she ought to have been shortlisted. At the time, she was attempting to challenge the strength of Dr Leischnig's application.

47. On 3 May 2017, the Claimant requested written feedback on why she had not been shortlisted. On 12 May 2017, Professor Bowen provided the Claimant with that feedback. He said that although she had provided good references, had good research fit within the School and had developed a stream of publications, those publications were not at the internationally-excellent level with only 3 at this level according to the ABS list since 2008, and one in this REF cycle. There was insufficient evidence of teaching leadership and she did not yet appear to have established an outstanding national and international reputation in a research area. He offered to provide her with face to face feedback on her most recent application and in addition to discuss the promotion criteria in detail some time before the next promotion round.



48. The Claimant sent a lengthy response that evening challenging the reasons given by Professor Bowen, and saying that she could not agree that Dr Leischnig was more experienced than she was. She did not take up Professor Bowen's offer of face to face feedback either in relation to the most recent application or in relation to future promotion opportunities. In those circumstances, Professor Bowen sent a short further email saying that her application was neither dismissed nor ignored, but that the matter was now closed. This was reasonable given the extent of written feedback provided and the Claimant's apparent unwillingness to have a face to face meeting.

49. The Claimant was dissatisfied with the outcome of her latest promotion application. She lodged a grievance on a Grievance Form which was dated 2 June 2017. She said that the grievance had been prompted by the rejection of her recent application for promotion, which she attributed to "intersectional racial bias as a female BME academic". She wrote that there was a sustained pattern of racial, unfair and prejudicial treatment towards her as a BME academic, saying that she was being judged by different higher standards than were applicable to other candidates. The grievance form asked her to describe particular incidents. As well as naming the most recent promotion application in 2017, she referenced her previous promotion applications in 2013 and 2015, and the decision to change the name of the marketing group. In addition, as already noted, the grievance complained about the delay in granting her flexible working request.

50. The grievance was referred to Professor Julia Shelton. She was a Professor of Biomechanical Engineering who had not been involved in any of the issues with which the grievance was concerned. She had previously conducted two other grievances and had not had any formal training in conducting grievances. She took HR advice throughout the grievance process.

51. She met with the Claimant on 6 July 2017 to find out more detail from her about the nature of her grievances. The notes of this meeting were sent to the Claimant for her agreement. She added comments over and above what was discussed at the meeting, but which were treated by Professor Shelton as fully explaining the nature of her grievance. She asked Professor Shelton to interview Dr Amit Rai, Dr Yasmin Ibrahim, Professor Nicholas O'Shaughnessy and Professor Matthew Hilton. The Tribunal finds that Professor Shelton interviewed all those witnesses that the Claimant asked to be interviewed. The Tribunal does not accept that the Claimant asked Professor Shelton to interview other BAME members of academic staff as she asserted in her evidence before the Tribunal.

52. During the interview, the Claimant accepted that she had gaps in her CV around administration. She added in her comments on the draft notes that she had previously undertaken administration roles at Durham and Surrey Universities. Her case to Professor Shelton was that she had been denied any administration responsibilities.

53. Professor O'Shaughnessy in his interview was recorded as making the following remarks, with which the Claimant takes issue:

"[Nicholas O'Shaughnessy] explained that [Amy Hackley] is a young mother and has pressures preventing her from socialising with colleagues. There is a culture

in SBM where people just do their administration and student facing activities in QMUL and then work elsewhere. AH is not able to socialise as much as some other colleagues due to childcare commitments but AH is dedicated to her work and has achieved a great deal with a young child.”

54. The Professor told the Tribunal that, at the time he made the comments, he was on sabbatical, was facing significant family pressures and personal illness, and said he used the wrong phraseology. The Tribunal finds that he made these comments in an attempt to give the Claimant the benefit of the doubt for her lack of attendance. He was trying to help Professor Shelton understand the potential pressures on the Claimant by excusing her lack of attendance at meetings and her lack of interaction with colleagues.

55. Dr Ibrahim told Professor Shelton that there was no mechanism to have leadership roles within the group because these were carved up between the white colleagues. She referred to an ACAS investigation into bullying, harassment and race discrimination. Dr Rai referred to a legacy of racism within the School but said that Frances Bowen was doing an amazing job. Neither produced particular examples of racism, still less suggested that the Claimant had been the victim of racism.

