



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms R Anghel  
**Respondent:** Middlesex University  
**Heard at:** Watford Employment Tribunal  
**On:** 26 to 30 October and 2 to 3 November 2020  
**Before:** Employment Judge Quill; Ms Brosnan; Mr English

## Appearances

For the Claimant: In person  
For the respondent: Mr S Gill, counsel

## JUDGMENT

- (1) The complaint of unfair dismissal is not well-founded. The Respondent did not unfairly dismiss the Claimant.
- (2) All of the complaints of breaches of the Equality Act 2010 fail. The Respondent did not harass the Claimant contrary to section 40 of the Equality Act 2010.

## REASONS

### Introduction

1. This was a 7 day in person hearing. Our decision and reasons were given orally on Day 7 and written reasons were requested. These are they.

### Claims and Issues

2. There was an agreed list of issues in the bundle, which we refined on Day 1 to accurately summarise the contents of the Particulars of Complaint as mentioned in that list of issues
3. As amended, the issues were:

Unfair dismissal

- 3.1 What was the reason for dismissal? The respondent's primary case is that the reason is redundancy. The respondent's secondary case, if the dismissal is not technically for redundancy, is that it was for some other substantial reason, namely a need to save costs.
- 3.2 Was the decision to make the Claimant redundant or to dismiss her in order to save costs materially influenced or engineered by reason of the Claimant's relationship with Professor Westley?
- 3.3 Did the respondent apply a fair procedure to the redundancy exercise? Did they consult properly and seek other posts for the Claimant? The Claimant says it would have been cheaper to keep her post and that of the other Senior Academic Assistant rather than having three Lecturers and one Associate Lecturer. The Claimant also says the questions at her interview for the Associate Lecturer post were not properly focussed on the job requirements and that her rejection for that post in view to her relationship with Professor Westley.
- 3.4 If the dismissal was procedurally unfair, would the Claimant have been dismissed in any event had a fair procedure been followed? IT is noted that the respondent says that paragraph 17 of its Grounds of Resistance should read that knowledge of the Claimant's relationship with Professor Westley was **not** common knowledge. However, the Claimant disputes this.

Harassment / Harassment of a sexual nature / Harassment by less favourable treatment

- 3.5 The allegations of harassment related to sex and harassment of a sexual nature are set out in paragraph 75a of the Particulars of Claim.
  - 3.5.1 Did Dr Westley engage in conduct as alleged in the paragraphs of the Particulars of Complaint referred at paragraph 75(a) of the Particulars of Complaint
  - 3.5.2 If so was that conduct unwanted?
- 3.6 If so, did it relate to the protected characteristic of sex and/or was it of a sexual nature?
- 3.7 Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 3.8 The allegations of harassment by less favourable treatment are set out in paragraph 75(b) of the Particulars of Complaint.
  - 3.8.1 Did Dr Westley and/or the Respondent treat the Claimant as alleged in paragraph 75(b) of the Particulars of Complaint.

- 3.8.2 If so, was that conduct which fell within the definition in 26(3) of the Equality Act 2010.
- 3.9 Did the respondent take all reasonable steps to prevent Professor Westley subjecting the Claimant to the behaviour alleged?
- 3.10 Is the claim for harassment out of time? If it is, should time be extended as being just and equitable?

### **The Evidence**

4. We had a bundle of approximately 600 pages from the Respondent and another bundle of approximately 300 pages from the Claimant
5. On the Claimant's side there were two witnesses, herself and Ms W Hewad, a former student. Both parties agreed that we could take Ms Hewad's statement as read - giving it the same weight that we would give it had she attended and testified under oath - and that there was no need for her to attend to answer any questions.
6. On the Respondent's side there were: Dr D Westley, Ms S Klandic, Professor A Bifulco, Mr D Malpas, who each attended in person and answered questions, and also Prof Dickins who gave evidence by video.

### **The Facts**

7. The respondent is a university. The Claimant was an undergraduate student at the university from around 2011. She graduated with a first class degree in Psychology with Counselling in 2014. For some of the modules which she took during that degree, the tutor was Dr David Westley.
8. In August 2014, the Claimant became an employee of the Respondent. She commenced a two-year fixed term contract as Graduate Academic Assistant (GAA) for the Psychology department. The grade was Grade 4. Her line manager was the Head of Department – Psychology which, at the times relevant to this dispute, was Professor Antonia Bifulco.
9. As summarised in the job description, the role was to be typically held by a recent graduate or postgraduate in psychology. The purpose of the job was "*To provide support to academic colleagues and students and assist in promoting effective learning, teaching and assessment practices and/or to assist in research and knowledge transfer activities*". It was a fixed term contract running from 19 August 2014 to 18 August 2016. The fixed term contract specified that the demand for work would be kept under review and that there was no guarantee of further employment when the fixed term expired.
10. In August 2016, the Claimant was offered the post of Senior Graduate Academic Assistant (SGAA) in the same department. This was to be a two-year fixed term contract from 15 August 2016 until 15 August 2018. The grade was Grade 5 (one grade higher). Other terms and conditions remained the same. She continued to report to the Head of Dept, Professor Bifulco.

11. This latter contract was not renewed. The Claimant's employment came to an end on 15 August 2018. It was the Respondent's position that the reason for non-renewal was redundancy and it made a redundancy payment to the Claimant.
12. For both the GAA role and the SGAA role and the Respondent always issued fixed term contracts. GAA was a common post across the university's various departments, but not all departments had any SGAs. Generally the intention of the University was that each of the GAA and SGAA roles were there to provide an opportunity to recent graduates to gain some experience; it was not envisaged that individuals would remain in either of the roles for a long period of time.
13. The move from GAA to SGAA was not automatic, but the possibility of that happening was something that was envisaged by the Respondent and the Claimant was not the only person who made that progression.
14. At the time of the Claimant's appointment to SGAA, Prof Bifulco sent a congratulatory email to the department which said, in part:

*"I am sure you will want to join me in congratulating Elloise and Ruxandra on their promotion to Senior GAAs. This is a two-year appointment but with every prospect of being extended or leading to Associate Lecturer in due course. We went through a formal recruitment and interview procedure, and as you can guess, both did extremely well. We are lucky to have them both in our department."*
15. During her time in the GAA role, the Claimant commenced a PhD.
16. Many of the Claimant's allegations refer to Dr David Westley. Dr Westley is currently Head of the Psychology Dept. He took over this role from Professor Bifulco after the end of the Claimant's employment. Previously he was Director of Programmes for Psychology (2013-2015) and Director of Collaborative Psychology Programmes (2015-2018).
17. As mentioned, Dr Westley had taught some of the courses which the Claimant undertook while she was an undergraduate. However, during her employment, he was not her line manager, and was not responsible for her formal appraisals as an employee. He was also not a supervisor on her PhD.
18. The Claimant and Dr Westley were both involved in a project called the Wellbeing Project. Both of them came up with important contributions for that project and both worked hard on it. In relation to that project, Dr Westley was the person who was ultimately accountable to the University and – as between him and the Claimant - he was the person who had final say. Therefore, in that sense, he was more senior than the Claimant in relation to the work on the Wellbeing Project. The Claimant's work on the Wellbeing Project was a voluntary activity in addition to her duties as an employee. The Claimant's work on the Wellbeing project was not part of her duties as an employee as either GAA or SGAA.
19. In December 2014 there was a social occasion one evening which both the Claimant and Dr Westley attended. During the course of the evening, Dr Westley made some complimentary comments to the Claimant. It is not possible for the panel to decide exactly what was said - or in what context - in relation to an event which took place almost 6 years prior to this hearing and 4 years prior to the date

on which the proceedings were issued and in relation to which there is no written record. The Claimant accepted in her evidence that she was not alleging that Dr Westley's behaviour on this occasion had been unwanted.

20. At the end of the evening, Dr Westley offered to give the Claimant a lift home in a taxi. It is alleged by the Claimant in her particulars of claim - though not referred to in her witness statement - that at the end of the journey, Dr Westley kissed her hand and held it tight. Dr Westley is sure that this did not happen and that he was in the front seat of the taxi and the Claimant in the rear.
21. Dr Westley reported during the later grievance investigation that he often kissed colleagues on the cheek at the end of social occasions, and our finding is that it is possible that, as he said goodbye to the Claimant, he kissed her on the hand. However, given the length of time that has elapsed, it is impossible for us to say for sure whether that happened or not. As per the Claimant's evidence, if it did happen, then it was not unwanted conduct.
22. In late February or (more likely) early March 2015, there was another social occasion at which the Claimant and Dr Westley were present in a bar. They had originally been out with colleagues, who had gone home, leaving just the two of them, and they decided that they both wanted to go for a drink in another establishment, the Arena bar. Towards the end of the evening, they kissed. The kiss was mutual and both parties consented to it. On the balance of probabilities, it was Dr Westley who initiated the kissing. However, this was not something which was unwanted by the Claimant.
23. In terms of exactly what each of them said to each other on this occasion, which was five and a half years before this hearing, and more than 3 years before proceedings commenced, we are not satisfied that either of them remembers the exact words that were said either by themselves or by the other person. In any event, on the Claimant's own evidence, the words which she alleges were used by Dr Westley that day were not unwanted conduct at the time that he is alleged to have uttered them.
24. They went no further than kissing on that occasion. A week or so later, they met again off campus. On this occasion, which was approximately 10 March 2015, Dr Westley informed the Claimant that he did not wish to become involved in a relationship with her. Dr Westley had separated from his wife in January 2015, and during this conversation, he informed the Claimant that he was not certain that his relationship with his wife was finally finished and that in any event, he believed it was too soon for him to become involved with anybody else.
25. At around this time, around March 2015, the Claimant was potentially willing to commence a romantic relationship with Dr Westley, which might later develop into a sexual relationship.
26. During the meeting on 10 March 2015, on the balance of probabilities, Dr Westley did say something along the lines of "I am not allowed" (which is a phrase which the Claimant says she clearly remembers) when explaining his reasons for not wishing to start a romantic relationship with the Claimant. The first time that it was alleged by the Claimant that he made this comment was more than 3 years later,

in her August 2018 grievance. The Claimant did not give full details of the exact words that were allegedly used by either of them surrounding this sentence. For these reasons, it is not possible for us to make any finding about whether the words “not allowed” referred to his marital situation, or to the Respondent’s rules, or both, or neither. They did, however, indicate that he was not seeking a sexual or romantic relationship with the Claimant.

27. Dr Westley’s conduct towards the Claimant on 10 March 2015 was not unwanted, save to the extent that she did not want him to say that he was not interested in commencing a romantic relationship.

28. Later that evening, 10 March 2015, at 22:57, the Claimant sent a text message to Dr Westley (page 160 of the bundle)

*It's probably best if I leave. I've been thinking about if for a while now, and it's something we should both get ready for. We cannot have the cake and eat it, too. It's just not me and I don't deserve it. Neither do you.*

29. The Claimant was referring to leaving the Respondent’s employment, and Dr Westley understood that when he read the message. The following morning, 11 March 2015, at 7 AM, Dr Westley replied by text message stating that he did not see any reason that she should leave and that she should stay.

30. Subsequently, they did meet again to discuss matters not long after 10 March 2015. Dr Westley informed the Claimant again that he did not want to commence a relationship. He disagreed with her assertion that something had been building between them for years. He said that he was still intending to potentially recommence his relationship with his wife or at the very least he needed further time to come to terms with the fact that he had recently separated from his wife. On the balance of probabilities, we find that Dr Westley did make a comment along the lines of “I cannot make any promises”, which is a phrase the Claimant says that she clearly remembers. However, our finding that this was in the context of the Claimant’s suggesting to him that that she wanted to commence a relationship with him at some stage in the future. We reject the Claimant's assertion that she asked for his assurance that he would not kiss her again and that Dr Westley replied by stating he could not make any promises that he would not do so.

31. After this meeting, there was the Easter vacation and a break during which the Claimant was away from university for a short time, and during that period the Claimant and Dr Westley did not meet.

32. After this gap, in April 2015, by mutual agreement, the Claimant and Dr Westley started what they each describe as a “dating relationship”. They each agree that they did not have sex on any of these dates and they each agree that this period of their relationship lasted between approximately April 2015 and July 2015.

