



EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MARTIN
MEMBERS: Ms Leverton
Ms Edwards

BETWEEN: Mr Rummy Hasan Claimant
and
University of Sussex 1st Respondent
Professor J Schot 2nd Respondent

ON: 30 September – 11 October 2019 and 6 January 2020
and 7-9 January 2020 in chambers

APPEARANCES:

For the Claimant: Ms H Barney - Counsel
For the Respondent: Mr A Line - Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claim of discrimination on the grounds of disability is unfounded and is dismissed.

RESERVED REASONS

1. By a claim form presented to the Tribunal on 15 February 2018 the Claimant brought claims of disability discrimination. The Respondent denied this claim in its response presented on 4 May 2018. The Claimant is still employed by the first Respondent.

The issues

2. The issues that the Tribunal had to determine were agreed as set out in the appendix to this judgment. The Tribunal is grateful to the parties for amending the list of issues to include the paragraph numbers from the particulars of claim which are referred to.

The Law as relevant to the issues:

The relevant statute is the Equality Act 2010.

Reasonable adjustments

3. An employer is required to make reasonable adjustments under ss.20 and 21 where a provision, criterion, or practice (PCP) applied, placed a disabled person at a substantial disadvantage in comparison with non-disabled persons. Failure to do so amounts to unlawful disability discrimination. Tribunals determining whether it would be reasonable for the employer to have to make a particular adjustment in order to comply with the duty must take into account the extent to which taking that step would prevent the disadvantage caused by the PCP (Equality and Human Rights Commission's Code of Practice on Employment).
4. The case of Environment Agency v Rowan [2008] ICR 218 set out guidance on how to approach reasonable adjustment cases. It held that the Claimant must show:
 - 4.1 There was a PCP
 - 4.2 The PCP put the Claimant at a substantial disadvantage in comparison to persons who did not share his disability
 - 4.3 The adjustment would avoid that disadvantage
 - 4.4 The adjustment was reasonable in all the circumstances
 - 4.5 The failure to make the adjustment caused the losses alleged.
5. The duty to make adjustments may require the employer to treat a disabled person more favourably to remove the disadvantage which is attributable to the disability. This necessarily entails a measure of positive discrimination (**Archibald v Fife Council** [2004] IRLR 651, HL).
6. The correct approach to assessing reasonable adjustments is addressed in **Smith –v- Churchills Stairlifts plc** [2006] IRLR 41; **Environment Agency –v- Rowan** [2008] IRLR 20; and **Project Management Institute –v- Latif** [2007] IRLR 579.
7. In **Smith**, the comparative exercise required by s.6(1) of the DDA was considered by the Court of Appeal having regard to the speeches contained in the judgment of the House of Lords in **Archibald**. Maurice Kay LJ stated: “. . . Notwithstanding the differences of language, it would be inappropriate to discern a significant difference of approach in these speeches. . . it is

apparent from each of the speeches in **Archibald** that the proper comparator is readily identified by reference to the disadvantage caused by the relevant arrangements”.

8. With regard to knowledge the EAT in **Secretary of State for the Department of Work and Pensions v Alam** [2009] UKEAT 0242/09 held that the correct statutory construction of s 4A(3)(b) involved asking two questions: (1) Did the employer know both that the employee was disabled and that his disability was liable to affect him in the manner set out in section 4A(1)? If the answer to that question is: 'no' then (2) Ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in section 4A(1)? If the answer to that question is also 'no', there is no duty to make reasonable adjustments.

Direct discrimination

9. Direct discrimination is dealt with in sections 13 and 23 of the Equality Act 2010.
10. Section 13 provides that:
“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.”
11. Section 23 provides that:
12. *“On a comparison of cases for the purposes of section 13...there must be no material difference between the circumstances relating to each case.”*
13. In considering the claim of direct discrimination, the first task of the Tribunal is to decide whether on the primary facts as proved by the Claimant, and any appropriate inferences which can be drawn, there is sufficient evidence from which the Tribunal could (but not necessarily would) reasonably conclude that there had been unlawful discrimination. If the Claimant can prove such facts, then the burden of proof passes to the Respondent to show that what occurred to the Claimant was not to any extent because of the relevant protected characteristic as set out in the Equality Act 2010. In each case, the matter is to be determined on a balance of probabilities. The fact that a Claimant has a protected characteristic and that there has been a difference in treatment by comparison with another person who does not have that characteristic will not necessarily be sufficient to establish unlawful discrimination. In all cases the task of the Tribunal is to ascertain the reasons for the treatment in question and whether it was because of the protected characteristic. The provisions of section 136 of course apply to any proceedings under the Act, and not only to claims of direct discrimination.

Victimisation

14. Section 27 of the Equality Act 2010 (“EqA”) provides:
“(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

- (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act –
- (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”
15. In **St Helens Metropolitan Borough Council v Derbyshire** [2007] IRLR 540, HL Baroness Hale endorsed the three step approach set out in **Chief Constable of West Yorkshire Police –v- Khan** [2001] IRLR 830, HL with regard to the RRA, which equally applies to the EqA:

“There are three relevant questions under the 1975 Act. First, did the employer discriminate against the woman in any of the ways prohibited by the Act? In this particular case, the alleged discrimination was by 'subjecting her to any other detriment' (contrary to s.6(2)(b) of the 1975 Act). Secondly, in doing so, did the employer treat her 'less favourably than ... he treats or would treat other persons'? Thirdly, did he do so 'by reason that' she had asserted or intended to assert her equal pay or discrimination claims or done any of the other protected acts set out in s.4(1) of the Act?

Harassment

16. Section 26 of the EqA provides:
- (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 subsection (1)(b), each of the following must be taken into account—*
- (a) *the perception of B;*
- (b) *the other circumstances of the case;*
- (c) *whether it is reasonable for the conduct to have that effect.*
- (5) *The relevant protected characteristics are - . . . disability”*
17. A Tribunal should consider all the acts together in determining whether or not they might properly be regarded as harassment (**Driskel –v- Peninsular Business Services Ltd** [2000] IRLR 151, EAT and **Reed and Bull Information Systems Ltd –v- Stedman** [1999] IRLR 299, EAT).
18. The motive or intention on behalf of the alleged harasser is irrelevant (see **Driskel** above).
19. The Court of Appeal confirmed in **Land Registry –v- Grant (Equality and Human Rights Commission intervening)** [2011] ICR 1390 “*when assessing the effect of a remark, the context in which it is given is always highly material*”.
20. In **Richmond Pharmacology –v- Dhaliwal** [2009] ICR 724 the EAT held that the Claimant must have felt or perceived his or her dignity to have been violated. The fact that a Claimant is slightly upset or mildly offended is not enough.
21. The word ‘victimisation’ is specifically defined by the Equality Act 2010 and has a different meaning from the normal use of the word. In considering a claim of victimisation the Claimant must prove that there has been a protected act as defined. The Claimant must also establish that there has been a detriment, and most importantly the Tribunal must find that the detriment was because of the protected act. A claim of victimisation cannot succeed without that causal link being established.

Indirect discrimination

22. Section 19 of the EqA provides:

A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

23. Indirect discrimination is when there's a provision criteria or practice which applies to everyone in the same way, but it has a worse effect on some people than others. i.e it puts the employee at a particular disadvantage. The provision criteria or practice can be formal or informal. It can be a one-off decision or a decision to do something in the future. A key characteristic of indirect discrimination is that it applies to everyone in the same way. Therefore, it follows that if something only applies to some people who all have the same protected characteristic, it would not be indirect discrimination. This type of discrimination can be objectively justified

Discrimination arising from disability s15

24. Section 15 of the EqA provides:

“(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.”

25. It therefore needs to be established whether there was a causal connection between the unfavourable treatment and the disability. If there is, the burden shifts to the employer to establish justification i.e. a proportionate means of meeting a legitimate aim.
26. This type of discrimination occurs not because the person has a disability, but because of something connected with the disability. It can only occur if the employer knows, or could reasonably be expected to know, that the person is disabled.

Burden of Proof

27. The burden of proof reversal provisions in the EqA are contained in section 136. Guidance is provided in the case of **Igen Ltd –v- Wong** [2005] IRLR, CA. The Claimant must, on a balance of probabilities, prove facts from which a Tribunal could conclude, in the absence of an explanation by the Respondent, that the Respondent has committed an act of unlawful discrimination. The Tribunal when considering this matter will raise proper inferences from its primary findings of fact. The Tribunal can consider evidence from the Respondent on the primary findings of fact at this stage (see **Laing –v- Manchester City Council** [2006] IRLR 748, EAT and **Madarassy –v- Nomura International plc** [2007] IRLR 246, CA). If the

Claimant does establish a *prima facie* case, then the burden of proof moves to the Respondent and the Respondent must prove on a balance of probabilities that the Claimant's treatment was in 'no sense whatsoever' on grounds of disability.

28. The term 'no sense whatsoever' is equated to 'an influence that is more than trivial' (see **Nagarajan –v- London Regional Transport** [1999] IRLR 573, HL; and **Igen Ltd –v- Wong**, as above).
29. Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating on why the Claimant was treated as they were and postponing the less-favourable treatment issue until after they have decided why the treatment was afforded. Was it on the proscribed ground or was it for some other reason? (*per* Lord Nicholls in **Shamoon –v- Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285, HL).
30. The Supreme Court in **Hewage –v- Grampian Health Board** [2012] UKSC has confirmed:

“The points made by the Court of Appeal about the effect of the statute in these two cases [Igen and Madarassy] could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in Martin v Devonshires Solicitors [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.”

The hearing

31. The Tribunal heard from the following witnesses:

- 31.1 For the Claimant:

- 31.1.1 The Claimant

- 31.1.2 Professor Christopher Chatwin (UCU representative)

- 31.2 For the Respondent:

- 31.2.1 Professor Johan Willem Schot

- 31.2.2 Professor Gordon Stuart Mackerron

- 31.2.3 Professor Roger Nicholas Strange

- 31.2.4 Professor David John Storey

- 31.2.5 Dr Jenny Lieu (who gave evidence by Skype)

- 31.2.6 Professor Steven Michael McGuire

31.2.7 Professor Hand Van der Heijden

31.2.8 Professor Joanna Bridgman

32. The Tribunal had an agreed bundle of documents comprising 680 pages and an agreed chronology.
33. Adjustments were made to the hearing for the Claimant's disability including the provision of warm water for his flask as required and the opportunity to take breaks when giving evidence.

The Facts that the Tribunal found

34. The Tribunal found the following facts on the balance of probabilities having heard the evidence and read the documents referred to by the witnesses. These findings of fact are limited to those findings that are relevant to the issues to be determined and necessary to explain the decision reached. Even if not specifically referenced below, all evidence was considered by the Tribunal. The parties helpfully agreed a chronology for which they are thanked. This is reproduced at appendix 2 to this judgment and these reasons are to be read in conjunction with it.

Background

35. The Science Policy Research Unit ("SPRU") in which the Claimant worked is described in Professor Schot's witness statement as "**a prestigious department and has an enviable international reputation**". Up to 2010 SPRU was an independent department of the University then became part of the School of Business Management & Economics ("BMEc").
36. The Claimant is a Senior Lecturer who is still employed by the University in SPRU. He was employed on 1 September 2004. The principle accountabilities of a Senior Lecturer are detailed in the job description contained in the bundle and these applied to him:
 - **To provide academic leadership in the design and delivery of high-quality teaching programmes.**
 - **To engage in high quality research activity resulting in high-quality publications to be submitted to the REF at acceptable levels of volume and academic excellence; to lead research projects or research initiatives in the School; to secure research funding and third-stream income' and to contribute to the Schools' research strategy.**
 - **To support the management activities of the School and University and undertake a key role in the School or University working groups or committees, as required.**
37. His key responsibilities were for teaching and student support, research, scholarship and enterprise and to contribute to the School and University. His

job description highlights what is expected under each of these heads including to “**Play an influential role in identifying sources of funding and secure and/or contribute to the process of securing bids**”. Teaching comprised delivering lectures and conducting seminars.

38. The Claimant is paid directly by the University and his role does not depend on specific grants or making funding applications. In addition to student fees, a large part of a University’s income is generated by grants and making funding applications. Academic staff are expected to make such applications and bring in funds from outside sources. The Claimant maintained that this did not apply to him as he was paid out of central funds. The Tribunal does not accept this and accepts the Respondent’s position that all academic staff are expected to contribute to funding by making applications for funds and notes the reference to securing funding and grants in the job description.
39. Within a year of starting work for the university, the Claimant was unhappy with his working arrangements as exemplified by the memo dated 12 September 2005 between him and Professor John Holmwood, Dean of SocCul (another school within the University) which refers to the Claimant’s “**dissatisfaction with the working arrangements in SPRU**”. This memo is referred to in more detail below. At that time arrangements were made that the Claimant could use office space at SoCul.

The Claimant’s disability

40. The Claimant suffers from Sjogren’s Syndrome, symptoms started in 2008 and the condition was diagnosed in 2009. The Respondent accepts that this amounts to a disability. This is an auto-immune condition which causes acute dryness of the mouth and throat. This prevents the Claimant from being able to speak for extended periods of time which affects his ability to teach. The Respondents accept that at all material times they have been aware of the Claimant’s condition.
41. The Claimant was first referred to occupational health (“OH”) in relation to this condition on 15 September 2008. This was not his first visit to OH, he had three previous visits in 2007 which were in relation to his dissatisfaction with his working environment at SPRU, in particular working in an open plan office (by this time the Claimant was no longer using office space at SocCul).
42. As at 15 September 2008 OH advice was that the Claimant would not be able to deliver lectures but would be able to conduct seminars which had less strain on the voice. At this time it was considered short term. As can be seen from the appended chronology the Claimant was seen by OH on many occasions over several years.
43. On 21 November 2008 the Claimant met with Dr Martin Meyer the then Acting Head of Business and Management in SPRU and there was discussion about temporarily adjusting the Claimant’s duties to accommodate his health conditions. A letter dated 30 November 2008 confirms the OH advice that the

Claimant could undertake all work (including seminars) save for delivering lectures. Alternative duties were suggested in lieu of lectures.

44. A further OH report dated 10 December 2008 was sent to Dr Meyer in which it was confirmed that the Claimant's symptoms were aggravated by talking. There was no diagnosis and no prognosis at that time. As before, the Claimant said he could do all aspects of his job save for delivering lectures.
45. By February 2009, the OH advice was that the Claimant's symptoms were likely to continue for the foreseeable future and that a prognosis for improvement was '*guarded*'. Again, it was envisaged the Claimant could undertake all aspects of his job save for delivering lectures. It was anticipated by this letter that the Claimant would not be able to deliver lectures for at least three months but that it was not envisaged that the Claimant would be unable to deliver lectures permanently or that he would become unable to conduct seminars. At a further meeting with Dr Meyer on 10 March 2009 adjustments to the Claimant's role to give alternative duties to lecturing were discussed and agreed.
46. At this this time Professor Mackerron was appointed Director of SPRU (2009 - 2013). As part of his remit, he asked all colleagues at SPRU to send him a summary of their research and grant output. In his evidence Professor Mackerron described the Claimant's record to be '*thin*' in terms of quantity of output and associated research-based activity and that the Claimant's summary of his work did not say that the new direction of his research would be outside SPRU's interests even if these were very broadly defined and it was assumed therefore that his work was aligned with SPRU interests. It was accepted by the Claimant that from September 2005 his research was not aligned in any respect to work undertaken by SPRU.
47. This situation continued and in June 2009 OH gave the same advice as it had done previously. Following this advice, the Claimant met with Professor Mackerron to plan for the 2009/10 academic year. Again, it was the delivery of lectures that was causing the Claimant problems. Five different options were discussed, and it was agreed to meet again to discuss them further on 13 July 2009.
48. There were further discussions about options on 13 July 2009 and the letter confirming this meeting dated 22 July 2009 stated:

"We discussed exploring other areas of research. You confirmed that you had a book coming out in the autumn, a critique of multiculturalism. I agreed that this an area which fits more with the current School of Social Sciences and Cultural Studies and you agreed to try to contact Richard Black again to talk about exploring links with School of Global Studies. As regards research in SPRU areas I explained that in the future SPRU needs to be more active in supporting and reviewing research proposals in a collective way to increase success rates and I suggested that Pari Patel and individuals in Centrim would be appropriate colleagues to talk about research interests and proposals".

An action plan was put in place.