56. Professor Shelton produced a detailed Grievance Investigation Report on 19 October 2017. With the exception of her findings about the timescale for dealing with the flexible working application, she dismissed each of the Claimant’s grievances, giving full explanations for her conclusions. This included considering the definition of institutional racism in the McPherson report and rejecting that particular allegation. She made four recommendations, namely that the recruitment process should be clarified in relation to the purpose and the running of seminars given to the department by shortlisted candidates; declarations of interest should be made to the chair of interview panels who will make a decision whether there is a conflict of interest to eliminate any possibility of discrimination and lack of transparency; that there should be reconsideration of the approach to flexible working requests; and that there should be an avenue within the School to raise issues of racial discrimination. Further action would be taken by HR and it would be referred to the Equality and Diversity Inclusion Committee.

57. The next day, 20 October 2017, the Claimant appealed against the outcome of the grievance, under the headings racial discrimination, recruitment practices, culture of white patronage and HR and non-agency. The appeal was assigned to Kath Barrow who was an External Council Member. She convened a meeting with the Claimant held on 30 November 2017. At the grievance appeal meeting the Claimant is recorded in the notes as confirming that she did not believe she should have been appointed to the role of Reader. Ms Barrow published her grievance appeal outcome on 30 November 2017. She found that the procedure was applied correctly, the findings were fair and actions suggested were appropriate. As a result, she dismissed the appeal.

58. On 20 February 2018, Professor Henneberg asked the Claimant if she wanted to concentrate her teaching commitments in one of the University’s two semesters or spread them over two semesters, and what she would ideally like to teach in 2018/19. She chose to teach in the second semester, allowing her the first semester to concentrate on

research. In the language used in her email response she was recognising that this would mean she would not be able to teach the Creative Branding module she had previously written in 2016, scheduled to take place in the first semester. Neither then, nor subsequently, did she offer to drop either of the two modules she was planning to teach in the second semester so she could run her Creative Branding module in the first semester. There were no other lecturers who had the capacity to teach this course. This led to a decision that the course could not be run.

59. On 5 April 2018, Professor Bowen emailed the Claimant to thank her for confirming her teaching availability for the forthcoming academic year. She added that the Creative Branding course was currently not being scheduled to run during the next year as there was not the teaching capacity to teach it. The Claimant says that this email was a lie. The Tribunal rejects that characterisation. It was true at the point at which it was written.

60. Notwithstanding the lack of a lecturer to teach the course, this course was advertised to students as available, due to an administrative error. This was realised only close to the start of the academic year. As a result, the Respondent decided that the course would need to be run after all. It sourced a lecturer from another higher education institution, Dr Olga Kravets, to teach the course. Dr Kravets was known to staff in the marketing department at the Respondent. She was invited to teach the course without being required to go through a formal recruitment process or competitive selection. She was of Caucasian ethnic origin. The Claimant was not consulted about this decision. She remained unavailable to teach this course given that she had already committed to teaching two modules the following semester.

61. In the event, Dr Kravets decided not to continue teaching the course, one week after the course had started. The Claimant was offered first refusal to step in and teach the remainder of her own course. The Claimant responded it was impossible for her to take on the course at such short notice. She was offered the opportunity to teach the course in 2019/20. The withdrawal of Dr Kravets led to a further urgent search for a suitable lecturer. A replacement was found, and the course continued to its conclusion.

62. On 30 January 2018, the Claimant applied again for promotion to the position of Senior Lecturer, attaching her 2018 CV. On the Claimant's application form, she chose to mention that she had submitted a grievance in relation to her promotion application the previous year. The application was initially considered by the SBM Research Advisory Group ("RAG"). The composition of the RAG at the time was as follows:

- a. Professor Frances Bowen (chair); white female
- b. Nelarine Cornelius; coloured female
- c. Perri 6; white male;
- d. Professor Stephan Henneberg; white male
- e. Gill Kirton, white female
- f. Martha Prevenzer, white female

63. As recorded in a form dated 2 March 2018 and signed by Professor Bowen, the Claimant's application was not supported. Whilst she had met the required standards for "student experience and education", she had not met the standards expected for "research" and for "management and collegiality".

64. The narrative recognised her sound teaching, her development of five new modules and described her as a caring and conscientious academic advisor. In this area she was considered to be performing at Senior Lecturer level. However, whilst recognising a high number of citations on Google Scholar, these were spread over a relatively large number of publications including an Advertising textbook. There was only one ABS3 listed journal article since 2012. Although there was some evidence of participation in events at the School, most of the examples related to her previous employment. The unanimous view of the RAG was that there was insufficient evidence of performance at Senior Lecturer level to justify promotion. They did say that they remained open to the Faculty's view within the broader institutional context.