33. It is impossible for us to decide, 5 years later, what specific sentences were uttered by either of them at the outset, or during, the dating relationship, given the passage of time. However, to the extent that either of them paid compliments to the other, or spoke about wanting to kiss the other, or admiring the other’s body, our findings are that they were involved – at this time – in the type of relationship in which each

of them thought that the other might want those type of comments to be made. At the time, there was no suggestion by the Claimant that Dr Westley should not want to kiss her, or that he should not say that he wanted to kiss her. In fact, it was the opposite; the Claimant welcomed comments that Dr Westley found her attractive.

34. There is disagreement between them about how frequently they went on what might be described as a “date”. Our finding is that each of their accounts can be reconciled with the other. Dr Westley recalls it being approximately 5 occasions because he is counting only the occasions on which it was just the two of them and no-one else, and when they went out together off-campus to a pub or a restaurant. The Claimant thinks the number is much higher than 5. The Claimant is counting occasions that took place at work when they drank in Dr Westley’s office, and/or when other people were present. Each of them were trying to give an honest account of the number of dates, but the significant passage of time means that it is not possible for either of them to give a detailed account of all of their meetings in this period.
35. During these dates, Dr Westley did not tell the Claimant that he planned to start a family with her.
36. After one of the dates – and it is not possible to be certain of the exact date, but it was probably the second to last time that they went out alone together for a specific off-campus date – the Claimant and Dr Westley ended up back at the Claimant’s residence. This was because the Claimant invited him to come home with her and he accepted the invitation. They ended up lying on top of the bed together. The Claimant unbuttoned Dr Westley’s shirt, but he did not remove it. The Claimant removed her dress. There is some disagreement between the two of them as to what Dr Westley’s role was in the removal of the Claimant’s dress. However, it is agreed that all of the activities up to this stage of the evening were by mutual consent. Shortly after the Claimant’s dress was removed, Dr Westley decided that he did not want to go any further and he decided to go home, which is what he did. Their intimacy went no further, either on this night, or on any later occasion.
37. The Claimant alleges that, some time after this evening, Dr Westley said to her, “you must feel like a failure”. Our finding is that he did not make that remark.
38. In July 2015, the Claimant and Dr Westley went to a pub, the Claimant wanted to meet Dr Westley in order to obtain some clarity about the “dating relationship”. During the meeting, the Claimant said to Dr Westley that she would like the two of them to become involved in a serious relationship, which would potentially be a long term one. Dr Westley informed the Claimant that he did not want that type of relationship at that stage. As a result of this meeting the dating relationship came to an end. It was a mutual decision to end the dating relationship at that time.
39. In the Claimant’s grievance, submitted in August 2018, her description of this meeting is “*in July 2015, I asked Dr Westley to meet me. I wanted to end what felt like a harmful relationship.*” Our finding is that that is not accurate. It was not the Claimant’s intention - before the meeting - to end the relationship, but rather it was a mutual decision which they each came to during the meeting. Furthermore, the Claimant did not decide in July 2015 – either before or after it ended - that the relationship was an abusive or harmful one.

40. After July 2015, Dr Westley did not seek to recommence a dating relationship with the Claimant. Dr Westley did not seek to commence a sexual relationship with the Claimant either a long-term/serious relationship, or the type of relationship which the Claimant told us that he wanted, which she referred to as “work with benefits”. After July 2015, Dr Westley did not say that he had feelings for the Claimant or that he was interested in commencing any sort of romantic or sexual relationship with her.
41. On Saturday 24 October 2015, shortly after 10am, the Claimant sent an email to Dr Westley with the subject line “a few words”.

*Hi David*

*I'm writing as yesterday i noticed your phone wallpaper and that you've chosen again the picture with your housemate... That made me think...*

*Maybe I didn't make it very clear, but my wish for myself right now is to settle down and start a family. Of course, the only way to have that is by starting a relationship. There are a few gentlemen who are interested in having that with me, but giving the friendship and feelings I built for you in the past four years, in my heart I was hoping that it would be you... i stopped thinking about what is going on in your mind. Too many confusing signals... Anyway...I don't like being stuck in situations that do not work and in which I cannot grow, nor the other can. I ask you kindly to give yourself two weeks to think about this and what you want for your future, and if you want me. After all, it's been four years...I won't bother, won't talk to you, no pressure. If I don't hear from you after these two weeks, I will consider it's time to give a chance to another relationship. I think it's time....*

*R*

42. Dr Westley replied on 29 October 2015. Amongst other things, he stated “*my direct answer is that you should go for the relationship options that you have right now and not wait for anything to change with me. I don't know how my current situation will resolve itself but even if my marriage doesn't get back on track I know that I won't be ready to commit deeply to anyone else for quite a while. I'm sorry if I had implied anything else was the case - I have tried to explain this in the past but perhaps I hadn't been as clear as I thought.*”
43. Our finding is that, after July 2015, Dr Westley had not been seeking to encourage the Claimant to believe that a romantic relationship between them might resume. On the contrary, he was seeking to be clear that it would not.
44. About a year after the dating relationship ended, and more than 9 months after the exchange of messages in October, the Claimant's contract as GAA came to an end, and she was appointed to a new contract as SGAA instead. Dr Westley did not do anything either to seek to prevent the Claimant applying for the new contract, or to dissuade any colleague of his from appointing her to it.
45. In around 2014, the Claimant and Dr Westley had commenced the Wellbeing project. Both at the outset and in the ensuing years they each contributed to it. The Claimant was an extremely important part of the Wellbeing Project. It would not have been as successful as it was without her work. The mentoring aspect of



the programme came to an end once the Claimant's employment ceased which further demonstrates her importance.

46. It was no secret that they were each a contributor and there was no attempt by Dr Westley - or anyone else - to minimise the role which the Claimant played. For example, on 29 February 2016, the Claimant sent an email to the ambassadors for the project with a set of materials that they would potentially need. The Claimant signed her email "Ruxandra and David". Later, on 14 March 2016, Dr Westley sent a reminder to the same ambassadors asking if they had looked through the material which the Claimant had sent to them. He also used the signature line "Ruxandra and David". We are not persuaded that Dr Westley sought to take credit for the Claimant's work on the Wellbeing project either in 2016 or at all.
47. In relation to the name and logo for the program, there were discussions between the Claimant and Dr Westley. Ultimately, Dr Westley took decisions with which the Claimant did not wholly agree. The reasons for Dr Westley, making those decisions were that he chose the name and logo which he thought were most suited to the project. He was not influenced in his decisions by the dating relationship he had previously had with the Claimant or the fact that that dating relationship had come to an end.
48. Between around 12 and around 17 October 2016, there was an exchange of emails between the Claimant and Dr Westley which were copied to Prof Bifulco. On 17 October 2016, the Claimant stated that she had decided that she would not need time to promote the mentoring aspect of the Wellbeing project in any of his lectures. Instead, she would carry on with the mentors that had already been trained. She asked that Dr Westley refrain from using certain materials - which she had produced - in any of his own projects. She expressed the view that she was not being given appropriate credit for her efforts and that someone else (and she meant Dr Westley) was seeking to take credit for her work. She stated that she acknowledged that she was "just an assistant", which was a reference to the fact that her preferences for name and logo had not been adopted. Dr Westley replied and agreed that he would not use the materials in his own project. He praised those materials and said that he hoped that the Claimant might have a change of heart about working on the Wellbeing project.
49. Prof Bifulco was the head of department. As such, she was the line manager of David Westley and the Claimant and others. The Claimant had meetings with Prof Bifulco from time to time. Sometimes such meetings were scheduled in the diaries, or sometimes the Claimant dropped into Dr Bifulco's office without a specifically scheduled appointment. During one of these meetings, in October 2016, the Claimant suggested there were problems with the Wellbeing project, and that she and David Westley were having problems communicating with each other. The Claimant did not inform Prof Bifulco at this time, (or on any other date prior to her August 2018 grievance) that she and Dr Westley had had a dating relationship. Nor did she allege that he was pursuing her for any sort of romantic or sexual relationship. The Claimant did not refer to any relationship at all with Dr Westley outside work, and it was Prof Bifulco's view that what was being described to her was a normal difference of opinion or approach between two colleagues.

50. In Professor Bifulco's view, what the Claimant said about communication problems was consistent with comments which had been made to her a few days earlier by Dr Westley. It was Prof Bifulco's view that ultimately the responsibility for the project lay with Dr Westley and that it was he who would have final say. Prof Bifulco believed that the most sensible and appropriate course of action was to identify two different work streams for the project, which would be more independent of each other, and to put the Claimant in charge of one of those (mentoring), and Dr Westley in charge of the other. That is what she did. At the time there was no complaint from the Claimant to Prof Bifulco about that course of action. Furthermore, at the time, the Claimant did not complain to Dr Westley about it either.
51. On 18 October 2016, Dr Westley emailed the Claimant with some suggestions for how both of their efforts could be acknowledged in preparing materials for the Wellbeing project. He suggested that they both put their names as authors at the end of each step and asked the Claimant for her opinions. The Claimant replied on 19 October to say that something that could be discussed if the project continued, but she believed there were still major issues to be resolved. She asked to meet him that day, 19 October, he and suggested that they meet either in his office, or somewhere else. The location was the Claimant's choice.
52. At approximately 3 o'clock on 19th of October, the Claimant replied to say that she was starting to feel uncomfortable and was dreading the next day's meeting. She said that she wanted it to be clear that the meeting was about understanding what has happened in their relationship and to discuss how to repair it and not a discussion about who was right and who was wrong. Dr Westley understood the Claimant to be referring to their working relationship on the Wellbeing project and he replied to say "definitely".
53. The Claimant decided that she would remain part of the Wellbeing project. In the weeks which followed, the Claimant and Dr Westley had various conversations and in the course of those conversations. Dr Westley expressed the view that he would like their working relationship to get back to how it had been previously. He did not state or imply that he wanted to resume any romantic relationship or dating relationship or sexual relationship with the Claimant.
54. The Claimant wanted and expected that Dr Westley would contact her (for example, by text message) during Christmas 2016. In fact, he did not. She sent him a message on 26 December 2016 which referred sarcastically to the fact that he had not contacted her. The following day, 27 December, he sent a message to say that he had been with family for a few days and had not had mobile reception. The Claimant replied to say "*I was just worried that you got very sick, missing my charming presence, but as you saw, I kept optimistic*" and she added an emoji with a smile. Dr Westley wished her well with the rest of her vacation and said that he would see her in the New Year.
55. In January 2017, at the Claimant's request, Dr Westley and the Claimant agreed that they would restrict communication between themselves to essential work matters only. The reason for the Claimant's request was that Dr Westley had stated again that he was not interested in a romantic relationship with the Claimant. Dr Westley did not, in January 2017 or later seek to persuade the Claimant to go

out on dates with him or to get involved in any kind of sexual relationship with him, or any other kind of romantic relationship.

