EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Dr O Iourin	and	The Chancellor, Masters and Scholars of the University of Oxford

Hearing held at Reading on:	26, 27, 28, 29, 30 October 2020 (Full Merits Hearing) 24, 26 November 2020 (In chambers)

Appearances:

For the Claimant:	In person
For the Respondent:	Ms A Beale, counsel
Employment Judge:	Vowles
Members:	Ms A Brown Ms H Edwards

UNANIMOUS RESERVED JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents provided by the parties and determined as follows.

Direct Sex Discrimination – section 13 Equality Act 2010

2. The Claimant was not subjected to sex discrimination. This complaint fails and is dismissed.

Victimisation – section 27 Equality Act 2010

3. The Claimant was not subjected to victimisation. This complaint fails and is dismissed.

Disability – section 6 Equality Act 2010

4. The Claimant was not a disabled person within the meaning of section 6 Equality Act at the material time. The complaint of failure to make reasonable adjustments fails and is dismissed.

Reasons

5. This judgment was reserved and written reasons are attached.

Public Access to Employment Tribunal Judgments

6. The parties are informed that all judgments and reasons for judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the Claimant and Respondent.

REASONS

SUBMISSIONS

1. On 27 March 2018 the Claimant presented complaints of sex discrimination, victimisation and disability discrimination (failure to make reasonable adjustments) to the Employment Tribunal.

2. On 15 May 2018 the Respondent presented a response. All claims were resisted.

3. Preliminary Hearings were held on 12 February 2019 and 30 October 2019 at which the claims were clarified. A later claim (3312662/2019) was struck out as an abuse of process and a duplication of the original claim. An anonymity / restricted reporting order was made under rule 50 of the Employment Tribunal Rules of Procedure 2013 and section 11 Employment Tribunals Act 1996 in respect of the identity of the person who made a complaint of sexual misconduct against the Claimant. That person is referred to as Ms A.

Issues

4. The list of claims pursued by the Claimant and which fall to be determined by this Tribunal were set out at pages 117M–P of the trial bundle of documents:

    - Direct sex discrimination – section 13 Equality Act 2010
    - Victimisation – section 27 Equality Act 2010
    - Disability Discrimination (Failure to make reasonable adjustments) – section 20 Equality Act 2010.

5. The Respondent did not concede that the Claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of Transient Ischaemic Attack (TIA).

EVIDENCE

6. The Tribunal heard evidence on oath from the Claimant, Dr Oleg Iourin (Post-Doctoral Research Scientist).

7. The Tribunal also heard evidence on oath on behalf of the Respondent from Professor David Stuart (Professor of Structural Biology), Ms Nicola Small (Head of Administration Department of Physics), Professor Christopher

Conlon (Head of Nuffield Department of Medicine), Ms Dawn McNish (HR Team Leader Central Personnel Services), Mr Mark Damazer (Former Master St Peter's College / Chair Grievance Committee) and Ms Gillian Morris (Assistant Registrar Human Resources).

8. The Tribunal also read documents in a bundle provided by the parties.

9. From the evidence heard and read, the Tribunal made the following findings.

FINDINGS OF FACT

10. From 19 December 1994 and up to the present time, the Claimant was employed as a post-doctoral research scientist in the division of structural biology. One of his colleagues was Ms A, and by all accounts, until January 2016 they had a good personal and professional relationship.

11. On 21 April 2016 Ms A submitted a formal written grievance to Ms McNish as follows:

"Dear Dawn McNish

I am raising a grievance in relation to a sexual harassment that occurred on the 22 January 2016 by Oleg Iourin who is another member of staff. I also raise a grievance about the systemic failure of HR within the university to report this matter in a safe and confidential manner.

The sexual harassment on the 22 January 2016 entailed to be forceful and unwanted acts whilst in my injured state I managed to stop his intentions going further and escape. On the 25 January 2016 I received a note and gift on my desk from Oleg. The note was typed on a PC in capitals with no name. I informed Oleg I don't want this to happen again. I disposed of the gift and kept the note. On 9 March 2016 I came into work and saw flowers on my desk this time without a note and I moved the flowers to a common area. On the 11 March 2016 Oleg approached me whilst I was at my desk with an aggressive look and told me the flowers were meant for me and asked me why I had moved them. I simply stated I don't want anything from you….