65. This outcome was communicated to the Claimant in an email sent by Professor Bowen on 9 March 2018, providing reasons for the decision. Professor Bowen told her that the Faculty Panel would consider the matter further and would get back to the Claimant sometime in April with their decision. She said that she would be willing to meet to provide further feedback after the Faculty Panel had met. She ended the email encouragingly, "Thank you for everything you are doing for our school!".

66. The Claimant chose to email Professor Hilton and others, following receipt of Professor Bowen's email, appealing against the recommendation of the SBM Research Advisory Group. Amongst other matters, she alleged that she had again been the victim of discrimination based on her gender and ethnicity and age. She asserted, without providing any particular evidence, that some senior white professors had mentioned these protected characteristics as reasons why she was experiencing disadvantages, and wrongly asserted that Professor Shelton in the outcome of the Claimant's grievance, had concluded that there was a wider culture of racial discrimination in the SBM that needed, in the Claimant's words, "re-mediation". The Claimant has not provided the Tribunal with any evidence to support these allegations.

67. In response, the Claimant was told that the current academic promotion round was midway through the process. She would have a right to appeal if her application was ultimately unsuccessful once considered by the Faculty Panel, but that it could not be considered at the current time.

68. The Claimant's promotion application was considered by a Preliminary Faculty Panel on 28 and 29 March 2018. The Panel was chaired by Professor Hilton, who was Vice Principal and Executive Dean of the Faculty. There were four other panel members, including a lesbian woman and a Jewish man. In attendance, in order to ensure that equality and diversity issues were addressed, was at least one Athena Swan representative. Although Professor Bowen was a member of the Faculty Panel, she excused herself from the meeting when the Claimant's application was being considered.

69. In advance of the Panel discussion about the Claimant's promotion application, Professor Hilton was aware that the Claimant's application was not supported by the SBM and that the Claimant had previously raised equality issues. In part for this reason, Professor Hilton decided to read some of the Claimant's research publications in order to review whether the Research Advisory Group's unanimous view that its quality was not at Senior Lecturer level was a reasonable one. His view, whilst recognising that this was not his particular area of expertise, was that he could see nothing to indicate that the RAG's view was an unreasonable one.

70. The notes of the Panel's discussion about the Claimant's application record that whilst she was a conscientious academic advisor, her publications were not of a quality commensurate with the expectations of the Respondent or a Russell Group university. The notes also record that there was an absence of evidence of leadership, management or collegiality. As a result, the Panel decided that the Claimant's application was unsuccessful. On 20 April 2018, the Claimant was informed of this outcome and offered the opportunity to request detailed feedback from Professor Hilton.

71. Before that meeting could be held, the Claimant chose to appeal against the outcome of the promotion application. She did this in an email on 23 April 2018.

72. On 8 May 2018, the Claimant met with Professor Hilton to receive feedback on her application. The meeting was held at lunchtime and attended by both Professor Hilton and Professor Bowen. There is a dispute as to how this feedback meeting was conducted. The Claimant alleges that the conduct of the meeting amounted to direct race discrimination and harassment related to her race.

73. The Claimant arrived slightly early for the scheduled start time of the meeting. Immediately before the meeting, Professor Hilton had been in a lengthy executive committee meeting where he had disagreed with others on a strategic issue. As a result, he arrived feeling tense, and had a short conversation with Professor Bowen and the Claimant about matters that were not relevant to the subject matter of the meeting. This discussion talked about travelling distances from home and living in the countryside, as well as Professor Hilton's need for his PA to get him a sandwich. The Claimant participated in this discussion by referring to spiders in her house. She alleges that the content and manner of this discussion was demeaning and upsetting to her, and indicated that her need for feedback was not being taken seriously. The Tribunal finds that this was a short discussion at the start of a meeting lasting about 15 minutes in which the Claimant was provided with full feedback on the reasons why she had not been promoted to Senior Lecturer. At no point during this discussion did the Claimant indicate that she found it uncomfortable and her reference to spiders in her house reasonably indicated to the other two individuals that this brief discussion was not inappropriate.