56. From time to time during this period, the Claimant and Dr Westley did run into each other at work, including at changeover of workshops. These were normal work interactions and were not conduct that was related to the Claimant's sex or the previous dating relationship, and Dr Westley did not deliberately engineer these encounters. At no time, did Dr Westley complain to the Respondent, or to any of the Respondent's employees, that the Claimant wished to communicate with him solely about work issues.
57. In 2017, the Claimant decided that she no longer wished to continue with her PhD at the respondent university. She wished to transfer to a doctoral program at one of the Respondent's partner organisations. She discussed this with both Dr Westley and Prof Bifulco. Dr Westley informed Prof Bifulco that he supported the Claimant's preference. The cessation of the PhD was a decision which the Claimant came to of her own accord. She was not influenced by Dr Westley to cease doing the PhD and nor did Dr Westley influence any of his colleagues, or any of the Claimant's supervisors, to undermine her PhD programme.
58. In May 2017, there was a social get-together on the Respondent's premises. In the course of that event, the Claimant and Dr Westley had a conversation with each other. During that conversation, Dr Westley expressed to the Claimant that he regretted the fact that they were communicating only in relation to essential work matters. The Claimant stated that she did not feel supported by Dr Westley and that she felt marginalised.
  - 58.1 Dr Westley did not say that his opinion was that the Claimant was not ready to be promoted and did not say anything to discourage her future employment with the Respondent.
  - 58.2 He did not say that the Claimant did not like working there.
  - 58.3 Dr Westley did not say anything along the lines of "if you stick with me" and/or "if you are a good girl then I will have your back".
  - 58.4 More generally, he did not refer to the Claimant as a girl and he did not state or imply that he was in a position to have an effect on her career and he did not state or imply that her career progression depended on any personal or sexual relationship that she might have with him.
59. As a result of the conversation on this evening, the Claimant and Dr Westley had a slightly improved relationship immediately after May 2017 and their communications were no longer confined solely to work issues.
60. The Claimant's recollection is that they hugged that evening, and Dr Westley does not recall that they did so. Given the passage of time, and the lack of corroboration for either party's recollection, it is not possible for us to decide to what extent they parted ways with a handshake or a brief embrace, or something else. However, the physical contact that they had that evening did not include anything that the Claimant did not want and did not include anything that was an attempt by Dr Westley to move to a sexual relationship with the Claimant.

61. On 28 June 2017, at about 7:27pm, the Claimant sent a text message to Dr Westley which said:

*I'm coming over at yours later. Get a nice bottle of wine. There will be no talking. Send me the exact address.*

62. He replied to say: "Sorry- I don't understand? Possibly a sense of humour failure on my part?" The Claimant initially replied to say, "Apparently". We do not have time stamps for these latter 2 messages. However, we infer that they were a short time after the 7.27pm message.

63. Without further reply from Dr Westley, shortly after 10pm, the Claimant sent a further message.

*I don't make such jokes. It is not my style. I'm a grown woman. I expressed my desire. I was hoping for a more elegant response.*

64. Neither at that time, nor at any other time, did Dr Westley invite the Claimant to come to his residence.

65. In the new academic year, 17/18, the Wellbeing project continued. Both the Claimant and Dr Westley continued to contribute to it. Dr Westley did not seek to take credit for the Claimant's work. As he had done previously, he continued to believe that the final say was his. His approach to the project was not influenced by the fact that he and the Claimant had had a dating relationship in 2015, or the fact that that relationship had ended, or the fact that between January and May 2017, the Claimant had only wished to communicate with him on work issues. Dr Westley did not seek to resume a dating relationship with the Claimant at any time after it ended in 2015, and none of his decisions in relation to the Wellbeing project - in autumn 2017, or at any other time - were affected by the fact that no such dating relationship had resumed.

66. During November 2017, the Claimant and Dr Westley communicated in person, and by text message, and by email. They also sought to arrange some face-to-face meetings when it suited their schedules. We do not necessarily have all the written messages that they sent to each other during this period, but we are satisfied that it is reasonable for us to draw conclusions from the selection which has been provided to us.

67. In this month, the Claimant asked Dr Westley to produce some written comments about her work which would potentially be used in consideration of an award. He produced a draft commenting on the Claimant's work on the Wellbeing project and sent the draft to the Claimant and Prof Bifulco. He sent that on 22 November 17 at 8:40am. Amongst other things, he stated that the Claimant had shown an outstanding commitment to enhancing the wellbeing of psychology students. He stated that she had developed and co-authored resources, organised regular workshops and social activities and coordinated a mentoring system. He said that her contributions had been highly valued by students and were an essential part of the Department's strategic direction for the development of an inclusive curriculum and enhancing Wellbeing within learning communities.

68. One of the sentences in the draft was: *"She has been instrumental in the development of an evidence-based multimodal wellbeing intervention for Psychology students that runs alongside their academic studies"*.
69. The Claimant was not fully satisfied with this reference and left a voicemail message for Dr Westley to say so. At 3.35pm, he texted her back to say that he was sorry if she believed that his endorsement undervalued her contribution. His impression of her voicemail was that the word instrumental was what had caused her most concern. He defended his use of that word and said that he believed that his summary had been positive. He said that he was willing to try again if she felt otherwise. Our finding is that Dr Westley did believe that his contribution had been fair and reasonable, and that it had given praise to the Claimant.
70. The Claimant replied to say that there was no need for Dr Westley to write it again and she said that she thought his opinion of her was very clear. The Claimant suggested that the endorsement might cause embarrassment to Prof Bifulco, but she, the Claimant, hoped that she would still get the award. The Claimant in a further message stated that she believed that Dr Westley statement had been extremely impersonal and they did not say enough about her role in starting the project. The Claimant added, writing in all capital letters "I'M NOT JUST INSTRUMENTAL". The Claimant finished her message by saying *"You won't die if you showed a bit of heart, David, you know! I've so had it!"*
71. Dr Westley replied to say that he had attempted to describe the Claimant's own contribution to the project and that he was happy to talk to the Claimant about it. In response to his offer of a meeting the Claimant replied the same morning - 23 November 2017 - to say:
- Oh, I would not miss a session of patriarchal wisdom for the world, but what if you have to make some toast..? Or you are busy for no apparent reason? I wouldn't want to bother and feel I'm a third wheel, because who am I? Ruxandra Anghel, this no one, with instrumental value at times, whose purpose in life is to just hang around waiting for David Westley to notice she exists. Because then maybe he would be a little instrumental himself for a change! Unless he has to make toast. Because THAT is important!*
72. The following day, the Claimant texted Dr Westley again and stated that she was considering leaving. She said that she wanted to discuss the project hand over with him and that she did not wish to let anybody down. She said that after she had those discussions with him, she would then discuss with others. Dr Westley replied to say that he was sorry to hear that and he was willing to meet to discuss handover. The Claimant suggested that they meet privately with no one else present. She said that she was not leaving for another job, but she was leaving because of Dr Westley and that she could not express how much it hurt her to leave the Respondent. Dr Westley replied - still on Friday 24 November 2017 - to say that if the Claimant was upset with him he assumed that it was because she thought that he did not value her contribution and he assured her that he did. He agreed to the suggestion of a meeting to take place on the following Monday, 27 November. The Claimant replied to say that she knew that Dr Westley valued her as a colleague. However, she said that she suffered because he did not value her as a person. She stated that she was leaving because he had broken her heart.

She said he was constantly breaking her heart. She continued to be upset about the fact that he had used the word instrumental.

73. Dr Westley responded by further text message to say that it was that he did value her as a person, but that he believed the Claimant was looking for more than that. He reiterated his position that - as far as he was concerned - they had agreed on several occasions that there would be boundaries, and that they be work colleagues and nothing more than that. He said that he did not want this to change in the future.

74. In further replies sent by the Claimant that day, she stated (amongst other things):

*It's sad and frustrating that you could not see in all this time that I stayed by your side whilst I was well aware of all that you're scared of showing me. I'm sorry David, I cannot spend my life being your colleague and pretend that our bond is just that. And maybe you are capable of this charade, but you cannot ask me to do the same*

75. Her text messages on the Friday continued until after 6.30pm. The next day, Saturday 25 November, the Claimant sent a series of texts to Dr Westley starting shortly after 8.30am. Amongst other things, she said:

*You never want to spend any time with me and you never see me when I tell you I am in pain because of you. Not at least ONE damn coffee over the weekend in all these years!!! Yesterday you could have said 'let's meet and talk today'. It was serious. But nothing matters to you. God, I'm such a failure! I failed 6 years of my life. So no, you are not going to get your boundaried stupid meeting on Monday morning at work! And you are not going to get a proper goodbye from me! Because you don't deserve this! You didn't have to reciprocate my love, but you betrayed the friendship... This is what hurts the most.*

76. He replied to say that he was sorry that he did not feel the same way that the Claimant did, but said that he had been clear over a long period of time that he was not interested in a relationship. He said that - as far as he was concerned - they had been on a few dates two years earlier and it had not worked out. The Claimant replied to say that she did not regard the events of April to July 2015 as dates and that in her opinion, "*people are made to feel good at dates and they have sex!*"

77. In the continuing text message exchange, amongst other things, the Claimant stated that there was no excuse for what she described as Dr Westley's "exaggerated boundaries". The Claimant continued to say that she was planning to leave, and that she did not want Dr Westley to mention this to anybody else. She said that perhaps they should discuss that the show and offered to meet that same Saturday night, after 7pm, or alternatively on the following day.

78. In further exchanges, Dr Westley replied to say did not wish to meet the Claimant that weekend and suggested that she might wish to change your mind about her stated intention to leave. He said that there were many reasons that she should stay but he stated that he should not be regarded as one of those reasons. He asked her to fully accept that they were never going to be more than colleagues. The Claimant's messages asked Dr Westley to say to her face that he did not want

to have a relationship with her. He said that he was happy to say it in person, but his stance would not change. They arranged to meet the following Monday at 9.30am. On Sunday, 26 November at 11:30am, the Claimant texted Dr Westley to say it would be difficult for her to wait until Monday and therefore she suggested that they meet that night. The Claimant said that she was happy to meet late that night, once he had returned to London. Dr Westley declined. He also said that the only purpose of meeting was so that the Claimant could have what she described as closure and also from his point of view to establish boundaries for future working.

79. In these messages, the Claimant referred to the period between January 2017 and May 2017, during which, at her request, communications had been restricted to essential work issues. It is clear from her text messages that the Claimant did not believe that Dr Westley had been pestering her during that period and that - on the contrary - the Claimant believed that he had abided by her wishes, and that it was she who did not wish to return to that state of affairs.
80. Dr Westley wrote that he was content to overlook things that the Claimant might have said in anger, but he was not willing to keep the door open to more than a work relationship in the future. He said this in plain and unambiguous terms. He was expressing his genuine opinions in these text messages and he was not saying something that was new, or something that was contradictory to what he was saying to the Claimant in person or in other messages.
81. In his messages, he said they were not compatible and nothing would change his feelings on the subject. The Claimant disagreed that they were not compatible, and she suggested that they should go out on a date. Dr Westley refused.
82. The Claimant sent an email on 27 November 2017. This is an email, the Claimant referred to as her closure email. In the email, the Claimant sought to suggest that she was pulling away from Dr Westley and that he believed that he would be upset. However, our finding is that it was Dr Westley who had made clear that he did not wish to have a romantic or sexual relationship and it was the Claimant who was upset by that stance. In the email, the Claimant referred to having various fabulous memories of Dr Westley and stated she had enjoyed their first kiss. She mentioned a more recent occasion on which they had had juice and a cigarette, and he had waited with her at the bus stop. She said that that had been beautiful.
83. In late 2017, Prof Bifulco decided that the Wellbeing project would be evaluated. She agreed this with Dr Westley and applied for funds. The funds could not be used for the Claimant to do the evaluation because she was part of the Wellbeing project and the evaluation had to be carried out by someone else.
84. The Claimant became aware of the evaluation study in around February 2018 when she saw an advert seeking somebody to work on the study. She had not been told directly about it by Prof Bifulco or Dr Westley. We find as a fact that there was simply an oversight in that the Claimant was not specifically informed about the fact that an evaluation programme was going to take place. There was no deliberate or conscious decision taken by Dr Westley and/or Prof Bifulco to avoid mentioning this to her.