I contacted HR about this on the 22 January 2016 and had been attempting to report this sexual harassment in a safe and confidential manner for 84 days since. Despite considerable efforts I have not been able to formally report this incident the last point of contact being the HRBP Lynette Cole. This matter has been raised and escalated through the appropriate university channels and with guidance…

I would like the university to investigate my complaint without delay and to take appropriate action. As an outcome to my grievance I would wish to see the following:

1. I would like the perpetrator moved away from the vicinity of my lab/office space, and away from the place allocated space is reserved for my

students. Thus, for everyday work including my students there is no need to be in the same location as the perpetrator. This action should be done without inconvenience to myself;

2. I would like the perpetrator to be warned about his inappropriate behaviour and for appropriate disciplinary steps to be taken;

3. I would also like clarity and transparency on the process and procedure for reporting sexual harassment to HR; and

4. I would like HR personnel, including HRBPs to be trained (or retrained) appropriately in sexual harassment and such matters, along with unconscious bias."

12. The incident on the 22 January 2016 related to the Claimant having given Ms A a lift home in his car and the alleged sexual harassment occurred when they were still in the car having arrived at the Claimant's home.

13. On 3 May 2016 the Claimant was informed in writing by Dr Conlan that the department had received a formal complaint against him from Ms A. He had a meeting with the Claimant on 4 May 2016.

14. Miss Small was appointed to conduct an investigation into Ms A's grievance. She wrote to the Claimant on 16 May 2016 to invite him to an investigation interview. The letter included the following:

"The concerns that have been raised and I am investigating are:

1. [Ms A] has indicated that you sexually harassed her when giving her a lift home from work on 22 January 2016.

2. She has raised concerns that after this you placed a gift of chocolates and a note on her desk on 25 January 2016.

3. She also believes that you placed flowers on her desk on 9 March and that when these were moved by her to a common area that you were aggressive towards her on 11 March 2016."

15. On 17 May 2016 Dr Stewart informed the Claimant that, where possible, he should try to work from home. This was done because of the close proximity of the respective working areas on Ms A and the Claimant in a small laboratory environment. The Claimant was also told not to contact Ms A in any way until the investigation had been completed.

16. The Claimant remained away from work from 18 May 2016 until 12 April 2017. He referred to this as a "period of suspension". The Respondent referred to it as "special paid leave".

17. Miss Small completed the investigations. On 13 October 2016 she completed two separate investigation reports into complaints by Ms A against departmental HR and against personnel services. On 14 October 2016 she completed her investigation into the sexual harassment complaint by Ms A

against the Claimant. She produced an investigation report (summary at page 679) which detailed the evidence she had gathered which included interviews with both Ms A and with the Claimant. She did not uphold Ms A's allegations.

18. The investigation report was presented to a Divisional Panel and both the Claimant and Ms A were invited to hearings before the panel. On 4 April 2017 Miss McNish wrote to the Claimant (page 917) to confirm that:

    "The panel have concluded that there is no conclusive evidence to support [Ms A]*'s claims of sexual harassment against you and to this end the complaint is not proven."*

19. Ms A was also informed of the outcome and on 13 April 2017 lodged an appeal against the outcome. Meanwhile, on 12 April 2017 the Claimant had returned to work.

20. On 25 July 2017 the Claimant submitted a written grievance.

21. Because Ms A's appeal and the Claimant's grievance were closely related, it was decided that both matters would be considered by the same Grievance Committee and that the Committee would seek to hold the hearings in close succession and to make a decision on both matters at the same time, although following separate hearings.

22. On 26 April 2018 the Grievance Committee had provided an outcome of the Claimant's grievance which pertained to the matter in which Ms A's complaint of sexual harassment against the Claimant had been handled. In the "summary of findings" it was stated.

    "For the reasons set out below, the Committee finds that three elements of OI's grievance are well found;

    1) In respect of the communication surrounding the need to remain away from work (and the lack of clarity in respect of that requirement);

    2) As to the lack of communication in respect of the progress of the investigation and delays; and

    3) In respect of the information provided to OI at the outset of the investigation process into [Ms A]'s complaint.

    The Committee find that the remaining complaints are not well found."

23. On 8 May 2018 the Claimant appealed against the outcome of his grievance. He was invited to an appeal hearing on 7 June 2018 and his appeal was dismissed on the 27 July 2018.

24. Meanwhile, on 20 June 2018 the Grievance Committee produced an appeal outcome report in respect of Ms A's appeal. The report included the following:

"The chocolates and note from OI indicate a degree of remorse and embarrassment consistent with an attempted "clumsy" kiss and also indicate a personality that is not likely to be aggressive in our view; and (5) in OI's own defence documents in the proceedings, he has posed rhetorical questions such as "Can an attempt to kiss your friend after providing lift home be harassment?" [E3] and "the list of allegations against me should be viewed as good will gestures between friends… The allegations were: an attempt to kiss at "bye bye" moment between two friends after giving a lift home" [E2]. We consider that these documents produced by him reveal the truth about the event, despite his denial that he ever attempted to touch [Ms A], even as a good will gesture.