74. Professor Hilton emailed the Claimant at 1730 that day, to summarise the feedback provided orally at the meeting. He recorded the three areas of concern with the Claimant's application, and ended with the comment:

“I hope you find these comments useful though I feel they offer only a summary of what I hoped was a more helpful conversation”

75. The Claimant responded with a brief email on 9 May 2018, simply stating “Dear Matthew, Thank you for your written comments”. The following day, 10 May 2018, the Claimant emailed the Respondent’s Principal, Professor Bailey and the Respondent’s Head of HR, Dalia Dasgupta. She did not copy this email to Professor Hilton.

76. The email was a complaint about the manner in which the feedback meeting had been conducted. The Claimant complained about the initial discussion, referred to the tone of the meeting as aloof and patronising, challenged in some detail the reasons given at the meeting and in the email summary, and concluded that the two professors adopted a mean spirited and belittling approach which was far below the standards of fairness and professionalism she expected. She did not in terms accuse them of discriminating against her although she did say that the grounds for refusal of her promotion were potentially biased and prejudicial.

77. The Claimant’s appeal against her rejection for promotion was heard at a meeting on 21 August 2018 which was chaired by Isabelle Jenkins, an External Council Member. The meeting lasted about an hour and a quarter. The Claimant was sent an appeal outcome letter on 10 September 2018 informing her that her appeal had been unsuccessful. The detailed letter ran to over 3 pages in length. The letter stated that the examples that the Claimant had provided of her contribution in terms of management and collegiality were very recent and the letter implied that they post-dated the promotion application form, which was the document reviewed by the School and the Faculty. The appeal committee accepted evidence from Professor Bowen that the Claimant was not seen at any of the start of term school events in September 2017 such as the School Board, teaching away day, student socials and the first research seminar of the term. The letter added that her attendance at group/department meetings had improved more recently.

78. In addition, the appeal committee noted that the Claimant had not been performing a leadership or administrative role that met the requirements for the promotion guidelines. It considered that leadership/administrative roles had been offered out to colleagues for expressions of interest in 2016, 2017 and 2018. The Claimant had declined the chance to organise research seminars which would have been an ideal opportunity to demonstrate her management/leadership skills and would have supported her application for promotion.

79. The Tribunal accepts that this accurately reflects the extent of the Claimant’s participation in School events during this period, and the extent to which she could have volunteered to participate. The only evidence that the Claimant has provided of collegiality is the seminar she had given shortly after appointment in 2012 on Thai death rituals.

80. In relation to the SBM applications for promotion in the 2018 promotion round, the evidence indicates that one male Chinese candidate was promoted from Reader to Professor, one Asian female was promoted from Senior Lecturer to Reader and another

Asian female was promoted from Lecturer to Senior Lecturer. In addition, one female Black candidate was promoted from Lecturer to Senior Lecturer. These promotion decisions were taken by the same Faculty Panel that had been adjudicating on the Claimant's promotion application.

### ***Delay in issuing proceedings***

81. The Claimant's explanation for the delay in issuing proceedings was as follows. At the outset she was still in her probation period and felt vulnerable in raising any complaint when she did not have the same job security as she would have once her role had been confirmed. Thereafter she had been advised by her union, UCU, to exhaust all internal processes first before bringing Tribunal proceedings. Her appeal against her refusal of promotion in 2018 was communicated to her on 10 September 2018. She initiated Early Conciliation on 27 September 2018, was issued with an EC Certificate on 27 October 2018, and issued proceedings on 21 November 2018. She told the Tribunal that she did not realise that there were any time limits for bringing a complaint of discrimination in the Employment Tribunal until she was told this by ACAS when she contacted them as part of the Early Conciliation process.

82. The Tribunal rejects the Claimant's assertion that she was not aware of the existence of time limits for bringing discrimination claims in the Employment Tribunal. She is a highly intelligent person, who carefully researched the law on flexible working in 2015. She was a member of a union. If the Claimant considered she had been the victim of discrimination it is likely she would have discussed this with her union and researched what options were available to her in order to seek a remedy. The Tribunal does not know whether the union advised her to exhaust her internal remedies. However, she had effectively exhausted her internal remedies in 2013 when she failed to appeal. This was the position again in 2015 when again she failed to appeal, and in late 2017 when her challenge to the 2017 Reader promotion decision was unsuccessful. It does not therefore provide the Claimant with a good reason for failing to issue proceedings within the required timescale.

83. The Respondent contends that it is prejudiced in responding to events which are outside the statutory time periods for complaining of discrimination. It relies not only on the passage of time and the effect on the memory of witnesses, it also relies on the departure of Professor Frances Bowen. Professor Bowen left the Respondent's employment in the Summer of 2018. That is why she has not been called as a witness.