85. The Claimant had a conversation with Dr Westley about this and he did not express regret to her about the fact that she had not previously been informed. We do not accept the Claimant's assertion that he also said to her that she needed to prepare for further news that summer. In our view, if such a remark had been made to the Claimant at the time, then she would have reported it promptly either to Prof Bifulco or to human resources or to friends or colleagues.
86. During February 2018, the Claimant had meetings with Prof Bifulco and, in one or more of those meetings, there was a discussion about the fact that the future of the GAA and SGAA roles was not guaranteed. It is Prof Bifulco's recollection that she stated that the GAA role was likely to be safe within the Department, but that she informed the Claimant that she was not making any promises. By the time of this meeting, Prof Bifulco had already been made aware that the Respondent was undertaking what it described as "People 2020". This was a process, which was going to take place between January 2018 and summer 2020 and would potentially lead to redundancies as part of a cost-cutting exercise.
87. In her grievance, the Claimant alleged that she came to a realisation in February 2018. She said that she thought back to May 2017, when Dr Westley had told her to be a "good girl" (a comment which we have found he did not make), and she realised - in February 2018 - that she had failed to be a good girl and that he was planning to retaliate against her. In her grievance she alleged that he had been trying to persuade her to accept a secret affair with him. Our finding has been that he had not been seeking to persuade the Claimant to do anything along those lines, and that he had been clear since July 2015 that he did not wish to have any sort of dating or romantic or sexual relationship with the Claimant. The account in her grievance is also different to her evidence to the tribunal. During the hearing her assertion was that it was in May 2018 (rather than February) that she realised for the first time that she had been - according to her - part of an abusive relationship with Dr Westley being the abuser.
88. In any event, on the Claimant's own account, as per her August 2018 grievance, as a result of the February 2018 discussions with Prof Bifulco the Claimant became anxious about losing her job. She was aware, of course, that the fixed term contract was due to come to an end in August 2018. She had discussions with Prof Bifulco, starting February 2018, about what would happen once the SGAA contract expired, including about the possibility of becoming an associate lecturer. On the Claimant's own account, as per her grievance, from February 2018 onwards, she was actively seeking to make suggestions to the Respondent as to what role she might fulfil once her SGAA contract came to an end that summer.
89. It is our finding that the Claimant did not genuinely believe – either in February 2018 or in May 2018 - that Dr Westley was potentially interfering with the process by which her contract would either be renewed, or else replaced with another contract, or else would terminate without renewal. The Claimant was aware that there was a possibility that her contract might terminate without renewal, and she was trying to come up with ideas to persuade the Respondent that that should not happen. Our finding is that if the Claimant believed that Dr Westley was doing anything to interfere with that then the Claimant would have taken steps to complain about his conduct to Prof Bifulco or to human resources or to somebody else. In fact, the first time that she complained about Dr Westley was in August



2018, two months after she had been told that the SGAA contract would not be renewed, and after she had already been told that she had been unsuccessful in her application for associate lecturer.

90. In February 2018, Prof Bifulco recommended the Claimant for an award. The Claimant was successful, and the award was made around April 2018. Prof Bifulco sent an email to the whole department congratulating the Claimant and one of her colleagues who had received a different award. The Claimant's award was for support staff of the year and was in connection with the Studywell/Wellbeing project. Unfortunately, because of a copying and pasting error, Prof Bifulco's email implied that some of the credit belonged to her (Prof Bifulco) whereas she had been intending to give all of the credit to the Claimant. Very fairly, the Claimant accepts that this was not intentional and was a genuine clerical error.
91. In May 2018, the Claimant arranged a picnic event in connection with the Wellbeing project. Neither Dr Westley nor Prof Bifulco attended the event. They both sent their apologies to the Claimant in advance. In each case, their reasons for not attending the event were genuinely due to other commitments, and neither of them was seeking to be disrespectful to the Claimant or to the hard work that she had put into organising the event.
92. In May 2018, shortly after the picnic the Claimant found out that her grandmother had died. She informed Prof Bifulco about this the following day and told Prof Bifulco that she would be away from work for a short period of time because of the bereavement. Prof Bifulco agreed to this absence. In sending an email to other staff mentioning the Claimant's absence, Prof Bifulco used the expression that the Claimant was absent "to resolve family business". In other words, Prof Bifulco did not specifically inform other members of staff about the Claimant's bereavement.
93. This was different to the approach that Prof Bifulco had taken when the other SGAA had had a family bereavement. On that occasion, Prof Bifulco had let the rest of the department know and the rest of the Department therefore were able to offer condolences to the other SGAA.
94. The Claimant did not complain about this email promptly. It was almost 3 months until she raised an internal grievance, and more than 5 months before she contacted ACAS and more than 6 months before she lodged a claim.
95. Prof Bifulco's account to the tribunal was that she did not know that the Claimant had suffered a bereavement. We think she is mistaken about this because of the time which elapsed before the complaint was made. We are satisfied that the Claimant did inform her. It is our finding that the words which Prof Bifulco used in her email were clumsy and were not entirely appropriate to the situation. It may perhaps have been better practice for Prof Bifulco to agree some precise form of wording with the Claimant about how much information about her personal circumstances would be publicly announced. That being said, the wording of the email was what Prof Bifulco thought that was appropriate to the situation at the time that she wrote it. Prof Bifulco did not know anything about any dating relationship or romantic relationship between the Claimant and Dr Westley. Furthermore, in May 2018, Dr Prof Bifulco knew nothing about the allegations which the Claimant subsequently made in her August 2018 grievance. The

wording of the May 2018 email was not influenced by Dr Westley or by of his interactions with the Claimant.

96. The People 2020 program as it affected the Psychology department initially sought cost savings of 15% over the 3 years of the initiative. In January 2018, Prof Bifulco was first made aware of this target and began thinking about how to achieve it. She had some discussions with more senior employees, including vice chancellors. She also discussed with other heads of Department in her cluster. At this stage, the only person who was more junior than Prof Bifulco that she spoke to was her deputy, Prof Tom Dickens. In other words, it was only Prof Dickens, who was aware of her thinking as to how the specific savings might be achieved.
97. Prof Bifulco did ask for information from other individuals, including Stephen Nunn the director of programmes and including Dr Westley. She asked for information without explaining to them at that stage what the reason was that she was seeking the information.
98. There were some public announcements made about the People 2020 programme to staff in early 2018. But, at that stage, details of which posts might potentially be redundant were not announced. Prof Bifulco had a meeting which included all the GAAs and SGAs in around February 2018. At that stage, she had not yet formed the intention to delete any particular posts and gave only general information about the programme rather than any specific details about deleting the SGAA posts.
99. Between February and May 2018, Prof Bifulco and Prof Dickens decided between them that one of the savings they would make would be to delete the posts of SGAA. Part of the reason for their thinking was that - especially in Prof Dickens' view - the posts were not needed in any event. Many other departments within the Respondent did not have SGAA level posts and it was Prof Dickens' experience that other comparable institutions did not have them at all.
100. Another part of their thinking was that the two SGAA postholders in the Psychology Department were each coming to the end of a fixed term contract in August 2018 and therefore a decision had to be made one way or the other as to whether to renew them or not.
101. As part of her review of the staffing within the Department, Prof Bifulco came to the belief that there were too many staff in the higher teaching roles including professor and senior lecturers and there were also too many in the lower roles including associate lecturer SGAA and GAA. However, she noted that there was a shortage of staff at lecturer level. She decided that as part of the restructure they would tackle this issue by creating and filling 3 lecturer roles. Before the reorganisation, there were 5 Associate Lecturers, and there was therefore the opportunity for (up to) 3 of those postholders to move up to Lecturer. An additional Associate Lecturer post was to be created meaning that potentially the department would move from 0 Lecturers and 5 Associates, to 3 Lecturers and 3 Associates.
102. The proposals that Prof Bifulco and Prof Dickens came up with were to achieve an 11% saving rather than the original 15% target and the proposals, having been discussed with the Dean, were taken to the vice chancellors and the board of governors around May 2018.

103. Dr Westley did not become aware of the fact that the restructuring proposals included proposals to delete the SGAA roles until after the news had been given to the Claimant and the other SGAA. The only group of redundancies that Dr Westley was aware of before they were announced publicly was for a group of 5 staff (one associate lecturer and 4 senior lecturers) who were involved in activities in the Respondent's partnership organisations. Eventually consultation for that group of staff commenced in October 2018, with redundancies - including voluntary redundancies - taking place by the end of the academic year 18/19.
104. On 14 June 2018, the Claimant attended a meeting with Prof Bifulco. She had not been told in advance what the meeting was to be about. At the meeting, Prof Bifulco informed the Claimant that the Respondent had decided that it was going to delete the SGAA post, and that because of this, her contract would not be renewed when it expired the following August. Prof Bifulco did not put this forward as a suggestion of what might happen, but rather she explained that the decision had already been made. She went on to have a general discussion with the Claimant about – amongst other things – her doctoral programme. Professor Bifulco was not seeking to discourage the Claimant from applying for any vacancies, either at Associate Lecturer level, or at all.
105. Although the Claimant had not been informed by the Respondent about the purpose of this particular meeting, the Claimant had previously sought advice from her union about the possibility of redundancies, albeit the advice that she had received was that the union did not expect redundancies to take effect in Summer 2018.
106. At 16:44 on 2 July 2018, the Claimant sent an email to Ms Klandic, HR Business Partner, with an attached letter of grievance. The letter of grievance referred to the 14 June meeting with Prof Bifulco and generally referred to the Claimant's unhappiness at the decision to delete her post. She implied that the other SGAA was potentially being treated more favourably than she was. In the letter of grievance, the Claimant made no mention of Dr Westley and no suggestion that any of her treatment was the result of any relationship with Dr Westley, or any conduct by Dr Westley.
107. The job description and person specification for the new associate lecturer post was drawn up primarily by Prof Dickens. He based it on his experience and on what he thought were the most sensible requirements for an associate lecturer post. He believed that to fulfil that post it would be desirable for the successful candidate to have either already completed a PhD or else to be near to completion. Neither Prof Dickens nor Prof Bifulco knew anything about the Claimant's dating relationship with Dr Westley and neither of them were influenced by Dr Westley in connection with either the deletion of the SGAA post or the contents of the Associate Lecturer job description and person specification. Neither of them was seeking to ensure that the Claimant would not be successful in her application for the new post. They each intended that there would be a fair process and that the best candidate would be appointed in due course.
108. For the new associate lecturer (“AL”) post, once the necessary approvals had been obtained and the job description and advertisement for the post had been created, the new vacancy went live on the respondent's recruitment systems. An

automated email was sent to Prof Bifulco on 3 July 2018. The automated email contained details of the fact that the job had gone live on the redeployment register. In other words, staff whose posts were under threat of redundancy, and who were eligible for this post in accordance with the Respondent's redeployment policies, could apply for the post and would have priority over other candidates.

109. At 8.43 a.m. on 3 July, Professor Bifulco forwarded the email to all of the staff in the Psychology department. She added her own comment that she would encourage suitably qualified SGAs to apply. The same day, the Claimant sent another email to Ms Klandic. She did not copy her email to Professor Bifulco. The Claimant requested clarity as to whether she would be eligible to apply for the post as a redeployee. She also said that she was concerned that the advert said that the role would typically be held by a candidate with a PhD or one near to completion. The Claimant was not undertaking a PhD at this stage, but was involved in a doctoral programme, which was not near to completion. The Claimant's email asked for the job description to be rewritten.
110. In response to her email, Ms Klandic met the Claimant. On 5 July, Ms Klandic sent an email to Prof Bifulco which copied in the Claimant. Ms Klandic informed the Claimant that the Claimant was not eligible to be regarded as a redeployee for the AL post because the AL post was one grade higher than the Claimant's current post. The respondent's redeployment policy was that redeployment rights only applied to posts which were at the same grade or else one grade lower than the potentially redundant persons existing grade.
111. However, the fact that the Claimant was undertaking a doctoral programme rather than a PhD was not a barrier. The Claimant would be eligible for the post, once it became open to all candidates. The Claimant had asked Ms Klandic for details of when the post had been approved; Ms Klandic replied that it had first been put forward by Prof Dickens in May and had been approved by HR in May, and by the executive dean on 14 June with final sign off to recruit by HR on 2nd of July.
112. On 11 July 2018, the Claimant had a meeting with Prof Bifulco about the proposed redundancy. Prof Bifulco was accompanied by an HR officer and the Claimant chose not to be accompanied. At the meeting, the Claimant was told again that her post of SGAA was to be deleted as part of the People 2020 programme and that therefore she would not be renewed in the same role. She was told that she could apply for the associate lecturer post with selection due to take place before the end of the month. She asked questions which were answered by Prof Bifulco during the meeting and confirmed in writing afterwards and she was told about her redundancy pay entitlement and about the respondent's redeployment scheme.
113. After this meeting, the Claimant was told about further vacancies which arose for which she was eligible under the redeployment policy. In other words, either the same grade as hers, or one grade below. During the meeting in July, the Claimant did not complain about Dr Westley or suggest that Dr Westley was responsible for the redundancy proposals.
114. On 26 July 2018, the Claimant was interviewed for the post of associate lecturer. The other displaced SGAA was also interviewed. They were each asked the same questions. No detailed records of the answers that were given by the candidates

was kept by the panel. Instead, each panel member marked the candidates against the criteria giving zero - does not meet criterion at all; 1 - partially meets; 2, fully meets and 3 for exceeds the criterion.