In summary, we find, on balance of probabilities, that there was an attempted hug and kiss and that OI most likely did hold or touch [MS A] on her shoulder when he moved to kiss or hug her. We do not find that this was forceful or aggressive. [Ms A] explained that she was in a "fragile state" due to the pain and injury to her shoulder [D159]. We consider that her perception of the degree of force OI used when touching her shoulder could have been affected by this.

We accept [Ms A]'s evidence that this was unwanted conduct, but we do not find that it was of a sexual nature. Both parties describe their relationship in familial terms, with OI suggesting that [Ms A] was "like a daughter" [D114] and [Ms A] stating she regarded OI as "a grandfatherly type person" [D44].

Further, whilst we do consider that a kiss or even an attempted kiss can amount to sexual harassment in some situations, on the facts of this complaint, we do not consider it to amount to such. This is because in the context of the relationship we have found it to be, OI may have felt it appropriate to demonstrate affection in this way. We do not consider that the attempted hug or kiss that we have determined took place (and which is a different from [MS A]'s perception of events) could be described as a "violation of dignity, or creating and intimidating, hostile, degrading, humiliating or offensive environment", adopting the vernacular of the Bullying and Harassment Policy. Accordingly, whilst we overturn the findings of fact and uphold [MS A]'s version of event to a degree, we do not make a finding that these actions amount to harassment or sexual harassment."

25. The summary of findings was as follows:

"For the reasons set out below, the Committee finds that three elements of [Ms A]'s appeal are upheld and, having considered matters on the balance of probabilities, decides as follows:

1) The finding in respect of events of 22 January 2018 be substituted with a finding that Dr Oleg Iourin ("OI") attempted to kiss and/or embrace [Ms A] in the car outside her home after

having driven her home. However, we do not find that this act meets the concept of sexual harassment or harassment;

2) OI did leave the note with the chocolates on 25 January 2016, but we do not find that this act constitutes sexual harassment or harassment; and

3) The University should have implemented interim measures within days of the written grievance of 21 April 2016.

All other elements of the appeal are not upheld."

26. Following the outcome of Ms A's appeal Professor Conlan wrote to the Claimant on 4 July 2018 regarding the decision of the Grievance Committee in relation to Ms A's appeal and set out his expectations that the Claimant would not contact Ms A and that the Claimant would undertake equality and diversity training. The Claimant objected to having to undertake the training but Professor Conlan told him he had to attend the training. The Claimant subsequently undertook the training on 18 December 2018.

27. Those are the background facts.

DIRECT SEX DISCRIMINATION – Section 13 Equality Act 2010

28. *Section 13*

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

29. Section 23 - Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14 or 19, there must be no material difference between the circumstances relating to each case.

30. *Section 136 – Burden of Proof*

(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.

31. There is guidance from the Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246. The burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a

difference in treatment. Those bare facts only indicate a possibility of discrimination, they are not without more sufficient material from which a Tribunal could conclude that on the balance of probabilities the Respondent had committed an unlawful act of discrimination. The Claimant must show in support of the allegations of discrimination a difference in status, a difference in treatment and the reason for the differential treatment.

32. If the burden of proof does shift to the Respondent, in Igen v Wong [2005] IRLR 258 the Court of Appeal said that it is then for the Respondent to prove that he did not commit or is not to be treated as having committed the act of discrimination. Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof and to prove that the treatment was in no sense whatsoever on the prohibited ground.

33. In Ayodele v Citylink Ltd [2017] the Court of Appeal held that the burden of showing a prima facie case of discrimination under section 136 remains on the Claimant. There is no reason why a Respondent should have to discharge the burden of proof unless and until the Claimant has shown a prima facie case of discrimination that needs to be answered. Accordingly, there is nothing unfair about requiring a Claimant to bear the burden of proof at the first stage.

34. In Law Society and others v Bahl [2003] IRLR 640 EAT it was said that:

"Tribunals may find it helpful to consider whether they should postpone the question of less favourable treatment until after they have decided why the particular treatment was afforded to the Claimant. Once it is shown that the protected characteristic had a causative effect on the way the complainant was treated, it is almost inevitable that the effect will have been adverse and therefore the treatment will have been less favourable than that which an appropriate comparator would have received. Similarly, if it is shown that the protected characteristic played no part in the decision-making, then the complainant cannot succeed and there is no need to construct a comparator.

35. In respect of all the allegations of sex discrimination the Claimant relied upon Ms A as an actual comparator and also a hypothetical comparator.

