EMPLOYMENT TRIBUNALS

Claimant: Mr C Mansfield

Respondent: Queen Mary University of London

Heard at: East London Employment Tribunal

On: 28 July 2020, 30 July 2020, 31 July 2020, 4 August 2020, 17 August 2020, 18 August 2020 & 21 August 2020

Before: Employment Judge Russell
Members: Mr M Rowe
Ms G Forrest

Representation
Claimant: Ms G Churchhouse (Counsel)
Respondent: Ms S Tharoo (Counsel)

JUDGMENT

The Judgment of the Employment Tribunal is that:

(1) The claim of failure to make reasonable adjustments fails.

(2) The claim of discrimination arising from disability fails.

(3) The claim of harassment related to disability fails.

(4) The claim of direct disability discrimination fails.

(5) The claim of unauthorised deduction from wages succeeds.

(6) There will be a remedy hearing, with a time estimate of one-day, to determine the amount of the unauthorised deductions.

REASONS

1. By a claim form presented to the Tribunal on 26 April 2019, the Claimant brought complaints of unfair dismissal (relying on **Hogg v Dover College**), unauthorised deduction from wages and disability discrimination under sections 13, 26, 19, 15 and 20 of the Equality Act 2010. The Respondent resisted all claims but accepted that the Claimant is a disabled person by reason of anxiety and depression. In closing submissions, Ms Churchhouse on behalf of the Claimant, withdrew the unfair dismissal complaint and the indirect disability discrimination complaint. All other complaints were maintained.

2. The hearing took place by video conference facility due to the Covid-19 pandemic and the restriction on the ability to hold in-person hearings. Both parties consented to this mode of trial.

3. The Tribunal was provided with a bundle of documents extending over three lever arch files, in excess of 800 pages. Added to this were a further 233 pages referred to as the Claimant's supplementary bundle. Ms Tharoo did not take any issue as to admissibility on the few occasions when a document arose from that part of the bundle.

4. The Tribunal heard evidence from the Claimant and on his behalf from Mr Tom Jordaan (UCU Branch Appointed Health and Safety Representative). On behalf of the Respondent, the Tribunal heard evidence from Professor Kathryn Richardson (Chair of the Language Centre), Professor David Adger (Professor of Linguistics). Dr Simon Pate (Co-ordinator of Foundation Programmes, Language Centre) and Ms S Lopez-Barillas (HR Consultant).

5. The parties had produced an agreed list of issues. By the conclusion of the case, the claims to be decided were as follows:

Unauthorised Deduction from Wages

5.1 Did the Respondent make unauthorised deductions from the Claimant's wages by paying him only 0.37 of his full salary since 21 February 2019 instead of his full pay?

5.2 Are these deductions a series of deductions which are ongoing?

Harassment related to Disability

5.3 Did the alleged treatment referred to in paragraph 51 of the grounds of claim amount to unwanted conduct related to disability?

5.4 If so, did that conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for him to work in?

5.5 Taking into account the Claimant's perception and the other circumstances of the case, was it reasonable for the conduct to have that effect.

Direct Disability Discrimination

5.6 If not an act of harassment, did the Respondent subject the Claimant to the detriments set out in paragraph 51 of his grounds of claim?

5.7 If so, did the Respondent treat the Claimant less favourably than it treated or would treat others because of the Claimant's disability or is the Respondent able to show that the less favourable treatment was for a reason unconnected to disability?

5.8 The Claimant relies on a hypothetical non-disabled comparator or a comparator that does not have his disability for the purposes of Section 23 Equality Act 2010?

Discrimination Arising in Consequence of Disability

5.9 Was the Claimant subjected to the unfavourable treatment as set out in paragraphs 49a – 49f of the grounds of complaint?

5.10 If so, was the unfavourable treatment because of something arising in consequence of the Claimant's disability. In particular, did the treatment occur because of the Claimant's inability to carry out all of the duties of his role and/or his requirement for reasonable adjustments?

5.11 Is "*ensuring employees are paid appropriately for the work they are carrying out*", as pleaded at paragraph 33 of the Grounds of Resistance and/or "*ensuring that work allocated to employees does not exacerbate an existing medical condition*" as pleaded at paragraphs 36 of the Grounds of Resistance a legitimate aim?

5.12 Can the Respondent show that the treatment was a proportionate means of achieving that legitimate aim? The Claimant relies on paragraphs 48a – g in showing that the Respondent's actions were not a proportionate means of achieving a legitimate aim.

Failure to make reasonable adjustments

5.13 Did the Respondent apply a PCP or PCPs which put the Claimant at a substantial disadvantage in relation to a relevant matter compared with non-disabled persons? The Claimant considers that the Respondent applied the following PCPs:

(i) The requirement that the Claimant worked a total of 18 contact hours per week;
(ii) The requirements as to workloads. The Claimant's depression and anxiety means that there are aspects of his role he is unable to carry out because he finds them challenging and cause him considerable stress.

5.14 Did the Respondent take such steps as were reasonable to avoid that disadvantage/those disadvantages? The Claimant relies on paragraph

44a – g of his grounds of claim as the requested reasonable adjustments.

Time Limits

5.15 Were any or all of the complaints set out above presented within time, if not, is it just and equitable in the circumstances for the Tribunal to extend time?

Findings of Fact

6. The Respondent is one of approximately 30 academic institutions which form part of the University of London. It has approximately 2,800 full-time equivalent staff and operates across three sites. One site is based at Mile End in East London. It comprises a number of academic schools, one of which is 'The School of Languages, Linguistics and Film', part of that school is the Language Centre. Professor Adger was Head of School between September 2017 and September 2019.

7. Since 1 September 2012, Professor Richardson has been Chair of the Language Centre, reporting to Professor Adger. The Language Centre has been established for over 20 years and employees 36 permanent employees and 35 fixed term contract employees. The Language Centre provides a number of programmes and modules designed to ensure that students have the knowledge and skills needed to succeed in their studies both at undergraduate and postgraduate level. Some modules are credit bearing, that is that they count towards the students' degree; some are non-credit bearing, in other words they are studied as an optional extra. In addition to in-sessional courses offered during the academic year, the Language Centre offers pre-sessional courses over the summer months with the aim of enabling predominantly international students to develop their English language and academic study skills. There are foundation programmes to prepare for undergraduate courses (the international foundation year) and postgraduate Masters courses. The Language Centre also provides English language and study skills modules to courses run by other departments or faculties, such as science and engineering. The programmes are aimed at students who have just missed meeting the entry criteria to access their chosen degree programme directly. Finally, the Language Centre offers a Masters programme in English language teaching.

8. The Claimant has been employed as a Teaching Fellow by the Respondent since 27 September 2010, based at the Mile End site. His contract is a full-time professional services contract at grade 5, spinal point 35. It is an express term that the appointment may be terminated on three months' notice. The contract provides that the duties of the post will be assigned by or on behalf of the Head of the Department and a copy of the current job description was enclosed. The contract provides for an average of 18 contact hours per week, spread over the three terms and the summer programme. There is no clause in the contract or attached terms and conditions permitting pro rata payment. The summer programme refers to the pre-sessional courses offered by the Respondent and comprised approximately a third of the Claimant's duties.

9. The Claimant's case is that 18 hours per week was the maximum and not the minimum expected contact time, relying upon one answer of Professor Richardson in cross-examination which appeared to accept that most people only do 16 hours per week. The Tribunal does not accept that this was a concession by Professor Richardson

that the average across the year was 16 hours per week but, as she went on to explain, a reflection of the fact that the amount of contact teaching would vary according to semester. For example, teaching time on science and engineering foundation courses would reduce to 16 hours per week to reflect the increased marking in the first semester and then revert to 18 hours per week or more in the second semester as marking reduced. Similarly, contact hours could be negotiated to take into account the administrative requirements of a module and individual circumstances, such as for the 13 or 14 members of teaching staff with reasonable adjustments as a result of Occupational Health reports or other adjustments required for flexible working. A practical example given by Professor Richardson spontaneously in cross-examination and which the Tribunal accepted had in fact happened, is that whilst a woman with a baby could negotiate later start times to accommodate childcare and retain full salary if she continued to meet the average contact time requirement, such an employee who wanted to reduce her teaching hours would reduce to a fractional contract and not be paid in full.

10. The purpose of the job of a teaching fellow is to contribute to the delivery of high-quality teaching, assessment of student achievement, design and development of courses. There are 13 items listed under the heading of main responsibilities: four refer directly to teaching, two refer to student assessment and examination work, four are administrative tasks ancillary to teaching (course evaluation questionnaires, progress reports, dealing with course work and attendance monitoring) and the remainder are general duties such as attendance at meetings and personal development such as appraisal and continuing professional development, including "**attending as appropriate courses and seminars offered by the college in connection with professional development in teaching and research**".

11. This generic form of professional services contract applied to all teaching fellows within the department. In addition, the Respondent also employs staff on academic terms and conditions (either teaching and scholarship or teaching and research). The Tribunal accepts Professor Adger's evidence that the job descriptions for teaching fellows and lecturers were similarly generic, with neither specifying particular modules.

12. Having regard to the content of the generic job description, the Tribunal accepts Professor Adger's evidence that the focus of the job of a teaching fellow is to teach with the ancillary duties being specific to the modules being taught by that teaching fellow. They were not general, free-standing duties. Research work in the Language Centre is limited and requires a PhD and post-doctoral experience as it forms part of the excellency framework used for ranking and public funding. Only three employees in the Language Centre were employed on academic teaching and research contracts. The evidence of Professor Adger that teaching fellow is not a research role, but that appropriate research related training would be permitted as part of the roughly 10% component of professional development, is consistent both with the specialist nature of research work and the natural meaning of the professional development duties in the teaching fellow job description.

13. From 2012 onwards, the Claimant experienced increasing anxiety and mental health difficulties which required time off work. The Claimant's case is that his then line manager, Dr Sherazi, handled the situation ineffectively and he became increasingly isolated. It is not an issue for this Tribunal to decide whether or not the Claimant's stress, anxiety and depression were caused by problems of any sort at work, but it is clear that

the Claimant's health problems and perception of poor management persisted over many years prior to the period with which this case is concerned.

14. By the summer of 2015, the Claimant and Respondent were considering possible adjustments to his duties to help alleviate the Claimant's severe depression and anxiety disorder. One particular cause of anxiety for the Claimant was his teaching commitment on the summer pre-sessional courses. An Occupational Health report dated 20 July 2015 recommended that his summer workload be reviewed to see how he could be supported, taking into account the needs of both the Claimant and Respondent, and that the Claimant attend therapy.

15. A further cause of friction in the working relationship arose when the Respondent refused the Claimant's request to take annual leave for part of the summer 2015 pre-sessional teaching period. The Claimant was absent during the whole pre-sessional teaching due to sickness and did not return to work until 21 September 2015. Further Occupational Health advice was obtained and recommended a phased return to work, arranging the Claimant's teaching timetable so that he was able to attend his therapy sessions during the working week and mediation with Dr Sherazi. The latter proved inconclusive and the friction in the line management relationship continued.

16. It is clear from contemporaneous correspondence that the Claimant disagreed then, as he does now, with the Respondent's assertions that it had made attempts to support him and make adjustments to accommodate his mental health disability. In particular, the Claimant firmly believes that Dr Sherazi and the Respondent did not properly involve him in discussions about his needs and preferred support. The Respondent equally firmly believes that it did. This is a dispute to which we will return when considering the issues which subsequently arose and which are before this Tribunal.

17. Some changes were made to the Claimant's timetable but he continued to teach up to 18 hours per week during the academic year 2015/2016. Again, the Claimant requested annual leave for the period 1 July 2016 to 9 September 2016 to avoid the potential stress triggers caused by the summer pre-sessional teaching programme. The Respondent again refused the request. The Claimant was not happy with the decision but ultimately did not teach on the summer pre-sessional course due to a further period of sickness absence.

18. There was a case conference on 11 July 2016, attended by the Claimant, Mr Jordaan (his UCU Representative), an Occupational Health Physician, Dr Sherazi, Professor Richardson as Chair of the Language Centre and Ms Sam Holborn from HR. The Claimant repeated his concerns that he was not being adequately consulted. Occupational Health suggested that there should be a work/risk assessment looking at the HSE standards around demands, controls and support on the Claimant. The Claimant was asked to propose specific reasonable adjustments which he thought might help him in the workplace so that the Respondent could consider whether they could be accommodated. Based upon the contemporaneous notes of the discussion which we consider to be reliable, we find that whilst the Claimant made generic requests for support and referred to policies providing guidelines for support he did not suggest any specific step other than that notes should be taken of meetings. This is consistent with the list of suggestions submitted by the Claimant after the case conference, which again suggested that management "look carefully" at internal Codes of Practice, "explore ways

to practically and demonstrably implement the NICE guidelines", undertake a stress risk assessment, consideration of how to make more transparent and constructive meetings and communications between the Claimant and his managers and consideration of greater involvement or oversight by the Head of School in management decisions. In terms of specifics, the Claimant suggested that an observer be present in his meetings with managers, there be mediation with Dr Sherazi, Mr Tweddle and Professor Richardson and a formal meeting about his work-related health issues.