49. On 16 December 2010 the Respondent received an OH report which, for the first time, stated that the Claimant's specialist had confirmed his diagnosis of Sjogren's Syndrome and said that the Claimant should be able to undertake lectures by pre-recording them provided he could pause, take regular breaks and drink water when necessary. The Claimant had been doing this for some months. It was confirmed that the Claimant could take seminars. This resulted in a letter from Ms Lees, Human Resources Advisor, being sent to the Claimant on 31 January 2011. In this letter there is a discussion about the temporary adjustments that had been made to the Claimant's job to accommodate his medical conditions. It recorded a pre-existing agreement from April 2010 that the Claimant would do pre-recorded lectures. This was described as a long-term adjustment. This letter confirmed this arrangement would continue and stated that **"At the most recent meeting held on 30th November 2010 (at which Ian Davidson, Gordon McKerron, Rupert Brown (UCU representative) you and I were in attendance) it was agreed that you would undertake the full duties of a Senior Lecturer going forwardthe only difference in your work being the adjustments that have been in place around the delivery of your lectures"**. The pre-recording of lectures was not a success and this was stopped shortly after this letter, after which time the Claimant did not deliver lectures again.
50. Further OH reports continued to say that the Claimant was not able to deliver lectures, but continued to say that he was able to conduct seminars and the reports said that his inability to deliver lectures would last for months but could not give a firm prognosis.
51. By end of August 2017 OH advice changed when it said unequivocally that the Claimant would be unable to undertake lectures or seminars up to when he retired. Until this point, there was still the possibility that the Claimant could, with adjustments, undertake some teaching and there had been discussions about this, even if those discussions did not lead to a solution whereby this was achieved. This led to a meeting on 7 December 2017 at which this OH report and any possible adjustments were discussed and considered. The Claimant said that there were no other adjustments which would help save for him not delivering lectures which was already being done. The notes of this meeting show that it was not an easy meeting as they record that the Claimant was acting in an aggressive manner and that Mr Curry felt that the Claimant was threatening him.
52. During this meeting it is recorded that when asked what aspects of his role the Claimant could undertake, the Claimant responded indicating a continuing ability to do seminars: **"I supervise students and undertake administrative duties as well as delivering a citizen contribution to SPRU. This entails helping students who approach me in person, via email or by 'phone. I deal with Health and Safety matters, I am the local rep. I undertake ethical reviews. I also undertake research, I am very research active"**.
53. There were then several processes running in tandem. The capability process, the sickness management and medical incapacity process and the grievance process. These procedures are set out in policies which were before the Tribunal. The time frame indicated in the Capability Procedure is

discretionary with an expectation that the procedure be completed within 12 months. However as Professor Bridgman explained non-academic staff are normally dealt with quickly but with where the issue relates to academic staff publications this can take a long time to come to fruition and a capability procedure in her department of 18 months would not be unusual. Therefore not only would there be a long period of time for the process to be concluded in the circumstances that applied to the Claimant but the slow resolution of his grievance meant that the whole process was delayed.

SPRU Strategy 2014 - 2018

54. Professor Schot (the first Respondent) joined the University as Director in January 2014 and developed a SPRU Strategy for 2014-2018. He joined the University at a time when there was a lot of turbulence from issues which had been ongoing for a number of years. SPRU was going through a difficult period as there had been an acrimonious move of SPRU into Business & Management (B&M). SPRU had been directed to give teaching away to B&M, had been forced to move from its premises and had been in negotiations to join UCL. Professor Schot said, described it as being a “turbulent” and “unhappy” period. Dr Lieu described this period and said that “**change within SPRU it was a very turbulent time, very uncomfortable in a general sense, we had been evicted from our building, there was resistance**”. The Claimant accepted in evidence that as part of the process some of his modules were passed over to the B&M directive and replaced with other duties.
55. The SPRU strategy stated “***SPRU wants to become known for the high quality of all its teaching. All SPRU modules will aim to obtain at least a 4 in the MEQ rating. SPRU’s recruitment target for its 5 PG programs is a total of 125 students to be achieved within 3 years (currently we have 50-60 students) ...***”.
56. SPRU Values and Expectations’ document stipulates that “***a fifth core SPRU value is the delivery of the highest quality research-led teaching... The expectation is that all SPRU staff contributes to teaching, recruitment of students as well as the raising of research funds.***” Not surprisingly teaching is at the heart of what the university does, and high-quality teaching and research was expected and required from the academic staff. This document was completed after extensive consultation with all members of SPRU including other academic staff. What is written sets out common goals including areas of SPRU related themes, the need for all to contribute to SPRU research, publications and the acquisition of grants.
57. **University funding** – The core areas of funding are by way of tuition fees and research grants, to include REF. Professor McGuire explained this in his witness statement:

“For the REF academics in the Business School re broadly asked to submit research which fits into one of two Units of Assessment for the REF: either Business and Management or Economics.”

58. Professor Schot's witness statement said:

"In 2014 the First Respondent re-evaluated its strategy in relation to research and grant income and set ambitious targets for doubling grant income. Shortly after joining I developed a new SPRU strategy for 2014 – 2018 setting out a new research strategy that would lead to the doubling of grant income by 2018 through the diversification of our funding portfolio and a significantly improved submission to the next Research Excellence Framework ("REF") the system that evaluates the quality of UK universities research submissions and determines their Higher Education Funding Council for England grant. This was a collective endeavour and everyone was expected to contribute."

59. The Claimant's position is set out in his submissions:

"In respect of grant generation, it is denied that there was any contractual requirement for the Claimant to procure grants, in relation to which the Tribunal is referred to Clauses 15 and 17 of his contract [68d-e]. The Claimant's work was not of the sort that required grant generation".

60. The Respondent said this in submissions:

"The Claimant conceded in cross examination that the bottom line was he had not shifted his research interests to align with SPRU, confirmed his position "I don't need grants. It's a waste of time" and "He has no right whatsoever to do that. This comes from someone who does not understand where he is working", "Don't do this in British Universities".

The Claimant even went so far as to proclaim in response to the SPRU Strategy document that Professor Schot as Director of SPRU "Had no right to do this. It goes against the grain of academic life. It's a massive interference in academic freedom". Such a proposition is manifestly wrong and irrational. It also fails to recognise that the Strategy document was completed after extensive consultation with all members of SPRU, setting out common goals to include the areas of SPRU related themes, need for all to contribute to SPRU research, publications and the acquisition of grants".

61. The Tribunal accept the Respondents submissions.

The Claimant's first meeting with Professor Schot

62. The Claimant met with Professor Schot on 16 January 2014. This was the first formal meeting between the Claimant and Professor Schot.

63. There was a stark contrast of evidence between the Claimant and Professor Schot about what happened at the meeting. The Claimant's position is set out in his claim form (as reproduced in the list of issues appended to this judgment). In summary the Claimant says that Professor Schot showed no empathy and said he intended to re-start oral teaching for the Claimant. He says he was harassed and discriminated against and that Professor Schot was intending to remove the reasonable adjustments in place to harass or discriminate.

64. By contrast Professor Schot described the meeting .as being positive and constructive. He said he wanted to support the Claimant to return to seminar teaching, to improve the quality and focus of his research output, to submit high quality grant applications and get him more engage with other staff in the department. As a result of these discussions, the Claimant's teaching workload for the academic year commencing autumn 2014 was reduced to 38% (as opposed to 60%).
65. Professor Schot's evidence was that when he arrived at the University, Professor Davidson and Professor Mckerron told him that the Claimant had a medical condition which limited his ability to speak and give lectures. He was also told that take the Claimant's research output was poor, that he was isolated and he had hardly any teaching workload. Professor Schot's witness statement says that he decided to make a fresh start with the Claimant and explore what was possible to generate a better situation for the Claimant and for the department.
66. There was an exchange of emails following the meeting, the first dated 16 January 2014 from Professor Schot to the Claimant:
- "It was good to talk, thanks for the open conversation and explanation of your current position.**
- We agreed on the following**
- 1. you will write a position paper on your future research and how it possibly relates to other work (the right hand side of this page has been cut off and the words are missing)... SPRU. Deadline is the end of February.**
- Based on this paper we will then look into funding options too**
- 2. you will contact Puay Tang to discuss teaching opportunities and work with her to develop a port... 60% of your time**
- Please do consider visiting the SPRU seminars and other meetings in order to reconnect to SPRU. I would really welcome that**
- My door is always open, if you wish to discuss, feel free to contact me**
- Best wishes"**
67. The Claimant replied the next day. **"Yes, it was a good open, frank discussion – will undertake to do what was agreed".**

The Capability procedure

68. The following sets out the capability process as applied to the Claimant. It does not include all communications between the parties on this subject and is limited to what the Tribunal considers to be relevant to explain its decision.

69. As can be seen from the findings above, there were concerns about the Claimant's performance from before Professor Schot became Director when Professor Mackerron was dealing with these issues. The formal capability process started on 2 December 2014 when the Claimant was invited to a meeting on 27 January 2015 by Professor Schot. The invite states: **"it has become apparent that there are issues surrounding the level of performance of your duties at the University of Sussex"**. Three areas were highlighted: teaching; grant writing and research publications. The Claimant was given a link to the capability procedure so he could familiarise himself with it. It is worth noting that at about the same time the Claimant made an application for promotion to Professor.
70. There are comprehensive notes of the meeting held on 27 January 2015. During the meeting different areas of the Claimant's work were discussed and following representations from the Claimant, teaching was removed from the process as he had only recently recommenced teaching seminars. The issues discussed were that Professor Schot considered that the nature of the Claimant's research was not in line with SPRU and that his journal output was below standard in terms of the quantity and quality of output in high impact journals. The issue of lack of grant applications was also discussed.
71. Professor Schot discussed the Claimant's lack of participation in SPRU which led to underperformance. This was attributed to the Claimant not being aligned with SPRU, not having a network of colleagues within SPRU, and had not made a genuine effort to reach out to colleagues. The Claimant was not participating in any activities relating to SPRU including attendance at internal meetings which amongst other things were designed to facilitate the exchange of ideas within SPRU. Professor Schot told the Claimant that he wanted to explore whether he would be able to make the Claimant more productive within SPRU and involve him in teaching.
72. During the meeting specific targets were set and confirmed in a letter to the Claimant dated 9 February 2015 which were specific and measurable. They were that the Claimant was to:
- "Submit two articles in the next six months to journals relevant to SPRU (either 3 or 4 start journals from the ABS list or other high quality journals relevant to SPRU which have been agreed by me);**
- Submit one serious research grant application in the next six months in an area relevant to SPRU. This will involve initially producing a document to explore the options for grants submission to be discussed with Michael Hopkins, considering possible collaborators and then submitting the application through the normal internal review process**
- Attend most of the internal SPRU seminars on Wednesday afternoons in order to find out about colleagues' research ideas and developments"**.
73. A mentor was to be sought and collegial support was to be provided to the Claimant in relation to his publications in terms of advising on appropriate journals and reading draft publications and grant proposals. A meeting in

September 2015 to review progress was proposed.

74. The review in September did not happen as the Claimant put in a grievance against Professor Schot in July 2015, and the capability process was then put on hold pending the resolution of the grievance. Professor McGuire was appointed to hear the Claimant's grievance. Regrettably, Professor McGuire did not deal with the grievance promptly as he acknowledged in his evidence. There was a grievance meeting on 24 September 2015 and the grievance outcome was eventually given in February 2017.
75. The reason given by Professor McGuire for this delay was that SPRU had been leaderless for 14-18 months after the previous Head of School retired. He explained that the University had attempted and failed to get a successor, and that in the meantime there was a collective leadership with Professor van der Heijden being appointed Deputy Dean. Additionally, student applications had showed deterioration, and to remedy this the University took the route of relaxing the usual entry standards to boost applications. This resulted in there being a significant rise in the number of students which caused logistical and resource tensions. Professor McGuire said that on his arrival at SPRU he was confronted with a difficult and volatile situation which he was tasked to bring some coherence to. He apologised for the delay.
76. The Claimant says he was unaware that the capability process had been put on hold and that given the time lapse thought it had been disbanded. However, he accepted in submissions that his union representative had been told and his union representative should have told him. The capability procedure eventually resumed on 11 September 2017.
77. Despite the passage of time the Claimant had not met the targets which had been set. The outcome of that meeting was that the Claimant was informed by letter dated 15 November 2017 that the process would move to a stage 2 capability hearing. The Claimant was given a written warning and the right of appeal. For some reason the Claimant he did not receive this letter. The University accepted that the he had not received it and resent it to him on 9 March 2018 giving him the opportunity to appeal which he did.
78. A further meeting was scheduled for 23 January 2018 which appears to have been rescheduled for 26 February 2018. The letter confirming this dated 13 February 2018 set out the parameters of the meeting and states that the Claimant's employment may be terminated if the required improvement was not achieved. This prompted a response from the Claimant on 20 February 2018 where he said among other things "Let me remind you that I have never accepted the basis for this capability procedure – it is a manifestation of discrimination, harassment, and victimisation, hence unlawful under the provisions of the Equality Act 2010". Steps were taken on 20 February 2018 to set up a panel for the stage 2 capability hearing.
79. The Claimant appealed against the decision to proceed to Stage 2 of the capability procedure by letter dated 19 March 2018. By this time the Respondent had initiated the Medical Incapacity Procedure which is dealt with

separately below.

80. The basis of the appeal was: that he was not aware he was still under the capability procedure; that Professor Schot should not have conduct of determining if it should go to stage 2 because of the stress risk assessment and the Claimant's complaint against him (see below); that he was complying with the requirements of the capability procedure despite him contending its appropriateness and that he did not receive the letter of 17 November 2017 from Professor Schot. By this time the Claimant had issued his proceedings in the Employment Tribunal and the closing paragraph of this letter refers to this claim and to direct and indirect discrimination, harassment and victimisation contrary to the Equality Act 2010.
81. Professor Bridgeman was appointed to hear the appeal which was heard on 24 April 2018. The Claimant attended accompanied by Professor Chatwin. The Claimant started the meeting by describing his medical condition and how it impacted on his teaching and about his relationship with Professor Schot. Professor Bridgeman then went through the four grounds of appeal. Part of the discussion was about the Claimant's suggestion that he had not been notified that the capability process had been put on suspension.
82. It was put to the Claimant that the purpose of the meeting with Professor Schot was to agree the targets and that the Claimant did not query them afterwards which implied he was content with the targets set. The Claimant said: **"I never agreed the targets, there had never been any problems with my publications or research before Johan Schot arrived.....I had other commitments at the time"**.
83. The issue of Professor Schot's involvement was discussed and the Claimant said the workplace stress assessment (see below) said that Professor Schot would be removed from the process and that he should not have responsibility for him. In relation to research or grant applications the Claimant's position was that there had been no problems in the past with his grant applications.
84. Professor Bridgeman met with Professor Schot on 15 May 2018. Professor Schot told Professor Bridgeman about the situation at SPRU when he arrived and the strategy he developed. He explained that the Claimant's research did not engage with SPRU and that he had told the Claimant that he needed to improve his performance giving him support to do so. He told Professor Bridgeman that the communications between him and the Claimant were initially cordial as the Claimant was doing what he (the Claimant) wanted to do and on that basis the Claimant was content. He explained that he wanted to support the Claimant who he considered to be isolated, but that when he tried to address the Claimant's performance it was not well received. He explained his continued involvement with the Claimant in this way:

"When Rummy Hasan raised a grievance against me I asked Dr Tang to undertake his 2015 appraisal. It's not possible for me to undertake all appraisals so they are spread out between five of the leadership team. I do the Professors in SPRU and those to appraise others.

Although Dr Tang undertakes the day to day management of Rummy Hasan I did clarify with Steve McGuire that I was still his manager. All staff are managed on a day to day by Dr Tang with respect to teaching and learning but that doesn't mean I'm not the manager responsible for formal processes. I continued with the capability procedure (Regulation 33) because Steve McGuire advised me I was his line manager and to provide consistency. The fact he raised a grievance against me to some extent is irrelevant. It wouldn't change the fact I was his manager. The situation with the appraisals was perfectly normal".

85. Mr Curry sent a letter to the Claimant on 16 May 2018 on behalf of Professor Bridgeman with a summary of her findings. The Claimant's appeal was dismissed on the basis that the Claimant was aware that the capability process was on going and that it was Professor Schot's responsibility as the Claimant's line manager to conduct the capability process. It went on to say that appropriate targets for stage 2 would be set at the Stage 2 meeting and that although it was regrettable that there was a delay in communicating the decision of the stage one process to the Claimant this did not act to his detriment. As at the time of this Tribunal hearing the stage 2 capability process had not been conducted.
86. The Claimant says that Professor Schot invoked the Capability procedure during his appraisal. This was denied by Professor Schot. The Tribunal prefers the evidence of Professor Schot which it found to be measured, credible and consistent.