115. The panel was Prof Dickens, Prof Bifulco, Stephen Nunn and Dr Lian Lundy. At the time of conducting the interviews none of the 4 people on the panel were aware of the previous dating relationship between the Claimant and Dr Westley, and at the time, the Claimant had not complained about Dr Westley's alleged conduct to the Respondent or to any member of the panel. Dr Westley did not seek to influence any member of the panel as to their decision.
116. The panel unanimously came to the view that the person who had performed best in the interviews against the assessment criteria was the other candidate. They therefore contacted her and offered her the job. Shortly afterwards, on 27 July 2018, Prof Dickens contacted the Claimant and informed her by phone, and later by email that she had been unsuccessful.
117. The score sheets for each of the two candidates were in the bundle. To the extent that the Claimant suggests that either set of score sheets was not genuine, we reject that suggestion. Our finding is that they are genuine. The score sheets demonstrate that each of the panel members scored the other candidate significantly more highly than the Claimant.
118. Each of the panel members individually, and the panel as a whole, approached the selection exercise with the intention of selecting the best candidate. The questions and the presentation topic were chosen with the intention of testing the candidates against the selection criteria, and the decision was based on the answers that were given.
119. In early August 2018, one of the GAAs in the Psychology department informed Prof Bifulco of her intention to leave. She had to give one month's notice, and she eventually left in September 2018. At that time recruitment to fill vacant posts was not automatic due to the restrictions imposed by People 2020 programme and therefore Prof Bifulco needed to get approval to recruit to the job. That approval was given and recruitment for it started in October 2018.
120. The resigning GAA suggested to Prof Bifulco that the Claimant might be interested in the post. However, Prof Bifulco did not discuss this with the Claimant because she believed that this would be a significant backward step for the Claimant, taking her back to a role she had commenced in 4 years earlier, and had left 2 years earlier. As stated in her grievance, the Claimant was informed about the upcoming vacancy on 7 August 2018 by the departing GAA, in a message that was copied to other colleagues. The Claimant did not ask the Respondent to appoint her to the role and she did not wish to be considered for it. The Claimant said in her grievance was that she believed that the departing GAA had been asked (by implication by either Prof Bifulco or Dr Westley) to notify the Claimant of this potential future vacancy. In the grievance, she stated that the Respondent would have appointed to her to it had she asked to be appointed. The Claimant made clear in her grievance, submitted before the end of employment, that she did not want this role and was not seeking to have it formally offered to her.

121. The Claimant's last day of employment was 15 August 2018. On 14th August 2018, the Claimant submitted a grievance. She sent this to Ms Klandic. The grievance was 13 pages of typed A4. The grievance described alleged events going back several years, including during the period in which the Claimant was an undergraduate. It went on to include most of the allegations which later formed her particulars of complaint in these proceedings. This document was the first time that the Claimant had raised a complaint about the alleged conduct of Dr Westley.
122. There were no medical reasons which would have prevented the Claimant lodging this grievance earlier. In her oral evidence to the tribunal, she stated that it was around May 2018 that she believed she was being excluded from the department and as a result of that she said that she came to realise that the way in which she had been treated by Dr Westley over the preceding years had been inappropriate. She said that she did not make a report about his alleged conduct immediately – in May 2018 - because it can be difficult to report sexual harassment.
123. The Claimant was aware of mechanisms by which alleged sexual harassment and other harassment could be reported either to the Respondent or to other bodies.
124. If the Claimant's description of events – as per her grievance and as per this litigation - was accurate then there are several points at which she might have considered making a complaint. Working backwards:-
  - 124.1 When she raised a grievance about recruitment with Ms Klandic on 2 July and 3 July 2018, she could have mentioned Dr Westley then if she believed that he was seeking to bring about the end of her employment.
  - 124.2 On 14 June 2018, either during or immediately after her meeting with Prof Bifulco, she could have mentioned it then.
  - 124.3 On her own account in the tribunal hearing, a realisation that Dr Westley had been abusive occurred to her in May 2018 and she could have raised a grievance at that time or shortly afterwards.
  - 124.4 In the August 2018 grievance itself, the Claimant refers to deciding in February 2018 that her job was at risk, because of comments (which we found were not made) allegedly made to her then by Dr Westley. She could have put in a grievance at that stage.
  - 124.5 Going back further still, her email of 27 November 2017 is something that she now describes as a closure email. At that stage she did not lodge any grievance about the events of previous years.
  - 124.6 On the Claimant's account, Dr Westley told her in May 2017 that if she was a "good girl", then he would potentially look after her in her career progression. She did not report that alleged conversation either to the University or to anybody else at the time or for more than a year after the comments were allegedly made.
  - 124.7 In January 2017, the Claimant had asked that she and Dr Westley communicate only in relation to essential work issues, but she raised no grievance at that time.

- 124.8 In October 2016 when she did speak to Prof Bifulco about communication issues between her and Dr Westley, there was no mention made of the fact that the Claimant believed that she might have been sexually harassed by Dr Westley, or harassed at all by him.
- 124.9 The Claimant did not complain about anything connected to the dating relationship – or events prior to that dating relationship - until more than 3 years after the dating relationship had ended. As per our findings above, after the dating relationship had ended, Dr Westley never sought to resume it, and made clear to the Claimant that he did not want any romantic or sexual relationship with her, and that he would never want that.
125. Having submitted her grievance, the Claimant asked that all correspondence about it be via her solicitors. Mr David Malpass was appointed to investigate the grievance. He met the Claimant twice, on 21 September and 5 October 2018. Mr Malpass interviewed Dr Westley, Professor Bifulco and other people who might have information as to whether Dr Westley had harassed the Claimant and/or interfered with her studies or her employment, or with her application for Associate Lecturer. During the investigation, Dr Westley made an offer that the Respondent could examine his phone for full details of text messages. The Respondent did not take him up on that invitation, but instead asked him to provide the text messages which he thought supported his version of events, namely that it was the Claimant pursuing him for a relationship rather than the other way round.
126. The Claimant had deleted her own copies of the text messages prior to lodging the grievance and she was therefore unable to provide any copies of the messages either to Mr Malpass during his investigation, or to the Respondent's representatives during this litigation.
127. Mr Malpass's report recommended that there was not evidence to support the Claimant's complaints. However, he did decide that the appropriate processes had not been followed prior to the 14 June 2018 meeting, and that the Claimant should have been given formal notification about the purpose of that meeting in advance. He made other recommendations which the Respondent has not – as of November 2020 – yet adopted.

## **The Law**

### Time Limits

128. Section 123 of EA 2010 states (in part)
- (1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
    - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
    - (b) such other period as the employment tribunal thinks just and equitable.
  - (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
    - (a) the period of 6 months starting with the date of the act to which the proceedings relate, or

- (b) such other period as the employment tribunal thinks just and equitable.
  - (3) For the purposes of this section—
    - (a) conduct extending over a period is to be treated as done at the end of the period;
    - (b) failure to do something is to be treated as occurring when the person in question decided on it.
129. The Claim was issued on 9 December 2018. Early conciliation started on 29 October 2018 and finished on 29 November 2018. Because the claim was issued less than one month after the end of early conciliation, claims relating to any acts or omissions alleged to have occurred on or after 30 July 2018 are in time. Subject to Section 123(3)(a) of EA 2010, allegations relating to incidents on or before 29 July 2018 are out of time, subject to the tribunal's ability to extend time in accordance with Section 123(1)(b).
130. In applying Section 123(3)(a) of EA 2010, the tribunal must have regard to the guidance in Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530); Lyfar v Brighton and Hove University Hospitals Trust [2006] EWCA Civ 1548. Applying that guidance, the Court of Appeal has noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents: Aziz v FDA 2010 EWCA Civ 304. The tribunal must consider all relevant circumstances and decide whether there was an act extending over a period (up until 30 July 2018 or later) or else there was a succession of unconnected or isolated specific acts. If it is the latter, time runs from the date when each specific act was committed
131. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. The Tribunal has a broad discretion to extend time when there is a good reason for so doing. Parliament has chosen to give the Employment Tribunal the widest possible discretion. Unlike s 33 of the Limitation Act 1980, s 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it is wrong to interpret it as if it contains such a list. A tribunal can consider the list of factors specified in s 33(3) of the Limitation Act 1980, but if it does so, should only treat those as a guide, and not as something which restricts its discretion. The factors that may helpfully be considered include, but are not limited to:
- 131.1 the length of, and the reasons for, the delay on the part of the claimant;
  - 131.2 the extent to which, because of the delay, the evidence is likely to be less cogent than if the action had been brought within the time limit specified in Section 123;
  - 131.3 the conduct of the respondent after the cause of action arose, including the extent (if any) to which it responded to requests for information or documents

#### Burden of Proof

132. Section 136 of the Equality Act deals with burden of proof and is applicable to all the Equality Act claims in this action, namely all the claims of harassment which rely on the definitions in section 26(1) and/or 26(2) and/or 26(3).



133. Section 136 of EA 2010 states (in part)

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

134. Section 136 requires a two stage approach:

134.1 At the first stage the tribunal considers whether the Claimant has proved facts (on the balance of probabilities) from which the tribunal could conclude, in the absence of an adequate explanation from the respondent, that the contravention has occurred. At this stage it would not be sufficient for the Claimant to simply prove that what she alleges happened did, in fact, happen. There has to be some evidential basis upon which the tribunal could reasonably infer that the proven facts did amount to a contravention. That being said, the tribunal can look at all the relevant facts and circumstances and make reasonable inferences where appropriate.

134.2 If the Claimant succeeds at that first stage, then that means that the burden of proof has shifted to the respondent and that the claim must be upheld unless the respondent proves that the contravention did not occur. If the other parts of the definition in 26(1) are met, the Respondent would have to prove that the conduct was in no sense whatsoever related to sex. If the other parts of the definition in 26(3) are met, the Respondent would have to prove that the less favourable treatment was in no sense whatsoever because of the Claimant's objection to, or submissions to (as the case may be) the conduct in question.

135. Where the Claimant fails to prove, on the balance of probabilities, that a particular alleged incident did happen, then complaints based on that alleged incident fail. Section 136 does not require the Respondent to prove that alleged incidents did not happen.

Harassment

136. Section 26 of EA 2010 states (in part)

- (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.
- (2) A also harasses B if—
  - (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—

- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
  - (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (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.
137. For the purposes of subsection (1), sex is a relevant characteristic. Furthermore, for the purposes of subsection (1), the Claimant will need to establish on the balance of probabilities that he or she has been subjected to “unwanted conduct” which has the “purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment” for her.
138. In relation to subsection (1), it is not sufficient for a Claimant to prove that the conduct was unwanted or that it has the purpose or effect described in Section 26(1)(b) EA 2010. The conduct also has to be related to the particular protected characteristic, ie sex. Because of section 136, the Claimant does not need to prove - on the balance of probabilities - that the conduct was related to sex. However, in order to shift the burden of proof, she would need to prove facts from which we might infer that the conduct could be so related.
139. It is possible for the same conduct to fall within both Section 26(1) and 26(2).
140. In most cases, whether or not the conduct in question can be categorised as “of a sexual nature” will be self-evident. This is something which should be decided on a common-sense basis by reference to the facts of each particular case, including the intentions of the person making the contact and the perception of the recipient of the conduct.
141. The following examples of sexual harassment are given in the EHRC’s Employment Code: unwelcome sexual advances, touching, sexual assault. Other conduct could amount to conduct of a sexual nature, depending on the circumstances. The EHRC’s 2020 guidance points out that conduct “of a sexual nature” includes a wide range of behaviour, such as: sexual comments or jokes; displaying sexually graphic pictures, posters or photos; suggestive looks, staring or leering; propositions and sexual advances; making promises in return for sexual favours; sexual gestures; intrusive questions about a person’s private or sex life or a person discussing their own sex life; sexual posts or contact on social media; spreading sexual rumours about a person; sending sexually explicit emails or text messages; unwelcome touching, hugging, massaging or kissing. Again, these are just examples of conduct which might fall within the definition, and not an exhaustive list.