### **Other evidence of alleged race and sex discrimination**

84. The Claimant included statistics on Staff Diversity at the Respondent, but the two pages provided do not enable the Tribunal to identify the year to which they relate. The document records Academic BME in the Humanities and Social Sciences Faculty as 11.9%, but gives the higher figure of 17.09% elsewhere on the page. In evidence, Dr Hilton told the Tribunal, which the Tribunal accepts, that 38% of staff on "teaching and research" contracts in the School of Business and Management were BAME against a benchmark of 21.5%.

85. The Claimant produced the Staff Survey from 2019, and sought to rely on certain entries alleged to be relevant to her claim. The particular answers that she relied upon were to questions about whether if a staff member reported an incident of discrimination or harassment at Queen Mary they were confident it would be taken seriously, and whether they had experienced bullying and/or harassment at work in the last 12 months. The Tribunal does not consider that this survey provides any basis for drawing inferences as to the factors which influenced those who took the impugned decisions in relation to the Claimant.

86. The Claimant alleged that there was discrimination in relation to a decision made to change the name of the marketing group. The Tribunal finds that the decision was made in order to better reflect the particular expertise of a majority of members of the group, rather than to exclude those of a particular ethnic origin. Professor O'Shaughnessy was also dissatisfied with the proposed new name, but was white British by ethnic background. It is telling that when a provisional decision was taken, those unhappy at the proposed new name were given the opportunity to attend a meeting to explain their objections. None of those who were dissatisfied, including the Claimant, chose to attend such a meeting and the change was made.

87. The Claimant relies on the resignation email of Sandra Brown on 12 April 2019, who was the diversity and inclusion manager at the Respondent. This expresses general dissatisfaction about equality issues in relation to both students and staff. It does not specifically mention the School of Business and Management nor the Faculty of Humanities and Social Sciences. It does not provide any specific examples or evidence of particular discriminatory practices. Because it is framed in such general terms, it cannot be the basis on which inferences can be drawn as to discrimination in relation to the Claimant. In any event, there has been no determination as to whether Ms Brown's allegations are factually correct.

88. The Tribunal was told that ACAS had been asked to investigate alleged discrimination within the Respondent. However, there was no evidence before the Tribunal as to the precise scope of the ACAS investigation nor as to any conclusions that ACAS had reached. This cannot be the basis on which inferences can be drawn as to discrimination in relation to the Claimant.

89. The Claimant referred to another Tribunal complaint of discrimination brought by Dr Bakre. That complaint was heard by a Tribunal panel chaired by Employment Judge Warren between 27 and 29 August 2019. The panel unanimously dismissed that claimant's complaints.

90. The Claimant produced a report at the back of the bundle which was headed UCU/Unison Equalities Lunch Gatherings Oct/Nov 2019, but dated 16 January 2020. This date was within a week of the start of these proceedings and around a year after the Claimant left the Respondent's employment to take up a position at Birkbeck University. The Tribunal does not derive any assistance from the contents of this document. The Claimant was not herself at the meetings that had led to the report being written. The report records unattributed comments from members of staff and students across the



entire University alleging dissatisfaction and in places discrimination on grounds of sex, race and sexual orientation. The comments included comments from students as well as staff. These comments provide no basis for drawing any inference as to the factors which influenced those who took the impugned decisions in relation to the Claimant.

## Legal principles

### ***Direct discrimination***

91. Section 13 of the Equality Act 2010 is worded as follows :

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

92. The Claimant seeks to compare herself against the treatment of successful candidates for promotion where she was refused promotion and in relation to all allegations as to how a hypothetical comparator would have been treated. Such a hypothetical comparator must in all other respects be in a comparable position to the Claimant apart from her ethnicity.

93. The focus is on the mental processes of the person or persons that took the decision said to amount to discrimination. The Tribunal should consider whether they consciously or unconsciously were influenced to a significant (ie a non-trivial) extent by the Claimant's ethnicity or (in one case) by her gender. Their motive is irrelevant.

94. Section 136(2) of the Equality Act 2010 is worded as follows:

- (2) If there are facts from which the Court could decide in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred;
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

95. Guidance on the burden of proof was given by the Court of Appeal in *Igen v Wong* [2005] ICR 931. This guidance has subsequently been approved by the Court of Appeal in *Madarassay v Nomura International plc* [2007] ICR 867 and by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054 (at paras 22-32).