Medical incapacity procedure

87. The Respondent has a Sickness absence and Medical Incapacity Procedure. The section on medical incapacity states that **"where the member of staff is at work but is unable to perform all or part of their role for reasons connected to their health (see definition 3.3 above) and it is not possible for the manager to resolve the situation at the informal stage, he/she may hold a meeting with the member of staff to discuss an improvement plan, setting out the objectives to be attained over a specific review period"**. There is provision for the use of OH advice. The formal stage is conducted by a panel appointed by the Vice Chancellor or nominee which consists of three senior (grade 8 or above) members of staff from another school or area of the University who have had no previous involvement, with the Chair having the authority to dismiss.
88. The definition at 3.3 of the procedure as relevant states **"where due to any medical condition, illness or other incapacity, a member of staff is, or has become, or is considered to have become or likely to become, unable to perform his or her duties (or any part thereof) or to be able to do so only with difficulty, or be unable to perform his or her duties to an acceptable standard"**.
89. On 11 September 2017 Professor Schot sent an email to Jo Lees of HR:
**"I got a letter by OH about Rummy, a good one. Bottom line is that he can't teach.

I would like a meeting with Stuart and you beginning of October to review the situation and asses how we move forward"**.

The Claimant interprets this email as Professor Schot saying it was good that

the Claimant could not teach as it gave Professor Schot a means of dismissing him. Professor Schot's evidence was that this is not what the email says or what he meant. The judge's note of his evidence about this is: **"We had been trying to get a clear picture of his situation, particularly re teaching, when I sent OH referral long description of what he could do. Here was a very clear answer, before it was not do it for months, this clear not able to do lectures or seminars until retirement. The 'good one' referred to it being a crystal-clear report".**

90. In cross examination he said:

<p>390a discussion about OH report 31 August 17. This is the email you sent following receipt of this to Jo Lees. You don't mention this in your w/s but in response to questions from your rep you said that 'it's a good one' meant you felt it was clear</p>	<p>Yes, the context for this, of course when discussed the referral, HR and me, we were looking for a clear indication so set out for OH the referral with exact questions as focussed on a clear indication as the last one was not clear, it was clear was a change, as seminars included, but clear OH struggled with C about the report, so wanted a clear indication, discussed this together so when it came in I said it's a good one as now it is clear.</p>
<p>You don't say this, you just say 'it's a good one'. Your explanation is gloss you painting on this email as diff email for you, you think you can use this to fast track C dismissal through procedures isn't it</p>	<p>Not at all because, let me be clear again, aim is not dismissal, aim is to create a situation good for C and for the department. What you suggest not on my mind.</p>
<p>'assess how we move forward'</p>	<p>Yes it is a new situation</p>
<p>You knew you could not take C's inability to do lectures and seminars in capability so would need a change of strategy, a new procedure</p>	<p>I was not thinking of a strategy yet, thinking clear the situation is, now think how to manage it, so need to assess the situation, that is what is said and meant to be. Stuart was new HR person, replaced Michelle Punter, he was the boss of Jo Lees.</p>

From EJ Martin's notes of evidence

91. The Tribunal has considered this matter carefully and finds that the meaning of this email was as Professor Schot has described. The structure of the email makes this clear. There is a full stop after the words **"a good one"** linking those words with the words coming before them, namely the report itself. The Tribunal does not accept the Claimant's argument that this shows that Professor Schot wanted rid of him.

92. The Claimant was invited to a meeting by letter dated 6 October 2017 to discuss this OH report. This was held in accordance with the Sickness and Medical Incapacity Policy. The letter sets out the parameters of this meeting as being a discussion of the Claimant's medical condition and likely prognosis of his fitness to carry out his duties fully; any adjustments that could be made

to enable him to carry out his duties fully and whether any further measures could be put in place to support the Claimant in carrying out his duties.

93. The meeting of 25 October 2017 was, on any reading of the minutes, a difficult one. The Claimant started by saying: **“First of all I would like to state my view that this is not a legitimate meeting as it should be conducted by Joanna Chattaway. Secondly I wanted on record that anything that is said here will be considered for use in my lawsuit against him (pointing at Johan Schot)”**. Then following a short discussion there is a note in the minutes: **“Rumi Hassan then described how he was going to sue Johan Schot, pointing at him and talking in an aggressive manner. Graham Curry states his conduct is aggressive and inappropriate. Asks Rumi Hassan to concentrate on the issues the meeting has been called to discuss”**. There was a discussion following about pre-recording of lectures which the Claimant had tried to do in the past and during this this discussion it is noted in the minutes **“more pointing and threats to sue Johan Schot”**.
94. It was put to the Claimant that as a senior lecturer a **“significant part of the responsibilities of this role is giving lectures and seminars, if these are taken out of the range of duties what remains, to me, doesn’t look like a senior lecturer, therefore this is not a reasonable adjustment”**. Both parties agreed that prerecording lectures was not a practicable way forward. The Claimant said that he was unable to deliver seminars to his medical the Claimant condition. Other types of software to convert type into speech was discussed and dismissed by the Claimant.
95. Further adjustments were discussed until this topic was exhausted. The note at the end of the minutes states: **“throughout the meeting Rumi Hasan behaved in an aggressive manner towards Johan Schot, jabbing his forefinger towards him and using phrases like such as “you in a lot of trouble”, “I’m going to sue you”. He described actions taken in a pejorative way “he forced me to...”. Rumi Hasan referred to Johann Scott as “him and he” rather than using his name. Johann Schot did nothing to provoke this behaviour. I found Rumi Hasan’s behaviour to be unProfessoressional, intimidating and representing harassment in a meeting that was set up to support him by identifying adjustments that would enable him to continue in his role as Senior Lecturer”**.
96. On 1 November 2017 Mr Curry wrote to the Claimant confirming what had been said the meeting on 25 October about adjustments which had been suggested by OH. He told the Claimant that he would be invited to a further meeting as part of the Sickness Absence and Medical Incapacity Procedure stating that at that meeting they would revisit the nature of his medical condition and whether there was any change in prognosis and whether any other action could be taken, on a temporary or permanent basis including redeployment, to maintain the Claimant’s employment at the University together with whether the Claimant wish to pursue an application for early retirement on the grounds of ill-health.
97. There was then a meeting on 8 December 2017 which was a stage I **“informal stage meeting”** in accordance with the Sickness Absence and Medical Incapacity Procedure. The Claimant had been sent a copy of the procedure but stated in that meeting that he had not read it and had never seen it. The Claimant was given a copy of this and he and Professor Chatwin who

accompanied him, were directed to the relevant parts. The Claimant had sent a letter via his lawyers on 28 November 2017 in which he said the proceedings should be suspended and complaining about a failure to make reasonable adjustments, ‘ongoing discrimination, harassment and victimisation’. The Respondent had replied to this letter it would not suspend the procedure. It was stated that the purpose of the meeting was to try to identify whether the Claimant was able to deliver the role of a Senior Lecturer and, the design and delivery of high-quality teaching programs. Medical advice was discussed together with the likely prognosis. The prognosis by that time was at the Claimant’s condition was chronic and unlikely to remit.

- 98. There was consideration of the adjustments suggested by OH including pre-recorded lectures and software to convert type into speech. The Claimant was asked if there any other adjustments he wanted to put forward for consideration to which he stated “no, I have adjustments in place that enable me to carry out my work, why these been taken away?” To which Mr Curry responded that it was reasonable for the University to review and assess the situation and take reasonable steps to attempt to rectify it. There was discussion about the aspects of the role that the Claimant was able to undertake, and this included supervising students, administrative duties, delivering a citizen contribution to SPRU. The Claimant explained he dealt with health and safety matters and was a local representative and undertook ethical reviews. He said that he also undertook research and was very active in that field. Mr Curry discussed redeployment and early retirement on the grounds of ill-health both of which the Claimant rejected.
- 99. The outcome of the meeting was that Professor Schot decided to progress the matter to the formal stage of the University Sickness Absence and Medical Incapacity Procedure. This meant that a panel would be appointed by the Vice Chancellor or nominee in accordance with the policy. As at the date of this Tribunal hearing this had not happened.
- 100. **Academic freedom** - During the Claimant’s evidence he made repeated and impassioned references to his right to academic freedom being infringed by Professor Schot’s attempts to manage him.
- 101. The following extract from the Judge’s typewritten notes of evidence encapsulates the Claimant’s position in relation to this:

Ms Leverton. 2 pm.	
You mentioned a number of times about academic freedom, in your view does this effectively mean you are not accountable to anyone for anything	Yes. Otherwise a dead letter, freedom to research and think and write about anything you so wish in academic sense, books, articles, papers and comment pieces
So regardless of what dept and school	Absolutely right, University signed up to it

102. Academic freedom is enshrined in statute:

Equality Reform Act 1988

s202 The University Commissioners.

(1) There shall be a body of Commissioners known as the University Commissioners (in this section and sections 203 to 207 of this Act referred to as “the Commissioners”) who shall exercise, in accordance with subsection (2) below, in relation to qualifying institutions, the functions assigned to them by those sections.

(2) In exercising those functions, the Commissioners shall have regard to the need—

(a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions;

(b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and

(c) to apply the principles of justice and fairness.

The University statute reflects these provisions in section V11 Paragraph 6 which repeats this wording.

103. The Claimant submitted that it is not for the Tribunal to determine what is meant by the concept of academic freedom, which is a concept capable of different reasonable interpretations and that this suggestion is not inconsistent with the approach to issues of academic judgement by the Courts, which are treated as non-justiciable issues and relied on **Clark v University of Lincolnshire and Humberside [2000] 1 WLR 1988**. In submissions it was said that it is “enough for the Tribunal to recognise that academic freedom did provide the Claimant (at least, to some extent) with control over the direction of his research work”. The Tribunal disagrees and finds that given the nature of the complaints made and the nature of the evidence given, that it is appropriate and necessary for it to make its findings as to what academic freedom means in the context of this case given the way in which the Claimant has put his case and the way in which he gave evidence.

104. As discussed during submissions, the Tribunal considers it necessary to make certain findings about what academic freedom means given the differing interpretation of this by the Claimant and the witnesses for the Respondent and the emphasis put on this by the Claimant in his evidence. In 188 pages of typed notes taken by the Judge, academic freedom was raised over 52 times. The Tribunal has considered this insofar as it relates to the issues in this case which are largely about whether the Respondent’s attempts to manage the Claimant amounted to a breach of the principle of Academic Freedom.

105. Essentially the evidence given by the Claimant is that academic freedom gives him the absolute right to research whatever he wants even if it has no

relation to SPRU. He accepts that his research, especially in more recent years has no correlation to work done in SPRU. In addition, he maintains that academic freedom means he is not subject to the management or direction of the Respondent in any way, to include that he cannot be told or encouraged to attend departmental meetings or seminars or be performance managed in any way. In other words, he feels he can do what he wants, how he wants and when he wants with no regard to business needs or management requirements. Hence, he considers that the Respondent's attempts to manage his performance and realign him with the work and values of SPRU as an interference with academic freedom.

106. The Respondent submits that nowhere in the Education Reform Act 1988 or the University's statutes does it provide that an academic can research in any field it so desires, without management guidance or intervention. The Respondents went on to submit that the Claimant acknowledged in cross-examination that the University statutes could have said that an academic could research anything that interests them, but it did not.
107. The Tribunal finds that the Claimant's interpretation is unsustainable. Whilst there may be aspects of research which should not be interfered with under this principle, this does not relate to general day to day management issues.
108. The Tribunal notes the statutory provisions:

"academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions".

The focus of this principle is on ideas and opinions. The Tribunal also notes the next part of the principle:

"(b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically;".

This second part clearly envisages some form of management by the qualifying institution to ensure efficiency and economy.

109. Having come to this conclusion, the Tribunal finds that the Respondent was entitled to manage the Claimant and that the principle of academic freedom does not mean that the Claimant is not subject to normal line management. It would be untenable if a University academic was outside any management control. The Tribunal accepts the Respondent's submission that ***"if the Claimant's claim is correct that it is "an absolute right" to research in any field, irrespective of the School to which the Senior Lecturer is attached and without interference, the University would descend into chaos and dysfunction."*** The Tribunal finds that the same must apply to day to day management of the Claimant (and indeed other academic staff). If the Claimant (and other academic staff) were able to do what they wanted in the way the Claimant says, then it would be impossible to meet the objective in the statutory wording of efficiency and economy.

110. The Tribunal finds that as the Claimant is employed by and paid by the University and must conform to normal management processes. This includes absence management and performance management and direction of work. Otherwise, as submitted by the Respondent, chaos would descend.
111. **Memorandum of agreement** – an important part of the evidence is what the nature and extent of this memorandum of agreement was. This memorandum came into existence because the Claimant was unhappy about the working arrangements within SPRU. The agreement was between SocCul (a school within the first Respondent that no longer exists) and the Claimant. It is dated 12 September 2005 about one year after the Claimant started work for the University. Given the importance of this memorandum it is set out in full:
- Following discussions with Professor Michael Gibbons concerning your dissatisfaction with the working arrangements in SPRU I it was agreed to provide office accommodation in SocCul. This is an open ended agreement with the only proviso that it is dependent on the availability of such space. The Agreement with Professor Gibbons is that SPRU will meet normal office costs (ie computer charge and telephone) from the start of the academic year 2005/06.**
- The basis of this agreement is that you have close research interests with the Centre for Global Political Economy and the Centre for Cultural Development and the Environment. Your contractual obligation for teaching and RAE delivery remains with SPRU in the first instance. In the longer run, it is possible that there will be “teaching exchanges” between SPRU and SocCul (the former are perhaps interested in having SocCul input into the undergraduate Business Studies curriculum) and this may facilitate you having some teaching input into SocCul courses.**
- However, any such development will be subject to the agreement of the Head of Department of International Relationships in Politics and the directors of CDE and SPRU. It is unlikely they could be any agreement on this during the next academic year until the full implications of the new Resource Allocation Model became clear and, therefore, it is vital you retain good relations with colleagues in SPRU you where your contract is based. Any transfer to SocCul would be subject to the agreement of the Dean of SocCul, Director of SPRU and the Head of the relevant department in SocCul”**
112. The Claimant submits that this memorandum is a contractually binding agreement whereby he is entitled to work on areas of research outside SPRU. The Claimant was requested to return to the Freeman Building where SPRU is located and raised a grievance against Professor Gibbons, the former SPRU Director. The grievance was dismissed by letter dated 18 July 2007 where it was held that the memorandum was not a contractually binding document. This led to the Claimant’s self-referral to OH regarding his working environment (open plan offices) in 2007.
113. The Respondent’s position is still that this is not a contractually binding document and that in any event SocCul ceased to exist at some stage making the agreement null and void.
114. The Tribunal accepts the Respondent’s position and finds this to be a memo of understanding between the parties and not a contractually binding agreement as alleged by the Claimant.

2011 alleged agreement with Professor Meyer

115. The Claimant alleges that there was an agreement in 2011 with Professor Meyer. There are no contemporaneous documents to assist Tribunal and Professor Meyer did not given evidence as he is no longer working for the Respondent.

116. The Claimant describes the agreement in paragraphs 21-22 of his witness statement:

“In the Spring term 2011, I started to have difficulty taking seminars as it was clear that students were not able to provide such efficient level of input into seminars to alleviate the strain on my voice. I was also having difficulty with the workload of the lectures, seminars and additional supervision that I was allocated.

Professor Martin Meyer, Deputy Head of the School, and I discussed this in August 2011. I explained that seminars were proving too difficult for me and that the pre-recorded lectures were not an ideal solution. Professor Meyer decided that my adjustments would be changed so that I could no longer conduct seminars or pre-recorded lectures, would maintain a high level of MSc dissertation supervision, and undertake additional marking work and administrative duties. I continue to fulfil my full workload hours.

At the time of making these changes, Professor Meyer was fully aware that my disability was permanent and not likely to improve as he had been provided the occupational health correspondence and reports which confirmed this.....”

117. The Tribunal has already noted that up to 2017 there were discussions with the Claimant about adjustments that could be made which would enable him to teach and conduct seminars. In the Claimant’s complaint in March 2015 he refers to his discussions with Professor Meyer. In this complaint, he refers to the pre-recording of lectures working reasonably well but Professor Meyer deciding to pass his two modules to the new Business and Management Department and allocating him other duties instead. There is no mention here of a binding agreement between them it is just a narrative of what occurred. Of significance, is that the Claimant says this document was drafted with advice of solicitors. The Tribunal finds on balance that this was simply an agreement to help him at the time without having any contractual force. The Claimant, being a trade union representative would no doubt have made sure that the agreement was in writing if it was at contractually binding and as important as he now maintains.

Stress risk assessment

118. A stress risk assessment was completed on 11 July 2017. This identified a difficult relationship between the Claimant and Professor Schot. The risk level was identified as being low, and it was recorded **“HoS delegated day to day matter to Dr Puay Tang, including annual appraisal. HoS oversees the management. Dr Hasan has indicated that this arrangement is helpful to him.”** The Claimant relies on this as evidence that Professor Schot should not have been involved in his management at all including the capability and medical incapacity procedures. Professor Schot’s explanation is that he retained management for 5 people for

continuity including the Claimant and given the extensive background and complexity of the Claimant's issues he considered he was best placed to deal with the Claimant.