36. The allegations of direct sex discrimination were set down in the agreed List of Issues as follows:

"1.1 ***On 18 May 2016, did the Respondent introduce restrictions on the Claimant's access to his place of work without sufficient evidence?***

1.3 Did the Respondent fail to re-evaluate the justification for the interim measures applied to the Claimant during the internal investigation?

1.6 Did the Respondent keep the Claimant away from his place of work for 6 months after the outcome of the investigation report?"

37. The Tribunal found allegation **1.1** factually proved. Ms A's complaint was a serious complaint and is quoted extensively above. It is a fact that both the Claimant and Ms A worked in close proximity in the laboratory area. The Respondent's harassment complaints procedure states that if the alleged perpetrator and the complainant are in the same college or department, contact between them will need to be managed.

38. Ms A had requested that the Claimant be moved out of the vicinity of her laboratory/office space. Various options were considered but eventually Professor Conlan decided that the Claimant should work from home until the investigation was complete and that he should not have contact with Ms A until that was done. Accordingly, the Claimant stayed at home (from 18 May 2016 to 12 April 2017) for the duration of the investigation and until Ms A's complaint against him had been determined by the Grievance Panel.

39. Clearly the circumstances related to the Claimant and Ms A were materially different. She was the complainant and he was the alleged perpetrator. In the circumstances of the complaint by Ms A one of them had to be moved and it was not unreasonable for the Respondent to decide, bearing in the mind the nature of the Claimant's work, and the fact that he could not be employed elsewhere in the Respondent's premises, that he should have to work from home.

40. There was no evidence to indicate that this was motivated by the Claimant's sex. Professor Conlan and Dr Stewart both confirmed that a woman in the same circumstances would have been treated no differently and there was no reason to doubt their testimony. It is clear that there was a difference in gender between the Claimant and Ms A but no evidence to provide a causal link between the treatment of the Claimant and gender. There was no evidence upon which the Tribunal could find or infer less favourable treatment because of gender.

41. The Tribunal found allegation **1.3** not factually proved. It is clear that both Professor Conlan and Dr Stewart were constantly assessing and re-evaluating the Claimant's circumstances in being away from the work place and expressed concern on several occasions about that matter and about the delay in conclusion of the investigations and the outcomes of the respective Panel and Committee. Professor Conlan kept in touch with the Claimant during May and June 2016 and met with him on 24 June 2016. He met with the Claimant again on the 11 October 2016 and again on 21 November 2016. He wrote to the Claimant on 25 November 2016 explaining that the investigation had been complicated and had taken time but assured him that at that point it had been completed and the report was provided but no decision yet made. At that time Professor Conlan was no longer the decision maker but he explained to the Claimant that until a decision was made he should remain working from home because the outcome of Ms A's complaint against him had not yet been decided.

42. Professor Shepperd wrote to the Claimant on 28 November 2016 confirming that she, rather than Professor Conlan, was now the decision maker and invited him to a formal meeting on 8 December 2016.

43. There was no indication that the Claimant had been treated any differently to Ms A. Although the delay and the requirement to work from home was extensive, there was no evidence to suggest that it was in any way motivated by the Claimant's gender. There was no evidence that a female in the same circumstances would have been treated any differently.

44. The Tribunal found allegation **1.6** factually proved. Miss Small had produced her investigation report on 14 October 2016 but her conclusions had to be considered and decided by the Grievance Panel chaired by Professor Shepperd. There is no doubt that the Respondent's processes in this respect were cumbersome, lengthy and delayed, not least due to the difficulty in convening the Grievance Panel. However, as stated above, the Claimant was informed by Professor Conlan of progress, or lack of it, in the investigation and in the procedure. Once again there was no indication that the Claimant was being treated any differently to Ms A or that he was being treated differently because of gender.

1.2 Before the Claimant's investigatory interviews of 23 May and 25 August 2016, did the Respondent fail to provide an adequate description of the allegations against the Claimant?

45. The Tribunal found allegation **1.2** not factually proved.

46. The description of the allegations were provided to the Claimant by Miss Small in the letter dated 16 May 2016 which is quoted above. It clearly reflects those matters which were set out in Ms A's grievance dated 21 April 2016. In the course of his interview on 23 May 2016, the Claimant was provided with a copy of the note said to have accompanied the chocolates given to Ms A on 25 January 2016. Two later additional allegations regarding the "canteen" and "kitchen" incidents were dismissed. Although the Grievance Committee found that a copy of the original complaint by Ms A and the notes of her interview should have been provided to the Claimant there was no evidence that in the same circumstances a woman would have been treated any differently.

47. The Grievance Committee considered the Claimant had been provided with sufficient detail to understand the allegations against him and to enable him to discuss matters at the various interviews.