19. On 30 August 2016, Ms Holborn emailed the Claimant and proposed a meeting once a further Occupational Health report was available to talk about a stress risk assessment and role design. She suggested that Language Centre's managers meet the Claimant to discuss ways of moving forward. The Claimant returned to work on a phased basis from 26 September 2016 and his teaching timetable was arranged to accommodate his therapy sessions.

20. On 7 December 2016, Dr Sherazi sent a proposed timetable for the Claimant to consider. He responded on 8 December 2016 setting out ongoing reservations about stress associated with the organisation and design of the in-sessional teaching which, although shared by many others, should be considered as part of his risk assessment and job review. The Claimant asked that account be taken of the particular difficulties caused to him by evening classes and social classes.

21. On 9 February 2017, Ms Holborn emailed the Claimant apologising for the delay and proposing, following further discussion with Occupational Health, that they meet to discuss the stress risk assessment document and produce an agreed document and approach. Ms Holborn provided a draft assessment setting out the Respondent's view of potential risks and action taken to date. Occupational Health agreed to attend a joint meeting to discuss the risk assessment. In the meantime, Ms Holborn sent the Claimant information about Remploy and asked whether he had looked to them for support. On 10 March 2017, the Claimant confirmed his commitment to the process, thanked all involved for their patience and welcomed Occupational Health attendance at the meeting. The Tribunal finds that the risk assessment provided by Ms Holborn was not a final document, but the basis for discussion with the Claimant to find a way forward which would be mutually acceptable.

22. The joint meeting to discuss the risk assessment took place on 13 April 2017. The Claimant was accompanied by Mr Jordaan. Also present were Professor Armstrong (then Head of School), Professor Richardson, Ms Bennett-Pompei (Occupational Health) and Ms Holborn. Dr Sherazi gave apologies for non-attendance. The Claimant expressed concern that the Respondent had drafted the risk assessment without including him. Professor Armstrong and Ms Holborn explained that the document was simply a draft being circulated for consideration and amendment after discussion. The Tribunal find that the Claimant did not engage constructively in discussion about the draft risk assessment, choosing instead to focus on criticisms of the draft and his general perception that he was not being properly consulted. The meeting was largely overtaken by discussion about problems in the Claimant's working relationships with colleagues and managers, whether or not mediation was an appropriate way forward and his general criticism of the Respondent. From the minutes taken, the Tribunal find that as a result there was little detailed discussion of the contents of the draft risk assessment beyond a reference to having a further meeting to discuss reasonable adjustments and the risk assessment once Occupational Health had considered its suitability.

23. Following the meeting, the Claimant completed and returned his own draft stress risk assessment which identified his view of levels of risk and their causes. He expressed his view that insufficient action had been taken to address his concerns. The Tribunal find that it is clear from the document that a significant cause of stress for the Claimant was his perception of poor working relationships with both managers and certain colleagues, as well as a lack of job satisfaction, conflicting priorities, working in isolation and lack of involvement in deciding how the job should be done.

24. The follow up meeting on 12 May 2017 was intended to discuss the risk assessment and identify appropriate reasonable adjustments, including to pre-sessional teaching, following Occupational Health input with the Claimant. Professor Armstrong, Professor Richardson, Dr Sherazi, the Claimant, Mr Jordaan, Occupational Health and HR all attended. Professor Armstrong made it clear from the outset that changes to the organisation of programmes was not something which could be considered as a reasonable adjustment, rather they were looking at possible adjustments specific to the Claimant. The Claimant agreed that he would not expect programme level adjustments in the short-term, although the structure and running of some programmes caused particular stress. This is consistent with his evidence at Tribunal that he had reluctantly accepted that there would be no structural changes as they were very difficult to achieve due to the significant wider participation required. Whilst the Claimant accepted that the issues affected all teaching fellows, the problem was more acute for him due to his mental health conditions.

25. Professor Richardson suggested that the Claimant did not teach the final of the three pre-sessional courses as it had the greatest number of students and increased time pressure to mark assessments before term commenced. The Claimant did not agree that this was reasonable as he would still be required to teach the first two courses and instead asked to take leave for the whole period. Professor Armstrong agreed to consider the request. The Tribunal accepts the evidence of Professor Richardson that removal of all pre-sessional teaching would have created a large gap in the Claimant's teaching time and that it would not have been reasonable simply to transfer the 200 or so hours of pre-sessional work into the remaining two semesters as this would have increased the pressure upon the Claimant in those semesters.

26. Regrettably as before, the meeting was largely dominated by discussion of the Claimant's concerns about problems with working relationships and general discontent with how he had been managed, such as a lack of one to one meetings and appraisals. There was some discussion about stressors in the Claimant's role and whether the job description and responsibilities could be reviewed. Professor Armstrong suggested that it would not currently be possible but that they would consider flexibility in timetabling. The Claimant said that he was looking at which parts of his generic job description could be expanded, reduced or balanced and any new activities which could be created. This led to a discussion about the differences between teaching fellows engaged on professional services contracts as opposed to academic contracts. Occupational Health suggested that Remploy be contacted to provide support and help in developing an action plan. The Claimant and Respondent both agreed and, shortly afterwards, a referral to Remploy was made.

27. On 12 June 2017, Professor Armstrong refused the Claimant's request to use annual leave to cover the summer pre-sessional period because he did not consider that

taking leave could be a reasonable adjustment for a health-related situation. He acknowledged the particularly high health risk to the Claimant posed by the pre-sessional teaching but stated that it was an express part of his teaching commitment and a total exemption would amount to a substantial reduction in the Claimant's duties. Professor Armstrong suggested that the Claimant's contract be varied to remove the pre-sessional work with a consequential 29% reduction of his contractual hours with a commitment to look for other work in the Language Centre to offset the amount of the reduction. The Claimant was unhappy that his request to use leave as a reasonable adjustment had been declined and made clear that he had not requested reduced duties.

28. On 3 July 2017, Professor Richardson provided the Claimant with a draft timetable for the term starting in September 2017 and said that the Respondent would consider requests for changes. The Claimant's response was that major adjustments would be required and it was not sufficient to replicate existing problematic arrangements. It was agreed that the timetable would be discussed at a meeting on 9 August 2017. There are no notes of the meeting but Ms Holborn's contemporaneous correspondence with the Claimant refers to the contents of the meeting and follow up actions about teaching options and reasonable adjustments. On balance, the Tribunal accepts that the Respondent was continuing to try to find teaching work which the Claimant could safely undertake whilst the Claimant was looking for a more creative approach beyond teaching work, such as development of modules, work on the Masters programmes, collaboration with Linguistics academics, development of a teacher training course and other research or development work. We accept the evidence of Professor Adger that there had been many discussions over time about whether the Language Centre should move more into applied Linguistics, but that the decision was to retain the research focus of the Language Centre and that applied Linguistics did not fit with their curriculum.

29. The Respondent looked into work on the Masters courses but rejected the idea as the Claimant meet the general requirement of having a PhD or equivalent and there were no vacancies for Masters teaching in any event. The requirement for a PhD or equivalent is applied by the Dean of Education across Respondent organisation and is designed to ensure high quality teaching by people qualified beyond the level being taught. The Respondent did not consider the other suggestions reasonable as there was no anticipated significant development in new programmes or commercial desire to develop a teacher training course. Ms Holborn told the Claimant that the focus of discussion needed to be reasonable adjustments to the Claimant's current role within the current operating structure and style of the Language Centre. Some of his teaching could be removed, for example pre-sessional courses, but either alternative teaching would need to be found to complete an average of 18 hours contact per week over the year or there would be a pro rata reduction in his contracted hours and salary. Ms Holborn proposed further meetings to discuss the practicalities of what that teaching delivery might look like and how specific concerns might be addressed. The Respondent was prepared to change the Claimant's line manager to enable appraisal and development. Other options were for the Claimant to apply for a job on an academic contract, look at redeployment outside of the Language Centre or for there to be a formal capability process. Ms Holborn asked the Claimant to respond by 5 September 2017.

30. The Claimant did not consider that the suggestions amounted to reasonable adjustments. He did not want a pro rata reduction in his contracted hours and did not accept that 18 hours teaching time was required for a full-time contract. The Claimant did not want to teach foundation courses on the science and engineering programmes

or on the pre-Masters or international foundation programmes, nor did he want to teach non-credit bearing courses. The Claimant provided a helpful document setting out with more detail than before the work he believed he would be able to do. The Claimant suggested that he could teach three courses (Morphology of British Culture, Exploring Spoken English and/or Critical Thinking and Writing). The Claimant's other suggestions were teaching on the Masters programme or other non-teaching work such as development work in language education, exploring PhD options, more involvement in the academic activities of the Language Centre, exploring the development of teacher training or mentoring initiatives and/or e-learning. Many of these broader, non-teaching solutions proposed had already been rejected by the Respondent for the reasons above.

31. On 8 September 2017, Ms Holborn offered the Claimant the Morphology and Exploring Spoken English courses but refused to offer the Critical Thinking and Writing as the course had been conceived, developed and was delivered by a colleague who the Respondent declined to displace. Ms Holborn stated that if the course became available, they would consider allocating it to the Claimant. The Respondent would not agree to the Claimant teaching on the Masters programme without a PhD. The Claimant could apply for a PhD course and would benefit from a fee waiver, but it would not count towards his contracted working hours. Developing a teacher training course was not possible as the Respondent considered that there was no market for it and the other suggestions were not work currently or likely to be delivered by the Language Centre. Overall, the teaching work available amounted to 35.92% pro-rata of the 18 teaching hours that the Respondent maintained were required, with commensurate professional development time. In conclusion, the Respondent offered a 0.36 FTE role as a teaching fellow but stated:

> **"if you do not wish to undertake this part-time position then this effectively comes off the table and a recommendation would have to be made that there is no role compatible with your health available in the Language Centre. You could then ask to have your case considered by a panel hearing. This panel would decide if the recommendation that you cannot undertake a full-time role in the Language Centre is correct or not. They will note you refused to accept a part-time position and will not seek to reinstate that offer, therefore, if they consider you cannot undertake a full-time role in the Language Centre you would be given contractual notice on the grounds of medical capability. During this notice period you would be eligible for consideration for redeployment on medical grounds to other roles within the University".**

32. On 9 September 2017, Ms Holborn advised Professor Richardson that the Respondent was at significant risk of a breach of contract claim by the Claimant unless a panel hearing was held before making the change. HR explained that the attendance policy was appropriate because the stage 3 process refers to a person who cannot carry out the duties of their role adequately.

33. On 6 October 2017, the Claimant rejected the offer of a 0.36 FTE contract or any reduction of his contracted hours and made clear that he would oppose any unilateral variation of his contract. The Claimant maintained that there was suitable non-teaching work which could be found or created in the Language Centre and he was happy to engage in ongoing discussion about the longer-term development of his permanent full-time role and duties. The Tribunal finds that by October 2017, there was a clear impasse between the parties. The Respondent maintained that there was no suitable alternative work available in the Language Centre and a reduction to part-time was the only reasonable solution; the Claimant maintained that there were duties beyond teaching

and Masters teaching which could reasonably make up a full-time contract.

34. Despite the Claimant rejecting the part time offer, the Respondent did not commence a formal capability process. Instead, it proposed further discussion and involvement of Remploy to ensure that there were no other reasonable adjustments which would enable the Claimant to continue in his full time, or an increased fractional, role. There was also ongoing correspondence between Ms Holborn and Mr Jordaan about which policy was to be applied – attendance or absence.

35. The Claimant did not agree that the 0.36 FTE proposed adequately reflected the work which he was still performing, which he assessed at nearer to 0.8 FTE. At a meeting on 17 January 2018 also attended by the Claimant, Professor Richardson, Professor Adger, Mr Jordaan and Ms Holborn, the Remploy consultant suggested that the Claimant keep a diary of his actual work activities which could be reviewed with a new line manager. Professor Adger made clear that the Language Centre would not diversify into new fields in the foreseeable future and therefore the focus should be on finding teaching work that the Claimant could undertake within the existing programmes.