96. The burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of a satisfactory explanation, that the Claimant's treatment was in part the result of her ethnicity or her sex.

97. In order for the burden of proof to transfer from the Claimant to the Respondent, it is well established that it is insufficient for the Claimant merely to show a difference in status and detriment treatment (see *Madarassay* at paragraph 54). In *Network Rail Infrastructure v Griffiths-Henry* [2006] IRLR 865, Elias J at paragraph 15 said that the mere fact that an unsuccessful candidate was a black woman and successful candidates were white men would be insufficient to be capable of leading to an inference of discrimination in the absence of a satisfactory non-discriminatory explanation. To shift the burden of proof a claimant must also prove something more. That is, in the present case

the Claimant must prove facts from which the Tribunal could infer that there is a connection between the protected characteristic of race or sex and the detrimental treatment, in the absence of a non-discriminatory explanation. Mere unreasonable or unfair treatment is not, by itself, enough to trigger the transfer of the burden of proof (*Bahl v Law Society* [2003] IRLR 640, EAT per Elias J at paragraph 100).

98. If such facts are established, then the burden of proof transfers to the Respondent to establish on the balance of probabilities that the protected characteristic formed no part of the reasoning for the treatment. It is also well recognised that it is open to the Tribunal to look straight to the Respondent for its explanation on the assumption that the burden of proof has already transferred, and to consider whether any part of the reason for the treatment is tainted by the protected characteristic.

### **Harassment**

99. Section 26 of the Equality Act 2010 is worded as follows:

- (1) A person (A) harasses another (B) if-
  - a. A engages in unwanted conduct related to a relevant protected characteristic, and
  - b. The conduct has the purpose or effect of –
    - i. Violating B's dignity, or
    - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for B
- (4) In deciding whether conduct has the effect referred to in (1)(b), each of the following must be taken into account-
  - a. The perception of B;
  - b. The other circumstances of the case
  - c. Whether it is reasonable for the conduct to have that effect

100. In relation to a claim for harassment under Section 26, it is open to a Tribunal to find that conduct was unwanted even if a claimant chooses to stay in employment and even if a claimant chooses not to object whether formally or informally (*Munchkins Restaurant Ltd v Karmazyn and others* EAT 0359/09). The Equality and Human Rights Commission : Code of Practice on Employment (2011) states as follows:

- 7.7. Unwanted conduct covers a range of behaviour, including spoken or written words or imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.
- 7.8 The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'. 'Unwanted' does not mean that express objection has to be made to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment.

101. When considering whether a comment was related to a protected characteristic under Section 26 Equality Act 2010, this covers a wider category of conduct than conduct “because of a protected characteristic” under Section 13 Equality Act 2010. A broader enquiry is required involving a more intense focus on the context of the offending words or behaviour (*Bakkali v Greater Manchester Buses (South) Limited t/a Stage Coach Manchester* [2018] UKEAT/0176/17).

102. In assessing whether the conduct met the proscribed threshold, Tribunals should not place too much weight on the timing of any objection (*Weeks v Newham College of Further Education* UKEAT/0630/11). Whether it was reasonable for the Claimant to regard treatment as amounting to treatment that violates her dignity or has an intimidating, hostile, degrading, humiliating or offensive environment is a matter for factual assessment of the Tribunal having regard to all the relevant circumstances, including the context (*Richmond Pharmacology v Dhaliwal* [2009] IRLR 336). In that case the EAT said:

“Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended”.

103. Section 212(1) of the Equality Act 2010 is worded as follows:

- (1) In this Act ... detriment does not, subject to subsection (5), include conduct which amounts to harassment;
- (2) ...
- (3) ...
- (4) ...
- (5) Where this act disapplies a prohibition on harassment in relation to a specific protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic.

104. Paragraph 18.107 of the IDS Handbook on Discrimination at Work explains that the purpose of this Section is to prevent double recovery in circumstances where a claimant succeeds in establishing that a particular course of conduct amounts to both direct discrimination and discrimination by way of harassment. It is still open to a claimant to argue both claims in the alternative, on the understanding that both cannot succeed.

### ***Law on time limits***

105. Section 123 of the Equality Act 2010 is worded as follows:

1. Proceedings on a complaint brought within Section 120 may not be brought after the end of –
  - a. The period of 3 months starting with the date of the act to which the complaint relates; or
  - b. Such other period as the employment tribunal thinks just and equitable
2. ....