48. Miss Small said that she had not sent Ms A's full complaint letter to the Claimant because it contained complaints against the HR departments but she sent a summary of the allegations against the Claimant. The Tribunal found that the Claimant had been provided with an adequate description of the allegations in advance of the investigatory interviews on the 23 May and 25 August 2016.

1.4 Did the Respondent fail to provide the Claimant with proper updates on the investigation?

49. The Tribunal found allegation **1.4** factually proved.

50. The Respondent's witnesses confirmed and the Tribunal accepted, as did the Grievance Committee, that updates to the Claimant were adequate in May-June 2016. The Grievance Committee found updates were inadequate thereafter but it is clear that there were updates provided to the Claimant on 5 July 2016 and 18 and 19 August 2016 by Ben Powish and Miss McNish.

51. Both the Claimant and Ms A were informed at the same time that the investigation was complete by Mr Gutteridge on 11 October 2016. In that respect the Claimant and Ms A were treated the same.

52. During this period May to October 2016 there was no evidence that the Claimant was treated any differently in this respect to Ms A or a woman would have been treated.

1.5 On 25 November 2016 did the Respondent inform the Claimant about the content of the investigation report with no explanation of the delay?

53. The Tribunal found allegation **1.5** factually proved.

54. As stated above the Claimant was informed of the content of the investigation report at the same time as Ms A by Professor Shepperd who enclosed a copy of the investigation report by Miss Small dated 14 October 2016.

55. Miss McNish explained that it was necessary to have the additional panel appointed it was Professor Shepperd who appointed and to inform both the Claimant and Ms A at the same time of the outcome of the investigation report. There was no evidence of any difference in treatment of the Claimant and Ms A or that a woman would have been treated any differently in the Claimant's circumstances.

1.7 did the Respondent hear Ms A's grievances in breach of its procedures placing the Claimant in a significant disadvantage?

56. The Claimant's claims under this heading were:

   a That he should not have had to attend a second investigatory meeting with Miss McNish on 25 August 2016.

   b That Professor Conlan should have taken the decision whether or not to uphold Ms A's complaint rather than the matter being referred to a divisional panel.

   c That the Divisional Panel should have made its determination without holding further meetings with the Claimant and Ms A, and

d That the Claimant and Ms A should have attended a meeting together rather than separately.

57. As the Respondent submitted, the Respondent's harassment policy states:

    "If a complaint falls across more than one university procedure, the university will deal with the matter as flexibly fairly and proportionately as possible".

58. The Respondent's harassment policy does not stipulate that only one investigatory meeting may be held. Indeed, fairness requires that where further meetings are required to investigate particular matters then those involved should the opportunity to attend in person to be able to respond to those matters.

59. It was Ms A who requested that Professor Conlan be removed as the decision maker. Miss McNish advised that the Claimant's complaints would be referred to a divisional panel led by Professor Shepperd and the in division agreed and followed the suggested approach. As Ms A had indicated that she would present a further grievance which Ms McNish considered would delay proceedings even further, it was reasonable for Miss McNish and the Divisional Panel to agree to this course. Ms A's grievance against the HR department was also referred to the Divisional Panel.

60. In view of the nature of the grievances presented by both the Claimant and Ms A, it was decided that separate hearings would be conducted but each party was given an opportunity to attend and to provide evidence and respond to the panels questions. Accordingly both the Claimant and Ms A were treated the same. In the event, the Divisional Panel dismissed the complaints made by Ms A against the Claimant after considering the evidence from both parties.

61. The Tribunal did not find any element of unreasonableness or discrimination in taking this course. Indeed, the course was entirely pragmatic to avoid a further grievance and further delay. Eventually, the Divisional Panel found in the Claimant's favour.

62. There was no evidence of any less favourable treatment by reason of the Claimant's gender. There was nothing to suggest that a female person would have been treated any differently.

1.8 did the Claimant make complaints on the 24 June, 21 November and 19 December 2016 and on 2 February and 6 March 2017 and if so, did the Respondent not address such complaints?

63. The Tribunal found allegation **1.8** not factually proved.

64. 24 June 2016. The Claimant said that he showed Professor Conlan his letter of that date on his computer but did not send a copy of it to him. The Claimant's complaints were discussed during the meeting on 24 June 2016 but the complaint was never put in writing. The Tribunal found that the

Respondent did in these circumstances, albeit not in writing, respond to this complaint.