36. A further meeting between Dr Pate (newly appointed line manager), the Claimant, Mr Jordaan, Professor Richardson and Ms Holborn was held on 16 February 2018 to discuss work allocation and reasonable adjustments. In advance, the Claimant was provided with a list of teaching work said to be available. It was not a complete list of work available in the Language Centre, but only teaching work which the Respondent considered potentially suitable. As such, it excluded work which did not then exist, work which the Claimant was not qualified to teach and teaching already delivered by others.

37. The Claimant's position was that he could only teach on credit bearing in-sessional courses as non-credit bearing and pre-sessional courses were unsuitable due to stress caused by fluctuation in student attendance. The Claimant regarded teaching on the foundation programmes as a retrograde career step. Dr Pate candidly accepted in evidence that teaching on the Masters course was not discussed as it was not considered available due to the Claimant's lack of a PhD or equivalent. Nor did the meeting discuss scholarship or research as these were part of the module related duties of a teaching fellow and not discrete areas of work to be developed. There was no discussion about e-Learning as this would have required the Claimant to be redeployed to a separate team comprising specialists in training via virtual technology.

38. The only potentially suitable additional work identified by the Claimant was either the Critical Thinking and Writing course already being delivered by a colleague and/or the broader development of new modules or areas of work in the Language Centre. The Respondent discounted the development of new areas of work as not falling within its operational or strategic objectives. Professor Richardson and Dr Pate gave evidence that they discussed the possible splitting or reallocation of modules being delivered by another employee. Professor Richardson spoke to the employee concerned but they were not willing to give up the modules, having conceived, designed and continuing to teach them. Whilst the Respondent could contractually have forced the removal of the module from this employee, Professor Richardson did not consider this fair or a reasonable adjustment as the Respondent had to consider the needs of all employees and it would have led to discontent and possible grievances from the employee concerned. In evidence, the Claimant agreed that whilst not impossible, it would be difficult for the Respondent to remove such a course against the lecturer's wishes. There

is no contemporaneous documentary evidence in support of these discussions, but the Language Centre is small and discussions take place between managers and employees without requiring everything to be reduced to writing. Professor Richardson and Dr Pate's evidence was plausible and credible and the Tribunal accepts on balance that these discussions did take place.

39. Dr Pate agreed to review the Claimant's diary of work to benchmark the proportion of the teaching fellow job which he was still performing. At this meeting and a subsequent meeting on 20 February 2018, no agreement was reached about alternative duties as the parties maintained their respective positions. The Claimant was referred to Occupational Health for updated advice.

40. On 8 March 2018, Ms Holborn sent the Claimant a list of teaching to consider. As before, it was not a complete list of all work in the Language Centre but, as Ms Holborn's email and Professor Richardson's evidence makes clear, a list of all work which the Respondent believed was available to the Claimant. The Claimant was asked to score on a scale of 0 to 10 the level of anxiety for each specific module, the cause of the anxiety and any potential adjustments which could be made. In his reply on 9 April 2018, the Claimant scored the majority of modules as between 8 and 10 on the anxiety scale, citing a complete breakdown of trust and confidence in colleagues, structural problems with the courses' design and materials, widely fluctuating attendance of students and mixed ability groups, evening classes and a lack of management response to his concerns or professional development. The Claimant gave lower stress scores for scholarship work and in-sessional credit bearing modules such as Morphology and Exploring Spoken English. The Claimant did not give any score for foundation or pre-Masters teaching as he maintained that it would be a retrograde career step. The Claimant repeated his previous suggestion of creating a new credit bearing module on teaching English as a foreign language or integrating him into academic teaching activities on the Masters programme or certain linguistics courses.

41. In this response, the Claimant complained about what he perceived as a lack of engagement by the Respondent. It was a complaint repeated during the course of his evidence in this hearing. The Tribunal does not accept that this is a fair description of the Respondent's conduct. We find that the Respondent was genuinely trying to involve the Claimant in the attempt to find work which he felt able to do in order to maintain his full-time contract. However, the Claimant was prepared to consider only very limited areas of work which the Respondent agreed was available and responded by repeatedly proposing work which the Respondent had already decided was unsuitable. This was not a lack of engagement by the Respondent, simply a lack of agreement to give the Claimant the solution he wanted.

42. The updated Occupational Health report advised further Remploy input and a stress risk assessment. An exit report completed in May 2018 confirmed the change in line manager, ongoing discussions and guidance from Remploy but there was little by way of further recommendations. Remploy agreed to provide support for a further six months. An action plan prepared on 1 June 2018 recommended that Dr Pate review the Claimant's job description, expectations and plan for the upcoming school year to clarify his role and set clear objectives. The written job description would then be the basis of a discussion between the Claimant, Dr Pate and HR about which parts of the current job were being undertaken and a plan to review suitable available roles having regard to what the Claimant regarded as key stressors.

43. At a School Board meeting on 17 May 2018, Professor Hilton suggested that those on grade 5 professional services terms and conditions could make individual cases to be moved to academic teaching and scholarship terms and conditions based on their role. In an email to staff the following day, Professor Adger confirmed that he was in discussion with HR about how an individual could demonstrate that they were essentially performing a teaching and scholarship lecturer role and that he would provide further information to enable individuals to make their own decision.

44. The Claimant believed that an academic contract may offer more scope for finding duties which he was able to perform safely. In a meeting with Dr Pate on 22 June 2018, he said that he had a strong case to transfer due to his exceptional circumstances. Dr Pate believed that the job matching process would not apply as this was not a grading issue but a move to a different category of contract. Whilst transfer to an academic contract was considered, Dr Pate made clear that there still needed to be agreement on the teaching which the Claimant would undertake in the following year. He provided the Claimant with three possible work schedules each with a notional FTE: the first, only modules which the Claimant had identified as low to medium stress; the second, also included additional modules where the stress risk was unknown; and the third, including high stress modules but with further input from health professionals to reduce that stress. The Claimant said that his ideal role would be co-ordinator of credit bearing undergraduate modules and rejected the three proposed work schedules as not offering work commensurate with his skills and experience (such as Masters teaching).

45. Dr Pate sent a careful summary of the main points of the discussion to the Claimant for his amendment or agreement. The Tribunal finds that the tone and content of Dr Pate's email was conciliatory and positive; the Claimant's response was not, describing the summary as misleading in many respects and misrepresenting or over-simplifying his thinking but without identifying areas of dispute. In his response, Dr Pate apologised if the Claimant felt that his brief summary was inaccurate and said that he would be very happy to meet and discuss the Claimant's concerns. The Tribunal found Dr Pate to be an impressive witness and find that he maintained a calm and courteous approach to the Claimant despite the latter's repeated suggestions that Dr Pate was acting in a less than open way.

46. On 26 June 2018, the Claimant made a formal request to move from a Professional Services grade 5 contract to an academic contract at the higher grade 6. The Claimant asked that due to his exceptional circumstances, the transfer be effected by a job matching process and not part of the general process which was to be introduced. The Claimant was dissatisfied that Dr Pate could not tell him by the end of the week whether or not Professor Richardson supported his application to change to an academic contract. Again, Dr Pate responded calmly and constructively to what the Tribunal find was an unrealistically short timescale expected by the Claimant.

47. On 29 June 2018 Ms Holborn informed the Claimant that there would be a new process for transfer and that the Claimant could apply but, whether the Claimant remained on a professional services contract or moved to an academic contract, he would be expected to teach and the Respondent needed to understand which activities on the proposed work schedules he would be able to undertake. The same day, Professor Adger confirmed to the Claimant that his request to transfer had not been rejected simply that an answer could not be given in only a couple of days.

48. The Claimant provided copies of his Remploy reports to Dr Pate, who was in direct contact with the Remploy consultant during the summer break. The three Remploy suggestions were (i) a written job description; (ii) a review of planned work for the new academic year; and (iii) a review of the plan and work the Claimant could do. Dr Pate acknowledged that progress had been slow in part due to changes in HR but a further case conference was intended following OH input and there was agreement at institutional level about a move from professional to academic terms and conditions. The Claimant was again absent from work due to sickness during the summer holidays.

49. From the above, it is evident that by the end of the 2017/18 academic year, very little progress had been made in agreeing suitable duties for the Claimant to undertake. The Claimant had agreed to teach only two credit bearing in-sessional modules, roughly six hours a week of teaching time. This was a frustrating process for all concerned but the Tribunal does not accept that Dr Pate failed to engage in genuine dialogue. The Tribunal finds that Dr Pate engaged constructively with the Claimant to try to find mutually acceptable duties for the Claimant to perform, even though he did not agree to the limited options proposed by the Claimant and already rejected by the Respondent.

50. On 24 August 2018, the Claimant sent colleagues a newsletter produced by the University and College Union which expressed dissatisfaction with the level of a proposed pay rise. One recipient, Mr Taylor replied to the Claimant "**W.A.C!**". The Claimant replied, stating "**I don't suppose your salary's going up in real terms, is it?**". Mr Taylor's response was: "**Chris, I work for a living. You do not; and should not complain**". The Claimant made a complaint that Mr Taylor's emails amounted to bullying as they were abusive and threatening in content.

51. In an investigation meeting on 5 September 2018, Mr Taylor accepted that he had written the emails in a fit of pique in response to what he regarded as provocative emails from the Claimant who was complaining about pay and conditions when he (Mr Taylor) did not think that the Claimant deserved the pay he got. In a subsequent disciplinary investigation meeting on 22 January 2019, Mr Taylor stated that he sent the emails because he was upset to be working full-time on the pre-sessionals from which the Claimant was always excused. Nevertheless, he accepted that he should not have sent the email and stated that he was prepared to apologise. The Tribunal finds that Mr Taylor's email had the purpose and effect of being hostile and that his irritation was caused in part by a belief that the Claimant was being paid full salary whilst teaching a very reduced workload. The Tribunal accepts as plausible the Claimant's evidence that given the small size of the Centre and their previous social interaction, Mr Taylor would have been aware from around 2012 that the Claimant had anxiety and mental health problems which had led to significant sickness absence.

52. In his own interview on 11 September 2018, the Claimant raised a number of procedural questions about which policy was being followed and questioned whether or not Mr Taylor had been drunk when writing the email. The Tribunal consider this indicative of the Claimant's lack of insight and, at times, judgment. Whilst he reasonably regarded Mr Taylor's emails as inappropriate, he did not consider it inappropriate for him to criticise a colleague, without apparent factual basis, of drunkenness at work. This was consistent with the approach he took at times to his managers in discussions about suitable work: prepared to make serious allegations of improper behaviour and a lack of genuine engagement when his managers did not agree to his requests but slow to reflect

and consider whether his own engagement was constructive in seeking to impose short time limits, the limited teaching he was prepared to agree and repetition of proposals already rejected (such as developing a whole new teacher training module).

53. By September 2018, Ms Holborn had gone on maternity leave, Ms Peatfield provided some short-term support and from October 2018 Ms Lopez-Barillas assumed HR responsibility for the ongoing discussions. The Claimant was concerned as he believed that Ms Lopez-Barillas' expertise consisted in "exiting" employees from the organisation. On 14 September 2018, Dr Pate again asked the Claimant to indicate which of the previously suggested teaching options he was prepared to perform.

54. The Claimant objected to applying for a transfer to an academic contract under the new procedure published in late September 2018 as he believed that it would be too stressful for him and that a job matching exercise should be applied instead. The Tribunal heard a great deal of evidence about whether an application process was required or whether a job matching exercise could have been undertaken for the Claimant. The Claimant maintained that it was possible to transfer after job matching to the academic contract, citing an example of another employee who had done so. However, the example given by the Claimant was an employee who had moved from a grade 6 professional services contract to a grade 6 academic contract.

55. We accept as plausible and credible the evidence of Professor Adger that there is a significant difference between the two types of contract. On an academic contract, once the employee has satisfactorily completed a three-year probation period, they are automatically moved to grade 6. By contrast, an employee on a grade 5 professional services contract could only be appointed to a grade 6 post after a competitive interview. These concerns did not apply to the person relied upon by the Claimant as they had already been appointed to a grade 6 position. The Claimant's request was materially different as he was asking not only to change the family of contract but also to be re-graded without any application process or assessment of his ability.

56. The Tribunal considers it important to bear in mind that the Claimant was not asking to be redeployed into a vacancy, rather for the terms and conditions of his existing role to be transferred to the academic family with the prospect of automatic promotion to grade 6. The expectation of leadership, innovation and scholarship is greater on a grade 6 academic contract than a grade 5 professional services contract. The process adopted by the Respondent was an assessment of whether an applicant was able to meet the enhanced expectations, it was not competitive and had the benefit that if transfer were agreed, the applicant would not be subject to the usual three- year probation period.