119. The Claimant also relies on a memorandum dated 12 September 2017 from Professor Schot to staff. The Claimant maintains that this memo states that Professor Schot was handing all management matters to Professor Tang. The memorandum states as relevant:

"It is with great pleasure that I'm also in the position to announce that Joanna Chataway is the new Deputy Director of SPRU. She will deputise for me when necessary, and we have agreed a division of labour in which she is becoming responsible for HR issues, internal organisation and will leave the work on impact case studies in SPR you (working with Michael Hopkins)".

120. The Tribunal considered the explanation from Professor Schot as to why he maintained responsibility for managing the capability and medical incapacity processes with the Claimant. The Claimant was not the only person for whom he retained responsibility and as he was Claimant's line manager is appropriate that he dealt with these matters. The Tribunal also finds that the Claimant has misunderstood the risk assessment which does not state or give a recommendation that Professor Schot should not undertake any management issues with the Claimant. The risk areas identified as low and reflects what the Claimant said at the time the risk assessment was undertaken rather than any specific recommendation.
121. In July 2018 a further stress risk assessment conducted which identified, in relation to communications with Professor Schot, that the risk as now high. This was after the Claimant had presented his claim to the Tribunal and given that that Professor Schot is a named Respondent, is not surprising that the risk level increased.

Submissions

122. Both parties gave extensive and detailed submissions in writing which were presented orally. These are not reproduced here but have been carefully considered by the Tribunal.

The Tribunal's conclusions on the specific issues

123. Having found the facts as set out above the Tribunal has come to the following conclusions on the balance of probabilities:

Direct Discrimination (section 13)

In respect of the matters stated below, did the Respondents treat the Claimant less favourably because of his protected characteristic than they treat or would treat others?

The Second Respondent's conduct during the meeting on 16th January 2014, as described at paragraphs 19-22 of the Particulars of Claim.

124. The facts are set out above. There is a significant difference between what the parties say happened at this meeting. The Tribunal prefers the evidence of Professor Schot which is corroborated by the emails that follow this meeting. It appears to have been a constructive meeting where there was agreement as to the way forward as shown in the emails.

The Respondents' invocation of the Capability Procedure on 12th September 2014, and its decision to proceed to Formal Stage 1 of the Capability Procedure on 2nd December 2014, as described at paragraphs 24-26 of the Particulars of Claim.

125. The Tribunal has set out details of the capability process above. In the paragraphs of the particulars of claim referred to Claimant complains that the Professor Schot invoked the capability process during his appraisal on 12 September 2014 which was against University policy. Professor Schot denies invoking the process in the Claimant's appraisal and denies that this process was related to the Claimant's disability.
126. The Tribunal finds that the reason the capability procedure was invoked was because the Claimant had failed to engage with Professor Schot and in particular had not responded to his informal request to improve performance and contribution to SPRU. The Tribunal accepts Professor Schot's evidence as set out in his witness statement paragraph 33 and 34. He says that **"My decision to start the capability process and move to stage I was completely unrelated to the Claimant's disability and/or any alleged protected act and was solely because of his performance failings. Fundamentally, I did not see the Claimant's inability to give lectures as a significant problem for SPRU. There was a general move away from lectures in the direction of seminars and workshops as a method of degree teaching and the Claimant was medically fit to do this at that time"**. The inference is that if the Claimant had engaged with him and had performed in other areas to teaching, then he would have been content with his performance. The Claimant himself, said in cross-examination that he had a suspicion that the capability procedure was invoked because of his disability but accepted that he could not prove this.
127. Even had Professor Schot mentioned capability at the appraisal it does not follow that this would have been an act of discrimination. Similarly the Tribunal finds that the decision to move to the formal stage 1 of the capability procedure was not an act of direct disability discrimination. The reason for this is that the Claimant had not shown evidence of improvement as requested by Professor Schot and to which he had agreed to in their first meeting. The Tribunal is satisfied that the targets set by Professor Schot were not affected by the Claimant's disability.

The Second Respondent's neglect of the Claimant's application for promotion to a Chair made on 14th October 2014, in particular during a meeting on 26th November 2014 when the Second Respondent informed the Claimant that he would not endorse the application without providing any reasons for the same, as described at paragraph 27 of the Particulars of Claim.

128. During his evidence the Claimant accepted that he was informed he would be placed on the capability procedure in the meeting of 26 November 2014. It was after this that the Claimant asked Professor Schot to support his application for promotion whereupon Professor Schot said that given his concerns about the Claimant's capability, he could not support this application for promotion. The Claimant agreed in his evidence that given this scenario it was not surprising that Professor Schot did not support his application.
129. The evidence is that Professor Schot acknowledged the draft application that the Claimant sent him, but he was not in support of it. The Tribunal has considered the criteria for promotion and excluding the criteria relating to teaching. these criterion relate directly to the issues for which the Claimant was put on the capability procedure namely research and publications.

The decision of the Respondents to include a complaint about the Claimant's teaching at the Capability Procedure meeting on 27th January 2015, which was subsequently withdrawn, as described at paragraphs 28-29 of the Particulars of Claim.

130. This meeting was convened to discuss the Claimant's general performance including teaching, grants and research. The Respondent then removed the teaching aspect from this process following representations made by the Claimant. The reference to teaching was about the quality of the teaching that the Claimant undertook when he was teaching, rather than the fact that he was unable due to his disability to do lectures. This is unrelated to his disability. The evidence is that Professor Schot listened to the Claimant and as a result removed the issue of teaching from the process. In any even the Tribunal accept Professor Schot's evidence (his witness statement paragraph 34): "Fundamentally, I did not see the Claimant's inability to give lectures as a significant problem for SPRU. There was a general move away from lectures in the direction of seminars and workshops as a method of degree teaching and the Claimant was medically fit to do this at that time"

The obligations placed on the Claimant under the Capability Procedure from September 2014 to May 2015, as described at paragraphs 28-35 of the Particulars of Claim.

131. The documentary evidence does not support the Claimant's complaints. For example, the Claimant says that Professor Schot required him to attend all departmental seminars on Wednesdays and Fridays. The requirement was

for the Claimant to attend “most of the internal SPRU seminars on Wednesday afternoons in order to find out about colleagues research ideas and development”. The purpose of this was to enable the Claimant to engage and integrate with SPRU which he not been doing. This appear to be reasonable and not affected by his disability. The Tribunal finds that part of the Claimant’s role was to be part of the school in which he is employed. This is not related to his disability.

132. The teaching aspect was removed from the capability process and this shows that Professor Schot was listening to the Claimant and taking on board the Claimant’s view. Professor Schot says in his witness statement that the Claimant should have more time to prove himself with seminars as at that time he had only recently started giving them again. His concern was that the Claimant’s research output was below standard in terms of quantity and quality of output in high impact journals and that it continued not to be in line with SPRU. This is not indicative of a mindset of discrimination.

The Respondents’ reinstatement of the Capability Procedure in July 2017, and the Second Respondents decision to retain control of the Capability Procedure notwithstanding that Professor Chataway had taken over his functions in respect of HR and internal organisation, as described at paragraphs 50-52 and 57 of the Particulars of claim.

133. The Tribunal accepts the evidence of the Respondent which is set out in the above facts. The Tribunal does not consider this to be an act of direct disability discrimination. The Claimant was not the only member of staff for whom Professor Schot retained management for when Professor Chataway took on most of the HR management of staff. This was discussed at one of the departmental meetings which the Claimant chose not to attend when it was explained that Professor Schot was still responsible for management of staff but had delegated some specific matters to others.
134. The Tribunal is satisfied that the Claimant knew (or should have known) that the capability procedure had been suspended. He should not therefore have been surprised when it was proceeded with given that he had not achieved the targets which had previously been set despite the time he had to do this. The Claimant agreed in cross-examination that he had chosen not to meet the performance targets “because they were illegitimate”. This was a theme running through the Claimant’s evidence which is discussed in more detail in the section on credibility of witnesses below.

The continued line management of the Claimant by the Second Respondent, notwithstanding a recommendation made by Hans van den Hejden following a risk assessment on 11th July 2017 which recommended that the Claimant’s management should be delegated to other individuals, as described at paragraphs 49, 50 and 57 of the Particulars of Claim.

135. The Tribunal has found that there was no recommendation by Professor van den Heijden that Professor Schot would not line manage the Claimant and for the reasons already stated that it was appropriate for Professor Schot to continue with his management of the Claimant which he did alongside another four or five members of staff. Professor Schot explained that one reason he retained line management responsibility for the Claimant was because of his attitude and his pre-text of using academic freedom as a reason for not engaging with him. Professor Schot considered he was in the best position to manage the Claimant given that he knew the history and was aware of the threatening attitude the Claimant had.

The Respondents' decision to invoke the Sickness Absence and Medical Incapacity Procedure between 25th October 2017 and 1st November 2017, as described at paragraphs 58-63 of the Particulars of Claim.

136. The Tribunal spent some time considering the chronology regarding the Claimant's medical condition and how it affected his ability to teach. Relevant parts are set out above. The Claimant's position is that nothing changed. By this he presumably meant he still had the condition with no remission. However, in the context of a capability procedure, it is the information that the Respondent had in relation to his ability to teach which is crucial. The evidence shows that the Respondents were initially told that any adjustment would be temporary. As set out above, there were ongoing discussions about alternative methods of delivering teaching, e.g. pre-recording and type to speech technologies. As set out above, what changed from the Respondent's perspective is that they were being told that the Claimant's condition would not improve and that he would be unable to teach in any capacity for the rest of his working life. From the Respondent's perspective this was a change in the advice received and it sought to discuss this with the Claimant which included a discussion about the adjustments and whether the Respondent could continue to offer them in the longer term. This process was never concluded, and the stage 2 hearing has not been convened. The adjustments have not been removed and remained in place at the date of the hearing.

The Respondents' decision effective from 1st November 2017, and subsequently confirmed on 15th December 2017, to withdraw the Claimant's reasonable adjustments, as described at paragraphs 58-70 of the Particulars of Claim.

137. The Claimant's reasonable adjustments have not been removed. On 14 Dec 2017 Graham Curry sent the Claimant a letter confirming the outcome of the informal stage meeting and informing the Claimant it was progressing to the formal stages of the process. No decision were made save to progress the procedure. The invite to the informal meeting specifically states "whether any action could be taken, on a temporary or permanent basis including redeployment, to maintain your employment at the University. It would be up to the panel at stage 2

to remove adjustments if it considered it appropriate to do so, but this had not been done as at the date of the Tribunal hearing.

The Respondents' decision to move the Claimant to the panel stage of the Sickness Absence and Medical Incapacity Procedure, as per its letters of 14th and 15th December 2017, as described at paragraphs 68-70 of the Particulars of Claim.

138. The Tribunal has found it was reasonable for the Respondent to move to stage 2 of this procedure and for reasons already set out above, does not find this to be an act of direct disability discrimination.

The Respondents' decision to move the Claimant to Stage 2 of the Capability Procedure on 20th December 2017, as described at paragraphs 71-72 of the Particulars of Claim.

139. For the same reasons as set out in paragraph 136, the Tribunal does not find this to be an act of direct discrimination. The capability issues did not relate to the Claimant's disability.

The Respondents' decision not to uphold any aspect of the Claimant's appeal against the decision to invoke Stage 2 of the Capability Procedure as particularised at paragraphs 72.1-72.7 of the particulars of claim.

140. Professor Bridgeman's evidence was that the Claimant's disability and what he says are protected acts, had no influence on her decision to reject the Claimant's appeal. The Tribunal notes that Professor Bridgeman is not a named Respondent. The Tribunal finds that the appeal was conducted fairly with Professor Bridgeman considering each aspect of the appeal made by the Claimant making findings of each of them. The Claimant's evidence was that he thought that: "a more empathetic decision maker might have said 'hold on' colleague has disability – highly contentious – what's going on here"¹. The Tribunal accepts the Respondent's submission that "Such a criticism is flawed in itself and certainly does not come close to justifying an inference of discrimination".

The Respondents' decision not to promote the Claimant to Professor and the subsequent feedback provided as particularised at paragraphs 72.8-72.12 of the particulars of claim.

141. The Tribunal finds that the reason that the Claimant was not promoted to Professor was that he did not evidence the capabilities required for this

¹ From EJ Martin's notes of evidence

position. This is unrelated to the Claimant's disability and was not because the Claimant had complained about discrimination

Harassment (section 26)

The Second Respondent's conduct during the meeting on 16th January 2014, as described at paragraphs 19-22 of the Particulars of Claim.

142. As found above, the Respondent did not engage in unwanted conduct. The meeting was amicable and constructive as agreed by the Claimant in his correspondence after the meeting.

The Respondents' invocation of the Capability Procedure on 12th September 2014, and its decision to proceed to Formal Stage 1 of the Capability Procedure on 2nd December 2014, as described at paragraphs 24-26 of the Particulars of Claim.

143. The Tribunal accepts this was unwanted conduct but was not because of the Claimant's protected characteristic. The capability procedure (given that teaching was removed) was around the Claimant's failure to engage with SPRU as set out above which was unrelated to his disability. The purpose of the Capability Procedure as described by Professor Schot was to support the Claimant to achieve the necessary standard of work required by his employer.

The Second Respondent's neglect of the Claimant's application for promotion to a Chair made on 14th October 2014, in particular during a meeting on 26th November 2014 when the Second Respondent informed the Claimant that he would not endorse the application without providing any reasons for the same, as described at paragraph 27 of the Particulars of Claim.

144. The Tribunal has found that the second Respondent did not neglect the Claimant's application. Professor Schot has given satisfactory reasons as set out above as to why he was not prepared to endorse the Claimant's application. The Tribunal note that it was not only Professor Schot who would not endorse it, as the other referees suggested by the Claimant also would not endorse his application.

The decision of the Respondents to include a complaint about the Claimant's teaching at the Capability Procedure meeting on 27th January 2015, which was subsequently withdrawn, as described at paragraphs 28-29 of the Particulars of Claim.

145. The Tribunal accept that it was unwanted conduct to initially include teaching in the capability procedure, however this rectified when it withdrawn. The Tribunal has considered carefully the evidence in this regard and accepts

Professor Schot's evidence that the teaching referred to about the quality of seminar teaching which had been reported to him and not that the Claimant was unable to teach because of his medical condition. When the Claimant objected because he had only recently returned to teaching seminars, this aspect was removed from the procedure. This was not related to the Claimant's disability and not harassment.

The obligations placed on the Claimant under the Capability Procedure from September 2014 to May 2015, as described at paragraphs 28-35 of the Particulars of Claim.

146. The Tribunal accepts this was unwanted by the Claimant however these obligations were not related to his disability as they included research, submitting articles, submitting grant research application and to attend most of the internal SPRU seminars on Wednesday afternoons. These obligations related to aspects of the Claimant's role which were not affected by his disability. The Claimant had agreed to the targets set, and in his evidence acknowledge that he did not try to achieve them. The reason the Claimant was placed on the capability procedure is as put by Professor Schot: he had not engaged in the informal process or contributed to SPRU or tried to align his research within the parameters of SPRU. The evidence was that those parameters were wide and therefore it would not be difficult for the Claimant to realign part of his research with SPRU aims and objectives. All staff were expected to produce high quality research, publications and be a part of SPRU.

The Respondents' reinstatement of the Capability Procedure in July 2017, and the Second Respondents decision to retain control of the Capability Procedure notwithstanding that Professor Chataway had taken over his functions in respect of HR and internal organisation, as described at paragraphs 50-52 and 57 of the Particulars of claim.

147. The Tribunal accepts the reinstatement of the Capability Procedure was unwanted by the Claimant. The Claimant was aware or should have been told by his union representative, that the procedure had been put on suspension pending the outcome of his grievance. The Tribunal finds that Professor Schot was not singling the Claimant out as five other members of staff also remained under his management. This was not because of the Claimant's disability but for continuity given the complexities and difficulties in managing the Claimant.

The continued line management of the Claimant by the Second Respondent, notwithstanding a recommendation made by Hans van den Hejden following a risk assessment on 11th July 2017 which recommended that the Claimant's management should be delegated to other individuals, as described at paragraphs 49, 50 and 57 of the Particulars of Claim.

148. The Tribunal accepts this was unwanted by the Claimant. The Tribunal has already found that there was no recommendation by Professor van den Hejden in this assessment. The assessment reflected the current working arrangement ie 'Action already taken' (Professor van der Hejden witness statement). The Tribunal has accepted Professor Schot's explanation as to why he continued to manage the Claimant.

The Respondents' decision to invoke the Sickness Absence and Medical Incapacity Procedure between 25th October 2017 and 1st November 2017, as described at paragraphs 58-63 of the Particulars of Claim.