142. The fact that alleged harasser did not regard the conduct as sexual harassment does not mean that it cannot be harassment contrary to section 26(2) and/or section 26(1).
143. In order for a harassment claim to succeed based on section 26(3), then it is a necessary condition that harassment contrary to section 26(1) or 26(2) is found to have occurred. The perpetrator of the less favourable treatment does not have to be the same as the perpetrator of the harassment.

#### Dismissal

144. In both the Equality Act and the Employment Rights Act, the definition of dismissal includes the expiry of a fixed term contract.
145. Section 39(2)(c) of Equality Act 2010 makes it a contravention of that Act for an employer to discriminate against an employee by dismissing the employee.

#### Unfair Dismissal

146. Section 98 of ERA 1996 says (in part)
- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it—
- ...(c) is that the employee was redundant,
- ... (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.
147. The definition of redundancy includes the fact that the requirements of the business for employees to carry out work of a particular kind, have ceased or diminished or are expected to cease or diminish
148. The Respondent bears the burden of proving, on a balance of probabilities, that the Claimant was dismissed by reason of redundancy. If the Respondent fails to persuade the tribunal that that was the genuine reason, then the dismissal will be unfair.
149. Provided the respondent does persuade the tribunal that the Claimant was dismissed by reason of redundancy, then the dismissal is potentially fair. That means that it is then necessary to consider the general reasonableness of that dismissal under section 98(4) ERA 1996.

150. In considering this general reasonableness, we must take into account the respondent's size and administrative resources and decide whether the respondent acted reasonably or unreasonably in deciding that there was a sufficient reason for dismissal. That includes deciding whether or not the respondent carried out a reasonable process prior to making its decisions.
151. It is not the role of this tribunal to substitute our own decisions for the decisions made by the respondent. In Williams and ors v Compair Maxam Ltd 1982 ICR 156, EAT, the EAT laid down guidelines that a reasonable employer might be expected to follow in making redundancy dismissals. However, it is not for the employment tribunal to impose its own standards and we must not lose sight of the fact that we must instead ask whether "the dismissal lay within the range of conduct which a reasonable employer could have adopted".
152. We must consider whether or not this particular respondent's decision to dismiss this particular claimant fell within the band of reasonable decisions in all the circumstances, and whether the procedure by which that decision was reached also fell within the range of reasonable conduct. Subject to that, the factors suggested by the EAT in the Compair Maxam case that a reasonable employer might be expected to consider were:
- 152.1 whether the selection criteria were objectively chosen and fairly applied
  - 152.2 whether employees were warned and consulted about the redundancy
  - 152.3 whether, if there was a union, the union's view was sought, and
  - 152.4 whether any alternative work was available.
153. In Polkey v AE Dayton Services Ltd 1988 ICR 142, the House of Lords suggested that an employer will not normally be deemed to have acted reasonably unless it warns and consults any employees affected, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment.
154. The fact that a contract is fixed term is one factor that may be taken into account in determining reasonableness, but the fact that the contract is fixed term does not – in itself – mean that consultation is not required. There are no invariable rules about what constitutes adequate consultation with an employee. However, fair and genuine consultation usually requires that the employee is given a fair and proper opportunity to fully understand the redundancy proposals, and to express their views on the proposals, and that the employer considers those views properly and genuinely before making a final decision.
155. In Thomas and Betts Manufacturing Co v Harding 1980 IRLR 255, CA, the Court of Appeal ruled that an employer should do what it can so far as is reasonable to seek alternative work.
156. Even if an employer believes that an employee would refuse a particular post, if offered, that does not necessarily mean that it is reasonable to fail to give information to the employee about the potential vacancy. However, where the employee already has information about a potential vacancy (especially if it is a

lower graded job) and fails to ask to be considered for it, then a fair dismissal does not necessarily require that the employer makes a formal offer of the job to the potentially redundant employee.

157. Where there is a competition for the alternative work, an employer might be acting reasonably even where it fails to have model answers for the interviews. See, for example, Jones v Northumberland County Council EAT 0482/08. In that case, the questions were based on the job description and the person specification, and raised issues pertinent to the job. The lack of model answers did not render the process unfair and the EAT noted that if more than one current employee is to be interviewed for one new job, then it is impossible to completely remove all subjectivity from the process. Furthermore, a fair dismissal would not require that the employer must seek to ensure that the criteria for the new job did not make it easier for one candidate to demonstrate that they met the criteria; of course, if the purported criteria for the new post were actually a sham device to bring about a pre-determined outcome, then that would be highly relevant to the fairness – or otherwise - of the dismissal.

### **Analysis**

158. The Claimant alleged (paragraph 75a of the particulars of complaint) that the events described in the following paragraphs of her particulars of complaint were harassment related to sex and/or harassment of a sexual nature. Ie harassment within the definition of section 26(1) and/or 26(2) of the Equality Act: paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 28, 29, 30, 31, 32, 33, 34.
159. She also alleged (paragraph 75b of the particulars of complaint) that the events described in the following paragraphs of her particulars of complaint were less favourable treatment and were harassment within the definition of section 26(3): paragraphs 25 (see also above), 26, 30 (see also above), 31 (see also above), 32 (see also above), 33 (see also above), 34 (see also above), 45, 46, 52.
160. We will therefore cite the relevant paragraphs when analysing and we consider all the allegations as per 75a first, before turning to 75b.

**Paragraph 13.** In December 2014, whilst having a pre—Christmas drink, Dr Westley told the Claimant, "I want you to know that you are an exceptional person. You changed my life. Because of you, I have become a better person. Never forget that!" The Claimant thanked him for the compliment but felt overwhelmed and confused. Later that night, Dr Westley offered the Claimant a taxi to her home and as she left the vehicle he took her hand kissed it and held it tightly for a few seconds before she left.

161. In relation to paragraph 13 the Claimant has not proved to our satisfaction that Dr Westley kissed her hand. In any event, on the Claimant's own account, none of the events of that evening were unwanted conduct by Dr Westley. Therefore, this allegation is not upheld

**Paragraph 14.** In late February 2015, whilst the Claimant and Dr Westley were alone, talking in a bar after work, Dr Westley began to kiss her passionately and repeated, "I always wanted to do that" and "I'm so happy we are doing this". He also kissed her again after they had left the bar

162. In relation to paragraph 14, the exact words alleged to have been used by Dr Westley were not proven to our satisfaction. Although the kissing did occur (and we found it more likely to have been early March 2015, though that is not particularly important), none of the conduct on the evening referred to in paragraph 14 was conduct which the Claimant did not want. Therefore, this allegation fails.

**Paragraph 15.** The following week, Dr Westley asked the Claimant to go for a drink and to talk. He told the Claimant that what had happened previously was wrong and he was sorry that he had kissed her and said, "I am not allowed!" The Claimant felt upset and confused.

163. In relation to paragraph 15, we were satisfied on the balance of probability that Dr Westley had said something similar to "I am not allowed". The conduct referred to in paragraph 15 was – as per her evidence - not alleged by the Claimant to be unwanted. Therefore, this allegation fails.

**Paragraph 16.** Later that evening, the Claimant sent a text message to Dr Westley to inform him that she may need to leave the Respondent as she did not wish to be humiliated and deceived by him. The Claimant subsequently met with Dr Westley and explained to him that she wanted clarification about their relationship but that she would not agree to have an affair with him. Dr Westley stated, "I never had feelings for you! I only felt a little attracted recently!" and added, "I want to be a husband!" He then insisted that he was not interested in the Claimant romantically but when the Claimant told him that they needed to maintain their boundaries as work colleagues, and asked him if he could assure her that he would not seek to kiss her again, Dr Westley responded, "I cannot make any promises". Once again, the Claimant found his behavior to be inconsistent and confusing.

164. In relation to paragraph 16 we found on the balance of probabilities, that Dr Westley made a comment to the effect of "I cannot make any promises", but it was not in the context as alleged by the Claimant. It was in the context that he was stating that he could not make any promises that he would eventually become involved in a relationship with her in the future.

165. The only part of the conduct alleged to have occurred on that night that was said to be unwanted was the part about not making any promises about not kissing the Claimant in future and we found that that did not occur and therefore this allegation fails on the facts.

**Paragraph 17.** Dr Westley's unacceptable behaviour towards the Claimant continued. In around April 2015, he told the Claimant that he had always had feelings for her from the moment he had met her. He thanked the Claimant for her "patience" with him and told her, "My marriage IS a disaster!" and asked her to wait for him to "sort out the marriage". During this same conversation he told the Claimant, "I cannot imagine my life without you!"

166. In relation to paragraph 17, as per our findings of fact, we found that Dr Westley's behaviour prior to April 2015 had not been unacceptable to the Claimant. The only part of paragraph 17 that the Claimant says was unwanted conduct was the request that she wait for him to sort out his marriage. Our finding of fact was that that conduct did not occur, and that in fact he made clear to the Claimant that he

was not seeking a relationship with her because he was potentially seeking to resume his relationship with his wife, and he could not promise to start a relationship with the Claimant even if his relationship with his wife did not resume. The conduct which the Claimant says was unwanted was also not of a sexual nature or related to sex. Therefore, this allegation fails.

**Paragraph 18.** Between April — July 2015, the Claimant and Dr Westley spent more time together, in a “dating” relationship, at various parties and events, but he asked the Claimant to keep their relationship secret as he was “technically still married”. Dr Westley also sought to instigate a sexual relationship with the Claimant over this period, making comments such as, “You are so sexy, and the way you walk is so sensual! I really want to kiss the small of your back!”

167. In relation to paragraph 18, we found that the Claimant and Dr Westley were involved in a dating relationship. The dating relationship was not unwanted conduct. Our findings of fact were that it is impossible to know if the specific comments alleged in paragraph 18 were made or not. We could not say whether those exact words were used or not because it is such a long time ago and because it was more than 3 years later by the time the Claimant first complained. However, in any event, the comments that each of them made to each other during the dating relationship were not unwanted conduct at the time, given that the two of them were dating.
168. So in conclusion in relation to paragraph 18, and we were not persuaded by the Claimant on the balance of probabilities that the specific alleged comments were made. However, and in any event, they were not unwanted conduct even if made.
169. We also do not find that these alleged comments were such that they would have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading and humiliating or offensive environment for her in the context of a dating relationship which was mutually consensual.

**Paragraph 19.** On one occasion, in around May 2015, after a work party, Dr Westley came back to the Claimant's flat. He undressed her, but then made excuses and left, leaving the Claimant again feeling very confused, upset and ashamed

170. In relation to paragraph 19, the Claimant in her evidence clarified that the allegation of unwanted conduct was that she did not want him to undress her. As per the findings of fact, regardless of whether the Claimant took her own dress off unaided, or whether Dr Westley helped her to take it off, the Claimant wanted the dress to be off and its removal was not unwanted conduct. She did not want Dr Westley to leave. He did leave but the fact that Dr Westley departed from the Claimant's flat was not conduct which was related to, her sex, and it was not conduct of a sexual nature. This allegation fails.

**Paragraph 20.** Following this incident, Dr Westley then made confusing and unpleasant remarks to the Claimant belittling her with comments such as “You must feel like a failure”. On one occasion, the Claimant told him that she did not deserve the treatment she was receiving from him and he replied: “Then what do you deserve?”

171. In relation to paragraph 20. Our findings of fact were that we were not satisfied on the balance of probabilities, that Dr Westley made the particular alleged comments. Therefore this allegation fails.