57. When the Claimant suggested being transferred to an academic contract without an application, we accept that Professor Adger sought advice from HR and the Head of Administration who told him that nobody had transferred from grade 5 professional services contract to a grade 6 academic contract without a proper process. The Respondent required some way of assessing whether the person transferring was suitable for a grade 6 post. It was clear from the manner in which Professor Adger gave his evidence when pressed in cross-examination, that he genuinely believed that it would be unfair to require a longstanding employee to be subjected to the stress of a lengthy probation period upon changing contract. It is hard to imagine that the Claimant himself would have welcomed such a process had it been offered. The Tribunal finds that having properly considered the situation, the Respondent decided instead to operate a short

application process to ascertain whether or not an individual wishing to transfer to an academic contract met the required standards. This would be the decision of a faculty panel and it was not within the gift of either Professor Richardson or Professor Adger.

58. The evidence of Dr Pate was consistent with that of Professor Adger. The Tribunal considered that in both his oral evidence and contemporaneous correspondence with the Claimant, Dr Pate demonstrated a fair and balanced approach: carefully trying to deal with a difficult situation with understanding and patience, particularly in face of what appeared at times to be an obdurate response from the Claimant. The Tribunal accept as truthful his evidence that the possibility of allowing the Claimant to transfer without making an application was discussed but rejected as not reasonable for the reasons set out above.

59. A case conference was arranged for 11 October 2018. In advance, there were a series of emails between the Claimant and Dr Pate. The Claimant complained that the case conference had been proposed by Occupational Health in April 2018, that there had been no job review as advised by Remploy and that the earlier stress risk assessment did not conform to HSE standards as there had been inadequate discussion with him. Overall, the Claimant was unhappy with what he perceived to be a process which was inappropriate, lacked transparency and was conducted without his participation. Dr Pate's responses were courteous and measured; he referred to the Claimant's involvement in the scoring activities in the stress risk assessment, subsequent discussions on 19, 22 and 25 June 2018 and said that he looked forward to working with the Claimant to find a solution which made him feel comfortable and fulfilled in terms of his health and professionally.

60. The case conference took place but chaired by Professor Richardson as Dr Pate was unable to attend. Ms Lopez-Barillas' concern expressed in contemporaneous emails was that the Claimant would not move from his position, refusing to reduce to a pro rata contract or fulfil his teaching duties. The case conference was a difficult meeting. Although no notes were taken, a contemporaneous email from Professor Richardson outlines who was present and suggests that the meeting was frustrating for all concerned and no progress had been made, as she recorded the Claimant's view that management had never listened to him and her view that they were no further forward than in September 2017. Professor Richardson suggested a three-step approach: Dr Pate would meet the Claimant and listen to what he wanted; Dr Pate and Professor Adger would consider those wishes; a final offer would be made which may not be too dissimilar to that made in September 2017.

61. In contemporaneous emails, Ms Lopez-Barillas referred to animosity from the Claimant and his wife (who was also present) and stated her belief that the Claimant was not prepared to discuss anything other than what he wanted his job to be, unsuccessfully pressing Occupational Health to support him. She also expressed concern to Professor Adger about the well-being of Professor Richardson following what she described as a very difficult meeting with an unhealthy atmosphere and referred to the Claimant as being very emotionally charged. This is consistent with her email to the Claimant on 15 October 2018 which referred to a difficult meeting and the impact on his wife, providing details of the Employee Assistance Programme. Whilst the Claimant did not agree that the meeting had been difficult, he acknowledged the frustration for all present that so little progress had been made, the impact on his wife and the need for further open minded and forward-looking dialogue between himself and management was required.

62. The meeting between Dr Pate and the Claimant was somewhat delayed due to correspondence about the presence of Ms Lopez-Barillas. The Claimant objected to her attendance at a meeting with his line manager; Dr Pate considered it important that both HR and a union representative were present due to the complexity and sensitivity of the case and the importance of finding a final solution. The Claimant objected to the use of this phrase by Dr Pate but it is not any part of the issues to be decided in this case and we draw no inference that it indicated a closed mind by the Respondent, simply the need to draw an extremely protracted process to a conclusion.

63. The Tribunal finds that by October 2018, all concerned were clearly frustrated with the lack of progress since September 2017. Ms Lopez-Barillas, Dr Pate, Professor Adger and Professor Richardson believed that they had offered reasonable adjustments (a part-time role, temporarily maintaining full pay whilst other duties were explored and revised teaching) but that the Claimant was refusing to engage in any meaningful way. The Claimant did not agree that these proposals were suitable and maintained that his own proposals were reasonable steps to enable him to retain full time salary performing duties compatible with his health. The fundamental impasse was that the Respondent did not consider it reasonable to create new duties or to depart significantly from the teaching role which the Claimant had been contracted to perform whereas the Claimant's proposals involved what we consider was a significant change in the nature of his job. The Tribunal finds that both sides had become entrenched in their position and that further meetings were unlikely to take the matter further. This is the reason why Ms Lopez-Barillas referred to a "short time-line" in her email on 29 October 2018, envisaging a final offer being made following a meeting the next day.

64. The meeting took place on 30 October 2018. The Claimant's case is that Ms Lopez-Barillas said that the Respondent found it difficult to discuss challenging issues with him. Ms Lopez-Barillas' evidence was that she may well have said words to this effect at a subsequent meeting on 4 December 2018, but it related to the Claimant's behaviour in meetings and not in any way his disability. On balance, the Tribunal finds that the comments alleged by the Claimant were made by Ms Lopez-Barillas at both meetings. It was clear from her oral evidence that in the absence of contemporaneous notes, Ms Lopez-Barillas did not remember events in any great detail. The Tribunal did not draw any adverse inference from the absence of notes or her lack of memory, finding both understandable given her role as an interim HR provider and her work for other organisations since 2018. However, the comments alleged by the Claimant are consistent with the content of her other emails in October 2018 where she referred to meetings with the Claimant being difficult, the atmosphere being unhealthy, her concern for the well-being of Professor Richardson and Dr Pate and what we infer was her frustration at the Claimant's insistence on only his proposal being a reasonable solution. The Tribunal finds on balance that it was the challenging behaviour of the Claimant, his readiness to criticise his managers and lack of constructive engagement in an attempt to find a mutually acceptable solution that caused the comments.

65. On 31 October 2018, the Claimant repeated his interest in transferring to an academic contract but said that he could not do so by way of the application process partly as it would conflict with his position as a UCU representative (the Union believed the new process to be unfair) and partly referring to the potential risk to his health as the application process would require him to be observed delivering a class. He repeated the request that instead he be regraded from Grade 5 Professional Services to Grade 6

Academic. In response, the Respondent offered to adjust the process for the Claimant, by allowing him more time to complete the application and the ability to demonstrate teaching by submitting a video rather than an in person observed class. The Claimant did not avail himself of these adjustments.

66. On 6 November 2018, Dr Pate set out the Respondent's offer of adjustments which was, as anticipated, a repetition of those offered on 8 September 2017. The Respondent did not consider it sustainable to pay the Claimant in full when he was working only 0.37 FTE and referred to the need to treat all staff equally. Dr Pate said that much of the work currently being undertaken by the Claimant fell outside of his job description as a Teaching Fellow and that it was not a reasonable adjustment to change that job description to include the work that the Claimant wanted to do. In conclusion, the Claimant must decide whether to accept the 0.37 FTE pay or return to performing his full-time role, possibly with a supported phased return to work. The Claimant was told that if he did not reply by 20 November 2018, HR would be advised to reduce the Claimant's pay to 0.37 FTE with effect from 19 February 2019 as his contract provided for three months' notice. The Claimant was expressly told, however, that he would retain his substantive contract and would be able to revert back to his full-time pay when able to work the full remit of the job description. Dr Pate accepted in evidence that he was not sure whether he had considered the attendance policy when sending this letter and the Tribunal find that there was no deliberate decision to breach the same.

67. The Claimant sought advice from his Union. On 9 November 2018, Mr Jordaan objected to the proposal on the Claimant's behalf and maintained that the Respondent could not impose a change to the Claimant's contractual entitlement to full pay without first following a capability process. Mr Jordaan stated that the Respondent had unreasonably failed to redeploy the Claimant into a suitable role and described the adjustments identified by the Respondent as being mostly specious and imposed rather than agreed. The Tribunal finds that this is consistent with the Claimant's attitude to the discussions: anything with which he disagreed was rejected out of hand and only his proposal was regarded by him as reasonable. The Claimant formally objected to the proposed changes by email sent the same day.

68. On 13 November 2018, Ms Lopez-Barillas said that the change to salary was permissible by reason of custom and practice, following a process of discussion with the Claimant and giving contractual notice. The reasons for refusing the Claimant's proposals were repeated: partly out of equity to other employees in the same role and partly the need for work of the Claimant to fit the objectives and strategic direction of the department. It was not equitable for the Claimant to be paid full salary when not working his full-time contract. There then followed a series of emails between Mr Jordaan and Ms Lopez-Barillas about whether a capability process needed to be followed and whether the fraction of the contract being worked had been properly calculated.

69. Remploy prepared an exit report in November 2018 which referred to the lack of a formal job review undertaken by the Claimant and Dr Pate and stated: "**it has been difficult to support Chris from a wellbeing prospective during this period of support mainly due to his employer's not following through the formal job review that was discussed and agreed at the initial meeting**". Although the report was in the bundle at this hearing, the Claimant did not authorise its release to the Respondent despite requests from Ms Lopez-Barillas. In the circumstances, we do not accept Ms Churchhouse's premise that if the Respondent had a genuinely open mind about reasonable adjustments, it would have awaited the report.

It would not be reasonable to expect the Respondent to wait for a report which the Claimant had refused to share. The Respondent was however aware that the Claimant believed that there had been no formal job review; its position was that a review had been undertaken by considering the Claimant's work diary of tasks undertaken and then by applying the School's time allocation model.

70. There is a dispute between the parties about whether or not the time allocation model applied to the Claimant's contract. The model dates back to 8 June 2016, states that it was created in consultation with different schools and the Union and is said to apply to teaching associates and associate lecturers. The Claimant's case is that the model only applied to staff on fixed term and hourly paid contracts, not permanent employees. The Claimant was provided with a spreadsheet showing how the Respondent had applied the model to his job. The Claimant maintained that it was wrong to assess him on the basis of 18 hours contact time per week as this was the maximum (not minimum) required by his contract and that it failed to take into account the possibility that some tasks may take him longer because of disability. On balance, the Tribunal find that it was reasonable for the Respondent to apply the time allocation model to the Claimant when reviewing the amount of his role being performed. The document is not said to be limited to fixed term or hourly workers. Furthermore, even if it were, in the absence of any model of general application to permanent employees, the Tribunal finds that it was appropriate to apply this collectively agreed and objective benchmark to assess the components of a teaching role when assessing the fraction of the role being performed by the Claimant.

71. On 16 November 2018, Mr Alex Eastwood, the acting UCU Regional Support Official, requested by way of reasonable adjustment that the Claimant be considered for transfer to the Academic Teaching and Scholarship contract despite the deadline having expired. The Claimant commenced a period of sickness absence the same day.

72. An Occupational Health report on 22 November 2018 records the Claimant as being at a loss to understand why his contract was being changed to 0.37 FTE without discussion, that the face to face meeting with Dr Pate previously advised by Occupational Health had not taken place and that his voice had not been heard. The Tribunal does not accept that the Claimant's account to the Occupational Health doctor was a fair or accurate account of the situation in November 2018. There had been many face to face meetings and discussion with the genuine aim of finding a solution. The problem was not a lack of discussion or lack of engagement, it was that the Claimant did not agree with the Respondent's position and its refusal simply to agree to his proposals of a transfer to an Academic contract at a higher grade, teaching on the Masters course or a reduction of his teaching hours with a move into more developmental work.

73. On 22 November 2018, the Claimant was sent a letter confirming the change to his pay and repeating the reasons for the decision, namely that he was being paid in full for working a part time role, the cost to the Respondent of using other employees to cover the rest of his role, the inability to change his job outside the job description, the need to treat all staff (including others with disabilities) equitably and to deliver the operational remit of the department and its strategic focus. The Respondent refused to redeploy the Claimant without application to an Academic contract as it was not suitable alternative employment or a reasonable adjustment and would be unfair to other employees who had to transfer by application. In conclusion, with effect from 21 February 2019, the Claimant's salary and annual leave would be reduced to a 0.37 FTE.