65. 21 November 2016. Professor Conlan met the Claimant to discuss the concerns raised in this letter and also responded in writing on 25 November 2016. The complaint was about the length of time that the investigation had taken. Professor Conlan explained that he was no longer in a position of being the decision maker and that the decision had been referred to a divisional board but he was not aware of the date for the Divisional Panel to meet and make a final decision. He confirmed that until a decision was made the interim arrangements whereby the Claimant had to work at home and not enter the Respondent's premises would have to remain in place. Accordingly, the Tribunal found that this complaint was responded to.

66. The complaints of 19 December 2016, 2 February 2017 and 6 March 2017 were addressed to the Tribunal regarding Ms A's Employment Tribunal proceedings. They were not complaints made to the Respondents and no response was requested from the Respondent.

1.9 was the Respondent able to arrange a hearing of the Claimant's grievances for more than 300 days without adequate explanation?

67. The Tribunal found that allegation **1.9** was factually proved.

68. The hearing of the Claimant's grievances was extensively delayed as alleged. There was an explanation for the delay although the Tribunal found that it was not adequate and there could have been more explanation at an earlier stage.

69. The Claimant pursued his grievance formally on 25 July 2017. The Respondent considered that it was appropriate for both the Claimant's grievance and Ms A's appeal to be dealt with by the Grievance Committee set out on 18 August 2017 in a letter from Mr Ducksfield. Ms A was absent on maternity leave and this caused further delay. However, the Claimant was given regular updates on the progress of the Grievance Committee in arranging the relevant meetings on 22 and 28 September 2017, 10 October 2017, 23 November 2017 and 21 December 2017. The grievance hearing eventually took place on 12 March 2018.

70. The delay was excessive and unacceptable. There was, however, no evidence that a woman in the same circumstances would have been treated any differently. As stated above the Respondent's procedures were complex and cumbersome.

71. Additionally, Ms A's complaints regarding the delay in dealing with her grievances also took almost a year to be considered and finally determined. In that respect the Claimant and Ms A were treated the same.

1.10 did the Respondent require the Claimant, but not Ms A to undertake one-to-one training following the outcome of Ms A's internal grievance appeal when this was not justified but that outcome?

1.11 intensive one-to-one training about harassment was chosen for the Claimant to ensure to avoid misinterpretation of any physical contacts after 23 years of spotless employment at 63 year old of age instead of apologies to the innocent person. The Claimant, who proved his innocence from allegations of harassment and suffered severe injustice during the investigation, was subject to mobbing with request to undertake humiliating and insulting him training about harassment. That training was provided by HR officers who were subordinates to Miss Dawn McNish accused by the Claimant in this claim, while Ms A did not go through such training after her false statements.

72. As set out above, the Grievance Committee had found that the Claimant had attempted to kiss and embrace Ms A in his car on 22 January 2016 and that on 25 January 2016 he had left a note saying *"I have been a bit clumsy. Sorry. Hope you are not irritated."* Together with chocolates. The Grievance Committee found that conduct was unwanted but did not amount to sexual harassment. No sanction was posed or recommended.

73. Professor Conlan said in his evidence:

> *"I had to consider, in the light of the Committee's findings, whether there should be disciplinary action against the Claimant. I decided this was not appropriate taking into account the Committee's findings regarding the Claimant's own complaint. However, I had to make clear to the Claimant that he was not to communicate with Ms A or seek to contact her in any way. I also believed it appropriate for the Claimant to undertake equality and diversity training so that he understood appropriate boundaries with work colleagues. This can be arranged with HR and I expect it to cover equality and diversity and harassment training."*

74. Professor Conlan confirmed this in a formal letter dated 4 July 2018 to the Claimant. It summarised the findings of the Grievance Committee which had confirmed that the conduct proved to not amount to sexual harassment, but it did call into question his behaviour towards Ms A which caused her upset.

75. The Tribunal found that the requirement to undertake equality and diversity training, including training on harassment, was justified by the appeal outcome. Harassment is commonly a part of equality and diversity training, and appropriate in this case as the Grievance Committee had found that there was harassment, though not amounting to sexual harassment

76. Ms A was not required to undergo such training as her circumstances were materially different than that of the Claimant. There was no finding of unacceptable conduct on her part, as there was in respect of the Claimant's conduct.

77. The findings of the Grievance Committee were based on the evidence presented to it by both Ms A and the Claimant. The findings were clearly explained in the lengthy and detailed outcome.

78. The Tribunal accepted Miss McNish's explanation that the training provided to the Claimant, by Miss Morris was appropriate and that Miss Morris was not subordinate to Miss McNish.

79. Importantly there was no evidence to support the suggestion that a woman in similar circumstances would be treated any differently and would not have been required to undergo equality and diversity/harassment training.