3. For the purposes of this section –
  - a. Conduct extending over a period is to be treated as done at the end of the period;
  - b. Failure to do something is to be treated as occurring when the person in question decided on it.

106. Under Section 123 of the Equality Act 2010, proceedings on a complaint may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates. The three-month time for bringing Tribunal proceedings is paused during Early Conciliation such that the period starting with the day after early conciliation is initiated and ending with the day of the Early Conciliation certificate does not count (Section 140B(3), Equality Act 2010). If the time limit would have expired during Early Conciliation or within a month of its end, then the time limit is extended so that it expires one month after Early Conciliation ends (Section 140B(4), Equality Act 2010).

107. Conduct extending over a period is to be treated as done at the end of the period (Section 123(3) Equality Act 2010). There is conduct extending over a period if there is a continuing discriminatory state of affairs as opposed to a succession of unconnected or isolated specific acts. If so, then the three-month time period for bringing a claim only runs from the date on which the state of affairs ends (*Metropolitan Police Commissioner v Hendricks* [2003] ICR 530).

108. If the claim has been brought outside the primary limitation period, then the Tribunal has jurisdiction to consider the claim if it was brought within such other period as the Tribunal considers just and equitable. Considering a claim brought outside the three-month time limit (as extended by the Early Conciliation provisions) is the exception rather than the norm. Time limits are exercised strictly in employment and industrial cases. The onus is on the Claimant to establish that it is just and equitable for time to be extended (paragraph 25 of *Robertson v Bexley Community Centre (t/a Leisure Link)* [2003] IRLR 434, CA).

109. Factors which are almost always relevant to an exercise of the discretion are the length of and the reasons for the delay, and whether the delay has prejudiced the Respondent (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194 at paragraph 19). However:

“There is no ... requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard (*Abertawe* at para 25)”

110. It is not necessary for a Tribunal to consider the checklist of factors set out in Section 33 of the Limitation Act 1980, given that that Section is worded differently from Section 123 of the Equality Act 2010, so long as it does not leave a significant factor out of account.

111. It will frequently be fair to hold Claimants bound by time limits which they could, had they taken reasonable steps, have discovered. If the delay in issuing proceedings has been caused by the fault of an adviser, this is a potentially relevant factor that potentially excuses a failure to issue proceedings in time, or a delay in issuing proceedings thereafter (*Hunwicks v Royal Mail Group plc* EAT 0003/07; 20 March 2007 per Underhill J at paragraphs 9 and 13). However, to be a relevant factor, the bad advice must have been the reason for the delay.

112. Awaiting the outcome of an internal grievance procedure before making a complaint is just one matter to be taken into account by a tribunal considering the late presentation of a discrimination claim (*Apelogun-Gabriels v Lambeth London Borough Council* [2002] ICR 713, CA per Peter Gibson LJ at p719).

## Conclusions

### Race Discrimination

#### ***The Respondent failed to promote the Claimant to the position of senior lecturer in 2013 and 2015***

113. These allegations fail. There is no basis for inferring that these decisions was taken in part because of the Claimant's race. The Tribunal accepts the Respondent's non-discriminatory reasons for the failure to promote in both 2013 and in 2015. In both years, she was not promoted because she was not good enough for promotion. The Claimant was still in her probation period and had not demonstrated the necessary level of performance in relation to each of all of the three competencies required. In particular, apart from the calibre of her research, on which there was room for disagreement, she had not participated in activities at the School to a degree sufficient to demonstrate performance at the highest level for enabling activities. As the Tribunal has found, the Claimant's involvement in the activities of the School, apart from her own teaching responsibilities was very limited. It is telling that the information provided of those who were successful in those promotion rounds included those of Asian ethnic origin, indicating that race was not a particular factor weighing against promotion.

114. As a result, this was not direct discrimination on the grounds of the Claimant's race. It was also not discrimination by way of harassment. The failure to promote her on each of those two occasions was not treatment that violated her dignity nor did it create the proscribed atmosphere necessary to come within the terms of Section 26 of the Equality Act 2010.

#### ***The Respondent failed to shortlist or appoint the Claimant to the position of Reader which she applied for in 2017***

115. These allegations fail. The Claimant herself accepted in the course of the case that she did not merit promotion to Reader, given the extent of the expertise required for elevation to that position, and the extent of her expertise at that point. Her essential complaint is that she was not shortlisted for interview. Again, the Tribunal accepts the Respondent's non-discriminatory explanation. The Claimant was not shortlisted because none of the members of the shortlisting panel considered that her application was strong

enough to merit her to be shortlisted. Viewed objectively against the applications from the two candidates who were shortlisted, including that of Annie Chen, who was of the same ethnic origin as the Claimant, it was not as strong as that of Dr Leischnig or Dr Chen. The Panel's reasonable view was that there was no point in shortlisting someone who did not have a realistic prospect of being appointed following interview.