149. The Tribunal accepts this was unwanted by the Claimant. This is related to his disability as relates to him not being able to do lectures or seminars. The Tribunal has found that there was no binding agreement with the Claimant and Professor Mayer that the Claimant would not do teaching due to his disability and this was not raised by the Claimant. The Tribunal considered the letter of 6 October 2017 inviting the Claimant to the meeting. It is stated that at the meeting his medical condition and prognosis of his fitness to carry out his duties fully, adjustments and whether there were further measures which could help, were expressed to be the reason for the invitation. By this time it had been established that the pre-recording of lectures had not been successful.
150. Matters had changed as Occupational Health had reported that the Claimant would not be able to resume teaching. The Tribunal finds that the purpose of invoking this procedure was not to harass or violate the Claimant's dignity but to try to find a way moving forward in a supportive way. The Tribunal accepts the Respondent's submission that any Senior Lecturer who could not teach would be subject to this process whether or not they shared the Claimant's protected characteristic.
151. The Tribunal does not find that the Respondent created a hostile or intimidating environment. It was entitled to invoke this procedure given the nature of the report from Occupational Health and the stated purpose of the policy was to identify necessary support. If anyone created a hostile, intimidating environment it was the Claimant in the way he spoke and conducted himself in the various meetings as reflected in the facts above and the section on credibility below.

The Respondents' decision effective from 1st November 2017, and subsequently confirmed on 15th December 2017, to withdraw the Claimant's reasonable adjustments, as described at paragraphs 58-70 of the Particulars of Claim.

152. The Tribunal has found that there was no decision to withdraw the reasonable adjustments which continue.

The Respondents' decision to move the Claimant to the panel stage of the Sickness Absence and Medical Incapacity Procedure, as per its letters of 14th and 15th December 2017, as described at paragraphs 68-70 of the Particulars of Claim.

153. The Tribunal accepts this was unwanted by the Claimant. However, the Tribunal also find that the purpose was to be supportive in light of the limitation on the Claimant's ability to teach because of his medical condition. There is a difference between the parties as set out above, in that the Claimant considered there was no change since the adjustments were put in place, whereas Professor Schot considered that there was a change in that the medical advice was that the Claimant would be unable to teach again.

The Respondents' decision to move the Claimant to Stage 2 of the Capability Procedure on 20th December 2017, as described at paragraphs 71-72 of the Particulars of Claim.

154. The Tribunal accepts this was unwanted by the Claimant but finds that it was not related to the Claimant's disability but was related to his refusal to engage with SPRU submit grant applications and SPRU related research and so on. This lack of engagement was not related to the Claimant's disability but to his opinion that academic freedom meant that the Respondents were unable to manage him in any way.

Victimisation (section 27)

Did the Claimant do a protected act? Alternatively, did the Respondent believe that the Claimant had done a protected act, or that he may do a protected act?

The Claimant contends that the following acts are protected acts:

- a. **In a meeting on 16th January 2014 the Claimant explained to the Second Respondent the nature and impact of his medical condition and outlined the reasonable adjustments he had in place to accommodate this, as described at paragraph 19 of the Particulars of Claim ('PA1').**

155. As set out above, this was an amicable meeting and was the first meeting between the Claimant and Professor Schot on Professor Schot's arrival at the University. There was no complaint of discrimination merely a discussion about his medical condition, this is not a protected Act.

b. In a grievance raised in July 2015, the Claimant outlined potential discriminatory treatment by the Second Respondent, which he then reiterated and developed during an investigatory meeting, as described at paragraphs 36-37 of the Particulars of Claim ('PA2').

156. The grievance is itself dated March 2015. The Tribunal has looked at the document to see if this could reasonably be seen to be an allegation of discrimination on the grounds of disability. The document starts by outlining his medical condition and says that "**Johan appeared to display little empathy.....**". In this document he describes Professor Schot as "**a manifestation of incompetence tinged once more with malice**" and "**in abrogation of a central pillar of British academic life**".

157. The thrust of the document and the language used is critical of Professor Schot's management abilities but does not state that he had been discriminated against because of his disability, for a reason arising from that or that there had been a failure to make reasonable adjustments. Looking at this letter it is clear that the reason it was written is because the Claimant wanted a transfer to a different department which is something he had been pushing for since he arrived at the University, (hence the memo in 2005). The Tribunal considered the agenda for the meeting. There was nothing in the agenda about discrimination. In considering the minutes the Tribunal can see that the Claimant said the Respondent had no empathy for his medical condition, but this is different to an allegation of discrimination. Bullying behaviour is referred to as is "it suggests discriminatory behaviour". There is nothing here to say this was discrimination on grounds of disability. The Tribunal does not find this to be a protected act.

c. In June 2017 the Claimant was invited to a meeting with Professor McGuire where he provided information regarding an allegation of race discrimination made by one of the Claimant's colleagues against the Second Respondent, as described at paragraph 46 of the Particulars of Claim ('PA3').

158. The Respondent accepts this is a protected Act. The Tribunal notes it is not related to his disability.

d. During a stress risk assessment on 11th July 2017, the Claimant outlined the concerns he held about the harassing conduct of the Second Respondent and the effect it was having on him, as described at paragraph 49 of the Particulars of Claim ('PA4').

159. The Tribunal does not find this to be a protected act. Professor van der Heijden accepted and recorded in the assessment that there was a difficult relationship between the Claimant and Professor Schot however there is

nothing in the assessment about discrimination on the basis of disability or any other protected characteristic.

e. On 16th November 2017 the Claimant gave evidence as a witness to Professor Milns, who was investigating the allegations of race discrimination made by one of the Claimant's colleagues, as described at paragraph 46 of the Particulars of Claim ('PA5').

160. The Respondent concedes this is a protected Act. The Tribunal notes it is not related to his disability.

f. On 8th December 2017 the Claimant informed the Respondents that he considered that the invocation of the Sickness Absence and Medical Capability Procedure in October 2017 was an act of harassment, as described at paragraphs 65-66 of the Particulars of Claim ('PA6').

161. The Respondent accepts that this is a protected Act.

Was the Claimant subjected to a detriment because of the protected acts? The detriments relied on are as stated at paragraph 3(a) – (k) above.

162. The Tribunal has found three acts to be protected and these acts were in June, November and December 2017 therefore any alleged detriment prior to these dates were not because the Claimant had made a protected Act. In the section below "General observations" the Tribunal sets out its view of the issues between the parties overall. What is said there is relevant to the question of whether the Claimant suffered detriments for making these three protected disclosures. The Tribunal finds, for the reasons set out below, that there is no causal connection between the protected acts and the detriments alleged.

163. In relation to the detriment alleged about the reinstatement of the capability procedure, as already found, the procedure had been put on hold pending the outcome of the Claimant's grievance. Once that grievance was finished the capability procedure continued. This was not in reaction to any protected disclosure but merely a continuation of what had been started before the protected disclosures were made. There was no evidence to support the Claimant's allegation that these matters occurred because he had made a Protected Act. The procedure was started before any protected act.

164. As already found, the continued line management of the Claimant by Professor Schot was reasonable. It is accepted that their working relationship was strained however this was not because of the Claimant's disability, but because of his resistance to any form of management which he said was a

breach of his right to academic freedom. There is no evidence to support that these matters occurred because the Claimant made a Protected Act.

165. Similarly, the Tribunal does not find that the invocation of the sickness absence procedure was because the Claimant had made a protected act.

Failure to comply with the duty to make reasonable adjustments (sections 20(3) and 21)

Did the Respondents apply a provision, criterion or practice ('PCP')?

The Claimant contends that the Respondents' failure to permit the Claimant to continue working with the adjustments which had been in place for a number of years, as described at paragraphs 61-64 and 70 of the Particulars of Claim, amounts to a PCP.

166. This cannot be a PCP as this is something that relates to the Claimant personally and not to employees at the University generally. The Claimant in any event is still working for the Respondent subject to the same adjustments which he refers to in this claim.

The Claimant further relies on the paragraph 2 of the Further and Better Particulars of Claim as to the PCPs (p. 62 of the bundle).

- **Requirement to undertake a proportion of teaching activity which is comprised of orally delivered teaching in lecturers or seminars.**

167. The Tribunal finds this is a PCP. There is a general requirement is that academic staff in SPRU undertake 60% teaching, and 40% research and other activities. This put the Claimant at a substantial disadvantage because his medical condition precluded him from talking for long periods and hence his ability to teach. However, the Respondent had put in place reasonable adjustments, and as already discussed, had not removed them even though there had been discussion about whether they could be continued in the light of the OH report on 31 August 2017 which said that the Claimant would not be able to resume teaching duties before retirement.

Was the Claimant put to a substantial disadvantage in comparison with persons who are not disabled? The Claimant contends that the adjustments which had been in place were essential, and their unilateral removal without any, or any justifiable, reason or any effective consultation put him to a substantial disadvantage.

168. There was no disadvantage as the adjustments have been made and have not been removed.

What steps could the Respondent have taken to avoid the disadvantage? The Claimant contends that the Respondents should have continued to apply the previously implemented adjustments.

169. The Respondent continues to apply the previous adjustments and, as at the date of the hearing, the adjustments were still in place.

Indirect Discrimination (section 19)

Did the Respondents apply, or would it have applied, a PCP to persons with whom the Claimant does not share his protected characteristic? The Claimant relies on the paragraph 2 of the Further and Better Particulars of Claim as to the PCPs (p. 62 of the bundle).

The PCP's are:

The Respondent' failure to permit the Claimant to continue working with the adjustments which had been in place for a number of years.

170. First, this is a something personal to the Claimant and not a requirement or practice applicable to other staff. Second, the adjustments have not been removed.

The requirement to undertake a proportion of teaching activity comprising orally delivered teaching in lectures or seminars

171. The Tribunal finds that the requirement to undertake teaching activity by orally delivered teaching is a PCP. This PCP substantially disadvantages the Claimant and the Respondent made adjustments to his work to accommodate his medical condition. There has been no decision to remove the adjustments, all there has been is are discussions about whether the Respondent can continue to give the adjustments. It is for the stage 2 panel to make a final determination, and this has not yet happened.

The requirement to undertake lecturing and seminars through orally delivered teaching

172. The Tribunal finds this to be a PCP applicable to all academic staff.

The Respondent's failure to permit the Claimant from continuing to substitute orally delivered teaching through lectures and seminars with alternate duties of his role.

173. The Tribunal does not find this to be a PCP as it is something personal to the Claimant and not applicable as a provision, criteria or practice to others by way of a general rule. In any event, the adjustments have not been removed.

Did the PCP put, or would it have put, persons with whom the Claimant shares his protected characteristic at a particular disadvantage when compared with persons who do not share it?

174. The Tribunal accepts this put or would have put persons with whom the Claimant shares his protected characteristic at a disadvantage.

Did the PCP put, or would it have put, the Claimant to the particular disadvantage?

175. As set out above this did put the Claimant at a particular disadvantage

Can the Respondents show that the PCP was a proportionate means to achieving a legitimate aim?

176. The Tribunal finds that this PCP was a proportionate means to achieve a legitimate aim. The legitimate aim is to educate students. The Respondent adjusted this PCP to accommodate the Claimant's disability and this adjustment has not been removed.

Discrimination arising from disability (section 15)

Was the Claimant treated unfavourably? The Claimant relies on the matters stated at paragraph 3(a) – (k) as acts of unfavourable treatment.

177. The Tribunal does not find unfavourable treatment for the reasons set out above. The Tribunal has found that there was no unfavourable treatment of the Claimant in the meeting with Professor Schot on 26 January 2014 and that this was a supportive meeting.

178. The Tribunal has found that the invocation of the capability process was because of matters other than the Claimant's ability to teach which were not related to his disability or arising therefrom.

179. The Tribunal has found that there was no 'neglect' of the Claimant's application for promotion but that for reasons unconnected with any disability or anything arising from it, was not supported.

180. The complaints about the Claimant's teaching were not about his lack of teaching but rather his teaching before his illness prevented him from doing this. In any event, there was not unfavourable treatment even if it did include

his inability to teach as it was removed from the process immediately the Claimant raised it.

181. The obligations placed on the Claimant under the capability procedure were not unfavourable, they were designed to assist the Claimant and were part of supportive measures implemented by the Respondents.
182. The reinstatement of the capability procedure was a continuation of the supportive measures to improve the Claimant's performance and not unfavourable treatment.
183. There was no recommendation that Professor Shot should not line manage the Claimant as found above.
184. The invocation of the sickness and medical incapacity procedure was not unfavourable treatment. It was invoked in accordance with policy and was a supportive measure giving a formal framework for discussions.
185. No adjustments were removed so there was no unfavourable treatment.
186. The move to the panel stage of the Sickness and Medical Incapacity Procedure was a continuation of the initial process and for the same reasons supportive and not unfavourable.
187. Similarly the move to the panel stage of the Capability Procedure was not unfavourable but supportive.

Was the unfavourable treatment because of something arising in consequence of the Claimant's disability? The Claimant contends that the difficulties he experiences in delivering seminars and lectures are something arising in consequence of his disability.

188. Even had the Tribunal found that the treatment was unfavourable, save for the issues relating to the Sickness and Medical Incapacity Procedure, the Tribunal finds that any such treatment was not arising in consequence of the Claimant's disability. If it was unfavourable treatment the reason was because the Claimant was not performing in the sense of complying with the agreed targets as set out above. These targets were not affected by his medical position.
189. The Tribunal accept that if the invocation of the Sickness and Medical Incapacity Procedure was unfavourable treatment then this arose from the Claimant's disability.

Can the Respondents show that the treatment of the Claimant was a proportionate means to achieving a legitimate aim?

190. The legitimate aim of the Respondents is a need for Senior Lecturers to deliver lectures and seminar to its students. The Tribunal finds that the Respondents dealt with this in a proportionate manner taking OH advice and having many meetings to discuss that advice and what could be done in terms of any further measures. The Tribunal finds that the processes adopted by the Respondents were a proportionate means of achieving that aim.

Jurisdiction (section 123)

Were the Claimant's claims made within 3 months starting with the date of the act to which the complaint relates (taking into account early conciliation)? Do the Claimant's claims give rise to a course of conduct extending over a period? If any of the claims are prima facie out of time, should time be extended because doing so is just and equitable?

191. Given the findings above, the Tribunal has not considered jurisdiction.

General observations

192. The Tribunal has made its findings in relation to the specific issues which have been agreed between the parties. The Tribunal finds that the difficulties between the Claimant and the Respondents arose not because of his disability but because of the Claimant's intransigence and what can only be described as belligerence. In his submissions the Claimant said that: **"...it is hardly surprising that the Claimant, an academic, reacted adversely to Professor Schot, another academic, attempting to change the substantive trajectory of his work". This is not a 'typical' line management issue because it engages the issue of academic freedom and judgment".**
193. Tribunal does not accept this. It was clear from the evidence that all the Claimant was being asked to do was to align the research he was doing in some way to the objectives of SPRU. The Tribunal has found no evidence that there was any attempt to stop the Claimant carrying on with the research which he was doing. As set out above, the Tribunal's finding is that it was not the Claimant's disability that was causing the issue, Professor Schot said that if other aspects of his work were satisfactory the lack of teaching could have been coped with and the Tribunal accepts his evidence. The Tribunal finds that the issue was the Claimant's intransigence and his misplaced belief that the Respondents were interfering with his academic freedom.
194. During the course of his evidence, the Tribunal was concerned that it was forming a view of the Claimant because of the way that he was giving his evidence which is, the Tribunal accepts, a stressful environment, and not the same as the familiarity of a workplace. It was concerned that it was importing what it was seeing as being how the Claimant presented himself during the meetings with Professor Schot and other meetings as recorded above.

However, the following extract from the Judge’s notes of evidence reveal that the opposite was true and what the Tribunal was seeing, and hearing was a tempered down version of how the Claimant presented during these meetings.

Behaviour in this court - even though you are in court has been quite combative to say the least and probably on your best behaviour	I acknowledge
Are you trying to contain yourself here?	Yes
	These are serious emotional issues for me
You were not in court in this meeting, did not have a judge to say take a break, you were angry and aggressive	Not aggressive, angry about unlawful exercise
JS genuinely felt threatened by you in terms of your behaviour	He has power and unlawfully invoking procedure and harassing me for 3 years.

195. The Tribunal considered the language used by the Claimant in describing the people he had issues with. In relation to the Claimant’s application for promotion his evidence was²:

348 – 29 May Michael Hopkins asked to review your output. This is a fair assessment	This is always the case, goes back to 05 memo, so where is the news.
Re outputs says publication record is poor	He has no idea what he talking about, no expertise in my field, I was focussing on books which takes years.
Michael Hopkins is the Director of Research and you say he does not know what he doing	He tasked to assess work on which he has no expertise.
He is director or research, knows how to assess output on publications and grant	Matrix highly disputed to judge. You going into nitty gritty, these are highly debatable points, this so called director of research, act of harassment, no expertise so his comments are worthless. Worthless.