80. In summary, the Tribunal found that although the Respondent's treatment of the Claimant may have been unfair because of the excessive delay dealing with Ms A's grievance against him and his grievance about the Respondent's conduct towards him, it was not discriminatory. Unfair conduct, without more, cannot by itself amount to discriminatory treatment. There was no link between the difference in treatment between the Claimant and Ms A and the difference in gender. The Respondent has shown, through the evidence of its witnesses, that there was a plausible non-discriminatory reason and explanation for the treatment of the Claimant at each step.

81. There was no evidence of less favourable treatment because of the protected characteristic of sex.

82. The claims of direct sex discrimination therefore fail.

VICTIMISATION – Section 27 Equality Act 2010

Victimisation – section 27 Equality Act 2010

83. *Section 27 – Victimisation*

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –

a. bringing proceedings under this Act;
b. giving evidence or information about proceedings under this Act;
c. doing any other thing for the purposes of or in connection with this Act;
d. making an allegation (whether or not express) that A or another person has contravened this Act.

84. The protected acts relied upon by the Claimant were as follows:

A letter dated 24 June 2016 (page 584).

85. The Tribunal found that although this letter included the words "*victimised by heavy hammer of interim measures without any necessity"* this did not amount to a protected act within the meaning of S.27 of the Act. The word *"victimised"* was used in its colloquial sense rather than in terms of an allegation of contravention of the Equality Act 2010. It was not a protected act.

A letter given to Sarah Oliver of the Respondent on 2 June 2017 (page 982).

86. The Respondent accepted, and the Tribunal found, that this letter contained an allegation of a breach of the Equality Act 2010. It included the following

> *"Either his discriminated status served as a justification of investigators "vigilant" against harassment of innocent victims (and university report to ET confirms this point) or he suffered a sex discrimination connected to manhood in cases of such outrageous feminine complaints or some other reason for discrimination."*

87. The Tribunal found that this was a protected act within the meaning of section 27 of the Equality Act 2010.

The Claimant's grievance dated 25 July 2017.

88. The Tribunal found that this did not amount to a protected act as it did not include a complaint about a breach of the Equality Act 2010.

The Claimant's emails of 19 August 2017 (page 1042), 29 September 2017 (page 1089) and 13 October 2017 (page 1100).

89. These complaints are very similar and refer to "*discrimination against me*". The Tribunal found that these also amounted to a protected acts within section 27 of the Equality Act 2010.

Detriments

90. The detriments relied upon by the Claimant as acts of victimisation are the same as those set out as allegations of direct sex discrimination at paragraphs **1.1** to **1.11** dealt with above.

91. The first protected act, found by the Tribunal to be a protected act under section 27, was on 2 June 2017. It follows that none of the earlier events described at paragraphs **1.1** to **1.6** could have been done because of any protected act.

92. So far as allegations **1.7** to **1.11** were concerned there was no evidence whatsoever that these events, as far as found proved, were because the Claimant had made the protected acts referred to above. There was no

evidence whatsoever of any causal link between the protected acts and the events described by the Claimant.

93. As stated above the Respondent has shown, through the evidence of its witnesses, that there was a plausible non-discriminatory reason and explanation for the treatment of the Claimant at each step.

94. The complaint of victimisation therefore fails.

DISABILITY- section 6 Equality Act 2010

95. Equality Act 2010

Section 6

(1) A person (P) has a disability if –

(a) P has a physical or mental impairment, and
(b) The impairment has a substantial and long term adverse effect on P's ability to carry out normal day-to-day activities.

Section 212:

(1) – "substantial" means more than minor or trivial.

Schedule 1 paragraph 2(1):

(1) – The effect of an impairment is long-term if-
(a) It has lasted for at least 12 months,
(b) It is likely to last for at least 12 months, or
(c) It is likely to last for the rest of the life of the person affected.

96. As well as the statutory definition of disability, the Tribunal also took account of the guidance on matters to be taken into account in determining questions relating to the definition of disability issued by the Secretary of State in 2011, in particular the following:

B1 - Meaning of substantial adverse effect - The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect.

D3 – Meaning of normal day-to-day activities – In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related

activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents and keeping to a timetable or a shift pattern.

97. The disability relied upon by the Claimant is Transient Ischaemic Attack (TIA).

98. The complaint of Failure to Make Reasonable Adjustments under section 20 Equality Act 2010 was set out at paragraph 8 of the List of Issues. This claim was limited to the period of suspension from 18 May 2016 to 12 April 2017. In order that this claim could succeed, the Claimant would have to show, and the Tribunal would have to find, that the Claimant was a disabled person during this period.

99. The Claimant provided a disability impact statement on 29 April 2019 (pages 1801-1802).

100. The Claimant also described his TIA condition and Ischaemic Heart Disease (IHD) at paragraphs 120-124 of his witness statement.