116. As a result, this was not direct discrimination on the grounds of the Claimant's race. It was also not discrimination by way of harassment. The failure to promote her was not treatment that violated her dignity nor did it create the proscribed atmosphere necessary to come within the terms of Section 26 of the Equality Act 2010.

***The Respondent failed to uphold the entirety of her grievance brought by the Claimant in 2017***

117. Professor Shelton reasonably upheld one aspect of her grievance, namely in relation to the Respondent's delay in considering her flexible working application. There is no prima facie case shown by the Claimant that her rejection of the remainder of the Claimant's complaints was influenced by the Claimant's race. In any event, the Tribunal accepts Professor Shelton's non-discriminatory explanation, namely that the outcome she reached on the other aspects of the grievance was her genuine view of the merits of the points that the Claimant was raising, untainted by any consideration of the Claimant's race. It is telling that Professor Shelton made several recommendations of potential advantage to the Claimant, even though she was dismissing the remainder of the Claimant's grievance.

118. As a result, this was not direct discrimination on the grounds of the Claimant's race. It was also not discrimination by way of harassment. The failure to uphold the rest of her grievance was not treatment that violated her dignity nor did it create the proscribed atmosphere necessary to come within the terms of Section 26 of the Equality Act 2010.

***The Respondent failed to promote the Claimant to the position of Senior Lecturer in April 2018***

119. This allegation fails. There is no prima facie case established by the Claimant that the failure to promote her was influenced by her race. The Tribunal accepts the Respondent's non-discriminatory explanation, namely that the application was unsuccessful because she had not established sufficient evidence that she met the competencies required for the role. The Tribunal notes that even at this point, the Claimant had not sufficiently involved herself in the activities of the School by volunteering for administrative or managerial responsibilities and those opportunities were available and open to her.

120. As a result, this was not direct discrimination on the grounds of the Claimant's race. It was also not discrimination by way of harassment. The failure to uphold the rest of her grievance was not treatment that violated her dignity nor did it create the proscribed atmosphere necessary to come within the terms of Section 26 of the Equality Act 2010.

***The conduct of the feedback meeting with the Claimant at the end of the 2018 promotion process***

121. In the Tribunal's findings of fact, the Tribunal has found that the manner in which the feedback meeting was conducted was appropriate. There was no detriment to the Claimant in relation to the way that the discussion developed. In those circumstances, there is no basis for any finding of direct discrimination or harassment. This allegation therefore fails.

***Professor Bowen lied to the Claimant when she told her that the course the Claimant had devised was not going to run***

122. The Tribunal has found that Professor Bowen did not lie to the Claimant when corresponding with her about whether she could run the Creative Branding course. As a result, this allegation is factually misconceived and must fail both as an allegation of direct discrimination and of harassment.

**Sex Discrimination**

***The comments made by Professor Nicholas O'Shaughnessy during his interview with Professor Shelton as part of the Claimant's grievance***

123. The Tribunal does not find that the comments made by Professor O'Shaughnessy amounted to a detriment. They were an attempt to excuse the Claimant's lack of participation in the administration of the School by referring to her childcare responsibilities. They are therefore not a detriment. Furthermore, the comments did not violate her dignity nor did they have the proscribed effect. They therefore did not amount to discrimination.

**Whether the claims are in time**

124. None of the complaints amount to a continuing act with other complaints, although the failure to grant the Claimant a promotion in 2018 ended with the outcome of the appeal in September 2018. The remainder of the complaints were discrete acts. They are not part of a discriminatory state of affairs.

125. Therefore, all allegations apart from the 2018 promotion allegation are outside the primary limitation period. The Tribunal has balanced the various factors for and against granting an extension of time on the grounds of justice and equity, applying the legal principles stated above. The Tribunal's conclusion is that it would not be just and equitable for the Tribunal to consider matters in 2013 and 2015 on their merits. Therefore, in any event, the Tribunal does not have jurisdiction to consider those claims. The Tribunal does have jurisdiction to consider allegations in relation to events from 2017 onwards.

**Employment Judge Gardiner**

**9 March 2020**