**Paragraph 21.** Eventually, in July 2015, the Claimant sought to end what she considered to be a deeply confusing and often hurtful relationship. She informed Dr Westley of this, over drink in a pub and explained how hurt she felt. He replied firmly: "This is not what I want!", but then he added that he had nothing to offer to her and that she needed to know that

172. In relation to paragraph 21, as per our findings of fact and on the Claimant's own account, there was no unwanted conduct by Dr Westley on this occasion. Additionally, the fact that the relationship came to an end was a mutual decision, reached during the meeting; we rejected the Claimant's account that she decided to end things before they met, and our findings were that he never sought to resume the relationship on any later date. Dr Westley's conduct on this occasion was not conduct of a sexual nature and was not conduct related to the Claimant's sex. This allegation fails.

**Paragraph 22.** Subsequently Dr Westley continued to comment at times to the Claimant at work-related social events which they both attended, that he still had feelings for her and was interested in her, and at other times he would ignore her. The Claimant continued to find his behaviour confusing and hurtful

173. In relation to paragraph 22, we found that this behaviour did not occur. Dr Westley did not continue to inform the Claimant that he had feelings for her and/or that he was interested in her. We also did not find that Dr Westley ignored the Claimant, in consequence of anything that happened during the dating relationship or the end of it, but rather he sought to treat her as a work colleague and a fellow contributor to the Wellbeing Project. This allegation fails.

**Paragraph 25.** The Claimant experienced difficulties at work with Dr Westley in relation to the "Wellbeing Programme" which she had set up in 2014. She found that he sought to take credit for her work. When she challenged him about this, in a meeting in his office in October 2016 after him imposing a logo and name for the programme without consulting the Claimant, he told her that he did not have to consult with her as she was just an assistant and he was a director.

174. In relation to paragraph 25, in our findings of fact, we rejected the argument that Dr Westley did not consult with the Claimant in relation to the name or logo of the Wellbeing project. We did, however, find that he told the Claimant that he was the person who would have the final say and that he was more senior than her. We also decided that the reason that Dr Westley made those decisions was that they were the name and logo that he thought were most appropriate for the project. His decisions did not have the purpose of violating the Claimant's dignity or creating a hostile environment for her. His decisions were not related to the Claimant's sex, and his decisions were not of a sexual nature. We do not think that it would be reasonable for a person to perceive the conduct in choosing the name and logo of the project as conduct which violated the person's dignity, or created a hostile and intimidating, et cetera, environment for the Claimant. Therefore, that part of the allegation fails.



175. In relation to the remainder of paragraph 25, we found as a fact that Dr Westley had not sought to take credit for the Claimant's work and so that part also fails.

**Paragraph 28.** On 17 October 2016, the Claimant sent an email to Prof Bifulco and Dr Westley to express her disappointment in the way the situation above regarding the Wellbeing Programme had been handled. In response, Dr Westley then sent an email to the Claimant asking her for reconciliation stating that we have stopped hearing each other". The Claimant agreed to meet with him on a weekly basis and feeling obliged to conform but making clear to Dr Westley that she would only engage in reconciliation if he could be considerate of her perspective throughout communication. In those meetings, Dr Westley told her that he missed her and their relationship and told her, "We are so good together!" He said that he wanted them to gradually rebuild their trust and connection. In January 2017, Dr Westley then informed the Claimant that he was not interested in being in a relationship with her and she in response told him that she would like him stop any communication with her.

176. In relation to paragraph 28, as per our findings of fact, we decided that Dr Westley had wanted to repair the working relationship with the Claimant as regards the Wellbeing project, but that he had not sought to resume the dating relationship or to have any kind of sexual relationship or romantic relationship with the Claimant, therefore that part of her allegation fails

177. It is true that, in January 2017, the Claimant stated that she wished to communicate with Dr Westley only in relation to essential work matters. However, that was not the result of something he had said for the first time in January 2017. Rather he was being consistent with what he had previously said.

178. Also in our findings of fact, we referred to the fact that the Claimant messaged Dr Westley on Boxing Day 2016 to complain about the fact that he had not contacted her, and to the lengthy correspondence and exchanges between the Claimant and Dr Westley which took place in November 2017. It was our finding of fact that Dr Westley was making clear to the Claimant in late 2017 that he very clearly did not want to resume a relationship with the Claimant, and that she should as she had suggested move on to other relationships. It was our finding of fact that he had made the same point to the Claimant several times previously and much earlier than late 2017. It was also our finding of fact that the November 2017 messages demonstrated that Dr Westley had complied with the request that from January 2017 to May 2017 the communications were about essential work issues only.

179. Therefore, all of the allegations in paragraph 28 fail.

**Paragraph 29.** Although the Claimant then sought to avoid contact with Dr Westley at work, his inconsistent and unpredictable behaviour towards the Claimant continued; for example, he turned up unannounced to a first-year Counselling workshop the Claimant was teaching. The Claimant learned that he had also informed colleagues that he was upset that the Claimant was not speaking to him any more

180. In relation to paragraph 29 of the particulars, our findings of fact were that Dr Westley did not turn up inappropriately for any counselling workshops. His conduct was not related to the Claimant's sex and was not conduct of a sexual nature but was conduct which occurred because he was going about his business as an

employee of the respondent. He complied with the Claimant's request that communications be in relation to essential work issues only. We also rejected the Claimant's assertion that Dr Westley had told colleagues that he was upset that the Claimant was not speaking to him any more. Therefore, these allegations fail on the facts.

**Paragraph 30.** In May 2017, at an office party, Dr Westley told the Claimant that she had hurt him in all the months that she did not speak to him and that no matter what she chose to do, he would always be there for her. The Claimant said that she did not feel supported by him and felt marginalised. Dr Westley then told her, "You are not ready to be promoted! You don't even like working here!" The Claimant informed Dr Westley that she was offended by his statement and asked him what he meant. He said that she did not want to work with him. At this point they left the office and walked towards the tube station, arguing about the situation. Dr Westley then said "I am tired of taking bullets from you. There is the station. Just go!" The Claimant was shocked by his reaction and asked. "What do you mean by bullets? Give me some examples. " Dr Westley then said that the Claimant should trust him, hugged her and he said, "We are alright"

181. In relation to paragraph 30 we did not find that Dr Westley had stated that the Claimant was not fit to be promoted or that she did not like working for the respondent. On the Claimant's own account, the alleged hug was not unwanted conduct and we were not satisfied on the evidence that the hug did in fact occur. Therefore, this allegation fails.

**Paragraph 31.** The Claimant was confused but agreed to continue the conversation over a drink and Dr Westley then told the Claimant, "If you stick with me, if you are a good girl, I will have your back". He added that if she would not be "good", then he would tell others that he was upset with her which she took to be a veiled threat that he would seek to make things difficult for her at work.

182. In relation to paragraph 31, we found that Dr Westley did not make any comments along the lines of the Claimant being a good girl, or that he would potentially assist with her career progression if she cooperated with him (or interfere with it if she did not). Therefore, this allegation fails.

183. More generally, as per paragraphs 30 and 31, the events of this evening in May 2017 led to a temporary improvement in the working relationship between the Claimant and Dr Westley, and they were not unwanted conduct. It was the Claimant rather than Dr Westley who wanted to move away from the "essential work communications only" relationship which she had requested in January.

**Paragraph 32.** The Claimant continued to feel marginalised at work. After the start of the academic year in Oct 2017, Dr Westley continued to make decisions about the Wellbeing Programme without including or consulting with her. The Claimant felt that she was not being properly credited for the success of the programme, despite it being her creation.

184. In relation to paragraph 32, we found that Dr Westley carried on with the Wellbeing project in the academic year 17/18, as he had before, and he did not seek to unfairly deny the Claimant credit for the Claimant's work in any year. Dr Westley's

actions in relation to the Wellbeing project in 17/18 were not conduct which was related to the Claimant's sex and was not conduct of a sexual nature. Therefore, this allegation fails.

**Paragraph 33.** In February 2018, the Claimant discovered from a departmental newsletter that Dr Westley, together with Prof Bifulco and the Director of Programmes, Dr Stephen Nunn, were running a research project based on the Wellbeing Programme. The Claimant had not been informed of or included in this project

185. In relation to paragraph 33, as per our findings of fact, we decided that there had not been a deliberate decision to fail to inform the Claimant about the research that was going to be undertaken. The Claimant could not have been the person engaged to do the assessment for the project because she was actually involved in the project. The fact that there was an omission (in that she was not told about the research project) was not conduct of a sexual nature and was not related to the Claimant's sex. This allegation fails.

**Paragraph 34.** During a discussion in February 2018 with Dr Westley regarding the Wellbeing Project and the Claimant's concerns that she was being sidelined, Dr Westley told the Claimant, "You need to prepare for more news this summer". This ominous remark concerned the Claimant and she took it to mean a threat to her role. as her current contract was due to expire in August 2018

186. In relation to paragraph 34, we found as a fact that Dr Westley did not make that alleged comments and therefore this allegation fails.

187. We now turn to the allegations of less favourable treatment as per paragraph 75(b) of the particulars of complaint. Given that we have found that there was no harassment or sexual harassment as defined in sections 26(1) and 26(2) of EA, the allegations in 75(b) all fail in any event. Here are our additional comments.

188. The first of these relates to paragraph 25 of the particulars of complaint. We found as a fact that Dr Westley had not sought to take credit for the Claimant's work, therefore, that part of the allegation would have failed for that additional reason.

189. We also found as a fact that he did not tell her that he did not have to consult with her. He did inform her that he would have the final say, but that is because that was true. The fact that he regarded himself as having the final say, rather than the Claimant, is something that he would have decided regardless of whether or not he had previously had a dating relationship with the Claimant and had nothing to do with the fact that the Claimant and he had previously dated or that that relationship had come to an end.

**Paragraph 26.** The Claimant expressed concerns about Dr Westley's attitude towards her at work during a meeting with her Head of Department, Professor Antonia Bifulco, in October 2016. Prof Bifulco, who was unaware of the personal relationship issues told the Claimant that she did not have an explanation for his behaviour but that she found it very strange. Prof Bifulco then suggested that the Claimant should separate her work from that of Dr Westley and manage by herself a part of the Wellbeing Programme, namely a mentoring scheme, and that Prof Bifulco would mediate the future work relationship between Dr Westley and the Claimant by collaborating closely

with both of them on the programme. However, the following day Prof Bifulco sent an email to Dr Westley and the Claimant stating that she would join with him on the Wellbeing Programme and that the Claimant would be leading a mentoring scheme separately. The Claimant felt betrayed and sidelined.

190. In relation to paragraph 26, on the Claimant's own account of Prof Bifulco did not know about the previous dating relationship between Dr Westley and the Claimant. Neither the Claimant nor Dr Westley informed Prof Bifulco about anything connected to their personal relationship and Prof Bifulco was entitled to - and did - treat it simply as a disagreement between two work colleagues. Her solution was one which she believed was reasonable and appropriate to the circumstances and that is the reason why she made the decision. Therefore, this allegation fails for those additional reasons.
191. In relation to paragraphs 30 and 31 we refer back to our findings of fact on these matters, and also our conclusions above to the effect that there was no harassment in relation to the events described in these paragraphs of the particulars of claim. Based on our findings of fact, there was no less favourable treatment of the Claimant based on the allegations set out in those two paragraphs. As per our findings of fact, Dr Westley continued to treat the Claimant in relation to the Wellbeing project as he would have treated her regardless of their former dating relationship.
192. In relation to paragraph 32 we found as a fact that it was not true that the Claimant was not being properly credited for the programme. Furthermore, Dr Westley's conduct towards the Claimant was not motivated by the fact that they had previously been in a dating relationship or the fact that that relationship had ended. As per our findings of fact his actions in relation to the Wellbeing programme in the academic year 17/18, were those that he thought were appropriate to the circumstances and he acted in the same way that he would have acted if he had had another person, and not the Claimant, assisting him.
193. In relation to paragraph 33, the fact that the Claimant was not included in the research project was because she could not have been the person to do the evaluation. We found as a fact that there was an oversight in that she was not informed about the fact that a research programme was going to commence, but that was not a deliberate decision taken by Dr Westley and/or Prof Bifulco but was simply an oversight. It was not because of any alleged harassment or sexual harassment.
194. In relation to paragraph 34, we found as a fact that the comment "*You need to prepare for more news this summer*" was not made.