101. The Claimant confirmed in his witness statement that he suffered a TIA on 14 February 2012 but he has not suffered any subsequent TIA.

102. In the disability impact statement at pages 1081-1082 there is no reference to day-to-day activities. The Claimant's medical records are set out in the bundle at pages 1801-1828.

103. The Claimant describes on-going symptoms from his original TIA as facial numbness in the left cheek, dizziness, visual disturbances and blindness. However, there is no reference to these on-going symptoms in the medical records he has provided.

104. In the medical report dated 15 February 2012 (one day after the TIA on 14 February 2012) it is recorded as follows:

> *"While he was still having the symptoms he was brave enough to drive home. Half way through he had to stop driving because he could not see the lines of the road clearly. About an hour later his visual symptoms started to resolve. He managed to get home and parked his car and went to bed at 3.45am. He was still ataxic when he went to bed. When he woke up in the morning at about 8 o'clock his symptoms had almost resolved. He attended the A&E department on the same day. He had had a CT scan of the brain which did not show an acute infarct or bleed… On examination he is well there is no evidence of dysarthria or dysphasia. His blood pressure was 150/90 mmhg and the heart rate was 60 beats per minute and regular. He did not have any focal neurology. The heart sounds were normal and there is a soft ejection systolic murmur. The rest of the examination was unremarkable."*

105. In a medical report dated 5 April 2012 it was reported:

"Thank you for attending your TIA assessment for secondary prevention advice. I note that you have been symptom free since your first event."

106. In a medical report 3 December 2018 it was reported that he had:

"Ocular migraine in both eyes, no alarming sounds. Had TIA in the past. Might be basilar arteries constricted. Plan – if comes back refer to neurologist."

107. After 2012 there is no evidence of any substantial adverse effect resulting from the TIA in February 2012 or his ability to perform normal day-to-day activities.

108. In January 2017 the Claimant was diagnosed with ischaemic heart disease but the medical records do not state that this heart condition was caused by the previous TIA. The Claimant had operations on 19 January and 1 March 2017 when two stents were inserted.

109. In an occupational health report dated 20 May 2016 it was reported:

"There is no formal report as such but with Oleg Iourin's consent I am writing to confirm that I saw him yesterday and we have spoken in depth about his health and well-being. I have given him advice about sources of support and he can contact the occupational health service again directly if he requires our further support."

110. In a further occupational health report dated 17 May 2017 it was reported:

"What led him to be absent from work in May 2016 was an investigation relating to him which took some time to conclude but reportedly led to his being cleared of any wrong-doing. He was, however, profoundly uncomfortable with the whole situation and as these matters take time this was a key issue for him. Then during his absence from work he developed an acute and potentially very serious form of ill-health which happily was recognised and medically managed promptly with benefit. This condition requires on-going treatment and he is receiving a supportive rehabilitation program which is undoubtedly going to prove helpful. Happily his health seems largely recovered from this although he considers that this is not quite as it was.

I understand that he has been in the department for 17-18 years, undertaking post-doctoral research working in both a lab and an office. In general he feels well supported by the leading people in the department and by colleagues."

111. So far as adjustments were concerned it was stated:

"He therefore would currently appear to have no reason for any longer term or permanent work-related adjustments."

112. There was an absence of any medical evidence connecting the TIA in February 2012 with the heart operations in January and March 2017. In May 2017 the Claimant's health is recorded as having largely recovered.

113. There was no evidence that the Claimant's condition of TIA had any substantial adverse effect or that any effect was long-term. There was no evidence that the effect of the TIA had lasted for at least 12 months or was at least likely to last 12 months or was likely to last for the rest of the Claimant's life.

114. The Tribunal found that the physical impairment of TIA did not amount to a disability within the meaning of section 6 and Schedule 1 of the Equality Act 2010 during the period of suspension from 18 May 2016 to 12 April 2017.

115. It follows that the complaint of failure to make reasonable adjustments during this period set out in paragraph 8.1 of the List of Issues must fail.

TIME LIMITS – section 123 Equality Act 2010

116. In view of the substantive findings above, the Tribunal did not consider in detail whether any particular event occurred outside the statutory time limits. However, as the events were all well documented, it is likely that if there was any failure to comply with time limits the Tribunal would have found it to be just and equitable to extend the time limit.

I confirm that this is the Unanimous Reserved Judgment in the case of Dr O Iourin v The Chancellor, Masters and Scholars of the University of Oxford case no. 3305245/2018 and that I have dated and signed by electronic signature.

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Employment Judge Vowles

Date: *19 February 2021*

Sent to the parties on:

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For the Tribunals Office