196. The Tribunal noted this from the documents. This relates to the Claimant taking legal advice with a solicitor: “...I should like you to mull over VERY carefully one of the key grounds that Mullberry’s were going to use in my claim for damages against Johan...”, “...Mullberry’s is a firm of highly reputable

² taken from Employment Judge Martin’s notes of evidence

employment law solicitors who only recommend pressing charges if they assured of winning – and make no mistake, they will assuredly “throw the book” at Johan”.

197. The Claimant described Professor Schot in extraordinary terms: “like Kevin Spacey at the Old Vic”, “Mugabe too”, and to the Respondents being a “cabal”.
198. Taking this evidence together with what the Respondent witnesses said about how the Claimant behaved in the various meetings and reading the minutes of those meetings which record some of the Claimant’s behaviours, the Tribunal is satisfied that the Claimant did act in an aggressive and hostile manner during these meetings.
199. The Claimant’s continued view as to what academic freedom meant, which resulted in his intransigence in relation to the issues raised by Professor Schot are what fuelled the difficulties between the parties. The Tribunal accept the evidence from Professor Schot that if the Claimant was fully participating in the academic life of SPRU, had published in quality journals and had aligned some aspect of his research to SPRU then the fact that he could not teach would not have been an issue for the Respondent. What was an issue for the Respondent was that the Claimant, although attached to SPRU, divorced himself from any aspect of work or communication with colleagues within SPRU.
200. The Tribunal heard no evidence to suggest that the Respondent was directing the line of the Claimant’s research, or directing what research that he did, it simply wanted it to have some relevance to the School to which he worked for and this it told the Tribunal had a wide ambit. The Tribunal finds this to be reasonable. The Tribunal found the evidence given by all the witnesses for the Respondent to be measured, credible and consistent and as a consequence preferred the evidence of the Respondents.
201. In all the circumstances, the Claimant’s claims are dismissed.

Employment Judge Martin

Date: 30 March 2020

Appendix 1

Agreed issues

Disability (section 6)

1. The Claimant suffers from Sjogren's Syndrome, which was contracted in 2008 and diagnosed in 2009. This is an auto-immune condition which causes acute dryness of the mouth and throat. This prevents the Claimant from being able to speak for extended periods of time. The Respondents have at all material times been aware of the Claimant's condition.
2. The Respondents accept that the Claimant is disabled.

Direct Discrimination (section 13)

3. In respect of the matters stated below, did the Respondents treat the Claimant less favourably because of his protected characteristic than they treat or would treat others?
 - a. The Second Respondent's conduct during the meeting on 16th January 2014, as described at paragraphs 19-22 of the Particulars of Claim:

19. In January 2014, Professor Schot was appointed as the Director of SPRU (Head of Department) and became the Claimant's direct line manager. On 16 January 2014, the Claimant had his first meeting with Professor Schot. During this meeting the Claimant outlined his medical history and explained the adjustments to his role. In particular the Claimant explained that he suffers from the disability outlined above and outlined the impact that this has on his ability to speak for extended periods of time.

20. When discussing this medical condition, the Claimant was worried to see that Professor Schot showed no empathy. Professor Schot informed the Claimant that he intended for him to re-start oral teaching despite the previous medical agreements and adjusted duties to accommodate his condition.

21. It was the Claimant's view that despite his historical adjustments and extensive medical management at the University through OH, HR and previous line managers, Professor Schot had taken an aversion to him as a lecturer who was not conducting lectures and seminars. The Claimant claims that his reasonable adjustments caused Professor Schot to harass and discriminate against him and Professor Schot used the manipulation or removal of his reasonable adjustments to harass or discriminate against him.

22. Also during the 16 January 2014 meeting, the Claimant explained to Professor Schot his academic history within SPRU, especially concerning his research interests. He showed Professor Schot the Memorandum of Understanding from 12 September 2005 which afforded him freedom to research in areas outside of the SPRU norm (as detailed in paragraph 5 above). Professor Schot stated that the Memorandum of Understanding was old and that he did not intend to adhere to the agreement. Instead, Professor Schot informed the Claimant that he would like him to undertake more SPRU-type research. The Claimant claims that Professor Schot's aversion to his particular academic interests was influenced by the fact the Claimant was not conducting lectures or seminars.

- b. The Respondents' invocation of the Capability Procedure on 12th September 2014, and its decision to proceed to Formal Stage 1 of the Capability Procedure on 2nd December 2014, as described at paragraphs 24-26 of the Particulars of Claim:

24. On 12 September 2014, during an appraisal meeting for the Claimant, Professor Schot informed him that he was going to invoke the University's Capability Procedure. The Claimant had received no prior notification of this, nor was he provided with any explanatory information at the time. The Claimant did not know that this was a formal procedure.

25. Moreover, it is contrary to university rules on Appraisals to invoke a capability procedure during an appraisal meeting as the appraisal meeting is intended to be positive and supportive.

26. It was not until 2 December 2014 that Professor Schot followed this with a letter enclosing the University's Capability Procedure informing him that the informal stage of the procedure had been completed and they were proceeding to Formal Stage 1. This letter invited the Claimant to a Formal Capability Meeting on 11 December 2014. This letter stated that the meeting would address concerns surrounding the Claimant's teaching, grant writing and research. Up to this point, there had been no previous criticism of the Claimant's performance and nothing (save for the content of the meeting on 12 September 2014) to indicate that a capability procedure was underway.

- c. The Second Respondent's neglect of the Claimant's application for promotion to a Chair made on 14th October 2014, in particular during a meeting on 26th November 2014 when the Second Respondent informed the Claimant that he would not endorse the application without providing

any reasons for the same, as described at paragraph 27 of the Particulars of Claim:

27. On 14 October 2014 the Claimant notified Professor Schot by email that he intended to apply for a promotion to a Chair. The University's promotion protocol requires a hard copy of the form to be passed by the applicant to the Head of School. However, the BMEc School did not have a Head of School at the time, so the Claimant provided the form to Professor Schot, as his Head of Department. Accordingly, he placed the completed application form in his pigeon hole. The Claimant received no acknowledgement. The Claimant and Professor Schot had a further meeting on 26 November 2014, during which the Claimant raised the issue of his application form. Professor Schot stated that he was not going to endorse the Claimant's application but without providing any explanation for this refusal.

- d. The decision of the Respondents to include a complaint about the Claimant's teaching at the Capability Procedure meeting on 27th January 2015, which was subsequently withdrawn, as described at paragraphs 28-29 of the Particulars of Claim:

28. On 27 January 2015, the Claimant attended a Capability Procedure meeting with Professor Schot and Johanne Lees (HR). Also in attendance was the Claimant's union representative, Professor Rupert Brown. During this meeting, Professor Schot stated that there was a problem with the Claimant's teaching. The Claimant had been exempted from lectures and seminars for the previous three years because of disability. No evidence was provided of any issues with the teaching that the Claimant did, for example in supervision. The allegation regarding concerns over teaching was subsequently removed from the process.

29. However the Claimant considers the inclusion of 'teaching' as the first concern listed on the initial meeting invite letter an indication that Professor Schot's primary concern lay in the fact that the Claimant was not delivering oral and live lectures, which was because he was receiving reasonable adjustments. The Claimant therefore asserts that the inclusion of "teaching" as the first concern was an act of discrimination arising from a disability, and also indicative of the University's generally discriminatory approach towards the Claimant, which would continue to manifest itself subsequently.

- e. The obligations placed on the Claimant under the Capability Procedure from September 2014 to May 2015, as described at paragraphs 28-35 of the Particulars of Claim:

28. On 27 January 2015, the Claimant attended a Capability Procedure meeting with Professor Schot and Johanne Lees (HR). Also in attendance was the Claimant's union representative, Professor Rupert Brown. During this meeting, Professor Schot stated that there was a problem with the Claimant's teaching. The Claimant had been exempted from lectures and seminars for the previous three years because of disability. No evidence was provided of any issues with the teaching that the Claimant did, for example in supervision. The allegation regarding concerns over teaching was subsequently removed from the process.

29. However the Claimant considers the inclusion of 'teaching' as the first concern listed on the initial meeting invite letter an indication that Professor Schot's primary concern lay in the fact that the Claimant was not delivering oral and live lectures, which was because he was receiving reasonable adjustments. The Claimant therefore asserts that the inclusion of "teaching" as the first concern was an act of discrimination arising from a disability, and also indicative of the University's generally discriminatory approach towards the Claimant, which would continue to manifest itself subsequently.

30. Professor Schot instructed that the Claimant should attend SPRU seminars on a regular basis. The Claimant informed Professor Schot that he had attended a number of seminars in areas of his academic interest. It was apparent that Professor Schot was either unaware of this or, alternatively chose to ignore this, when making the original request.

31. In any event, Professor Schot stated that it would be a requirement for the Claimant to attend seminars on both Wednesday lunchtime and Friday, equivalent to four additional hours per week.

32. The Claimant considers this request to be a direct consequence of his reasonable adjustments. It does not relate to his capability to perform his role and, to his knowledge, he is the only member of staff required to sit in on all departmental seminars. Accordingly, he considered this requirement to be discriminatory conduct. In particular, the Claimant claims that the requirement to attend seminars further to his full time duties amounts to unwanted conduct relating to his disability.

33. Professor Schot required the Claimant to conduct seminars for two modules in January – May 2015 (Semester Two, 2015). This level of teaching required the Claimant to conduct three seminars in three consecutive days. In the interest of being conciliatory and explorative with the extent of his ability to speak and conduct seminars, the Claimant agreed to a trial of this

proposal. However, he felt compelled into doing this for the purposes of alleviating the impact of the formal Capability Procedure.

34. During the Semester Two 2015, the Claimant struggled to undertake the seminars and felt considerable strain on his voice. The Claimant's medical Professionals gave the view that he should not have done this and should not do this in the future until there was an observable improvement in his condition. In Semester One 2016 the Claimant therefore reverted back to the adjustments agreed as reasonable in autumn 2011.

35. Following the Capability Procedure meeting of 27 January 2015, the Claimant received a letter from Professor Schot dated 9 February 2015. This letter confirmed the requirement on the Claimant to attend most of the internal seminars on Wednesday afternoon. The Claimant was also required to submit two articles to journals deemed relevant to SPRU and submit one funding application in an area deemed relevant to SPRU. The Claimant considers the decision to invoke the Capability Procedure, and Professor Schot's demands on him through the procedure constitute discrimination and harassment relating to his disability. Despite this, the Claimant endeavoured to submit additional grant applications and write journal articles.

- f. The Respondents' reinstatement of the Capability Procedure in July 2017, and the Second Respondents decision to retain control of the Capability Procedure notwithstanding that Professor Chataway had taken over his functions in respect of HR and internal organisation, as described at paragraphs 50-52 and 57 of the Particulars of claim:

50. On 25 July 2017 the Claimant received a letter from Professor Schot stating that the Capability Procedure initiated in December 2014 was to be resumed. This correspondence came as a complete surprise to the Claimant. It caused him significant distress because he had come to believe that the change in his line management duties had taken him outside of the managerial orbit of Professor Schot. The re-instatement of the capability procedure indicated to the Claimant that this was not in fact the case, and he considered it likely that this would mean that he would be subjected to further stress and harassment.

51. The Claimant was subsequently informed that the Respondents had suspended the Capability Procedure pending his grievance against Professor Schot, which was now being reinstated because the grievance procedure had concluded. Neither the University nor Professor Schot had communicated to the Claimant to explain that the procedure had been postponed pending the grievance. The resumption of a capability procedure

more than two years after it was suspended is not permitted within the University's Capability Procedure policy which stipulates that one full academic year would be the maximum period appropriate.

52. Further, the Claimant claims that the timing of the resumption of the capability procedure (6 months after the outcome of his grievance, 6 weeks after the Claimant had answered questions about the allegation of race discrimination against Professor Schot and two weeks after the completion of the stress risk assessment) shows that it was not a genuine resumption, but a re-introduction amounting to harassment and victimisation.

57. On 12 September 2017 Professor Schot sent an email to members of the SPRU in which he stated that Professor Joanna Chataway would take responsibility for a number of his existing functions. This email stated that Professor Chataway would take responsibility for the HR issues and internal organisation. Following this email, the Claimant queried whether this meant that Professor Chataway would take over control of his Capability Procedure. Professor Schot informed the Claimant that despite relinquishing responsibility for HR issues in general, he was personally retaining control of the Claimant's procedure.

- g. The continued line management of the Claimant by the Second Respondent, notwithstanding a recommendation made by Hans van den Hejden following a risk assessment on 11th July 2017 which recommended that the Claimant's management should be delegated to other individuals, as described at paragraphs 49, 50 and 57 of the Particulars of Claim:

49. During this assessment, the Claimant explained that the conduct of Professor Schot was a major risk factor in his stress levels. This was reflected in the report that was agreed by HR and Hans van den Hejden which stated that day-to-day matters were delegated to Dr Puay Tang and management of the Claimant should be overseen by the Head of School, Steven Maguire, and not Professor Schot

50. On 25 July 2017 the Claimant received a letter from Professor Schot stating that the Capability Procedure initiated in December 2014 was to be resumed. This correspondence came as a complete surprise to the Claimant. It caused him significant distress because he had come to believe that the change in his line management duties had taken him outside of the managerial orbit of Professor Schot. The re-instatement of the capability procedure indicated to the Claimant that this was not in fact the case, and he considered it likely that this would mean that he would be subjected to further stress and harassment.

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- h. The Respondents' decision to invoke the Sickness Absence and Medical Incapacity Procedure between 25th October 2017 and 1st November 2017, as described at paragraphs 58-63 of the Particulars of Claim:**

58. On 25 October 2017, the Claimant met with Professor Schot to discuss the 31 August 2017 OH Report. Graham Curry (HR) and Chris Chatwin (Sussex UCU President) were also in attendance. This meeting constituted a discussion about reasonable adjustments. The Claimant was asked to give a view on the success of pre-recorded lectures and using a computer programme to type up speech. At no point during this meeting, was it explained to the Claimant that Respondents intended to invoke the University's Sickness Absence and Medical Incapacity Procedure. Accordingly, nor was it explained that a consequence of this procedure could be termination of employment.

59. On 1 November 2017, the Claimant received a letter from the Respondents informing him that the Respondents had taken the decision to invoke the Sickness Absence and Medical Incapacity Procedure. This letter informed him that as a result of the meeting on 25 October 2017 Professor Schot had taken the decision that the Claimant could no longer perform his role as a Senior Lecturer on the basis that his reasonable adjustments would be removed from hereon.

60. As set out above, at no point prior to this letter had the Claimant been informed that there was any concern or problem about the effect that his reasonable adjustments were having on his ability to perform his role.

61. The 1 November 2017 letter also informed the Claimant that a further meeting would be arranged to discuss whether the Claimant's prognosis was likely to change, despite the fact that there had been no change for over six years. Under the relevant policy, his case would proceed to a Panel hearing to determine his future employment at the University if there was no improvement in his prognosis.

62. No reason was given as to why the adjustments to his role to allow him to undertake other duties rather than conduct lectures and seminars which had been in place for approximately six years were no longer reasonable.

63. The Claimant claims that this management decision constitutes disability discrimination, harassment and victimisation by Professor Schot and the University. The Claimant claims that this correspondence reveals the historic motive of Professor Schot to harass the Claimant out of his employment because he was not undertaking lectures and seminars, i.e. because of his reasonable adjustments.

- i. The Respondents' decision effective from 1st November 2017, and subsequently confirmed on 15th December 2017, to withdraw the Claimant's reasonable adjustments, as described at paragraphs 58-70 of the Particulars of Claim:

58. On 25 October 2017, the Claimant met with Professor Schot to discuss the 31 August 2017 OH Report. Graham Curry (HR) and Chris Chatwin (Sussex UCU President) were also in attendance. This meeting constituted a discussion about reasonable adjustments. The Claimant was asked to give a view on the success of pre-recorded lectures and using a computer programme to type up speech. At no point during this meeting, was it explained to the Claimant that Respondents intended to invoke the University's Sickness Absence and Medical Incapacity Procedure. Accordingly, nor was it explained that a consequence of this procedure could be termination of employment.

59. On 1 November 2017, the Claimant received a letter from the Respondents informing him that the Respondents had taken the decision to invoke the Sickness Absence and Medical Incapacity Procedure. This letter informed him that as a result of the meeting on 25 October 2017 Professor Schot had taken the decision that the Claimant could no longer perform his role as a Senior Lecturer on the basis that his reasonable adjustments would be removed from hereon.

60. As set out above, at no point prior to this letter had the Claimant been informed that there was any concern or problem about the effect that his reasonable adjustments were having on his ability to perform his role.

61. The 1 November 2017 letter also informed the Claimant that a further meeting would be arranged to discuss whether the Claimant's prognosis was likely to change, despite the fact that there had been no change for over six years. Under the relevant

policy, his case would proceed to a Panel hearing to determine his future employment at the University if there was no improvement in his prognosis.

62. No reason was given as to why the adjustments to his role to allow him to undertake other duties rather than conduct lectures and seminars which had been in place for approximately six years were no longer reasonable.