**Paragraph 45.** On 16 May 2018, a "Happy Picnic" event took place, organised by the Claimant to celebrate what had been a successful year for the Wellbeing Programme. The Respondent's Vice Chancellor attended but neither Prof Bifulco nor Dr Westley did so, which appeared odd given their claimed involvement in the programme

195. In relation to paragraph 45, our findings of fact were that Prof Bifulco and Dr Westley did not attend the picnic because they had other commitments. Their decisions were not on account of any alleged harassment or sexual harassment.

Prof Bifulco was unaware that the Claimant and Dr Westley had ever been in a dating relationship and the Claimant had made no allegations to her or to the Respondent by May 2018. Therefore, this allegation fails for that additional reason.

**Paragraph 46.** Also in May 2018, both the Claimant's grandmother and that of her SGAA colleague ... passed away. Prof Bifulco sent out an email to all psychology department staff to announce [the other SGAA's] bereavement and invited everyone to support her. In the Claimant's case, however, it was simply stated that she was away "to resolve family business"

196. The reason that Prof Bifulco sent out the email to staff, is as per our findings of fact. Prof Bifulco was unaware of any alleged harassment or alleged sexual harassment at the time of sending that email and, therefore, that was that played no part in her thinking about her choice of words for that particular email.

**Paragraph 52.** On 14 June 2018, the Claimant was then called into a meeting with Prof Bifulco to discuss her current contract ending. In the meeting, Prof Bifulco informed the Claimant she would not be extending the Claimant's contract: she said that she needed to make budget cuts and as the contracts for both the Claimant and the other SGAA in the department, Ms Skillen both expired in August 2018 and they would not be renewed. The Claimant was informed that one AL post would be advertised. Prof Bifulco also asked the Claimant why she was undertaking a DCPsych and had not continued with the PhD she had started in 2016. The Claimant explained her position, although Prof Bifulco knew the reasons. Later in the meeting, Prof Bifulco told the Claimant that she was a practical professional and would be better off working in the Respondent's Wellbeing Services department and that she should go ahead and obtain herself a job there

197. In relation to paragraph 52, as per our findings of fact as of 14 June 2018, Prof Bifulco was unaware of any dating relationship between Dr Westley and the Claimant, and she was unaware (because they had not yet been made) of any allegations of harassment or sexual harassment. Therefore, that was not the reason why the Claimant was called to the meeting. The reason that the Claimant was called to the meeting was that the Respondent had made a decision that it was going to delete the post of SGAA and wished to inform the Claimant of that decision. As per our findings of fact, Dr Westley did not inform Prof Bifulco about any dating relationship that he had previously had with the Claimant or that the relationship had ended. Furthermore, the Respondent's decisions about wishing to appoint an associate lecturer who had either completed a PhD or was close to having completed a PhD had nothing to do with any dating relationship or any alleged harassment or sexual harassment, but were simply choices made by Prof Dickens and Prof Bifulco based on what they thought was in the Respondent's best interests.

### Unfair dismissal

198. As per our findings of fact, the Respondent did have a requirement to save costs. The People 2020 programme was one which affected the University as a whole and the fact that Prof Bifulco was informed – in January 2018 - that she needed to save 15% of from the budget was unconnected to the Claimant. Prof Dickens and

Prof Bifulco were the two people who made the decisions for the Psychology department and it was they and they alone who decided that the posts of senior graduate assistants would be deleted. The decisions they made were not a sham. The decision to delete the SGAA posts was because Bifulco and Dickens genuinely believed that this was a reasonable way to achieve some of the cost saving target. Dr Westley was not involved in the decision, and he did not seek to influence the decision to delete the posts.

199. The reason that the Respondent decided not to renew the contracts of the SGAA was redundancy. The Respondent no longer needed two (or any) SGAA posts in the Psychology department and it wanted to save the costs of the salaries of those posts and therefore decided not to renew the contracts after the expiry dates
200. The decision not to renew the Claimant in the same role of SGAA had been made by 14 June 2018 and was communicated to the Claimant on that particular day. The Claimant was not properly warned in advance about what the purpose of the meeting was. Furthermore, she was presented with a decision which had already been made to the effect that the posts were being deleted. In other words, she was not specifically invited on 14 June 2018 to make her own submissions as to why the Respondent should come to a different decision about keeping the posts.
201. However, as mentioned in our findings of fact, on the Claimant's own case she had been of the opinion since February 2018 that her employment was at risk and she had believed since then that she needed to make comments to Prof Bifulco as to what role she might play after the end of the SGAA contract, and that is what she had been doing.
202. Furthermore, the Claimant had always been aware that both the GAA post and the SGAA post were intended for recent graduates and she was now almost 4 years past graduation.
203. We do not find that 11 July consultation meeting reversed the effect of the Claimant not having been given that the opportunity, on 14 June, to comment on the decision to delete the SGAA post prior to the final decision having been made. However, there were various steps taken in June and July relation to whether the Claimant's employment with the Respondent would come to an end, or else would continue in a role other than SGAA. The Claimant was consulted about the potential cessation of her employment (if not appointed to another post) in good time before the expiry of her contract. In particular, there were various questions that the Claimant put to Prof Bifulco and an HR representative at the meeting on 11 July, and also to Ms Klandic at the start of July. The Claimant's questions were answered by the Respondent promptly. Many of the questions focused on the associate lecturer post, and it was clear to the Claimant, well in advance of 15 August 2018, that she could apply for the AL post in Psychology, and she could apply for posts – as a priority redeployee – that were at her grade (5) or one below, and that she could apply for other vacant posts (though not as a priority redeployee), and that if she was unsuccessful, then her employment would cease on 15 August 2018.
204. The Respondent did, in our view, fairly reach a decision about whether or not the Claimant would be appointed to the alternative work which she applied for, namely

associate lecturer in Psychology department. The Respondent fairly decided that it would appoint somebody else rather than the Claimant. It was not unreasonable for the Respondent to only create one new associate lecturer post rather than two.

205. In relation to the fact that one of the GAA posts was due to become vacant because an employee informed Prof Bifulco that she was resigning, in all the circumstances, it was not unreasonable for the Respondent to conclude that the Claimant would not be interested in that post, given that it would be going back to where she had been 4 years earlier. Furthermore, in fact, the respondent's assessment of the situation was correct and the Claimant was not interested in the post despite having the opportunity to tell the Respondent before dismissal that she wanted it, and despite the fact that she believed that the Respondent would appoint her to it if she asked. In fact, in her grievance, submitted the day before her employment ended, she made clear that she knew about, and did not want, the GAA position.
206. Therefore, in all the circumstances, we do not find that the process by which the Respondent decided that the Claimant's employment would end on 15 August 2018 (that is that her contract would not be renewed and she would not continue in another role either) was so unreasonable that no reasonable employer would have adopted it. There were some imperfections, but the process as a whole was not unfair or unreasonable.

#### Time limits

207. In relation to the Claimant's allegations of breaches of the Equality Act, we have not found in her favour in relation to any of those allegations.
208. Other than the dismissal itself, and decisions directly connected to the dismissal, there is no alleged act or omission which continued up until 30 July 2018 or later.
209. Complaints connected to dismissal (date of termination 15 August 2018) were in time. The meetings of 11 July and 14 June were connected to the dismissal. As was the failure to appoint the Claimant to the post of Associate Lecturer, and the creation of the job description and person specification for the role, and the choice of interview questions. The decisions to delete the post of SGAA earlier in 2018 were also connected to the dismissal. We rejected the arguments that anything said or done by Dr Westley was connected to the dismissal.
210. In relation to all of the Claimant's other allegations, there was nothing which continued up until 30 July 2018 or later, and so those are out of time, subject to the tribunal's ability to extend time in accordance with Section 123(1)(b).
211. In terms of the events of 2014 and 2015, it is our view that events up to and including the end of the dating relationship were not a state of affairs that continued after July 2015. As per our findings of fact, Dr Westley was not interested in becoming involved in a romantic or sexual relationship with the Claimant and nothing that he said or did after July 2015 implied that that was the case.
- 211.1 Given that the events occurred more than 3 years before the Claimant contacted ACAS, and that many of the allegations were things that could not be supported or falsified by documents (because there were no documents) our finding is that it would not be just and equitable to extend time. So much

of the factual allegations depended on the accuracy of human memory it would not be reasonable for the respondent to have to defend itself on in reliance on memory in circumstances where no grievance was brought by the Claimant until more than 3 years later.

212. In relation to the communication issues between the Claimant and Dr Westley in connection with the Wellbeing project, we found that both of them agreed that there had been some communication difficulties. The Claimant raised the issue with Prof Bifulco in October 2016. The Claimant had the opportunity in October 2016 to inform Prof Bifulco that she believed that some of the problems might have been caused by the fact that she had had a previous relationship with Dr Westley and/or (on her account, which we rejected) that the problems might be caused by the fact that Dr Westley wanted to resume the relationship and she was resisting.

212.1 Neither in October 2016, nor any time in 2017, did the Claimant raise these issues with Prof Bifulco or with the Respondent. The Claimant did not contact ACAS until almost 3 months after the end of her employment and she did not raise a grievance until the day before the end of her employment. In these circumstances, we do not think that it is just and equitable to extend time as the respondent has been disadvantaged by the fact that it was not able to investigate the allegations when they were fresh in anybody's memories.

213. In relation to the events of 2017 we have not found that there was any harassment or sexual harassment during this year. In her evidence to the tribunal, the Claimant stated that she regarded her 27 November 2017 email as a closure email. As per our findings of fact we did not regard the Claimant's email as bringing any relationship to an end (because the relationship ended in July 2015, and Dr Westley had not sought to renew it). However, had it been the Claimant's opinion at the time that she had been involved in an abusive relationship which continued until November 2017, causing her to need to keep a distance from Dr Westley during the first part of 2017, then there was no reason that she could not have brought these allegations to the Respondent's attention sooner, and there was nothing that the Respondent did that would have made it difficult to raise the allegations. According to what she told us, it was after 2017 that the Claimant deleted all her text messages to and from Dr Westley. If she did have evidence in those messages to support her allegations, then it was her choice, not the Respondent's to delete it. An extension of time to cover the allegations said to have occurred in 2017 would not have been granted.

214. In relation to the events of early 2018, and in particular the allegation that Dr Westley told the Claimant in February to look out for news in the summer, had we found that this allegation was accurate in our findings of fact, then we would have potentially connected this fact to the Claimant's dismissal (meaning that the complaint was in time) or else we might have extended time on just and equitable grounds. However, we found that the comment was not made.

215. In relation to the allegations that the Claimant was not informed between November 2017 and February 2018 about the research programme connected to the Wellbeing project, we would not have extended time as this was a self-contained issue and the Claimant could have raised a complaint about it promptly at the time with Prof Bifulco or somebody else and could have contacted ACAS. It



was also a comparatively minor incident, given that the Claimant was not eligible to be doing the research in any event.

216. In relation to the fact that Dr Westley and Prof Bifulco did not attend the picnic in May 2018, although this was only a comparatively short time before 30 July cut-off point, we would not have extended time for this allegation as it was also a comparatively minor and self-contained incident and one about which a complaint could have been made much sooner.
217. In relation to the allegations that Dr Westley brought about the Claimant's dismissal by influencing people after February 2018, they would have been deemed to be in time had we found them to be true, or else we would have extended time if necessary. However, we rejected them on the facts.
218. Given our findings and conclusions, it is not necessary for us to determine the issue "*Did the respondent take all reasonable steps to prevent Professor Westley subjecting the Claimant to the behaviour alleged*". Had it been necessary for us to do so, we would have taken into all of the evidence that we heard, including what we were told about the equalities training provided to staff, the length of time it took to conclude the grievance investigation, the fact that alcohol was served in his office, the recommendations which were made by Mr Malpass and the fact that those recommendations have not yet been implemented.
219. For the reasons stated above, all the claims failed.

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Employment Judge Quill

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Date 13/11/20

JUDGMENT & REASONS SENT TO THE PARTIES ON

1/12/20.....

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FOR EMPLOYMENT TRIBUNALS