The Tribunal accepted Professor Adger's evidence that he had a duty to manage responsibly the School's budget and Professor Richardson's evidence that the Respondent had been paying three temporary members of staff to cover the balance of the Claimant's teaching. We considered Professor Adger to be a careful and truthful witness and even without contemporaneous emails or letters, we accept his evidence that he had genuinely considered that it was no longer tenable to continue to pay the Claimant in full when he was discharging less than 40% of his contractual duties. This evidence was consistent with the contemporaneous reasons given in the letter dated 22 November 2018.

74. Despite the September 2017 advice of Ms Holborn that a panel hearing would be required before the Claimant's salary could be reduced, there was no hearing at all within the attendance policy and no right of appeal offered. Professor Richardson candidly accepted in evidence that had she thought about this in November 2018, the Respondent would not have reduced the Claimant's salary although she maintained that the Claimant had been told in September 2017 that he could ask for a hearing and he had not done so, either then or in 2018. The Tribunal accept on balance that the failure to hold a panel hearing was an oversight and born of a desire to make progress and was not in any sense whatsoever indicative of a desire to dismiss the Claimant because of his disability or requests for reasonable adjustments.

75. On 20 November 2018, Professor Richardson notified those in the School of a vacancy for full-time, maternity cover in the Language Centre from January 2019 to mid-October 2019. The Claimant expressed a desire to cover the Masters course part of the pregnant colleague's work as he felt that he had sufficient qualification, knowledge and skill to do so. Consistent with contemporaneous emails, the Tribunal finds that the Masters teaching had already been allocated to a colleague in the Masters team and the maternity cover required was limited to the rest of her Teaching Fellow role and to backfill the colleague now providing the additional Masters teaching. As the remaining work to be covered was non-credit bearing in-sessional modules which the Claimant had previously identified as too stressful, the Respondent told the Claimant that it would not be possible. The Claimant was told that if he decided to undertake a PhD, teaching on the Masters course may be available in the future.

76. On 11 December 2018, Dr Pate wrote to the Claimant stating that the time allocation model applied equally to permanent staff. Dr Pate considered the breakdown of weekly work submitted by the Claimant but, as he stated in evidence, concluded that it included preparation time in excess of the norm, work which may largely occur in only one semester and tasks which did not fall within the job description or custom and practice for a teaching fellow. Overall, Dr Pate felt that the Claimant was painting a picture which was not particularly accurate. As a result, Dr Pate maintained that the appropriate fraction remained 0.37FTE when the Claimant was benchmarked against those in similar roles, with similar responsibilities. In cross-examination, the Claimant accepted that some of the work he was undertaking did not fall within his job description and included time spent on scholarship and trade union activities, but maintained that this was because his job had developed since 2010 and he should have been benchmarked against a lecturer in the School based upon a transfer to an Academic family contract as this would have made alternative, non-teaching work available. The Tribunal prefers the evidence of the Respondent and finds that even on an academic teaching and scholarship contract, the Claimant would have had a similar teaching obligation or been required to show PhD equivalence to teach on the Masters course

although there would have been some additional administrative work potentially available.

77. Whilst this comparison of the Claimant's actual work and his contracted duties was undertaken on paper rather than at a meeting, as Professor Richardson had anticipated and Remploy had advised, the Tribunal finds that it was a reasonable and appropriate approach given the unfruitful nature of the meetings over the past year. In the circumstances, the Claimant and the Respondent were each able to set out in full on paper their view of the situation. Nothing further would have been achieved in a discussion, given that Dr Pate and the Claimant fundamentally disagreed on what were the essential elements of the job and what alternative work would be reasonable. This is consistent with the way in which the Claimant gave evidence in cross-examination: when the Respondent's perspective was put to him, he simply re-stated his firm and unshakeable belief that he was right and persisted in disagreeing with every contrary point suggested by Ms Tharoo on behalf of the Respondent.

78. On 17 December 2018, the Claimant raised a grievance about what he regarded as the termination of his contract and disability discrimination, suggesting that the Respondent had systematically failed to discuss alternative duties or to take full account of the demands of the teaching and scholarship activity which he was undertaking. Again, the Claimant repeated the work which he felt that he could do but which had not been properly considered: teaching on the Masters course and/or the Critical Thinking and Writing course, designing and delivering a new Teaching English as a Foreign Language module and developing his scholarship activities. The Claimant complained about the refusal to redeploy him to an Academic contract, the failure to allow him to teach on the Masters course as maternity cover and about what he described as a "desk based" job matching exercise by Dr Pate. The outcome of the Claimant's grievance has subsequently been that there should be a panel hearing and, more recently, it has been confirmed that this will be a stage 3 hearing under the Attendance Policy and Procedure. As at the date of the Tribunal hearing, this had not taken place.

79. On 21 January 2019, Professor Richardson provided a detailed response to the Claimant's suggestions for modules which he could deliver in the next academic year. Again, she stated that the Claimant could not teach on the Masters modules as he did not have a PhD nor was it possible to offer him teaching on modules which had been specifically conceived, developed and taught by a colleague. There was an opportunity to deliver part of module EAL4700 in semester 2, but this was an in-sessional, non-credit bearing course taught in the evening – each being factors previously identified by the Claimant as creating a high level of anxiety. For this reason, Professor Richardson concluded that it was not appropriate to offer such teaching to the Claimant unless he could provide evidence that his health had improved sufficiently to do so. The Claimant accepted in cross-examination that he could not imagine any hypothetical adjustment which would have made a difference to his inability to teach non-credit bearing modules due to the stress they caused him.

80. On 28 January 2019, the Project Manager in the Centre of Commercial Law Studies contacted the Claimant in relation to a project which required a proof-reader with experience of reviewing and editing legal texts. This was externally funded work which was important for the reputation of the Respondent and not simply an administrative task. The Project Manager she said understood that the Claimant was teaching legal English writing skills to LLM students and she wondered whether he would be interested in the

work. The Claimant said that he would be happy to help and had the necessary experience having worked with LLM students for a number of years, although he was not doing so currently. Professor Richardson was copied on the email and subsequently contacted the CCLS Project Manager directly. Professor Richardson advised her that there was a dedicated CCLS Team in the Language Centre in which the Claimant had not worked for some 7 or 8 years, although she considered him able to do the work and would not object if CCLS wanted to make a private arrangement with him. This is consistent with her response to the Claimant and indeed her oral evidence to the Tribunal - if CCLS wanted the work done by the Language Centre then it should be done by the dedicated team where she could underwrite the quality of their work but that she would not prevent a private arrangement using the Claimant if the CCLS project leader chose to do so. The work was not undertaken by the Claimant, who again expressed his disappointment.

81. The Claimant continues to be employed by the Respondent and it is clear from the evidence that we have heard that the dispute about what work the Claimant should and can reasonably perform also continues. Little progress has been made. During the course of this hearing, the Claimant was offered some teaching on a Masters course which had recently become available in the 2020/2021 academic year. The work was to teach academic skills to enable students to get a higher grade on their Masters by becoming familiar with the British education system. The Tribunal rejects the Claimant's suggestion that we should infer as a result that the PhD requirement for Masters teaching was not genuine. The evidence of Professor Richardson on this point was credible and reliable and supported by the evidence of Professor Adger and Dr Pate, both of whom the Tribunal found to be impressive witnesses prepared to concede points even when harmful to their case (in a manner which Professor Richardson and the Claimant often did not). The requirement for a PhD could be waived now only because the teaching is for one of the few skills-based, non-credit bearing support modules on the Masters course, it is now available and within the Claimant's skill set. We infer that this is consistent with the Respondent's ongoing and genuine efforts to find work for the Claimant which is mutually acceptable.

Law

Discrimination

82. Section 13 of the Equality Act 2010 provides that a person discriminates against another if, because of a protected characteristic, he treats that other less favourably than he treats or would treat others. Disability is a protected characteristic. Conscious motivation is not a requirement for direct discrimination, it being enough that the protected characteristic had a significant influence on the outcome. The crucial question is why the complainant was treated in the way in which they were, particularly in cases where there are no actual comparators identified, **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285.

83. Section 15 of the Equality Act 2010 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.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

84 There is no need for the Claimant to show less favourable treatment than a non-disabled comparator, simply 'unfavourable' treatment caused by something which arises in consequence of the disability. It is necessary to identify the "something" and establish that it arose in consequence of the disability.

85 At paragraph 33 of her Judgment in **Pnaiser v NHS England and another** UKEAT/0137/15, Simler J (then President of the EAT) reviewed the earlier authorities and set out the proper approach as follows:

(1) Identify any unfavourable treatment and by whom.

(2) Determine what was the reason for that treatment, focusing on the conscious and subconscious motivation of the alleged discriminator. As with direct discrimination, the "something" need not be the sole or principal reason but must be an effective reason. Motive is irrelevant.

(3) Was such effective reason or cause "something arising in consequence of disability"? This may involve more than one link and therefore more than one relevant consequence of disability may require consideration. Whether something can properly be said to arise in consequence of disability is a question of fact to be assessed robustly in each case. The more links in the chain between disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(4) This stage of the causation test is an objective question. It does not depend on the subjective thought processes of the alleged discriminator.

(5) The knowledge required is of the disability and does not extend to a requirement of knowledge that the "something" is a consequence of that disability.

(6) It does not matter precisely in which order these questions are addressed.

86 Objective justification requires the employer to establish a legitimate aim and then for the Tribunal to balance the proportionality of the steps taken and the discriminatory impact upon the employee. This will include consideration of the appropriateness and (reasonable) necessity of the means chosen, **Homer v Chief Constable West Yorkshire Police** [2012] ICR 704, SC. The employer does not have to show that no other steps were possible and the tribunal must have regard to its business needs.

87 Section 20 of the Equality Act 2010 provides that:

"20 Duty to make adjustments

> **(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.**
>
> **(2) The duty comprises the following three requirements.**
>
> **(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."**

88 Where, as here, the employer is alleged to be in breach of the duty to make reasonable adjustments imposed by section 20(3) of the 2010 Act, the Tribunal should identify (1) the PCP(s) applied, (2) the identity of the persons who are not disabled in comparison with whom comparison is made, and (3) the nature and extent of the substantial disadvantage suffered by the employee, **Environment Agency v Rowan** [2008] IRLR 20 at paragraphs 26-27 (Judge Serota QC).

89 Having done so, the Tribunal must consider and identify what (if any) step it is objectively reasonable for the employer to have to take to avoid the disadvantage. The aim of the duty is to remove or at least ameliorate the substantial disadvantage so that the disabled person may remain in the workplace. The potential adjustment need only have *a* prospect of alleviating disadvantage; there is no need to show that it would have been completely effective or even that there was a good or real prospect of it being so.

90 The duty to make reasonable adjustments may include the requirement to treat the disabled employee more favourably than other employees. It could include transfer to another job without a competitive procedure and even if the disabled employee may not be the best person for the job. However, what is reasonable will depend upon the circumstances of a particular case, **Archibald v Fife Council** [2004] ICR 954.

91 Where an employee is medically able to return to work part-time but for financial reasons cannot afford to do so, they are not placed at a substantial disadvantage by comparison to a person returning to work part-time for a reason other than disability, **Newcastle upon Tyne Hospitals NHS Foundation Trust v Bagley** [2012] UKEAT/0417/11.

92 An adjustment requiring higher pay (full-time pay for part-time work or higher sick pay) will very rarely be a reasonable adjustment. However, there may be cases where maintaining pay could be a reasonable adjustment as part of package to get an employee back to work, or retaining them in work, **G4S Cash Solutions (UK) Limited v Powell** [2016] IRLR 820.

93 An adjustment which is considered reasonable at one point is not necessarily reasonable indefinitely, however the employer will be expected to show some change in circumstances when it removes the adjustment, **Northumberland Tyne & Wear NHS Foundation Trust v Ward** UKEAT/0013/19.

94 The Equality and Human Rights Commission's Employment Statutory Code of Practice, at paragraph 6.28, suggests that the following factors might be taken into account when deciding what is a reasonable step for the employer to have to take:

- **whether taking any particular steps would be effective in preventing the substantial disadvantage;**
- **the practicability of the step;**
- **the financial and other costs of making the adjustment and the extent of any disruption caused;**
- **the extent of the employer's financial or other resources;**
- **the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and**
- **the type and size of the employer.**

95 An employer is not under a duty to make reasonable adjustments unless it knows (actually or ought reasonably to have known) both that the employee was disabled and that the employee was likely to be placed at a substantial disadvantage by a PCP because of that disability.