63. The Claimant claims that this management decision constitutes disability discrimination, harassment and victimisation by Professor Schot and the University. The Claimant claims that this correspondence reveals the historic motive of Professor Schot to harass the Claimant out of his employment because he was not undertaking lectures and seminars, i.e. because of his reasonable adjustments.

64. Following receipt of the 1 November 2017 letter, the Claimant was concerned that the treatment he was receiving was unlawful and discriminatory. Accordingly the Claimant sought legal advice. The Claimant's legal representative wrote to the University by letter dated 28 November 2017 inviting it to reconsider the decision to remove his reasonable adjustments. This correspondence outlined that the Claimant's adjustments had been in place for a considerable period of time, and no reason had been provided why it was reasonable or necessary for the Medical Incapacity Procedure to be invoked at this point. This correspondence outlined the Claimant's position that the only conclusion he could draw from the absence of any cogent reason is that the withdrawal of his reasonable adjustments was a further incident of harassment.

65. On 8 December 2017 the Claimant had a meeting under the Sickness Absence and Medical Capability Procedure with Professor Schot. Graham Curry (HR) and Chris Chatwin (UCU) were also in attendance. During this meeting, the Claimant outlined the points raised in the letter of 28 November 2017. He restated that this process was inappropriate given that he had been working under reasonable adjustments since 2011 and no information had been provided as to why these were deemed no longer reasonable. The Claimant explained that he had been provided adjusted duties from Professor Schot as recently as August 2017. He further outlined that Professor McGuire, Professor Schot's line manager, had recommended that he continue on his amended duties going forward. In response to this, Professor Schot stated that the Claimant's grievance failed.

66. The Claimant asked why the Medical Incapacity process was being invoked now, so long after the University first

acknowledged that his condition was unlikely to improve. Neither Professor Schot nor Graham Curry provided a substantive reason for this. Accordingly, the Claimant expressed his concern that the initiation of this process was harassment relating to disability. This was a protected act.

67. This meeting then proceeded to discuss redeployment. The Claimant stated that it was not appropriate to consider redeployment because his amended duties for the 2017/2018 academic year had been agreed in August 2017, and in any event he was working under long-term reasonable adjustments. The Respondents indicated that redeployment was nevertheless being pursued.

68. The Respondents' position was confirmed in correspondence from Graham Curry (HR) to UCU Regional Officer, Michael Moran, dated 14 December 2017 which stated that the matter of the Claimant's incapacity had proceeded past the informal stage and would proceed to a panel to determine his future employment in line with the Sickness Absence and Medical Incapacity policy.

69. Subsequently, the Claimant received a letter from the Respondents dated 12 December 2017 in response to the letter from his legal representative which had been received on 14 December 2017. This letter stated that no decision had been made whether his claim would proceed to a panel determination. Later the same day, the Claimant received separate notice that the matter would in fact proceed to a panel determination.

70. This letter requested that the Claimant engage with the Medical Incapacity Procedure in a constructive way to ensure that all options can be fully considered. On 15 December 2017 the Claimant received a further letter from Graham Curry (HR) dated 14 December 2017. This letter restated the Respondents' decision that the Claimant's reasonable adjustments would be withdrawn. Despite the fact that the prognosis of the Claimant's condition had changed little since 2011, the Respondent presented the fact that Claimant's condition was showing little sign of improvement as a new prognosis. The letter stated that the Claimant could not fulfil the duties of a Senior Lecturer. This ignored the adjustments that were made to the Claimant's role in 2011. The letter failed to explain why this had been reasonable for the previous six years, but was now no longer reasonable.

- j. The Respondents' decision to move the Claimant to the panel stage of the Sickness Absence and Medical Incapacity Procedure, as per its letters of 14th and 15th December 2017, as described at paragraphs 68-70 of the Particulars of Claim:

68. The Respondents' position was confirmed in correspondence from Graham Curry (HR) to UCU Regional Officer, Michael Moran, dated 14 December 2017 which stated that the matter of the Claimant's incapacity had proceeded past the informal stage and would proceed to a panel to determine his future employment in line with the Sickness Absence and Medical Incapacity policy.

69. Subsequently, the Claimant received a letter from the Respondents dated 12 December 2017 in response to the letter from his legal representative which had been received on 14 December 2017. This letter stated that no decision had been made whether his claim would proceed to a panel determination. Later the same day, the Claimant received separate notice that the matter would in fact proceed to a panel determination.

70. This letter requested that the Claimant engage with the Medical Incapacity Procedure in a constructive way to ensure that all options can be fully considered. On 15 December 2017 the Claimant received a further letter from Graham Curry (HR) dated 14 December 2017. This letter restated the Respondents' decision that the Claimant's reasonable adjustments would be withdrawn. Despite the fact that the prognosis of the Claimant's condition had changed little since 2011, the Respondent presented the fact that Claimant's condition was showing little sign of improvement as a new prognosis. The letter stated that the Claimant could not fulfil the duties of a Senior Lecturer. This ignored the adjustments that were made to the Claimant's role in 2011. The letter failed to explain why this had been reasonable for the previous six years, but was now no longer reasonable.

- k. The Respondents' decision to move the Claimant to Stage 2 of the Capability Procedure on 20th December 2017, as described at paragraphs 71-72 of the Particulars of Claim:

71. On 20 December 2017 the Claimant received a further letter from Graham Curry (HR) inviting him to a meeting as part of stage 2 of the Capability Procedure. This letter referred to a letter dated 15 November 2017 from Professor Schot outlining the outcome of Stage 1 of the Capability Procedure. The Claimant did not receive this letter.

72. The 20 December letter invited the Claimant to a Stage 2 Capability Meeting which would again be chaired by Professor Schot. This is despite the Claimant's challenge to the process and the suitability of Professor Schot as the decision maker. The Claimant considers this ongoing harassment and discrimination

designed to remove him from the University because of his disability.

- i. The Respondents' decision not to uphold any aspect of the Claimant's appeal against the decision to invoke Stage 2 of the Capability Procedure as particularised at paragraphs 72.1-72.7 of the particulars of claim:

72.1. On 21 December 2017, the Claimant emailed Graham Curry (HR) confirming that he had not received the letter of 17 November 2017 from Professor Schot.

72.2. On 13 February 2018 the Claimant received a letter from Graham Curry inviting him to a meeting on 26 February 2018 with Professor Schot as part of Stage 2 of the Capability Procedure.

72.3. On 21 February the Respondent received the Claimant's Employment Tribunal claim.

72.4. On 9 March 2018 the Claimant received a further letter from Graham Curry acknowledging the letter 17 November 2017 was not received and invited the Claimant to appeal the decision to move to Stage 2 of the Capability process by 22 March 2018.

72.5. On 19 March 2018 the Claimant appealed Professor Schot's decision to proceed to Stage 2 of the Capability Procedure, providing substantive grounds. The Claimant outlined inter alia that it was not clear to him that he was still subjected to the Capability Procedure; that it was not appropriate for Professor Schot to have conduct of process in light of the Stress Risk Assessment and his grievance; that he was fulfilling the requirements of the Capability Procedure; and that the requirements should have been updated and at least restarted with new frame of reference given the time that had passed. The Claimant's appeal was conducted by Professor Bridgeman.

72.6. On 16 May 2018, the Claimant received the outcome of the investigation into his appeal from Graham Curry (HR). Professor Bridgeman did not find in the Claimant's favour in respect of any of his grounds of appeal. The outcome stated that her targets would be discussed at a Stage 2 meeting, and notified the Claimant of potential termination of employment.

72.7. The Claimant considers that the decision not to uphold the Claimant's appeal and the consequent decision to proceed with Stage 2 of the Capability Procedure are further incidents of harassment, discrimination and victimisation for raising a complaint under the Equality Act 2010.

- m. The Respondents' decision not to promote the Claimant to Professor and the subsequent feedback provided as particularised at paragraphs 72.8-72.12 of the particulars of claim:

72.8. The Claimant applied for a promotion to Professor on 19 February 2018.

72.9. On 19 April 2018, the Claimant was invited to a promotions feedback meeting with Professor Steve McGuire, Head of School. At the meeting on 25 April 2018, the Claimant received verbal feedback on his application from Professor McGuire. The Claimant was told that his application was unsuccessful, although he did not receive a formal written decision which should have been provided. Professor McGuire also read out a brief statement provided by the panel as to why his application was unsuccessful, which included statements to the effect that his publications were not strong, the quality of his outputs were limited, his application was not strong, there was no track record of high quality outputs and that the decision of the panel was unanimous. The Claimant was taken aback by the ill-informed, dismissive and insulting nature of the panel's judgement, which he considered to be unbecoming and unProfessoressional conduct of a university.

72.10. On 26 April 2018, the Claimant sent an email to Deputy Vice-Chancellor Professor Saul Becker outlining issues with the process and outcome that he considered were of serious concern. The Claimant is yet to receive a substantive response to this email.

72.11. The Claimant did not seek to appeal the decision not to grant him a promotion because Professor McGuire informed him that his appeal would be considered by Professor Becker, the Deputy Vice-Chancellor and, if he believes that a case has not been properly considered, it will revert back to the promotions committee for further consideration. The Claimant considered that this process is unsatisfactory as the promotions panel is unlikely to reverse its decision. He asked instead for his application to be considered by an independent panel outside of the University with expertise in his fields in order to demonstrate objectivity and impartiality.

72.12. The Claimant considers that the rejection of his application, and the unProfessoressional and unfair feedback provided, stems from his pursuing this claim against the Respondent and Professor Schot, and arising out of the negative image of him that has been created. The Claimant claims that the circumstances surrounding the rejection of his application for a promotion is a further incident of harassment, discrimination and victimisation

indicative of the University's intention to remove the Claimant from the University because of his disability.

Harassment (section 26)

4. Did the Respondent engage in unwanted conduct? The Claimant relies on the same conduct as stated at paragraph 3(a) – (m) above.
5. Was the unwanted conduct related to the Claimant's protected characteristic?
6. Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Victimisation (section 27)

7. Did the Claimant do a protected act? The Claimant contends that the following acts are protected acts:
 - g. In a meeting on 16th January 2014 the Claimant explained to the Second Respondent the nature and impact of his medical condition and outlined the reasonable adjustments he had in place to accommodate this, as described at paragraph 19 of the Particulars of Claim ('PA1'):

19. In January 2014, Professor Schot was appointed as the Director of SPRU (Head of Department) and became the Claimant's direct line manager. On 16 January 2014, the Claimant had his first meeting with Professor Schot. During this meeting the Claimant outlined his medical history and explained the adjustments to his role. In particular the Claimant explained that he suffers from the disability outlined above and outlined the impact that this has on his ability to speak for extended periods of time.

- h. In a grievance raised in July 2015, the Claimant outlined potential discriminatory treatment by the Second Respondent, which he then reiterated and developed during an investigatory meeting, as described at paragraphs 36-37 of the Particulars of Claim ('PA2'):

36. In February and March 2015, the Claimant drafted a letter of complaint against Professor Schot and his conduct. In April 2015, this was provided to the Respondents by the Claimant's legal advisers at the time. Having received no response to this letter, the Claimant ultimately submitted this as a grievance in July 2015. In this grievance document the Claimant outlined his disability and how this affected his duties. He also expressed concern at the capability process instigated by Professor Schot and that requirements placed on him under this process may be discriminatory. The grievance was therefore a protected act.

37. This grievance was investigated by Professor Steve McGuire, Head of School. The grievance outcome was provided in January 2017 some 19 months after the grievance was originally lodged in July 2015 and 16 months after the Claimant was formally interviewed about it by the Head of School.

- i. In June 2017 the Claimant was invited to a meeting with Professor McGuire where he provided information regarding an allegation of race discrimination made by one of the Claimant's colleagues against the Second Respondent, as described at paragraph 46 of the Particulars of Claim ('PA3'):

46. At a departmental Equality and Diversity meeting on 13th June 2017, a colleague of the Claimant reiterated an allegation he had made in April 2017 of institutional racism within SPRU. As Director of SPRU, Professor Schot was implicated in this very serious charge. As a witness to this event, the Claimant was invited to a meeting with Professor McGuire to discuss the allegation. The Claimant was also questioned on what he knew in relation to the underlying allegation. In providing this information, the Claimant was undertaking a protected act. In August 2017, the Claimant's colleague invoked a grievance against Professor Schot on the grounds of racial discrimination and harassment. The Claimant was interviewed as a witness by the investigator, Professor Susan Millns on 16th November 2017, also a protected act.

- j. During a stress risk assessment on 11th July 2017, the Claimant outlined the concerns he held about the harassing conduct of the Second Respondent and the effect it was having on him, as described at paragraph 49 of the Particulars of Claim ('PA4'):

49. During this assessment, the Claimant explained that the conduct of Professor Schot was a major risk factor in his stress levels. This was reflected in the report that was agreed by HR and Hans van den Heijden which stated that day-to-day matters were delegated to Dr Puay Tang and management of the Claimant should be overseen by the Head of School, Steven Maguire, and not Professor Schot.

- k. On 16th November 2017 the Claimant gave evidence as a witness to Professor Milns, who was investigating the allegations of race discrimination made one of the Claimant's colleagues, as described at paragraph 46 of the Particulars of Claim ('PA5'):

46. At a departmental Equality and Diversity meeting on 13th June 2017, a colleague of the Claimant reiterated an allegation he had made in April 2017 of institutional racism within SPRU. As Director of SPRU, Professor Schot was implicated in this very serious charge. As a witness to this event, the Claimant was invited to a meeting with Professor McGuire to discuss the allegation. The Claimant was also questioned on what he knew in relation to the underlying allegation.

In providing this information, the Claimant was undertaking a protected act. In August 2017, the Claimant's colleague invoked a grievance against Professor Schot on the grounds of racial discrimination and harassment. The Claimant was interviewed as a witness by the investigator, Professor Susan Millns on 16th November 2017, also a protected act.

- I. On 8th December 2017 the Claimant informed the Respondents that he considered that the invocation of the Sickness Absence and Medical Capability Procedure in October 2017 was an act of harassment, as described at paragraphs 65-66 of the Particulars of Claim ('PA6'):

65.On 8 December 2017 the Claimant had a meeting under the Sickness Absence and Medical Capability Procedure with Professor Schot. Graham Curry (HR) and Chris Chatwin (UCU) were also in attendance. During this meeting, the Claimant outlined the points raised in the letter of 28 November 2017. He restated that this process was inappropriate given that he had been working under reasonable adjustments since 2011 and no information had been provided as to why these were deemed no longer reasonable. The Claimant explained that he had been provided adjusted duties from Professor Schot as recently as August 2017. He further outlined that Professor McGuire, Professor Schot's line manager, had recommended that he continue on his amended duties going forward. In response to this, Professor Schot stated that the Claimant's grievance failed.

66.The Claimant asked why the Medical Incapacity process was being invoked now, so long after the University first acknowledged that his condition was unlikely to improve. Neither Professor Schot nor Graham Curry provided a substantive reason for this. Accordingly, the Claimant expressed his concern that the initiation of this process was harassment relating to disability. This was a protected act.

8. Alternatively, did the Respondent believe that the Claimant had done a protected act, or that he may do a protected act?
9. Was the Claimant subjected to a detriment because of the protected acts? The detriments relied on are as stated at paragraph 3(a) – (m) above.

Failure to comply with the duty to make reasonable adjustments (sections 20(3) and 21)

10. Did the Respondents apply a provision, criterion or practice ('PCP')? The Claimant contends that the Respondents' failure to permit the Claimant to continue working with the adjustments which had been in place for a number of years, as described at paragraphs 61-64 and 70 of the Particulars of Claim,

amounts to a PCP. The Claimant further relies on the paragraph 2 of the Further and Better Particulars of Claim as to the PCPs (p. 62 of the bundle):

61. The 1 November 2017 letter also informed the Claimant that a further meeting would be arranged to discuss whether the Claimant's prognosis was likely to change, despite the fact that there had been no change for over six years. Under the relevant policy, his case would proceed to a Panel hearing to determine his future employment at the University if there was no improvement in his prognosis.

62. No reason was given as to why the adjustments to his role to allow him to undertake other duties rather than conduct lectures and seminars which had been in place for approximately six years were no longer reasonable.

63. The Claimant claims that this management decision constitutes disability discrimination, harassment and victimisation by Professor Schot and the University. The Claimant claims that this correspondence reveals the historic motive of Professor Schot to harass the Claimant out of his employment because he was not undertaking lectures and seminars, i.e. because of his reasonable adjustments.