96 Harassment is defined in section 26 of the Equality Act 2010 as follows:

> **"(1) A person (A) harasses another (B) if -**
>
> **(a) A engages in unwanted conduct related to a relevant protected characteristic, and**
>
> **(b) the conduct has the purpose or effect of -**
> **(i) violating B's dignity, or**
> **(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**
>
> **…**
>
> **(4) In deciding whether conduct has the effect referred to in 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."**

97 In **Richmond Pharmacology v Dhaliwal** UKEAT/0458/08/CEA, the EAT provided guidance to the effect that an Employment Tribunal deciding harassment claims should consider in turn: (i) the alleged conduct, (ii) whether it was unwanted, (iii) its purpose or effect and (iv) whether it related to a protected characteristic. As to effect in particular, at paragraph 15, the EAT made clear the importance of the element of reasonableness, having regard to all of the relevant circumstances, including context and in appropriate cases whether the conduct was intended to have that effect.

98 The importance of context was repeated in **Nazir v Asim** [2010] ICR 1225 and **Warby v Wunda Group plc** UKEAT/0434/11. The Tribunal should not lose sight of the strength of the statutory language when considering the effect of impugned conduct and avoid trivial acts causing minor upsets being caught within the concept of harassment.

99 In **Pemberton v Inwood** [2018] EWCA Civ 564, Underhill LJ revisited **Dhaliwal** in light of the introduction of s.26 and the difference in language to the predecessor harassment legislative provisions. Underhill LJ made clear that in considering whether conduct had the proscribed effect, the Tribunal must consider both the subjective perception of the complainant and whether it was objectively reasonable for that conduct

to be regarded as having that effect taking into account all other circumstances.

100 In considering the burden of proof, we referred to s.136 Equality Act 2010 and the guidance set out in the case of **Igen Ltd v Wong** [2005] IRLR 258, CA as approved in **Madarassy v Nomura International Plc** [2007] IRLR 246, CA. This guidance reminds us that it is for the Claimant to prove facts from which the Tribunal could conclude, in the absence of adequate explanation, that the employer has committed an act of unlawful discrimination. The outcome at this stage of the analysis will usually depend upon what inferences it is proper to draw from the primary facts found by the Tribunal. Where the Claimant has proved such facts, the burden of proof moves and it is necessary for the employer to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the prohibited ground.

101 In considering whether the burden of proof has shifted, the Tribunal should not adopt an overly mechanistic approach but rather consider whether discrimination can properly and fairly be inferred from the evidence, **Laing v Manchester City Council** [2006] IRLR 748. A Tribunal will be setting an impermissibly high hurdle, however, if it asks if discrimination is the only inference which could be drawn from the facts, **Pnaiser v NHS England and Coventry City Council** [2016] IRLR 170, EAT.

Time limits in discrimination claims

102 Section 123 of the Equality Act 2010 provides that no complaint may be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable. For the purposes of this section conduct extending over a period is to be treated as done at the end of that period and failure to do something is to be treated as occurring when the person in question decided on it.

103 An act will be regarded as extending over a period if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant. The concepts of 'policy, rule, practice, scheme or regime' should not be applied too literally, particularly in the context of an alleged continuing act consisting of numerous incidents occurring over a lengthy period, **Hendricks v Metropolitan Police Comr.** [2003] IRLR 96, CA at paras 51-52.

104 If the claim is presented outside the primary limitation period (that is, after the relevant three months), the tribunal may still have jurisdiction if, in all the circumstances, it is just and equitable to extend time.

Unauthorised deduction from wages

105 The Employment Rights Act 1996 ("ERA") s.13 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deductions are required or authorised to be made by virtue of a statutory provision, a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction.

106 A deduction occurs when an employee or worker is paid less than the amount due on any given occasion including a failure to make any payment, s.13(3) ERA.

107 The Tribunal must first consider whether there has in fact been any deduction, in other words what amount was due to the claimant under the terms of his contract as set out above. In the event that the Tribunal concludes that a lesser sum was paid, it must consider whether the provisions of the contract amounted to a relevant provision authorizing such deduction.

Conclusions

Reasonable Adjustments – Paragraph 44 of the Claim Form

84. The first PCP relied upon is a requirement to work a total of 18 contact hours per week. The Respondent accepts that this PCP was applied. As for the second PCP regarding workloads, this appears to overlap significantly with the first PCP. For the avoidance of doubt, and having regard to the Claimant's job description, the Tribunal concludes that there was a requirement to work 18 contact hours per week, averaged over the three teaching periods in the year. The workload principally comprised teaching and related duties, with some ancillary personal development including the possibility of attending research-related training but with no specific time allocation for original research. This is consistent with the job purpose. Whilst the Claimant was paid on occasion to attend conferences, this was to ensure high quality and up to date teaching as part of his personal development and does not lead us to conclude that his workload included research.

85. We accept that the application of the PCPs put the Claimant as a disabled person at a disadvantage, as he was not able to teach a large variety of courses (including pre-sessional, non-credit bearing, evening and social). As the focus of the job was teaching, this meant that the Claimant could not perform a full-time role and his salary was subsequently reduced.

86. Much of the evidence and submissions has been focused upon whether or not the adjustments proposed by the Claimant were reasonable. In considering each, we remind ourselves that the duty is on the Respondent to take reasonable steps to avoid or ameliorate substantial disadvantage; it is not the duty of the Claimant to identify particular steps which should have been taken. The assessment of reasonableness is objective and will depend upon the particular circumstances of the case and the Tribunal was satisfied that there were no other potentially relevant reasonable adjustments not identified by the parties.

87. The first proposed adjustment is to the duties allocated to the Claimant. This is expressed in five overlapping paragraphs of the claim form: paragraph 44(a) allocating alternative duties; paragraph 44(b) allocating additional duties identified by the Claimant as possible alternatives; paragraph 44(c) allowing him to undertake a role which would normally require a PhD; paragraph 44(e) allowing him to undertake consultancy work on another team's project and paragraph 44(f) swapping some colleague's duties. The extent of the overlap is clear from Ms Churchhouse's written submissions where essentially the same points are made in respect of each – teaching on the Masters programme, the CCLS proof-reading work and the Critical Thinking and Writing course conceived, developed and being delivered by another lecturer. The broader work in the first two categories included administrative duties and the Claimant's proposals for new work within the Language Centre, such as teaching English as a foreign language, work in applied Linguistics or developing new modules.

88. Addressing first the possibility of teaching on the Masters course, this includes the Masters part of the maternity cover work which became available. The Tribunal accepted the Respondent's evidence that the teaching now offered to the Claimant on the Masters course is skills-based and non-credit bearing. The requirement for a PhD or equivalent applied, and still applies, to teaching on credit-bearing modules which count towards the students' Masters degree. The requirement for a PhD or equivalent was applied across the Respondent at the direction of the Dean of Education. In deciding whether it would have been reasonable for the Respondent to waive the requirement for a PhD or equivalent, we bear in mind the nature of the Respondent organisation and the competitive nature of the higher education sector. Academic rigour and excellence are important to universities in attracting students and generating income, through the not insignificant fees paid by students or other funding sources. The Tribunal does not consider that it was objectively reasonable to require the Respondent to waive this requirement in respect of credit bearing teaching modules. In reaching this conclusion, we took into account that the Respondent said that it would support the Claimant in obtaining a PhD in order to teach on the Masters course in the future and offered teaching on the pre-Masters courses as possible alternative duties. The Claimant did not avail himself of the opportunity to study for a PhD and rejected the pre-Masters teaching because he considered it a retrograde career step, not for reasons related to his disability.

89. Addressing next the CCLS proof-reading as a possible adjustment, the Tribunal have found that this was an externally funded project which was important for the reputation of the Respondent. The initial enquiry made by the CCLS Project Manager was based on the understanding that the Claimant was still teaching legal English writing skills to LLM students which is consistent with our conclusion that this work required up to date specialist skills and experience in legal English, it was not an administrative task, such as simply checking for typographical errors. The Claimant had not worked on the LLM course for at least seven years. Professor Richardson did not refuse the opportunity for the CCLS team to use the Claimant if they considered it appropriate but provided the alternative option, ultimately accepted it would appear, of using the dedicated CCLS team in the Language Centre. Whilst Ms Churchhouse submits that Professor Richardson did not meet the Claimant to satisfy herself of whether he could do the work, nor apparently did the CCLS Project Manager who made the ultimate decision.

90. In essence, the adjustment would have been the imposition of the Claimant on the CCLS Project Manager. In deciding whether this was objectively reasonable, we took into account that there was no evidence that the project would have been long-term or even what amount of the weekly working week would be required proof-reading. Nevertheless, we accept that it would have ameliorated the disadvantage to the Claimant to some extent and for some period and could therefore be a reasonable adjustment. We bore in mind that it may sometimes be a reasonable adjustment to allocate work to a disabled employee even where they are not the best qualified. However, given the nature of the work, the reputational risk, the mistaken premise of the initial approach to the Claimant and his lack of recent experience, it was simply not reasonable in all of the circumstances to impose the Claimant upon CCLS rather than offering the Project Manager a choice of using the established, skilled team already in place. In all of the circumstances, the Tribunal does not accept that this would have been objectively reasonable. We consider that it is a further example of the Claimant viewing possible alternative duties purely from his own subjective view of whether he could, and wanted

to, perform them rather than objectively considered whether it was reasonable to do so.

91. As for the credit bearing in-sessional modules being taught by others, the Tribunal bore in mind that it can be a reasonable adjustment to treat a disabled employee more favourably and that there was no contractual impediment to forcing the lecturer teaching those modules to relinquish them. However, just because a step is contractually possible does not mean that it is objectively reasonable. The modules in question were not just being taught by another lecturer, they had been conceived and the teaching materials developed by that lecturer. The Claimant accepted that it would be difficult for the Respondent to remove such a course against the lecturer's wishes. The Respondent explored the possibility of allocating this work to the Claimant but decided that it would not be fair and could give rise to grievances and disruption in the working environment. The Claimant had repeatedly expressed concern about his working relationships with colleagues and the harmful effect this had upon his mental health. An imposed reallocation of work, we consider, would not in the circumstances have been objectively reasonable. There was not a systematic call for other lecturers or teaching fellows to volunteer to transfer their modules to the Claimant, as the Claimant's case seemed at times to suggest should have happened generally, but given the very prescriptive range of teaching which the Claimant said he could undertake, there is no evidence that it would have reduced the disadvantage to the Claimant in any event.

92. The final categories of alternative duties were administrative duties, research and the Claimant's proposals for new work within the Language Centre, such as teaching English as a foreign language, work in applied Linguistics or developing new modules. The Tribunal has found that the administrative and research parts of a teaching fellow's job were ancillary to the teaching being delivered and not free-standing work on the professional services contract. As the Claimant had limited teaching responsibility, his administrative duties were consequently reduced although he was in fact spending more time than normally allotted to them in the absence of contact hours. There was no evidence of any non-teaching related administrative work which the Claimant could practicably have undertaken, for example it would not realistically be possible for him to mark exams on modules which he did not teach and was therefore not sufficiently expert in their content. The nature of academic research is specialist and not widespread in the Language Centre. Objectively considered, the Tribunal does not accept that there were research duties which could reasonably have been allocated to the Claimant by way of adjustment.

93. The possibility of creating new types of work within the Language Centre was not greatly explored by Ms Churchhouse in her submissions. This is perhaps not surprising as the Claimant accepted that he would not expect programme level changes in the short term. Further, to develop new programmes would involve considerable expense for the Respondent and there was no evidence to contradict the Respondent's case that there was no commercial market or demand for them. On balance, the Tribunal does not accept that this would have been a reasonable step to expect the Respondent to take.

94. The Claimant has been repeatedly critical of what he regards as the Respondent's lack of engagement in attempts to find alternative duties which he can safely perform. The Tribunal does not accept that this is a fair criticism. The evidence shows a multitude of meetings to discuss possible duties over several academic years. At times, the Tribunal have found that it was the Claimant who did not engage constructively. The Claimant rejected the possibility of teaching on the foundation courses or pre-Masters

courses without giving them a stress rating because he perceived them as retrograde steps in his career. That is his prerogative but it is relevant, in our view, when considering whether it was reasonable to expect the Respondent to take the steps outlined above to take into account the alternatives offered and the Claimant's decision to reject all of them whilst maintaining a rigid insistence on only those types of work which he subjectively deemed suitable. As is clearly set out in the case-law, the question of reasonableness requires the Tribunal to take into account the needs of both the employer and of the employee in the particular circumstances of the case.

95. The Claimant's assessment of almost all of the work in the Language Centre as being scored at 8-10 in terms of risk and the refusal to score the foundation or pre-Masters work at all severely limited the opportunities for alternative duties. The Tribunal does not consider it unreasonable to limit the list of available work to that which the Claimant was qualified and experienced to undertake. It would have been obviously unreasonable to include the work undertaken by a Professor or a secretary; it was equally objectively unreasonable to expect the list to include work on the Masters programme given the University wide requirement and the Claimant's lack of a PhD or equivalent. Having regard in turn to the specific activities relied upon by the Claimant and more holistically at the limited alternatives available, the Tribunal finds that there was no failure to make reasonable adjustments in terms of the Claimant's duties.

96. At paragraph 44(d) of the claim form, the Claimant contends that it would have been a reasonable step to redeploy him to the available role of Lecturer – Teaching and Scholarship. As we noted in the findings of fact, there was no vacancy to which the Claimant could be redeployed. The issue was whether his existing job would be performed on a professional services contract or an academic family contract, and whether such a change would have made available other potentially suitable duties. Ms Tharoo accepts that it may have done so in part; a PhD or equivalent would still have been required for Masters teaching but there might have been some additional administrative or leadership roles. The Respondent's case is that transfer to an academic contract by way of job matching and without being required to make an application would not be reasonable.

97. As is clear from **Archibald v Fife**, it may be a reasonable adjustment to redeploy a disabled employee to another job without requiring them to submit to a competitive process. However, the Tribunal does not accept Ms Churchhouse's submission that the Respondent had a duty to do so in the particular circumstances of this case. The Claimant initially sought a move from a grade 5 professional services contract to a grade 6 academic contract. This is akin to a promotion in the sense that the grade 6 academic role has a greater expectation of leadership, innovation and scholarship and brings with it a higher salary range. The Tribunal has found that there were discussions about whether it would be possible to allow the Claimant to transfer without following a process, including seeking advice from HR. The Respondent offered adjustments to the process, such as more time to complete the application and the ability to demonstrate teaching by submitting a video rather than an in person observed class. The Claimant did not avail himself of these adjustments.

98. The Tribunal has accepted the Respondent's evidence as to why it was not appropriate simply to transfer the Claimant to an academic contract due to the need to assess suitability and the alternative of a lengthy probation with the risk of return to the former contract being even more stressful than the proposed application process. The

application process was short, it was not competitive as it assessed the Claimant's suitability by reference to his own experience and performance and not by comparison to other applicants and the decision was ultimately one for the faculty panel. Given the nature of the Respondent organisation and the need to ensure delivery of high-quality education, it would not be reasonable to expect it to essentially promote the Claimant without considering whether he was capable of performing the job. We accept the submission of Ms Tharoo that this would have been wholly unfair to the Claimant as it could be "setting him up to fail" by promoting him to a role with greater responsibilities without even this basic assessment of his competency.

99. The final issue is whether it would have been a reasonable adjustment to continue to pay the Claimant in full despite his reduced teaching workload. There was a dispute as to the precise fraction of the teaching fellow job that the Claimant was working: the Respondent assessed it at 0.37FTE whereas the Claimant assessed it as 0.8FTE. The Tribunal has not found it necessary to decide precisely what fraction of the job the Claimant was performing, although we have accepted that the assessment model applied by the Respondent was reasonable and that the Claimant accepted that his diary included work which did not fall within his job description. What is not in dispute is that since at least 8 September 2017, the Claimant had been told that he could not be paid in full whilst working only part of the job. Notwithstanding the clear terms of the letter sent on 8 September 2017 that the Claimant either accept a pro rata part time contract or be considered at a panel hearing, with the possibility of medical retirement or redeployment, the Respondent continued to pay the Claimant in full whilst working only part-time until February 2019. Ms Churchhouse submits that the continuation of full pay during this period was a reasonable adjustment by the Respondent and, applying **Ward**, that it must be able to demonstrate some change in circumstances to support its subsequent withdrawal on notice given on 22 November 2018.

100. With regard to the lack of evidence about the financial need to reduce the salary, we have accepted Professor Richardson's evidence that there was a financial cost to the Respondent in covering the Claimant's teaching and that Professor Adger had a duty responsibly to manage the Language Centre's budget. The disparity between the work done and the pay was considerable. In September 2017, the Respondent did not implement its original decision to follow a capability process which may have resulted in termination. This was because it decided instead to involve Remploy to ensure that no other reasonable adjustments were possible. The Tribunal concludes that the continuation of full pay for part time work was only ever intended to be a temporary adjustment – either further discussion and Remploy involvement would result in full time work or, after discussion was exhausted, there would need to be a move to pro rata payment. This is consistent with the repeated offer of pro rata payment following the conclusion of the second Remploy support period but no solution having been found and, indeed, no sight of the exit report due to the Claimant's decision not to authorise its release. The end of Remploy involvement and the absence of any further work being identified was, in our view, a material change in circumstances which justified the removal of the temporary adjustment. Overall, the Tribunal does not accept that permanent maintenance of full pay for part time work was a reasonable adjustment having regard to the significant cost to the Respondent.

101. For all of these reasons the reasonable adjustments claim fails.

Harassment – Paragraphs 53 and 51 of the Claim Form

102. The first conduct relied upon is the failure to take the steps set out in the reasonable adjustments claim. Applying **Dhaliwal**, as revisited in **Pemberton**, we accept that the conduct occurred (in the sense that the Respondent did not agree to do any of the things listed) and that it was unwanted (in the sense that the Claimant repeatedly asked for these steps to be taken). We have not considered it necessary to decide whether the conduct was related to disability as we are satisfied that it did not have the proscribed effect. In considering effect, the Tribunal must have regard both to the subjective perception of the Claimant and decide whether it was objectively reasonable taking into account all other relevant circumstances. For the reasons set out above, the Tribunal has not accepted that any of these amounted to a failure to make reasonable adjustments. In reaching that conclusion, we have concluded that objectively it was not reasonable to expect the Respondent to take any of the steps. In such circumstances, we do not accept that it was objectively reasonable for the Claimant to regard the failure to take those steps as an act of harassment.

103. The Claimant no longer asserts that he was dismissed but maintains that the reduction in pay was an act of harassment related to disability. It cannot be in doubt that the reduction in pay was unwanted. It was also related to disability as the reason for the reduction in pay was the reduction in teaching caused by disability. Looking at proscribed effect, based upon our findings of fact, we are satisfied that the reduction in pay was not implemented with the purpose of violating the Claimant's dignity or of creating a hostile, intimidating, degrading, humiliating or offensive environment. The Respondent was genuinely committed to finding a solution where the Claimant could continue to discharge a full-time role for full pay, but no agreement could be found and the financial position became untenable. Once again, the question is the subjective effect of the conduct and whether that effect was objectively reasonable in the circumstances and context which we have found. We have no doubt that it had the required subjective effect on the Claimant but do not accept that such effect was objectively reasonable. There had been a series of discussions over two academic years, the involvement of Remploy and Occupational Health, no solution had been found and a year after the initial proposal of part time work, the Respondent made clear that this was the path it would follow. The Claimant was working far less than his contracted teaching hours, there was a financial cost to covering his teaching. The situation could not reasonably continue indefinitely. In this context, we are satisfied that objectively considered the reduction in pay could not have the proscribed effect.

104. Separate to the actual reduction in pay, the Claimant also relies upon the manner of the reduction as an act of harassment related to disability. The Tribunal has found that there was a failure to follow the Respondent's own policies even though HR had made clear in September 2017 that this is what should happen before the pay reduction was implemented. The Claimant's pay was reduced without a panel hearing and with no right of appeal. Undoubtedly, this was unwanted conduct from the Claimant's perspective. In deciding whether the failure to follow proper process was related to disability, the Tribunal reminded itself that this is not a "but for" test of causation but a question of whether disability was a material and effective cause. No comparator is required by section 26, but the treatment of an actual or hypothetical comparator could be useful evidence when deciding whether disability was a material cause. The Tribunal is clear that if another teaching fellow without any disability was unable to fulfil well over half of their contractual contact hours and, after a series of protracted discussions over

two academic years, no progress had been made in finding work to make up a full-time role, their pay would also have been reduced. Furthermore, the Tribunal has found as a fact that the decision to impose the variation without a proper procedure was oversight and not in any way born of a desire to dismiss the Claimant due to his disability or requests for reasonable adjustments. Put differently, having regard to the context, we consider that our non-disabled evidential comparator would also have had the pay reduction imposed in this way and the Claimant's disability was in no sense whatsoever a material cause for the failure to follow a proper procedure.

105. The Tribunal bears in mind that unreasonable conduct is not necessarily discriminatory conduct but it could give rise to an inference of discrimination. We also had careful regard to the matters set out at paragraph 40.1 of Ms Churchhouse's submissions in deciding whether these would permit an inference of discrimination, sufficient to pass the burden of proof to the Respondent. We have not made any finding of a failure to comply with disclosure obligations as we are not satisfied that there has been any; even if there had been a case file of notes compiled by Ms Lopez Barillas, if cannot be found or no longer exists, it cannot be disclosed. The Respondent's witnesses have been found to be credible and reliable and we do not accept that the Claimant's criticism of disclosure is well founded. Nor have we made any finding of fact that there was a culture of harassment in the School as we have not considered it necessary to do so. In our findings of fact, the Tribunal expressly declined to draw any adverse inference from the absence of notes or lack of memory of Ms Lopez Barillas for the reasons given. We have accepted that the distinction drawn between the non-credit bearing Masters teaching now offered and the credit-bearing Masters teaching which required a PhD or equivalent was genuine and well founded. As for the matters raised at paragraphs 40.1(g) to (k), the Tribunal does not consider that any such finding of fact is necessary to determine the issues or to form the basis for any inference, preferring instead to rely upon our findings of fact based upon the oral and written evidence before us.

106. As for the failure of Dr Pate to hold a face to face meeting with the Claimant to review his work pattern or work-related aspects of his disability, we again accept that this was unwanted conduct. The Claimant relies heavily on the contents of the Remploy exit report which are critical of the Respondent in this regard. This report was, as we have found, not provided to the Respondent although it knew that the Claimant believed that there should be a formal job review. Again, the Tribunal considers that context is important when considering this part of the claim. There had been multiple face to face meetings to discuss the Claimant's duties over at least two academic years. None had achieved a mutually agreed solution and by as early as October 2017 the parties had reached an impasse. The Tribunal has found that in the circumstances, it was reasonable and appropriate for Dr Pate to carry out a paper-based assessment of the Claimant's work. The Claimant had a full opportunity to set out the work he believed that he was undertaking and he acknowledges that some of it fell outside his job description. Nothing further would have been achieved by a face to face review and objectively considered in context, the failure to hold such a meeting cannot be said to give rise to the proscribed effect.

107. On balance, the Tribunal has accepted that at two meetings, Ms Lopez-Barillas made the comment that the Respondent found it difficult to discuss challenging issues with the Claimant. The comments were unwanted by the Claimant. They were said in the context of the lack of progress on finding an agreed solution and her frustration at the Claimant's insistence that his proposal was the only reasonable solution and his

challenging conduct in meetings. As Ms Tharoo submitted, there is no evidence that the Claimant's behaviour was in any way linked to his disability. The Tribunal concludes from the evidence before us that these meetings were difficult and, consistent with his demeanour giving evidence, the Claimant was agitated and at times confrontational when the Respondent did not agree with what he wanted and believed he needed. This is consistent with the Claimant's acknowledgement that the meeting on 30 October 2018 had been frustrating. The Tribunal prefers the submissions of the Respondent: the comments by Ms Lopez-Barillas were based upon her negative view of the Claimant's conduct and were not in any way related to disability; the comments would equally have been made about a hypothetical, non-disabled evidential comparator who had behaved in the same way as the Claimant.

108. The Tribunal has not found that the Respondent generally required the Claimant to prove that his disability was no longer a problem before he could be considered for other work. The requirement arose only in January 2019 when part of the EAL 4700 module became available and the Respondent requested evidence that his health had improved sufficiently to do so. This was purely because the module was non-credit bearing and taught in the evening; both factors leading the Claimant to give such work stress factor scores of 8 to 10. The Respondent properly wanted to ensure that the Claimant could safely undertake available work and to meet its duty of care. The Claimant accepted that no adjustments could be made to non-credit bearing modules to enable him to teach them. Far from showing inconsistency, the Tribunal considers it consistent with the Respondent's case that it was concerned about the Claimant's health that evidence was not requested in August 2020 as that work was on the Masters programme which the Claimant had consistently said that he was able to do. In the context of a high risk assessed course which the Claimant could not safely teach, the requirement for evidence about his health in January 2019 cannot objectively be regarded as conduct which creates the proscribed effect.