64. Following receipt of the 1 November 2017 letter, the Claimant was concerned that the treatment he was receiving was unlawful and discriminatory. Accordingly the Claimant sought legal advice. The Claimant's legal representative wrote to the University by letter dated 28 November 2017 inviting it to reconsider the decision to remove his reasonable adjustments. This correspondence outlined that the Claimant's adjustments had been in place for a considerable period of time, and no reason had been provided why it was reasonable or necessary for the Medical Incapacity Procedure to be invoked at this point. This correspondence outlined the Claimant's position that the only conclusion he could draw from the absence of any cogent reason is that the withdrawal of his reasonable adjustments was a further incident of harassment.

70. This letter requested that the Claimant engage with the Medical Incapacity Procedure in a constructive way to ensure that all options can be fully considered. On 15 December 2017 the Claimant received a further letter from Graham Curry (HR) dated 14 December 2017. This letter restated the Respondents' decision that the Claimant's reasonable adjustments would be withdrawn. Despite the fact that the prognosis of the Claimant's condition had changed little since 2011, the Respondent presented the fact that Claimant's condition was showing little sign of improvement as a new prognosis. The letter stated that the Claimant could not fulfil the duties of a Senior Lecturer. This ignored the adjustments that were made to the Claimant's role in 2011. The letter failed to explain why this had been reasonable for the previous six years, but was now no longer reasonable.

2. The Claimant seeks to rely on the following PCPs:

2.1. The Respondents' failure to permit the Claimant to continue working with the adjustments which had been in place for a number of years.

2.2. The requirement to undertake a proportion of teaching activity which is comprised of orally delivered teaching in lecturers or seminars.

2.3. The requirement to undertake lecturing and seminars through orally delivered teaching.

2.4. The Respondents' failure to permit the Claimant from continuing to substitute orally delivered teaching through lectures and seminars with alternative duties of his role.

11. Was the Claimant put to a substantial disadvantage in comparison with persons who are not disabled? The Claimant contends that the adjustments which had been in place were essential, and their unilateral removal without any, or any justifiable, reason or any effective consultation put him to a substantial disadvantage.

12. What steps could the Respondent have taken to avoid the disadvantage? The Claimant contends that the Respondents should have continued to apply the previously implemented adjustments.

Indirect Discrimination (section 19)

13. Did the Respondents apply, or would it have applied, a PCP to persons with whom the Claimant does not share his protected characteristic? The Claimant relies on the paragraph 2 of the Further and Better Particulars of Claim as to the PCPs (p. 62 of the bundle):

2. The Claimant seeks to rely on the following PCPs:

2.1. The Respondents' failure to permit the Claimant to continue working with the adjustments which had been in place for a number of years.

2.2. The requirement to undertake a proportion of teaching activity which is comprised of orally delivered teaching in lecturers or seminars.

2.3. The requirement to undertake lecturing and seminars through orally delivered teaching.

2.4. The Respondents' failure to permit the Claimant from continuing to substitute orally delivered teaching through lectures and seminars with alternative duties of his role.

14. Did the PCP put, or would it have put, persons with whom the Claimant shares his protected characteristic at a particular disadvantage when compared with persons who do not share it?
15. Did the PCP put, or would it have put, the Claimant to the particular disadvantage?
16. Can the Respondents show that the PCP was a proportionate means to achieving a legitimate aim?

Discrimination arising from disability (section 15)

17. Was the Claimant treated unfavourably? The Claimant relies on the matters stated at paragraph 3(a) – (m) as acts of unfavourable treatment.
18. Was the unfavourable treatment because of something arising in consequence of the Claimant's disability? The Claimant contends that the difficulties he experiences in delivering seminars and lectures are something arising in consequence of his disability.
19. Can the Respondents show that the treatment of the Claimant was a proportionate means to achieving a legitimate aim?

Jurisdiction (section 123)

20. Were the Claimant's claims made within 3 months starting with the date of the act to which the complaint relates (taking into account early conciliation)?
21. Do the Claimant's claims give rise to a course of conduct extending over a period?
22. If any of the claims are prima facie out of time, should time be extended because doing so is just and equitable?

Remedy

23. Should the Tribunal do any of the following:
 - a. Make a declaration of unlawful disability discrimination?
 - b. Make recommendations?
 - c. Award compensation?

APPENDIX 2

AGREED CHRONOLOGY

Date	Event	Page
1/9/2004	Claimant's employment as a senior lecturer in the Science Policy Research Unit (SPRU) begins.	15; 67; 68a
12/9/2005	Memorandum of understanding.	69
14/6/2007	OH report.	80
11/7/2007	Grievance outcome.	69a
18/7/2007	Grievance appeal outcome.	69c
23/08/2007	OH report.	82
21/9/2007	OH report.	84
17/10/2007	OH report	86
2008	Claimant first starts to notice symptoms of (yet to be diagnosed) Sjogren's Syndrome.	
2008, Spring Term	Claimant informs R1 of the effect of his condition (in lieu of formal diagnosis)	16-17
24/9/2008	OH advice.	90
26/11/2008	OH advice.	91
30/11/2008	Letter from Professor Meyer regarding temporarily adjusted duties.	92
10/12/2008	OH report.	93
2009	Claimant's Sjogren's Syndrome is diagnosed.	
3/2/2009	OH report.	95
17/2/2009	OH report.	97
13/3/2009	Letter from Professor Meyer regarding adjusted duties for remainder of 2008/9 academic year.	98

30/3/2009	Request by Professor MacKerron for information regarding research from Claimant.	100
10/6/2009	OH report.	101
22/6/2009	HR letter to Claimant, following meeting to discuss plans for 2009/10 academic year.	103
22/6/2009	Professor MacKerron letter to Claimant regarding plans for 2009/10 year.	106
29/7/2009	OH report.	109
14/09/2009	Emails between Claimant and Professor MacKerron regarding plans for 2009/10 academic year.	110
?	Professor Strange teaching plan for Claimant.	110a
27/1/2010	OH report.	111
9/3/2010	OH report, confirming diagnosis of auto-immune condition.	113
10/6/2010	Letter from Professor Davison confirming that it is accepted that Claimant cannot carry out lectures or seminars, and referencing exploring use of technology.	115
8/10/2010	OH report.	116
19/10/2010	Claimant's personal research plan.	118
2/11/2010	OH report.	126
30/11/2010	Meeting notes relating to adjustments and 2010/11 academic year plan.	128
16/12/2010	OH report.	130
31/1/2011	Summary letter from HR stating that the University accepted that the Claimant's condition was long-term, with little prospect of improvement, and setting out agreed long-term reasonable adjustments to his role of Senior Lecturer, namely the pre-recording of lectures and delivery of seminars provided the Claimant drank frequently and did not talk for prolonged periods of time	132
8/6/2011	OH report.	134
June-Aug	Alleged discussion takes place between the Claimant and	18; C w/s para

2011	Professor Meyer (Dept Head of School) about changes to the Claimant's reasonable adjustments. Requirement to pre-record lectures and seminars was allegedly removed by agreement because of the difficulties the Claimant was experiencing delivering his teaching. The Claimant was allegedly allocated a higher proportion of MSc dissertation supervision, additional marking and administration duties.	21-22
18/1/2012	Claimant's personal research plan.	136
9/11/2012	Emails between Claimant and Professor Meyer.	143a
January 2014	Professor Schot becomes Director of SPRU and the Claimant's line manager.	16; 19
16/1/2014	Meeting between Claimant and Professor Schot. Email between Claimant and Professor Schot.	143b
28/1/2014	Email between Claimant, Professor Schot and Dr Tang regarding teaching.	144
February-March 2014	Email discussion between Claimant and Professor Schot regarding a book outline.	147-150
14/4/2014	SPRU Strategy 2014-18.	150a
March-April 2014	Email discussion between Claimant and Professor Schot regarding book outline and SPRU.	151-156
May 2014	Further email discussion between Claimant and Professor Schot. Claimant's personal research plan.	157-159 160-163
13/5/2014	Claimant request a transfer to another school. This is not supported by Professor Schot.	19
July 2014	SPRU values and expectations document drafted by Professor Schot & Andy Sterling.	164a
July-September 2014	Email discussion between Claimant and Professor Schot regarding book outline.	164c-e
12/9/2014	Appraisal meeting. Professor Schot allegedly tells the Claimant that he intends to invoke the Capability Procedure.	19; 165
14/10/2014	Claimant emails Professor Schot to inform him that he intends to apply for a promotion to a Chair position.	171a-171c; 172-191

26/11/2014	Meeting between Claimant and Professor Schot. Claimant allegedly informed of the invocation of the Capability Procedure. Claimant asks Professor Schot about his Chair application. Professor Schot confirms that he will not be endorsing it.	20; 193a
2/12/2014	Professor Schot writes to the Claimant inviting him to a stage 1 capability meeting.	193
5/12/2014	Claimant email to Professor Schot regarding his promotion application.	196
19/1/2015	Emails between Professor Schot and Professor van der Heijden about Claimant's promotion application. Professor van der Heijden's outcome regarding the promotion applications.	198 202
27/1/2015	Capability meeting.	204
Spring Term 2015	Claimant undertakes seminars, but this was not taken further due to difficulties experienced.	18; 21; 233
9/2/2015	Letter from Professor Schot to C setting out performance targets arising from 27/1/2015 meeting.	207
20/2/2015	Medical letter from Claimant's consultant rheumatologist to OH concerning C's reported difficulties with teaching.	208
3/3/2015	Promotion outcome letter.	211
11/3/2015	Emails between Claimant and Jo Lees (HR) regarding transfer to a different school.	212
7/4/2015	Claimant sends letter to R1 outlining complaints (at this stage not as a formal grievance).	213-217
13/5/2015	Emails between Professor McGuire, Professor Schot and Claimant about increasing his teaching workload for the next academic year.	218-221
June 2015	Emails between Claimant, Professor Schot and Dr Tang concerning increase to Claimant's teaching and supervision workload for the next academic year.	230
30/6/2015	OH referral by Professor Schot.	233a
01/7/2015	Emails between Claimant and Professor Schot about OH referral and workload.	236-238

July 2015	Claimant's personal research plan.	239
	Appraisal document	246
	Claimant submits a grievance. Professor McGuire appointed to investigate.	22; 252
11/8/2015	SPRU research strategic action plan.	250
12/9/2015 – 11/12/2015	Claimant signed off as unfit to work due to stress.	252a; 253
14/9/2015	Claimant email to Professor McGuire.	255
16/9/2015	Letter inviting Claimant to a grievance investigation meeting.	256
17/9/2015	Letter inviting Professor Schot to grievance investigation meeting.	260
23/9/2015	Letter inviting Professor Schot to grievance investigation meeting.	263
24/9/2015	Emails between Professor Chatwin and Jo Lees regarding capability procedure postponement; not dropped.	258
	Grievance investigation meeting attended by Claimant.	264
28/9/2015	Email from Jo Lees to Professor Schot about postponement of the capability procedure.	268
21/10/2015	Grievance investigation meeting attended by Professor Schot.	272-281
01/12/2015	Feedback on grant application.	290
3/12/2015	OH report.	293; 299
15/12/2015	Emails between Professor Schot and HR.	295-298
March 2016	Emails between Professor Schot and HR.	299a-b
2/3/2016	Email from Claimant to Professor McGuire about progress of his grievance.	300
15/3/2016	Meeting between Professor Schot, Jo Lees, Claimant and Professor Chatwin	302 322
23/3/2016	Email from Jo Lees to Claimant regarding Dec 2015 OH report.	303
8/4/2016	Email between HR to Professor Schot regarding grievance investigation.	304
24/6/2016	Email between Professor McGuire, Marion Clarke and Claimant	308-313

	about Claimant's workload allocation for 2016/17.	
4/8/2016	Claimant notification of accreditation as a UCU representative.	314
11/8/2016	Appraisal review document.	315
15/9/2016	Emails between Professor Schot and HR.	321
? 2016	Claimant personal research plan.	325
? 2017	SPRU leadership group 2017/18 document.	343
31/1/2017	Grievance outcome.	334-342
29/5/2017	Emails between Professor Schot and Michael Hopkins, Director of Research and Knowledge Exchange.	348-351
13/6/2017	SPRU Equality and Diversity meeting in which an employee raises an allegation of institutional racism.	347a
	Post-meeting emails.	347c-e
? 2017	Claimant interviewed by Professor McGuire about the race discrimination allegation.	23; C w/s para 50
11/7/17	Stress risk assessment carried out by Professor Hans van der Heijden, following Professor McGuire's grievance recommendations from 31/1/17.	24 366-368
17/7/2017	Appraisal review document.	352
	Personal research plan.	358
21/7/2017	OH referral.	371-374
25/7/17	Professor Schot writes to the Claimant to inform that he is resuming the capability management process which had first been instigated in late 2014/early 2015.	370
August 2017	Formal grievance raised against Professor Schot in relation to the race discrimination allegation. Professor Milins appointed to investigate.	
8/8/2017	Emails between Claimant and Jenny Lieu.	375-381
16/8/2017	Email from Professor Schot to the Claimant regarding his working hours for the 2017/18 academic year.	382
31/8/2017	OH report.	282

11/9/2017	Capability meeting. Email between Professor Schot and Jo Lees.	388 390a
18/9/2017	Claimant workload overview.	395-6
6/10/2017	Capability letter informing Claimant that matters would progress to Stage 2, issuing a written warning and providing right of appeal Claimant invited to a Sickness Absence and Medical Incapacity meeting. Emails regarding Professor Schot retaining control of the procedure as opposed to Professor Chataway.	397 400 404-408
October 2017	Emails between Claimant, Professor Schot, Professor McGuire and Stuart McLennan.	409-422
25/10/2017	Email from Hans van der Heijden to Professor Schot.	423
25/10/2017	Meeting under Sickness Absence and Medical Incapacity Procedure.	424
30/10/2017	Medical letter.	427
1/11/2017	Letter summarising meeting of 25/10/2017 which indicates that Sickness Absence and Medical Incapacity Procedure will be pursued further.	430
15/11/2017	Letter to Claimant regarding Stage 2 of Capability Procedure.	433
16/11/17	Claimant is interviewed by Professor Milins in respect of the race discrimination grievance raised against Professor Schot.	436-443
15/11/2017	Professor Schot's Stage 1 capability management procedure outcome letter, concluding that the Claimant would be moved to Stage 2 (C alleges that he did not receive this).	28
28/11/17	Claimant's solicitor letter to R1.	445
2/12/2017	Claimant contacts ACAS.	1
07/12/2017	Interim response to Claimant's solicitor letter	
08/12/2017	Meeting under the Sickness Absence and Medical Incapacity Procedure.	449
12/12/2017	Response to Claimant's solicitor letter.	453

14/12/2017	Letter from Graham Curry (HR) to Claimant following 7/12/2017 meeting.	456
19/12/2017	ACAS issues certificate.	1
20/12/2017	Letter from Graham Curry (HR) to Claimant, which referred to Capability Procedure Stage 1 outcome letter of 17/11/17, and informing him that a Stage 2 meeting is to be held.	461
21/12/2017	Email from Claimant to Graham Curry explaining that he had not received the Stage 1 outcome letter.	463
December 2017	Email discussion regarding Professor McGuire withdrawing support for grant application.	464-467
13/2/2018	Letter from Graham Currey to Claimant inviting him to a Stage 2 capability procedure meeting with Professor Schot.	485
15/2/2018	Claimant presents his ET1 (according to date stamp).	2
19/2/2018	Claimant application for promotion.	30; 468-481
20/2/2018	Claimant email to Graham Currey. Graham Currey email to Adam Tickell.	487 489
21/2/2018	Rs receive notification of the Claimant's claim.	29
24/2/2018	Grievance outcome	491
9/3/18	Graham Currey letter to the Claimant accepting that the Stage 1 capability procedure letter of 15/11/17 had not been received, and offering the Claimant a right of appeal against the decision.	497
19/3/2018	Claimant's appeal against Professor Schot's Stage 1 capability management procedure decision.	498
22/3/2018	Academic Promotions Committee meeting.	500a
13/4/2018	Letter to Claimant informing that Professor Bridgeman would handle the appeal.	501
24/4/2018	Appeal hearing attended by Claimant.	506
26/4/2018	Email following feedback meeting concerning the Claimant's recent promotion application.	30; 517
26/4/2018	Claimant email to Professor Becker (deputy vice chancellor)	30

	outlining his concerns about how his promotion application had been handled.	
11/5/2018	Academic Promotions Committee meeting.	519
15/5/2018	Professor Bridgeman appeal meeting with Professor Schot.	520a
16/5/2018	Professor Bridgeman appeal outcome.	521
3/7/2018	Stress risk assessment	527b-e; 527i-n
4/7/2018	Letter to Claimant from Professor Becker.	527h
4/9/2018	Claimant email concerning referees.	527m
October 2018	Email discussion about provision of references for Claimant's promotion application.	527nd-572nh
8/1/2019	Letter to Claimant from Professor Becker.	527nh-ni
23/1/2019	Claimant email concerning referees. Claimant email to Professor Becker concerning referees.	527nj 527r
7/2/2019	Professor Becker letter to Claimant.	527s