109. The final conduct relied upon as harassment is Mr Taylor's email on 24 August 2018. The claim form was presented on 26 April 2019, with ACAS early conciliation starting on 15 February 2019. The complaint is therefore out of time. No other act of harassment has been found by the Tribunal. The Tribunal does not consider that it is just and equitable to extend time. The Claimant is a trade union representative, throughout the period from 24 August 2018 he was represented by Mr Jordaan, he made an internal complaint about the conduct at the time and was aware of his rights under the Equality Act 2010. There is no factual overlap between this complaint and the other causes of action advanced. Time limits are important and it is for the party seeking an extension to persuade the Tribunal that it is just and equitable to do so. The Claimant has not done so and the Tribunal does not have jurisdiction to hear the complaint.

110. The claim of harassment fails and dismissed.

Direct Discrimination because of Disability – Paragraph 51 of the Claim Form

111. The conduct relied upon as harassment is also alleged, in the alternative, to be less favourable treatment because of disability. The Tribunal concludes that the conduct which does not objectively reasonably have the proscribed effect, cannot be a detriment. A reasonable objective employee in the Claimant's position could not have more than an unjustified sense of grievance given that it was objectively reasonable.

112. The manner in which the pay reduction was implemented and/or the comments of Ms Lopez-Barillas are not less favourable treatment as we have concluded that a hypothetical non-disabled employee in the same or not materially different circumstances would have been treated in the same way. The claim based upon Mr Taylor's email is out of time and it is not just and equitable to extend time.

Unfavourable Treatment because of Something Arising in Consequence of Disability – Paragraph 49 of the Claim Form

113. The unfavourable treatment relied upon in this claim overlaps significantly with the preceding harassment and direct disability claims.

114. The Respondent's case throughout is that the Claimant was not moved from a full-time contract to a 0.37FTE contract, simply that by way of variation his pay has been reduced pro rata on his full-time contract to reflect the work performed. The Claimant withdrew his unfair dismissal complaint, in effect accepting that the original contract remains in force. The Respondent accepts that the variation of the contract was unfavourable treatment and arose from the Claimant's inability to carry out all of the aspects of his role and that this inability arose in consequence of his mental health disability. The issue is therefore whether the Respondent was pursuing a legitimate aim and whether the variation was a proportionate means of achieving it. The Tribunal accepts that paying employees appropriately for the work being carried out is a legitimate aim as it is a requisite for financial responsibility and to ensure appropriate and best use of student fees to provide quality education. As for proportionality, the Tribunal has balanced the need of the Respondent to manage its budget and the harmful effect upon the Claimant of such a significant reduction in his pay. We took into account the very lengthy period over which an alternative solution was sought, the Claimant's resistance to any proposal other than his own, the fact that his proposals were not reasonable adjustments and the fact that by November 2018 no other solution was realistically possible. For all of these reasons, we conclude that the variation of the contract was objectively justified.

115. As for the manner of dismissal (which we understand to be the manner in which the pay reduction was imposed without due process), the Tribunal relies upon its conclusions above in the harassment claim. As with harassment, no comparator is required for a s.15 claim but, applying **Pnaiser**, the Tribunal must determine what was the reason for the treatment, focusing on conscious and subconscious motivation and deciding whether the "something" was an effective reason. We have found that the decision to impose the variation without a proper procedure was oversight and not in any way because of a desire to dismiss the Claimant due to his disability or requests for reasonable adjustments. We have concluded that any employee unable to perform two thirds of their job would, after more than two years of unsuccessfully trying to find a solution, would have had a pay reduction imposed. The failure to follow a proper procedure was entirely due to the passage of time, a sense of frustration at the delay and the belief that the situation could not persist. In the circumstances, we conclude that the Claimant's disability was in no sense whatsoever a material cause for the failure to follow a proper procedure.

116. As for the failure of Dr Pate to conduct a face to face review of the Claimant's duties, we rely again on our conclusions in respect of harassment and above with regard to the context: the passage of time, a sense of frustration at the delay and the belief that

the situation could not persist. Nothing would be achieved by a face to face meeting and in the circumstances, given the Claimant had adequate opportunity for input in writing, we do not conclude that the failure to hold a meeting could be considered unfavourable and far less because of something arising in consequence of disability. In her written submissions, Ms Churchhouse does not identify what the "something" is or how it arises in consequence of disability. If the something is the inability to fulfil the full-time teaching commitment, that is merely the reason why there needed to be a review of the Claimant's work. It was not a material or effective part of the reason to conduct that review in writing rather than face to face.

117. As for the comments by Ms Lopez-Barillas, the Tribunal accepts that these were capable of amounting to unfavourable treatment. However, for the reasons given in our conclusions on the same conduct in the harassment claim, we have accepted the Respondent's submissions that the comments by Ms Lopez-Barillas were based upon her negative view of the Claimant's conduct and were not in any way related to disability; the comments would equally have been made about any non-disabled employee who had behaved in the same way as the Claimant and there was no evidence to suggest that the Claimant's behaviour arose in consequence of his disability.

118. Finally, there was no requirement for the Claimant to prove that his disability was no longer a problem before he could be considered for other work. As set out in the harassment claim, the requirement in January 2019 was for evidence in respect of work which the Claimant had scored as highly risky to his health, which could not be adjusted to render it safe and was for the Respondent to meet its duty of care. The Tribunal does not accept that it can be unfavourable treatment for an employee with severely restricted ability to teach due to disability to be asked to provide medical evidence that he is able without further risk to his health to teach a module already identified as a high stress risk. Even if it were unfavourable treatment, the Tribunal would have concluded that it was objectively justified in the circumstances.

Unauthorised Deduction from Wages

119. The Claimant was employed on a full-time contract, with commensurate full-time salary. The Respondent's case is that because he was unable to perform his full duties, he was in breach of contract and it was therefore entitled to vary the contractual term as to pay in order to pay pro rata to the fraction of the job being performed. Throughout the case, the Respondent has maintained that the original full-time contract remains in place and it is only the term as to pay which has been varied. Once the Claimant can return to full-time teaching, he will return to full pay. In other words, there was no repudiatory breach of the original contract which it has accepted as terminating that contract and introducing a new part-time contract in its place.

120. In submitting that the pay term has been varied to permit pro rata pay, the Respondent relies upon an implied term by reason of business necessity or efficacy to permit its unilateral variation as the Claimant has not consented to the variation. It submits that it gave three months' contractual notice of the variation in the letter dated 6 November 2018 as, despite extensive efforts, it would not be reasonable to continue to pay the Claimant in full when there was no short or medium term prospect of him returning to a full-time role. Ms Tharoo submits that there was no contractual obligation to follow either the Attendance Policy and Procedure or the Capability Policy and Procedure as neither applies to the facts of this case: the Claimant is able to do his job

in the sense that there are no performance issues and he did not have any significant periods of recent absence.

121. By contrast, the Claimant's case is that there is no express or implied term in the contract of employment which permits deductions from wages in the factual matrix of this case. The Claimant is not in breach of contract but has been working a varied workload by way of reasonable adjustment by agreement with the Respondent.

122. Having regard to the submissions and our findings of fact, the Tribunal reaches the following conclusions. We accept Ms Churchhouse's submission that the Claimant was not in breach of contract in respect of his teaching duties as the Respondent agreed to the removal of teaching which was not suitable by way of reasonable adjustment even if only as a temporary measure whilst it was anticipated that suitable full-time teaching could be found. This agreement included continuation of full pay and the Claimant working reduced or alternative related duties from September 2016. Moreover, as stated to Occupational Health in November 2018, the Claimant continued to work his full hours, albeit not teaching.

123. From August 2017, the Claimant made it expressly clear that he objected to a pro rata reduction in pay. This objection was repeated following the formal offer on 8 September 2017 in which the Respondent made clear that if the Claimant did not accept variation it may result in termination of the contract following an appropriate process with medical input. The Tribunal does not accept that the capability or attendance procedures could not apply to the facts of the case. Capability as a reason within section 98 Employment Rights Act 1996 encompasses both incapacity and performance. The attendance policy now relied upon internally by the Respondent envisages a stage 3 panel hearing where an employee cannot carry out the duties of their role adequately. If an employee cannot fulfil the core duties of his role, if there are no suitable alternative duties to maintain full-time work and the employment will not consent to variation to part-time work, then dismissal after a proper procedure is likely to follow and ultimately be considered fair within s.98(4). The Respondent intended to follow this course of action in September 2017; in November 2018 it decided to opt for a purported unilateral variation of the contractual pay term instead.

124. Whilst the Tribunal has accepted that the Respondent did not discriminate against the Claimant or fail to make reasonable adjustments to enable either full-time work or an increased fraction, the test on an unauthorised deduction from wages claim is contractual. Was the Claimant paid less than that to which he was contractually entitled? To this extent, the Respondent's submissions about reasonableness do not assist as the legal test is contractual. There is no express term of the contract permitting pro rata pay or unilateral variation. Ms Tharoo accepts as much when she relies upon an implied term instead.

125. The Tribunal does not accept that a term permitting unilateral variation to pay can be implied into the Claimant's contract of employment by reason of business efficacy. A term cannot be implied into a contract simply because it is reasonable or an agreement would be unfair without it. The party seeking to imply the term must show that it would have been the intention of the parties to include that term at the time that the contract was entered as it is necessary to make the whole agreement workable.

126. The Claimant is ready, willing and able to provide satisfactory work to his employer,

but it is common ground that he cannot teach the required maximum of 18 hours contact time per week averaged over the academic year because of his disability. The Claimant is attending work, he is offering his services and the work being done is in part his core job role of teaching, in part ancillary duties such as administration and personal development even if spending more time on them than would normally be the case and in part duties falling outside of the job description but relevant to the workplace. As such, this is not a "no work, no pay case". The proposed implied term permitting pro rata payment is not, and would not have been at the time that the contract was entered into, necessary in order to render the whole agreement workable. The proposed implied term deals only with one aspect of the contract; there is no variation clause within the contract and it is notable that the contract permits for three months' notice only in respect of termination, not of any other change.

127. The Tribunal acknowledges that this was an untenable situation and there was a need to break the impasse which had developed. The Respondent was acting for the right reasons in trying to help the Claimant. It did not however follow the process to terminate the contract or act within any contractual power to vary pay. If dismissed in February 2019, the Tribunal may well have found the dismissal substantively fair as long as a proper procedure had been followed. It was not. However, the Claimant should be aware that if it remains the case that he is unable to do the full teaching complement and there are no alternative duties which can be found, the possibility of termination of his employment may need to be considered as part of a proper process.

128. The ACAS period started on 15 February 2019 and the claim was presented on 26 April 2019. The amendment to the salary came into force in February 2019, it seems therefore that strictly the ambit of the case before this Tribunal is in respect of two months' unauthorised deductions from wages. The deduction has continued since April 2019 to date (the amount will have changed by reason of pay rises and to reflect any additional teaching now undertaken by the Claimant on the Masters course). The Claimant could therefore bring a new claim for the ongoing deductions if the parties are unable to reach a resolution. Alternatively, the parties may prefer the Tribunal to permit an amendment to this claim to include the ongoing deductions without requiring the cost and delay of further proceedings.

129. The Tribunal heard no evidence or submissions and were not asked to decide whether or not the Claimant had either affirmed the contract by his conduct or waived the breach despite his initial objections given the length of time which has passed. Whether brought by way of a new claim or decided as part of the remedy in this claim, after amendment, these are issues which will need to be determined. A remedy hearing with a time estimate of one day will be listed. In preparation, the parties will need to:

- decide whether or not the ongoing deductions will also be considered;
- exchange a Schedule of Loss and counter Schedule of Loss;
- exchange relevant documents in support; and
- exchange witness statements.

130. We would like to thank both Counsel for the measured way in which they conducted proceedings. It is not always easy to strike the right balance between assertive cross-examination and avoiding damage to an ongoing employment relationship. There were times when it appeared that the balance had been lost, but ultimately good judgment prevailed. The Tribunal apologises for the delay in

promulgating this Judgment. The decision was reached and dictated following the oral submissions of the parties; the delay in its promulgation rests entirely with the Judge and was due to the pressure of current workloads upon judicial time and her absence from the workplace for several weeks.

Employment Judge Russell
Date: 4 January 2021